

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

+ **RC.REV. 205/2015**

% Decided on: 29th April, 2015

SANJEEV SOOD & ORS Petitioner
Through Mr. K.R. Chawla, Adv.

versus

RAVI KANTA MADHOK Respondent
Through Mr. Mithilesh Kr. Singh, Mr. Tarun
Verma, Advs.

Coram:

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

CAVEAT 421/2015

Learned counsel for the caveator enters appearance.

Caveat is discharged.

CM 7899/2015

Exemption allowed subject to just exceptions.

RC.REV. 205/2015 & CM 7898/2015 (stay)

1. Aggrieved by the order dated 31st January, 2015 whereby an eviction order was passed after evidence was led by the parties in an eviction petition under Section 14(1)(e) DRC Act, the petitioners prefer the present petition.
2. Smt. Ravi Kanta Madhok filed an eviction petition under Section 14(1)(e) DRC Act for eviction of petitioners i.e. Sanjeev Sood, Amit Sood and Smt. Rachna Chawla all legal heirs of late Shri Lakhpai Rai Sood who was a tenant in respect of Shop No.2 in House No.11/4, West Patel Nagar i.e. the tenanted premises on the ground of bonafide commercial requirement

of landlord's son, daughter-in-law and grandson. It was stated that Smt. Ravi Kanta Madhok was the owner and landlady of the entire suit property which comprises of three commercial shops abutting the Main Bazar, West Patel Nagar, New Delhi. The first floor of the suit property was being used for residential purposes for herself and her family. The tenanted shop had been let out to Shri Lakhpatri Rai Sood 48 years ago by father-in-law of Smt. Ravi Kanta Madhok. After her father-in-law, mother-in-law and the husband expired Smt. Ravi Kanta Madhok became the owner and landlady of the property. The residential premises on the ground floor of the suit property had been let out to one Smt. Leela Singh in the year 2003 who was residing there and occupying one small room, verandah with toilet and kitchen. Further petitioner filed eviction petition in respect of other two shops i.e. shop No. 1 and 3 as well which were in occupation of other tenants. It is stated that the son, daughter-in-law and grandson of Smt. Ravi Kant are LIC agents and they require the tenanted shops and other space for running their own offices. The grandson was 23 years old and thus requires space to run his own business besides being LIC agent. All her family members are dependent on her and have no other alternative accommodation.

3. In the written statement filed the main contention of the respondent was that the son, grandson and daughter-in-law of Smt. Ravi Kant were not LIC agents and the petition had been filed malafidely to take advantage of the judgment of the Supreme Court in Satyawati Sharma (Dead) By Lrs vs Union Of India & Another, AIR 2008 SC 3148. The contractual tenancy of Smt. Leela Singh who is a tenant in the rear portion of the ground floor had expired in 2004 and thus she could have been evicted easily. In an earlier eviction petition, the Court held that Smt. Ravi Kant Madhok had sufficient

alternative accommodation and that she had re-let the premises to the other tenant. Thus, the petition was barred by res-judicata as the earlier eviction petition was dismissed on 6th October, 2003.

4. In the replication Smt. Ravi Kanta Madhok clarified that no shop was re-let by the petitioner after 1990 and after 2003 no residential portion was re-let and hence there was no vacant accommodation available. The landlord tenant relationship had not been disputed and in any case Smt. Ravi Kanta Madhok being one of the legal heirs of her late deceased husband she was entitled to maintain a petition for eviction under Section 14(1)(e) DRC Act.

5. The two grounds urged before this Court by learned counsel for the petitioner are that there is no bonafide requirement as Smt. Ravi Kanta did not prove that her son, daughter-in-law and grandson were LIC agents and there was sufficient alternate accommodation which was re-let on the ground floor portion to Smt. Leela Singh.

6. As regards the bonafide requirement Smt. Ravi Kanta besides examining herself examined PW-6 Ajit Kukreja, Assistant Manager of LIC of India who was even cross-examined by the petitioners. He deposed that the son, grandson and daughter-in-law of Smt. Ravi Kanta were in the profession of life insurance business. Further as per the petitioner besides LIC business the petitioner's grandson and daughter-in-law wanted to do other business. Thus, the contention of lack of bonafide requirement is liable to be rejected. An attempt was made by learned counsel for the petitioners to contend that no material has been placed that the family members are LIC agents. This contention of the learned counsel for the Petitioners ignores the evidence of PW-6 Ajit Kukreja.

7. As regards alternative accommodation admittedly even as per the petitioners Smt. Ravi Kanta Madhok has no alternative vacant accommodation. The case of the petitioners is that the rear portion of the suit premises was re-let to Smt. Leela Singh in the year 2003 and the said tenancy having expired in 2004 the same ought to be got vacated. In this regard the petitioner No.1 who appeared as RW-1 admitted in his cross-examination that since 1990 there is no new tenant in any of the three shops including the tenanted shop. Smt. Leela Singh was inducted as a tenant on the rear portion of the ground floor in the year 2003 and eviction petition was filed in the year 2011. There being considerable time gap the said induction in the year 2003 was immaterial. Further portion on the back side cannot be said to be equally suitable alternative accommodation for commercial purposes as against the tenanted premises which was on the front side.

8. There is no illegality or perversity in the reasoning of learned ARC as it is only the portion of the rear side of the ground floor which was let out to Smt. Leela Singh in the year 2003 and even that is not vacant and thus there is no malafide on the part of the landlord exercising his choice to get evicted the shop on the front portion. Further over the period of time, the requirement of the landlady has grown as her grandson has completed his BBA and has become LIC agent. In Sarla Ahuja Vs. United India Insurance Co. Ltd. AIR 1999 SC 100 the Supreme Court laid down that it is not for the tenant to dictate terms to the landlord as to how else she can adjust himself without getting possession of the tenanted premises. Since PW-6 Ajit Kukreja has proved that the son, grandson and daughter-in-law of Smt. Ravi Kanta are LIC agents, the requirement of an office cannot be said to be not

bonafide. The petitioner has not been able to demonstrate any alternative vacant premises in possession of Smt. Ravi Kanta Madhok or her dependent members.

9. As regards the plea of res-judicata that as an earlier eviction petition was decided against Smt. Ravi Kanta Madhok between the same parties it may be noted that with time the requirement of Smt. Ravi Kanta Madhok and members of family dependent on her has increased. Her grandson has now grown up. Further an eviction proceeding under the Rent Act on the ground of bonafide requirement or non-payment of rent is a recurring cause and therefore the landlady is not precluded from instituting fresh proceedings. In an eviction petition on the ground of bonafide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of suit. Further even if suit for eviction on the ground of bonafide requirement is filed and is dismissed, it cannot be held that once a question of necessity is decided against the landlady she will not have a bonafide and genuine necessity ever in future. In the subsequent proceedings if such claim is established by cogent evidence adduced by the landlord, decree of possession could be passed. (See N.R. Narayan Swamy Vs. B. Francis Jagan (2001) 6 SCC 473; K.S. Sundararaju Chettiar Vs. M.R. Ramachandra Naidu (1994) 5 SCC 14 and Surajmal Vs. Radheyshyam (1988) 3 SCC 18).

10. Consequently, I find no merit in the petition. The petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 29, 2015
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