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HIGH COURT OF DELHI AT NEW DELHI

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RC. Revision No.410/2014

Decided on : 31st August, 2015

SHARDA DEVI

..... Petitioner

Through: Mr. Mohit Khanna, Advocate.

Versus

AKSHAY KHANDELWAL

..... Respondent

Through: Ms. Kamini Sirivastava, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed under Section 115 CPC read with Section 25-B (8) of the Delhi Rent Control Act, 1958 by virtue of which the petitioner has challenged the order dated 13.10.2014 passed by the learned Additional Rent Controller, Central, granting leave to defend to the respondent/tenant.

2. The reason for grant of leave to defend to the respondent/tenant by the learned Additional Rent Controller is on account of the fact that it has

been admitted by the petitioner/landlord that the son of the petitioner, for whose benefit the accommodation has been claimed, is running an independent business of tents from the first floor of property No.3677 in the same locality. The said business in the nature of partnership firm is being carried out by the two sons of the petitioner namely Sh. Deepak Mehra and Sh. Nitin Mehra. The business has extended to such an extent that not only the son of the petitioner has purchased a shop bearing No.5 in property No.2287/42, Kouria Pul but even the daughter-in-law has also purchased two shops in property bearing No.2287/41, Kouria Pul, Delhi. It has been stated that all the aforesaid shops are being put to use by the petitioner's son for his partnership business. It is averred that the premise presently being used for the business is insufficient to meet the requirements therefore an additional accommodation being the tenanted premise is required for use as godown. In such a contingency, the case of the petitioner for *bona fide* requirement to seek eviction of the respondent/tenant from a place in the suit premises for the purpose of storing of goods was held to be a triable issue by the learned Additional Rent Controller.

3. The aforesaid reasoning has been assailed by the learned counsel for the petitioner before this court on the ground that the Ld. ARC on an erroneous interpretation of law has wrongly held that a financially independent person will not be dependent for the purpose of accommodation on the petitioner/landlord. The petitioner in support of his contention has relied upon judgments of this court in *Major General A.K. Verma AVSM (Retd.) & Another vs. Narinder Singh*; 110 (2004) DLT 226, *Labhu Lal vs. Sandhya Gupta*; 173 (2010) DLT 318, *Agya Ram Arora vs. Surjeet Mech. Tools*; 2015 (220) DLT 245 and *Vinod Arora vs. Deepak Aggarwal*; 172 (2010) DLT 112.

4. I have perused and analyzed the aforesaid judgments and find them of no help to the case of the petitioner as each of the aforesaid judgment are distinguishable on account of completely different factual matrix. *Agya Ram Arora* (supra) was a case where the business was originally started by the landlord/ *Agya Ram Arora* himself and his wife and later their two sons joined the said business and the same was run like a joint-family business. Further it was recorded that the sons were residing with the landlord *Agya Ram Arora* as no evidence to the contrary was adduced. It was in the light of these circumstances that the court held that

two sons although financially settled were dependent on the landlord/father for their earning and accommodation and the landlord/father was inter dependent on the sons for the running of their business.

5. The findings rendered in Maj Gen. A.K. Verma AVSM (Retd.) And Anr. (supra) is also distinguishable as the question of law before the court in the said matter was whether a married sister who was living with the landlord/brother could be said to be dependent on him for the purpose of accommodation. It was a case where the married sister was residing with her mother in her paternal home for last 20-25 years and had relinquished her share in favor of her brother only to facilitate the securing of a government loan required for renovation of the residence the ground floor of which formed the tenanted premise.

6. Vinod Arora's case (supra) was a case where the tenanted premise was categorically required for the use of the landlord himself and therefore has no application to the present case.

7. Reliance placed on Labhu Lal's case (supra) also seems to be misplaced as in the said case the possession of the tenanted premise was sought by the landlord for the use of his son and daughter in law who were both doctors and residing with the landlord. The tenanted premise

being the ground floor of property No. 81-A, Kamla Nagar was to be used for the expansion of the clinic run by the son and daughter-in-law which was located at a corner in the rear portion of the ground floor. It is pertinent to note here that the son and daughter in law of the landlord were both dependent on him not only for their residential accommodation but also for running their clinic as the same was being run in a corner shop in premise no. 81-A, Kamla Nagar which as is recorded above was owned by the landlord/father. In the instant case the sons of the petitioner/ landlady are running their own independent business and are not dependent on the landlady either for accommodation or finances. Therefore none of the aforesaid judgments have any bearing on the instant matter and are of no assistance to the petitioner.

8. It is well settled position that in a case of *bona fide* requirement, four ingredients have to be satisfied by the landlord before a decree for eviction is passed. These four requirements being (i) that the petitioner/landlord must not only be the landlord but the owner, (ii) that the purpose of letting should not be in dispute, (iii) that the premises are required *bona fide* for the purpose of himself or his dependent family members and (iv) that the existing accommodation is not sufficient

enough to meet his requirement. In the event, all these four conditions are satisfied then only the petitioner is entitled to a decree of eviction. On the same note it has also been laid down in a catena of judgments that where a tenant prima facie makes out a triable issue which, being an issue if permitted to be proved would disentitle the petitioner/landlord from claiming eviction of such a tenant then in such an event the leave to defend of the tenant ought to be allowed and he be permitted to contest the matter on merits.

9. Coming back to the facts of the present case, the petitioner has challenged the order only on the ground that the son of the petitioner is dependent on the petitioner herself for the purpose of additional accommodation in the form of a godown, which happens to be under the tenancy of the respondent/tenant.

10. I have carefully considered the submissions made by the learned counsel for the petitioner and have also gone through the impugned order. I am of the considered opinion that analysis of the evidence done by the Ld. ARC is perfectly justified and is done with great deal of objectivity. The question which has been decided by the learned Additional Rent Controller is holding that a person who is financially not dependent on

the petitioner and has admittedly created 2-3 shops during the normal course of running of his business and therefore cannot be said to be dependent for the purpose of additional accommodation on the petitioner, his father. If the petitioner's son and his wife, namely, daughter-in-law of the petitioner have been generating sufficient finances which have resulted in creation of immovable assets, where from the business of the petitioner's son is being run now, then it is very well possible that they can create additional accommodation for the purpose of godown also and they cannot be termed to be dependent on the petitioner for the purpose of the same. Moreover, this is not the case of the petitioner that her son despite being financially well off and in a position to create additional accommodation is dependent on the petitioner for the purpose of additional accommodation. If that be so, there is perfectly no illegality, impropriety or unreasonability in the leave to defend granted by the learned Additional Rent Controller to the respondent/tenant.

11. For the aforesaid reasons, I feel that the revision petition filed by the petitioner is totally misconceived. The impugned order does not suffer from any jurisdictional error, impropriety or illegality which would

warrant any interference on the part of the court. Accordingly, the petition is without any merits and the same is dismissed.

V.K. SHALI, J.

AUGUST 31, 2015
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