

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

+ **RC.REV. 9/2015**

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Decided on: 9th January, 2015

DR.HANS RAJ GUPTA

..... Petitioner

Through

Mr. Sanjay S. Chhabra, Mr. Satish
Chaudhary, Advs.

versus

INDER RAJ SINGH

..... Respondent

Through

None

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM 427/2015

Exemption allowed subject to just exceptions.

RC.REV. 9/2015 & CM 426/2015 (stay)

1. The petitioner is aggrieved by the order dated 9th September, 2014 whereby the application for leave to defend filed by the petitioner has been dismissed.

2. The respondent filed the eviction petition under Section 14(1)(e) DRC Act. In the eviction petition it is stated that the premises in question was let out by Smt. Shakuntala Devi to the petitioner who was running an eye clinic under the name and style of M/s. East Delhi Eye Clinic vide rent deed

executed on 13th February, 1984 which was renewed from time to time. After the demise of Smt. Shakuntala Devi, the petitioner paid rent to the respondent herein. The petitioner's family is settled outside the country, however the petitioner has retained the premises best known to him. The premises is not being used presently by him and is lying closed. Despite repeated request the premises is not being vacated. It is further stated that the respondent require the tenanted premises for commercial purposes to settle his son Rajpal Singh in business and grand-son Ravi Yadav who is studying CA and has already completed the first year in 2013 and is now preparing for the last term and would be running his office thereafter. A small shop on the ground floor is occupied by another tenant Aklam who is carrying the repairing work. The first floor and second floor of the premises are being used for residential purposes. It is stated that no alternative accommodation is available to the respondent and they are totally dependent on the tenanted premises for the business of his son Rajpal Singh and for settling his grand-son who is doing CA.

3. In the leave to defend application the petitioner herein pleaded that the respondent has no locus. The rentals have been paid. The site plan filed by the respondent is wrong and denied and the premises is not required by the respondent for bona-fide purposes. It is stated that the other three tenants on the first and second floor have been staying for the last 10 years and it is not known why the respondent is adamant on getting the premises vacated from the petitioner who has been staying there for the last 30 years.

4. Considering the grounds the learned Additional Rent Controller decided the three issues i.e. status of the respondent as owner/ landlord,

bona-fide requirement of the dependents of the respondent and the availability of the suitable alternative accommodation. As regards the status of the respondent as owner/ landlord was concerned, it was held that as per the Hindu Succession Act the respondent had inherited the property being legal heir of Smt. Shakuntala Devi and thus he was entitled to file the eviction petition. Regarding the bona-fide requirement of the dependents of the respondent it was held that the premises in question was required for starting the business of the son and for professional activity of the grand-son of the respondent. As regards availability of alternative accommodation is concerned, the learned ARC noted that the first floor and second floor accommodation where the respondent lives with his family and has tenants would not fulfill the requirements, as ground floor is always more suitable for starting a commercial activity as it attracts customers because of ease and convenience of doing the business, hence this ground was also rejected.

5. Before this Court learned counsel for the petitioner urged that the tenanted premises cannot be used for commercial activity and as such the plea that the same was required for starting the business of the respondent's son was not bona-fide though he admitted that professional activity could be carried out as is being carried out by him. I am afraid this aspect cannot be looked into the present petition because this ground has not been pleaded in the leave to defend application and is being urged for the first time before this Court. It is further urged that the respondent has another plot available which plea was also not taken in the leave to defend application but was urged in written submissions. It is well settled that whatever grounds have to be agitated by the tenant the same should be part of the leave to defend

within 15 days of service of summons and by adding up grounds later he cannot seek amendment of the leave to defend application and extension of time.

6. As regards the impugned order, I find no infirmity as the learned ARC has clearly noted that the ground floor portion in possession of the petitioner is required for starting the business of respondent's son Rajpal Singh who is unemployed and for the professional activity of his grand-son Ravi Yadav who is doing CA. Learned counsel for the petitioner urges that Ravi Yadav is still doing CA and has not completed the course. Once Ravi Yadav is doing CA and has completed the first term in 2013 which would be followed by the final term examination, it cannot be said that the necessity has not arisen for the respondent and he must wait to file the eviction petition till his grand-son completes his CA and sit idle.

7. I find no merit in the petition. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 09, 2015
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