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HIGH COURT OF DELHI AT NEW DELHI

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RC REV No. 303/2015

Decided on: 22nd September, 2015

BHIM SINGH SAINI

..... Petitioner

Through: Mr. S.D. Dixit, Advocate

Versus

PREETI GUPTA

..... Respondent

Through: Mr. Rajiv Kanwar, Advocate with

Mr. R.K. Gupta, Advocate and

Mr. J.P. Malviya, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. By virtue of the present revision petition the petitioner has challenged the order dated 21.03.2015 passed by the learned Additional Rent Controller (ARC) vide which the leave to defend to the respondent-tenant was granted by the learned ARC.
2. I have heard the learned counsel for the petitioner-landlord. I have also gone through the impugned order. The facts of the case are not in

dispute and need not be reproduced herein. The same can be taken from the order passed by the learned ARC.

3. It would be suffice to mention here that the present petitioner is the owner of property No.1536, Tota Ram Bazar, Ganesh Pura, Tri Nagar, Delhi. The ownership of the suit property by the petitioner is not in dispute. It is not in dispute that there are six shops which are marked as A to F on the ground floor in the site plan. Out of these six shops one shop which is marked as C, i.e. the third shop is in possession of the respondent-tenant Preeti Gupta. All other shops except shops No.5 and 6, that is, marked E and F happen to be in possession of different tenants. So far as shop No. E to F are concerned, they are stated to be in possession of the petitioner-landlord Bhim Singh Saini where he is running the business of cosmetics, ladies lingerie, etc under the name and style of M/s. B.S. Traders. The petitioner has two children, a son and a daughter. The son of the petitioner is stated to have completed SCC & Graduation as well as Diploma in garment fabrication technology while the daughter is stated to be married way back in 1999.

4. The case which was set up by the petitioner in the petition was that the married daughter of the petitioner who has completed her Graduation from University of Delhi in 2001 and one year certificate course from NTT and had working as a Teacher in a School is presently unemployed. It has been stated that her husband one Kapil Bharti was running a optical shop in Shastri Nagar from a tenanted premise and he was not doing well in his business and, therefore, the family was in financial hardship. It was stated that the daughter of the petitioner was having two children, aged around 13 and 7 years and because of the paucity of funds, they are finding it difficult to manage their affairs and the daughter of the petitioner in order to supplement the income of the family was intending to start a Gifts and Novelties shop but due to non availability of any commercial accommodation was not able to do so. It was further stated that since that tenanted premise was only about 2 kms away from the daughter's matrimonial home, therefore the same was best suited for the settlement of the daughter. In light of the aforesaid, the present petitioner has sought the eviction of the respondent-tenant from shop marked C shown in the site plan attached to the eviction petition.

5. Respondent had filed the leave to defend application and contested the matter. The learned ARC after hearing the arguments granted leave to defend to the respondent-tenant on the ground that the present petitioner having married his daughter, who was not ordinarily living with him, could not be said to be entitled to retrieve the shop in question from the respondent-tenant for the benefit of his married daughter. The reasoning which was given by the Court was that after marriage the daughter was firstly dependent for the purpose of her accommodation, especially, for commercial purposes on her husband if need be, then upon her father. It was the responsibility of her husband to provide accommodation to the lady who happened to be the daughter of the petitioner in case she wanted to start a new business and for this purpose the daughter could not be considered to be a member of the petitioner's family depending on him for the purpose of accommodation.
6. The judgment which were cited by the learned counsel for the petitioner in order to support his contention that even if the daughter was married but for the purpose of accommodation would be treated as dependent on her father, were considered by the Court to be

distinguished on the ground that the factual matrix in those reported cases were different than the facts of the case in hand and the reasons are given in detail in the impugned judgment which need not be reproduced herein. These judgments are *Krishan Kumar Gupta v. Swadesh Bhushan Gupta*, 152 (2008) DLT 556 and *Rajender Prasad Gupta v. Rajiv Gagera*, 2014 Legal Eagle (Delhi) 481.

7. I have heard the learned counsel for the petitioner. The learned counsel for the petitioner has once again raised the same pleas which have been raised before the learned ARC that although the daughter may have got married but still for the purpose of accommodation she is dependent on the father and as she is in financial crisis because of her husband business not doing well therefore, the petitioner was entitled to retrieve the shop under the occupation of the respondent-tenant so the daughter of the petitioner could run her commercial activities. The learned counsel for the petitioner has also relied on *Prakash Kaur v. Asha Chopra and Ors.*, 2014 (1) Rajdhani Law Reporter 615 and *M/s. Chadha Pan Corner v. Shanti Devi @ Shanti Chhabra*, RC. Rev. 96/2015, decided on 26.03.2015.

8. I have gone through the aforesaid judgments. In my considered opinion, none of these judgments are of any help to the petitioner. The reason for this is the same which has been given by the learned ARC that before an accommodation can be retrieved by a petitioner-landlord, he must state that he requires the premises for his own benefit or for the benefit of any of his family member dependent upon him.
9. In the instant case, admittedly, the daughter of the petitioner after having got married, even though continues to be a member of the family but she ceases to be directly dependent on him once she moves to her matrimonial home. Although she may have, as rightly observed by the learned ARC, a right of succession under the statute but that is on different aspect. We are not concerned with the succession of the property, we are only concerned as to whether she could be treated as a member of the family dependent on the petitioner for the purpose of eviction of a tenant and the answer to this is certainly in negative. The judgments which have been relied upon by the learned counsel for the petitioner are the judgments where despite the daughter having got married in one of the cases, she was living with her father and

therefore, for all practical purposes, she was treated as a member of his family while as in the instant case, there is no such averment or factual position that the daughter is living with the father. Therefore, these judgments which have been relied upon by the petitioner are distinguishable

10. The second question which arises is that even if she is a member of the family of the petitioner, the next question would arise whether she could be treated as a dependent on the petitioner for the purpose of her accommodation. Certainly, to this question also the answer prima facie should be in negative. The reason being that once the daughter of the petitioner has got married for purposes of any accommodation, she would be dependent on her husband rather on her father.
11. For the aforesaid reasons, I feel that the learned ARC has rightly given the leave to defend to the respondent-tenant as these are triable issues and in case they are permitted to be proved by the respondent than they will knock out the case of the petitioner from the bottom only.

12. For the abovementioned reasons, I feel that the present revision petition is totally misconceived and there is no illegality, impropriety or jurisdictional error in the order of eviction passed on 21.03.2015.
13. I accordingly, dismiss the revision petition.
14. File be consigned to the record room.

V.K. SHALI, J.

SEPTEMBER 22, 2015

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