

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

+ **RC.REV. 341/2014 & CM 17396/2014 (stay)**

% Decided on: 8th January, 2015

VED PRAKASH Petitioner
Through Mr. Rajat Aneja, Mr. Vijay Kasana,
Advts.

versus

SURAJ SAXENA & ORS Respondent
Through Mr. Puneet Goel, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM 17395/2014

Exemption allowed subject to just exceptions.

CAVEAT 929/2014

Counsel as above appears for the respondent/ caveator, hence caveat is discharged.

RC.REV. 341/2014 & CM 17396/2014 (stay)

1. Aggrieved by the order dated 1st July, 2014 passed by the learned Rent Controller allowing the eviction petition filed by the respondent Smt. Suraj Mukhi the petitioner prefers the present petition. Smt. Suraj Mukhi, wife of late Gopi Chand had filed an eviction petition No.E-74/2011 before the Rent Controller seeking eviction of the petitioner from the premises situated at plot No.209, P.O. Block Krishna Nagar, Delhi i.e. two rooms and one store

room on the ground floor which had been let out for residential purposes but converted to commercial purpose. During the pendency of eviction petition Smt. Suraj Mukhi passed away and thus the respondents who are her legal heirs were impleaded as parties.

2. The respondents in the eviction petition plead that they have a large family, thus requiring at least 21 rooms and one garage, therefore seeking eviction on bona-fide requirement. According to the eviction petition the family of Smt. Suraj Mukhi besides herself consisted:

“(1) Petitioner’s eldest son namely, Suraj Kumar Saxena.
Aged about 61 years

(i) Smt. Shila Saxena (Wife/Daughter-in-law).

(ii) Smt. Neelam Saxena, W/o Shri Chandresh Saxena
(married grand-daughter) who has two kids.

(iii) Shri Ajay Saxena (Married Grand Son)

(iv) Smt. Neeta Saxena W/o Shri Sudhir Saxena
(Married grand-daughter having two kids)

(v) Smt. Nishu Chauhan, W/o Shri Charanjit Singh
Chauhan (married grand-daughter).

(2) Petitioner’s son late Shri Ashok Kumar Saxena

(i) Smt. Saroj Saxena (daughter-in-law). Widow and
aged about 62 years

(ii) Shri Nitin Saxena (aged 28 years) (Grand son)

(3) Petitioner’s son Shri Satish Kumar Saxena

(i) Smt. Kiran Saxena (wife/ daughter-in-law)

- (ii) Shri Ankit Saxena (aged 24 years)
- (iii) Ms. Megha Singh W/o Shri Paramjit Singh
(Married Grand Daughter having one kid)
- (iv) Ms. Shivani Saxena (aged 20 years)
(Grand Daughter)
- (4) Petitioner's son Shri Gopal Krishan Saxena
 - (i) Smt. Seema Saxena (Wife/Daughter-in-law)
 - (ii) Ms. Kajal Saxena (aged 21 years)
(Grand Daughter)
 - (iii) Ms. Iti Saxena (aged 19 years) (Grand Daughter)
 - (iv) Ms. Shruti Saxena (aged 15 years)
(Grand Daughter)
- (5) Petitioner's daughter Smt. Krishna Saxena
 - (i) Shri Yatish Babu Saxena (Son-in-law)
 - (ii) Shri Rajeev Saxena (married Grand Son)
 - (iii) Shri Sanjeev Saxena (married Grand Son)
 - (iv) Smt. Kanchan Saxena (married Grand Daughter)
 - (v) Smt. Kumud Saxena (married Grand Daughter)
- (6) Petitioner's daughter Smt. Suman Saxena
 - (i) Shri Akhil Saxena (son-in-law)
 - (ii) Master Mayenk Saxena (Grand Son)

- (iii) Master Kamal Saxena (Grand Son)
- (iv) Master Sachin Saxena (Grand Son)
- (v) Master Tushar Saxena (Grand Son)

3. The details of the portion of the entire property under use and occupation of Smt. Suraj Mukhi's family are as under:

“ON GROUND FLOOR:

Two rooms, one store as shown in Red Colour in site plan i.e. tenanted premises in question are in use and occupation of respondent. The petitioner is having one living room, two small rooms (measuring less than 100 square feet), one bathroom and one W.C.

ON FIRST FLOOR

The said portions are in use and occupation of the petitioner. The premises under the possession of the petitioners consist of two living rooms, one hall-cum-passage, three kitchen. Two kitchen have been made with wooden partition wall between hall-cum-passage.

ON SECOND FLOOR

One toilet-cum-bathroom and some portion is covered with plastic/asbestos sheet, however, there is no door or window in the said plastic sheet covered area and an open terrace.”

4. Since leave to defend was granted to the petitioner parties led their evidence. On behalf of the respondents four witnesses were examined, however the evidence of only three witnesses i.e. PW-2 Deepak Mehra, PW-3 P.C. Tiwari and PW-4 Suraj Saxena who were duly cross-examined was

considered by the Trial Court, since Ajay Saxena PW-1 did not appear for cross-examination his evidence was not considered.

