

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 569/2012 & CMs. 19947/2012 (stay) and 7658/2013**
(vacation of stay)

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Reserved on: 20th February, 2015

Decided on: 23rd February, 2015

BIPIN JAIN

..... Petitioner

Through: Mr. Asheesh Jain, Adv.

versus

ABHEY KUMAR JAIN THR LRS

..... Respondent

Through: Mr. Sanjeev Mehta, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Aggrieved by the order dated 31st May, 2012 whereby the leave to defend application filed by the Petitioner in an eviction petition filed by Abhey Kumar Jain, father of the Respondent was dismissed, the Petitioner prefers the present petition.

2. In the eviction petition Abhey Kumar Jain stated that he was the owner/landlord in respect of godown on ground floor of property No.2019, Ward No.5, Haveli Khan Jama Khan, Kinari Bazar, Chandni Chowk, Delhi-06 (in short 'the tenanted premises') which was let out to the Petitioner. The tenanted premises was required by Abhey Kumar Jain who was an old person and doing no job or employment to earn his livelihood. He further stated that he had no premises in his possession to establish the business and thus wanted to open his own shop from the tenanted premises along with three sons namely Rajiv Jain, Parag Jain and Sandeep Jain who were dependent on him.

3. In the leave to defend application the Petitioner took the plea that the three sons of Abhey Kumar Jain, namely Rajiv Jain, Parag Jain and Sandeep Jain were running their own business smoothly and earning handsomely. Rajiv Jain was plying his own taxi; Parag Jain was running a business of readymade garments at 40-F, Kamla Nagar, Delhi in the name and style of M/s Liver Pool and earning handsome amount while the third son Sandeep Jain was a share broker and having good name and fame in the field.

4. In the reply affidavit to the leave to defend application Abhey Kumar Jain denied the contents of the application and stated that he only required the tenanted premises for running his business and his sons were needed only for his assistance. Thus from the stand of Abhey Kumar Jain it was clear that he required the premises for himself to start his own business though with the help of the sons.

5. The only ground urged before this Court by the learned counsel for the Petitioner is that after passing of the eviction order dated 31st May, 2012 Abhey Kumar Jain passed away on 12th August, 2012 and as admittedly the eviction was sought by Abhey Kumar Jain to start his own business, the cause of action no more survived, thus the eviction order was liable to be set aside. Reliance is placed on Sheeshambal (dead) through LRs vs. Chelur Corporation Chelur Building and others, 2010 (3) SCC 470.

6. Though learned counsel for the Respondent has sought to urge that tenanted premises was sought to be got vacated for the livelihood of sons of Abhey Kumar Jain however, as noted above in the reply to the leave to defend application Abhey Kumar Jain clarified that the business was to be started by him with the assistance of his sons. In the light of this requirement and the fact that Abhey Kumar Jain expired after passing of the

eviction order it has to be seen whether the cause of action still survives or not in view of the subsequent event.

7. In Pasupuleti Venkateswarlu vs. The Motor & General Traders, 1975 (1) SCC 770 the Supreme Court pointed out the need for re-moulding the relief on the strength of subsequent event affecting the cause of action in the field of rent control litigation and that cognizance of such subsequent event should be taken very cautiously. The decision in *Pasupuleti Venkateswarlu* (supra) was re-affirmed in Hasmat Rai and Anr. vs. Raghunath Prasad, 1981 (3) SCC 103 wherein it was held that the requirement on the ground of personal requirement must continue to exist till final determination of the case. The appellate Court was required to take cognizance of subsequent event showing that the landlord's requirement has been made out and must mould the trial courts decree accordingly.

8. Even in Gaya Prasad vs. Sh. Pradeep Srivastava, 2010 (2) SCC 604 the Supreme Court emphasized that the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. In *Sheshambal* (supra) the Supreme Court reiterated this principle and held that on the death of the Petitioner therein, right to seek eviction on the ground of personal requirement for demised premises becomes extinct and the subsequent development having a bearing on the right of relief claimed by a party cannot be shut out from consideration and the courts are expected to examine the impact of the such subsequent development on the right to relief claimed by a party and, if necessary, mould the relief.

9. In view of the law laid down by the Supreme Court and as noted on the facts of the present case that the eviction petition was filed solely for setting up of business of Abhey Kumar Jain, husband of Respondent No.1 and father of Respondent No.2 to 6 the present petition is required to be allowed and eviction order set aside.

10. Consequently the impugned order dated 31st May, 2012 is set aside.

11. Petition and application are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

FEBRUARY 23, 2015

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