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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 558/2012

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Decided on: 3rd March, 2015

BABITA JAIN

..... Petitioner

Through: Praveen Kumar Jain and Mr. Naveen
Kumar Jain, Advocates.

versus

MAYA GARG

..... Respondent

Through: Mr. Sharad Chandra and Mr. Sanjay
Agarwal, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. Aggrieved by the order dated 19th September, 2012 whereby the leave to defend application of the Respondent was allowed by the learned ARC in an eviction petition filed by the Petitioner under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') the Petitioner prefers the present petition.

2. In the eviction petition, the Petitioner stated that the Petitioner along with the sister-in-law purchased the built up property bearing No. E-2/19, Jain Market, Shashtri Nagar, Delhi-110052 admeasuring 196 Sq. Yards vide registered Sale Deed dated 10th February, 2005. The first floor of the said property was being used by the Petitioner and her sister-in-law for residential purposes. As per the family settlement the suit property was partitioned and half portion of the suit property fell into the share of the Petitioner whereas the other half portion fell into the share of the sister-in-law. The shops on the ground floor of the suit property were equally divided. The Petitioner was doing the business of readymade fabric for the last five years in which

she has acquired requisite experience and thus now she wanted to start her own independent business of readymade garments for which purpose private Shop No.2 which was in use and occupation of the Respondent as tenant was best suited for her needs. The Petitioner is presently running her business of readymade garments from her residence and intends to start a readymade garments business by getting the same prepared in her own way and by own designing and getting it embroidered through her workers by installing the embroidery and sewing machines in the shops which are presently under the use and occupation of the other tenants for which the Petitioner is taking legal steps for getting the shops simultaneously vacated and the tenanted premises was required for opening a showroom with regard to the said readymade business. The Petitioner wants to open a big showroom as there is tough competition in the readymade market business in the vicinity. The Respondent has already attorned the Petitioner as landlady and was paying rent to her by depositing the same under Section 20 of the DRC Act and the premises was let out to the Respondent for commercial purposes.

3. In the leave to defend application the Respondent pleaded that he was doing the business of readymade garments from the tenanted shop and was threatened to vacate the premises or increase the rent. It is stated that the Petitioner is a house wife and not engaged in any business as alleged. The husband of the Petitioner was doing the business of Grey Fabrics, Chinu Twill and other varieties in the name and style of Veetrag Trading Company from a spacious business premises No.IX/6236, Subhash Mohalla, No.1, Nehru Gali, Near Sanatan Dharam School, Gandhi Nagar, Delhi. A visiting card of the husband of the Petitioner was filed. It was stated that as per the site plan filed by the Petitioner there were number of shops and besides the

tenanted shop, the Petitioner stated that she is trying to get vacated the other shops as well where she will set up tailoring units however, Shop Nos. 1 and 4 shown in the site plan have been let out on rent only one year ago by the Petitioner and the Petitioner is getting rent of Rs.8,000/- and Rs.5,500/- per month respectively from the two shops. He has given the names of the tenants in the two shops and the business they were carrying. It is further stated that Shop No.4 was vacated by the order of the Court pursuant to a petition filed by the Petitioner. Further despite Shop No.4A was in vacant and peaceful possession of the Petitioner and thus the requirement of Shop No.2, that is, the tenanted shop was not bona fide.

4. Vide the impugned order the learned Trial Court granted leave to defend to the Respondent, for the reason that the facts revealed that there are total nine shops on the ground floor of the suit property including the tenanted premises and as per the agreement dated 10th June, 2005 in relation to Shop of one Sunita Jain on the west side of the property there was a wide road on the north side of the property and gali on the other side of the suit property and the same is sort of small shopping complex approachable from North and South side. Thus the case being of additional accommodation and as the peaceful vacant possession of Shop No.4A being with the Petitioner was not disputed leave to defend was granted.

5. Learned counsel for the Petitioner relying upon the decisions in Royal Nepal Airlines Corporation vs. Shrishti Properties Pvt. Ltd., 184 (2011) DLT 362; K.K. Srain vs. M/s Pigott Chapman and Co., AIR 1992 Delhi 361; Ashok Kumar vs. Shashi Sharma, 204 (2013) DLT 498 and Shree Ram Sharma vs. Mohd.Sabir, 2011 (1) RCR (Rent) 228 contends that the case of the Petitioner in the eviction petition itself is that the entire area was required

to open a big show room wherein the Petitioner would install sewing machines in the back portion so that in house stitching could be done and in front a showroom would be made. Thus the case of the Petitioner is not of additional accommodation.

6. In the eviction petition the Petitioner did not disclose the fact that Shop No.4 was in vacant possession of the Petitioner. Further the two shops had been let out only a year ago and that Shop No.4 was got vacated by an order of the Court in a petition filed by where she could have easily started her business after the same were got vacated.

7. I find no reason to differ with the learned Trial Court for the present was a fit case for grant of leave to defend. There is no doubt if the defence raised by the tenant is a sham, moonshine or illusory, no leave to defend should be granted. However, the Respondent/tenant has brought out facts in the leave to defend application to show that the requirement of the Petitioner was not bona fide.

8. The decisions relied upon by the Petitioner have no application to the facts of the present case. In Shree Ram Sharma (Supra) since family of the landlord therein had grown with two married sons and three married daughters, the Court held that the requirement of the landlord was bona fide and no triable issue was raised. In Ashok Kumar (supra) this Court reiterated the principle of interference in revision petition under Section 25-B (8) of the DRC Act and held that a finding of fact arrived at by the Controller could not be interfered with by the High Court unless it can be shown that the finding has been arrived at by misleading or omitting relevant evidence and has resulted in gross injustice being caused.

9. In K.K. Sarin (surpa) this Court held that the assertion of the landlord that after retirement he would settle in Delhi cannot be said to be mala fide particularly when he has been living in Delhi for the last so many years being in the employment of Central Government and thus no triable issue was raised.

10. In the present case the Respondent/tenant has been able to show that the bona fide requirement of the Petitioner was doubtful in view of the fact that the two shops having been got vacated, one through the process of law and have again been let out a year ago and in case the requirement of the Petitioner was bona fide she would have started the work in the vacated shops. As noted by this Court in Royal Nepal Airlines Corporation (Supra) it is neither for the Court nor for the tenant to dictate how the landlord should expand its business however, the fact remains that if the Petitioner wanted to expand the business it would have not let out the two shops which were got vacated.

11. Consequently, the petition is dismissed being devoid of merits.

(MUKTA GUPTA)
JUDGE

MARCH 03, 2015

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