5. In the affidavit the petitioner admitted the jural relationship of landlord tenant between the parties. He deposed that the premises in question was let out by the deceased eviction petitioner i.e. late Smt. Suraj Mukhi in the year 1968-69 for non-residential purposes wherein the petitioner here-in was running the business of book binding with the help of small binding machines in the name of M/s. Ved Binding House. It is stated that Smt. Suraj Mukhi earlier also filed two eviction petitions against the petitioner herein firstly in 1976 and secondly in 1986 on various grounds including bona-fide requirements, however the said petitions were dismissed. While dismissing the second petition it was observed that the eviction petitioner had alternative accommodation being properties No. 6 & 7, Temple Road, Krishna Nagar, Delhi-51. Thus the present proceeding had been filed only to cause harassment to the petitioner. It is also contended that Shri Suraj Prakash Saxena along with his son Ajay Saxena has shifted his residence along with their family members to Arya Nagar Apartments, I.P. Extn., and thus they are not living in the premises in question. It is further stated that Gopal Kishan Saxena and Satish Kumar Saxena are residing in three rooms on the ground floor which are much more than their requirement though it is admitted that there is no kitchen on the ground floor. The petitioner further deposed that there are three rooms and three kitchen on the first floor and after the death of Smt. Suraj Mukhi her widow daughter-in-law Smt. Saroj Saxena along with her family has been residing in one room on the first floor while two rooms and one covered hall were lying vacant. It is also stated that one room on the second floor is also lying

vacant and the daughters of Smt. Suraj Mukhi being married they do not reside at the premises in question. Thus, there was sufficient accommodation available to the respondent and there is no bona-fide requirement to get the tenanted premises vacated.

6. In the affidavit the petitioner has not deposed that alternative accommodation in the form of two properties at Temple Road, Krishna Nagar are available; however the respondent/ eviction petitioners during trial examined two witnesses who deposed about sale of the two properties. PW-2 Shri Deepak Mehra deposed that he had purchased property bearing No.6, measuring area 110 sq. yds. situated at Krishna Nagar, Temple Tank Road in the area of village Ghondli, Illaka Shahadara on 22nd August, 1995 through the General Power of Attorney of Smt. Suraj Mukhi i.e. Shri Bintoo Gautam executed dated 9th September, 1994 duly registered on the same day with the Sub-Registrar of Delhi. This witness was not cross-examined by the petitioner. Further PW-3 Shri P.C. Tiwari from the Sub-Registrar Office Nand Nagri appeared and brought copy of the original sale-deed of property bearing No.7, Temple Tank Road, Krishna Nagar executed on 31st October, 1990 by Shri Suraj Kumar, Ashok Kumar, Satish Kumar, Gopal Krishna all sons of late Shri Gopi Chand Saxena. He also brought the record relating to the sale-deed in respect of property No.6, Temple Tank Road, Krishna Nagar. Thus from the testimony of these two witnesses it is amply clear that properties No. 6 & 7 Temple Tank Road, Krishna Nagar had been sold on 22nd August, 1995 and 31st October, 1990. Even according to the petitioner in the earlier proceedings the bona-fide requirements of the eviction petitioners were not disputed, however in view of the fact that there were alternative accommodations available the eviction petition was dismissed.

7. Even accepting the version of the petitioner that Shri Suraj Kumar Saxena along with his son Ajay Kumar Saxena and other family members are not residing in the premises in question, it would still be seen as many as 11 members of Smt. Suraj Mukhi's family are residing in the said premises excluding Suraj Kumar Saxena's family and the families of the two married daughters. For 11 members the accommodation available as noted above cannot be said to be adequate and thus there is bona-fide requirement of the respondents for the premises. Further the cause of action for eviction on the bona fide ground, that is, under Section 14 (1) (e) DRC Act is a recurring cause of action and a petition on bona fide requirement can be filed again. Hon'ble Supreme Court N.R. Narayan Swamy vs. B. Francis Jagan, 2001 (6) SCC 473 held:

"6. In our view, the High Court ought to have considered the fact that in eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring cause and, therefore, landlord is not precluded from instituting fresh proceeding. In an eviction suit on the ground of bona fide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit. Further, even if a suit for eviction on the ground of bona fide requirement is filed and is dismissed it cannot be held that once a question of necessity is decided against the landlord he will not have bona fide and genuine necessity ever in future. In the subsequent proceedings, if such claim is established by cogent evidence adduced by the landlord, decree for possession could be passed. [K.S.Sunderraju Chettair vs. M.R.Ramachandra Naidu (SCC para 10) and Surajnul vs . Radhe Shyam]"

8. Consequently, I find no infirmity in the impugned order. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 08, 2015
‘ga’