

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

+ **RC.REV. 436/2013 & CMs. 18963/2013 & 2970/2014 (stay)**

% **Decided on: 12th January, 2015**

MANJU SHARMA @ MAYA DEVI Petitioner
Through Mr. G.P. Thareja, Adv.

versus

KALAWATI Respondent
Through Mr. Shahid Ali, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The petitioner is aggrieved by the order dated 2nd August, 2013 whereby leave to defend application filed by the petitioner was dismissed.
2. Eviction petition was filed by the respondent claiming herself to be the owner of a shop admeasuring 7 x 9 ft. situated at the ground floor of premises No.1/3215, Mandoli Road, Shahdara, Delhi-110032. In the eviction petition, the respondent claims that she was the owner of the premises wherein four shops had been constructed. One shop had been sold by her around 10 years ago and the other in the year 2008 for her bona fide needs. Thereafter, the respondent was left with two shops one of which was given in tenancy to the petitioner. It is further claimed that in the other shop, the petitioner's husband is running a general merchant business however, because of ingress and egress of the property being provided from the said

shop, the husband of the respondent is using only 1/3rd area of the shop and the rest of the shop is being used for ingress and egress of the property. Thus, the respondent needs the tenanted premises for expansion of the business of her husband.

3. Eviction petition was filed on 15th January, 2013. On a notice being issued, leave to defend application was filed on 13th February, 2013 wherein it was specifically denied that the respondent's husband was running a general merchant shop. It was stated that in fact a pan-bidi shop was being run from the said premises and the respondent's husband was running a tour and travel business.

4. In the reply affidavit to the leave to defend application, the respondent admitted that the respondent's husband is no more running general merchant business, however stated that even if pan-bidi shop was being run, the respondent was entitled to the tenanted premises for expansion of the business.

5. A perusal of the pleadings in the present case would show that the very basis of the respondent's eviction petition that the tenanted premises was required for expansion of the business of respondent's husband i.e. General Merchant was refuted by the petitioner which fact was admitted by the respondent in the reply affidavit to the leave to defendant application.

6. In view of this fact situation the learned Trial Court ought to have granted leave to defend to the petitioner as a triable issue was raised. The petitioner has been able to discharge the onus which was on her to show that the averments in the eviction petition cannot be accepted on the face of it and

hence triable issue was raised. The learned ARC brushed aside this plea of the petitioner noting that the petitioner herein has taken contrary pleas, on the one hand contending that some one is running a pan-biri shop and on the other hand the petitioner's husband is running tour and travel business from the same shop. He has not given any "particulars" of the other person who is allegedly in possession of the adjoining shop. It is not alleged that the other person is paying any rent to the petitioner and there is no allegation of recent letting of the shop. The learned ARC failed to notice the admission of the respondent that her husband was no more running a general merchant shop and no denial of the fact that pan-biri shop was being run. The onus at the stage of grant of leave to defend on the tenant is not to prove by way of preponderance of probability by intimating who the "other person" is but to prima facie show that there is material on which adjudication by leading evidence is required.

7. It is well settled that the scope of interference in a revision petition in terms of the proviso to Section 25B(8) of the DRC Act is akin to Article 227 of the Constitution of India whereby this Court exercises supervisory jurisdiction and does not exercise appellate jurisdiction. This Court will interfere in the order of the learned ARC declining to grant leave to defend only if the view taken by the Trial Court is not a plausible view and is perverse leading to failure of justice. The Hon'ble Supreme Court in Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta AIR 1999 SC 2507 held as under:

"....The revisional jurisdiction exercisable by the High Court under S.25B(8) is not so limited as is under S.115 CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely

because it is inclined to take a different view of the facts as if it were a Court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion from the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to sub-section (8) of Section 25B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law."

8. Considering the facts noted above, I am of the view that the petitioner has made out a case for leave to defend as triable issues are raised and in view thereof the impugned order is set aside. Leave to defend application of the petitioner is allowed. Written statement be filed by the petitioner within 30 days. Replication, if any, be filed within 30 days thereafter. The matter be listed before the learned Additional Rent Controller for further proceedings on 6th April, 2015. The learned Additional Rent Controller is however requested to expedite the trial and conclude the same within six months. The user charges as directed by the learned Trial Court will continue to be paid during the pendency of the eviction petition. In case any amount is found to be paid in excess after the trial, the same will be refunded to the petitioner.

9. Petition and applications are disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 12, 2015
‘vkm’