

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

+ RC.REV.218/2015

% Decided on: 7th May, 2015

SUBE SINGH @ SUBHASH Petitioner
Through Mr. B.P. Gupta, Adv.

versus

OM PRAKASH Respondent
Through Mr. Deepak Khadaria, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

Caveat No.459/2015

Since learned counsel for the respondent enters appearance, caveat is disposed of.

RC.REV.218/2015 & CM 8456/2015 (stay)

1. Aggrieved by the order dated 29th January, 2015 dismissing the leave to defend application filed by the petitioner Sube Singh in an eviction petition filed by Om Prakash under Section 14(1)(e) of the Delhi Rent Control Act (in short 'DRC Act'), Sube Singh prefers the present petition.
2. The case of Om Prakash in the eviction petition is that Sube Singh was a tenant in one shop No.3 in property No.46/8, Gali No.13, Gadodia Road, Nai Basti, Anand Parbat, New Delhi measuring 8 X 8 sq.ft. It was stated that the tenanted premises was owned by Om Prakash and let out by the father of Om Prakash to the father of Sube Singh in the year 1978 @Rs.140

excluding water and electricity charges. It was stated that premises was required bonafidely by Om Prakash for the purpose of settling his sons namely Surender Kumar aged 29 years and Vijay Kumar aged 20 years. Om Prakash had three sons and one daughter of whom two sons were of marriageable age but as they were not settled in life, therefore they could not be married. It was further stated that two sons Surender Kumar and Vijay Kumar wanted to start computer shop. Om Prakash further disclosed that the adjoining shop No.2, 4 and 5 were sold by Om Prakash in 2004 due to financial crises and in October, 2012 he obtained the possession of Shop No.1 after evicting the tenant from said shop. Shop No.1 was being used by Om Prakash and his wife for their business of photo framing.

3. In the leave to defend application, Sube Singh, inter alia, took the pleas that Om Prakash had earlier filed an eviction petition under Section 14(1) (e) DRC Act against other tenants Smt. Sunita, Sandeep, Manoj and Smt. Maina in respect of shop No.1 in the same suit premises on the ground floor and it was stated that “the demise premises that is shop No.1 was required bona fidely by the petitioner for his unemployed sons namely Roshan and Surender”. After obtaining possession of the said shop, Om Prakash instead of settling his sons shifted his business from shop No.5 to shop No.1, thus the need of Om Prakash was not bona fide and he was using the name of his sons for getting the premises evicted from the tenants. It was stated that Om Prakash never sold shop No.5 and he continued to be owner of the said shop and that he did not sell shop Nos. 2 and 4. It was further stated that though in the earlier eviction petition, the requirement of Om Prakash was to settle his sons Roshan Lal and Surender Kumar, however Roshan Lal was employed in bank and Surender Kumar was Home Guard.

His younger son Vijay Kumar was studying at that time was studying in Ramjas No.2 School at Anand Parbat, thus there was no bonafide requirement.

4. In reply to leave to defend application, Om Prakash stated that Sube Singh in a petition under Section 45 of the DRC Act admitted that Om Prakash sold shop Nos. 2 and 4 to some person. Thus there is already an admission of Sube Singh on this count in earlier proceedings. He further stated that shop No.5 had been sold to one Shri Nathu Ram on 30th June, 2004 however since Om Prakash and his wife had no other place to run their business, Nathu Ram permitted them to carry on their business of photo shop vide rent agreement dated 12th June, 2006 and on vacation of shop No.1, Om Prakash surrendered the tenancy of shop No.5. Thus, the contention of Sube Singh is that after getting shop No.1 Om Prakash instead of settling his sons shifted his and his wife to shop No.1 from shop No.5 and surrendered the tenancy. Om Prakash reiterated that he has to settle his sons Surender Kumar and Vijay Kumar. It is stated that Surender Kumar is employed as Home Guard however the job is temporary in nature and for a limited period. Further younger son Vijay Kumar was not doing good in studies and thus he required the shop for running his business as well.

5. Learned ARC vide the impugned order came to the conclusion that landlord-tenant relationship was not disputed. It was held that the earlier eviction petition was filed in 2006 and eviction order was passed in the year 2010. Thus, in the interregnum Om Prakash handed over shop No.5 back to Nathu Ram therefore Om Prakash could not be faulted for using shop No.1 for opening his and his wife's shop of photo frames. Further in the earlier eviction Om Prakash had also sought eviction on the ground that he wanted

to use the said shop for himself and for his dependent family members for commercial purposes. Further Surender Kumar was employed as a Home Guard and younger son Vijay Kumar was admittedly studying thus their bona fide requirement cannot be denied and so declined to grant leave to defend to the petitioner.

6. Before this Court the sole ground urged by learned counsel for the petitioner is that when shop No.1 was got vacated for the bonafide requirement of two sons one of whom was Surender Kumar the present eviction petition for the same requirement was not maintainable. A perusal of the earlier eviction petition copy whereof has been placed on record would reveal that Om Prakash stated that he being landlord-cum-owner of the demised premises has got a family comprises of his wife, three sons namely Roshan aged 27 years, Surender aged 26 years and Vijay aged 15 years besides one daughter aged 16 years studying in 10th standard. It was stated that the demised premises a commercial shop was required bonafidely by the petitioner for his unemployed sons namely Roshan and Surender and that wife of the petitioner was running a small shop No.5 which has been taken on rent from Shri Nathu Ram, who is the owner of the said shop and both his sons i.e. Roshan and Surender have no business and the demised shop was required by them for running some business to earn their livelihood and the petitioner has got no other suitable accommodation/shop. Thus the ground on which shop No.1 was got vacated was bonafide requirement of Roshan and Surender and that wife of petitioner was running a small shop which was taken on rent. Thus, it cannot be said that having got vacated shop No.1 Om Prakash is using the same bonafide requirement again to get the tenanted shop vacated from Sube Singh. The need to start the business

from shop No.1 was genuine as shop No.5 had to be vacated by Om Prakash and his wife and this fact was mentioned in his earlier petition. Even if the requirement of Roshan and Surender was stated in the earlier eviction petition, admittedly the earlier eviction petition was not for the bona fide requirement of Vijay Kumar, the third son of the petitioner who has now completed his studies. Thus, the bonafide requirement of the Om Prakash cannot be denied when the respondent Sube Singh does not dispute the members of the family of Om Prakash. The only dispute raised by Sube Singh in this regard is that the elder son of Om Prakash i.e. Roshan was employed in a bank and Surender is a Home Guard. Om Prakash has clarified that the job of Home Guard is temporary and for a short period. Further Vijay Kumar also requires the shop. Hence in view of the requirement of the Om Prakash for the tenanted premises being bonafide and no other alternative accommodation having been shown by Sube Singh, I find no error in the impugned order declining to grant leave to defend to the petitioner.

7. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 07, 2015
‘v mittal’