

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.REV. 197/2015**

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Reserved on: 5th May, 2015
Decided on: 29th May, 2015

CHAMAN LAL KEWAL KRISHAN & ORS Petitioners
Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Amardeep Maini, Advocate.
versus

KANTA DEVI Respondent
Through: Mr. S.S. Jain and Mr. Nikesh Jain,
Advocates.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 15th November, 2014 whereby leave to defend application of the petitioners in an eviction petition filed by the respondent under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (in short the DRC Act) was dismissed, the petitioners prefer the present petition.
2. Smt. Kanta Devi the respondent herein filed an eviction petition against the petitioners seeking eviction from the premises i.e. a shop measuring 26 feet x 7 feet approximately bearing No. 4451, Daiwara, Nai Sarak, Delhi-110006 on the ground of bonafide requirement. It was stated that Smt. Kanta Devi was the sole and exclusive owner of the tenanted premises which was originally purchased by Putli Devi vide registered sale deed dated 16th June, 1972. Smt. Putli Devi bequeathed the property to her son Kailash Chand by Will dated 7th January, 1991 and on the death of

Kailash Chand, Kanta Devi being the wife of Kailash Chand succeeded as Class-I legal heir to the property. The children of Kanta Devi and Kailash Chand executed a relinquishment deed in her favour which was duly registered. The tenancy was in the name of Chaman Lal Kewal Kishan from the time of Smt. Putli Devi. However, Kewal Kishan alone was paying rent in the name of Chaman Lal Kewal Kishan under his signatures/initials. No person in the name of Chaman Lal ever paid the rent. It was stated that the tenanted premises was required for running business by Kanta Devi and her sons who were dependent on her in order to earn and meet the family requirements. Kanta Devi's family comprised of herself, two married sons with their wives and six grand-children and three married daughters who were financially dependent on her. It was stated that her elder son Pawan Kumar Gupta was doing the business of boxes and tins from the residence itself and earning a meager amount of ₹14,500/- per month. The younger son Sanjay Gupta was doing the retail trade of perfume from residence and earning ₹ 15,400/- per month. Both daughter-in-laws were housewives and not engaged in earning activity. Thus the income of the Kanta Devi and her sons was insufficient to meet the growing demand of the family. Since the tenanted premises was on the ground floor the same was suitable for commercial activity and that Kanta Devi had no other alternative suitable commercial accommodation.

3. Pursuant to summons being served leave to defend application was filed by the petitioners. It was stated that Putli Devi sold one shop bearing No. 4449, Nai Sarak in 1990 and another shop bearing No. 4450 situated on the ground floor was sold by petitioner's husband in the year 2003. Thus there was no requirement to carry out the business from the ground floor

premises. It was stated that Putli Devi and her husband were having number of properties in Naya Bans, Khari Baoli, Daiwara and Nai Sarak which have been bequeathed to her legal heirs which have not been disclosed in the eviction petition. The respondent is also having a tenant on the first floor of property bearing No. 4451, Nai Sarak which premises can also be used for commercial activity since it is in the area of Nai Sarak and has commercial value. The husband of Kanta Devi and her sons continue to carry on business from premises bearing No. 1213, Gali Samosa, Farash Bazar and have sufficient space and accommodation for the same. The sons of respondent are independent having separate kitchen and the daughters are also happily married and well-settled in their life.

4. Vide the impugned order learned ARC held that the landlord tenant relationship was not disputed. As regards the bonafide requirement it was not disputed that Kanta Devi and her sons were presently carrying on business from the residential house in the absence of any commercial space in her possession, thus the need for a commercial space cannot be denied. As regards the availability of an alternative suitable accommodation since no details of the other properties were given, the contention was held to be a mere bald assertion without any substance and leave to defend was declined and eviction order was passed.

5. The main grievance of the petitioners before this Court is that despite pointing out that the respondent has property bearing No. 1215, Gali Samosa, no finding has been returned by the learned ARC in this regard. As noted above, the availability of premises No. 1215 in Gali Samosa has not been taken in the leave to defend application. In the leave to defend application the factum of selling two shops i.e. 4449 and 4450 in the year

1990 and 2003 have been mentioned. It is further stated that the respondent has number of properties situated in the year Naya Bans, Khari Baoli, Daiwara and Nai Sarak, Delhi. No particulars of the properties have been mentioned and thus averments were rightly held to be bald assertions. The case of the petitioner is that since these averments were made in the leave to defend application which were denied by the petitioner in the reply to the leave to defend application, the petitioner filed a replication pointing out that the respondent has two vacant shops situated at property No. 1215 Ground Floor measuring 288 sq.yds. situated at Ward No. 7, Gali Samosa, Farash Khanna which are additional alternative suitable accommodation for the alleged bonafide needs/requirements and the sons of the respondent can shift their business from the residence to the said place. The photographs of the said two shops were placed on record. It is stated that the property bearing No. 1215, Ground Floor, Ward No. 7, Gali Samosa, Farash Khanna is a big space of 288 sq.yds. in the proximity of the residence of the respondent whereas tenanted space is only admeasuring 26 x 7 sq.ft. approximately.

6. The first and foremost aspect to be considered is whether this subsequent plea in the rejoinder affidavit could be considered by the learned ARC. No plea with regard to property No. 1215 Gali Samonsa was taken by the petitioners in the leave to defend application despite the fact that the relinquishment deed was filed by the respondent with the eviction petition mentioning the said property. In Prithipal Singh vs. Satpal Singh (dead) through its LRs, 2010 (2) SCC 15 the Supreme Court held that the provision of Limitation Act do not apply to the proceedings under Chapter 25B of the DRC Act which is a special provision the time period of 15 days for filing of the leave to defend application cannot be extended. Thus by permitting

additional grounds to be taken in the rejoinder affidavit or thereafter by additional affidavits would tantamount to extending the time for filing the leave to defend application and undoing what the legislature intended to do to speed up the eviction petitions in a special category of cases (*See Laxmi Prasad Vs. Suresh Kumar Mudgal 2012 (128) DRJ 321*).

7. Faced with the fact that vague pleas with regard to properties in various areas were taken in the leave to defend application and no specific plea was taken, learned counsel for the petitioner urges that the respondent was aware of this property as has been noted in the relinquishment deed and thus having not stated the same in the eviction petition amounts to material concealment of facts. It is further stated that one who comes with unclean hands deserves no discretion of the Court and the eviction petition ought to have been outrightly rejected. The petitioners were not in the knowledge of this property though it was mentioned as one of the properties in the relinquishment deed filed along with the eviction petition however the petitioners failed to notice the same.

8. Learned counsel for the respondent has countered this argument by stating that there was no material concealment of facts as this property was not required to be mentioned in the eviction petition as the same comprises of godowns which are with various tenants.

9. Since this plea was taken by the petitioner in the rejoinder affidavit no opportunity was available with the Respondent to counter this contention except in oral arguments as noted above. Though this plea is not required to be considered having not been taken in the leave to defend application however it is well settled that non-disclosure of an alternative

accommodation that is not suitable is not fatal to the eviction petition. In Surinder Singh Vs. Jasbir Singh 172 (2010) DLT 6117 this Court held-

“25. The mere fact that, respondent did not disclose the accommodation of basement and first floor available with him in the eviction petition, would not prove fatal to the present case, since the same cannot be said to be an alternative suitable accommodation for the purpose of business.”

10. In view of the discussion aforesaid, revision petition is dismissed.

(MUKTA GUPTA)
JUDGE

MAY 29, 2015
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