

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC. Revision No.592/2015 & C.M. No.25872/2015**

Decided on : 4th November, 2015

NATHU RAM

..... Petitioner

Through: Mr. Mukul Kumar, Mr. Dhanrmendra
Sharma & Mr. P.D. Sharma, Advocates.

Versus

RAJ BHUSHAN GUPTA

..... Respondent

Through: Mr. J.P. Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order dated 18.8.2015 passed by the learned Senior Civil Judge-cum-Rent Controller, Shahdara District, Delhi, rejecting the leave to defend application of the petitioner and passing of an eviction order against him.

2. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent. The learned counsel for the petitioner has contended that the learned Additional Rent Controller has erroneously considered the submission made by the petitioner and arrived

at a wrong conclusion by denying him the leave to defend. It was contended that the eviction of the present petitioner was claimed by the respondent/landlord from the shop in question bearing No.8/92, Chhota Bazar, Shahdara, Delhi on the ground that the same is required by the respondent/landlord for establishing of a separate business of jewellery to be run by his son Aman Gupta. It was also contended by him that Aman Gupta was actually doing the business along with his father under the business name of Nav Bhushan Jewellers at shop No.8/86, Gali Jain Mandir, Shahdara, Delhi and therefore, he could not be said to be unemployed and in any case, even if it was assumed that the shop which is under the occupation of the petitioner was required for the purpose of setting up a separate business in the same line, the requirement of the respondent/landlord was to be considered as a requirement for additional accommodation for which he had to not only to prove the requirement but also permit the present petitioner to adduce evidence that there was no such requirement.

3. The learned counsel for the petitioner/tenant also contended that non-denial of existence of 13 shops in his possession or ownership could not have been considered as a ground for eviction and that it was

observed by the learned Rent Controller that this was a *mala fide* reason for the petitioner/tenant to retain the shop in question.

4. The learned counsel for the respondent/landlord has justified the impugned order and has stated that the leave to defend application of the petitioner has been rightly rejected for the reasons that no triable issue was made out from the said leave and further that the petitioner could not be permitted to take advantage of withholding the premises when there was comparative lesser hardship to the petitioner from dislocation as he was admittedly having 13 other shops in his possession which fact has not been denied by him.

5. I have carefully considered the respective submissions and have gone through the impugned order which is a short order. However, I feel that the learned Rent Controller has fallen into a serious error by denying the leave to defend to the petitioner. The reason for this is essentially two-fold. Firstly, the availability of shops or the ownership of shops by the petitioner/tenant is not a consideration or a requirement to be satisfied under Section 14 (1) (e) by the respondent/landlord meaning thereby the mere fact that the tenant has certain alternative shops available to him which if the tenant is dislocated can be his savior, cannot be a ground of

denying him the leave to defend. This may be a factor which can be taken in a given situation into consideration when the parties have adduced their evidence and a question with regard to comparative hardship arises with regard to the eviction of the petitioner/tenant or when the time is sought to be given to him to vacate the premises. But certainly it is not one of the ingredients to be established by the respondent/landlord nor can this be a factor taken into consideration by the Rent Controller. In my considered view, this is the first mistake which has been done by the learned Additional Rent Controller.

6. Secondly, the retrieval of premises by the respondent/landlord is sought on the ground that his son, namely, Aman Gupta, who is aged about 22 years and is stated to be unemployed and the respondent/landlord wants a business to be started independently by his son. It may be pertinent here to mention that the respondent/landlord has two other sons, namely, Tarun Bansal and Arun Gupta, who are doing business in partnership, therefore, it appears that he wants to settle all the three sons in the jewellery business.

7. The petitioner/tenant had taken a specific plea that his son Aman Gupta is also doing the business with his father and other brothers in shop

No.8/86 under the name and style of Nav Bhushan Jewellery shop. The petitioner has placed on record the photographs of the said shop before the learned Additional Rent Controller which show that Aman Gupta is attending to some clients. In these photographs, there is no other brother of Aman Gupta or not even the father or a servant available. It only shows the presence of Aman Gupta in the said shop. The learned Additional Rent Controller has discarded these photographs by observing that nothing prevented Aman Gupta from assisting his brothers or even for that matter his father and therefore, he has not attached any importance to this. No doubt this observation of the learned Additional Rent Controller may be justified that if a photograph of a person is taken doing the business which is stated to be run by his brothers or for that matter by his father or by a partnership firm, his presence at the shop could not be treated as a ground for assuming that he may not be unemployed but certainly this fact whether he is unemployed or not, whether he is doing business independently or not or whether he is assisting his brothers or not will be required to be tested at the time of trial. The only thing before the learned Additional Rent Controller at the time of granting leave to defend would be the two rival affidavits, one

having been filed by the landlord and the other having been filed by the present petitioner/tenant and there is no way of accepting one to be correct and the other being discarded as being false. This dramatic opposite stand taken by learned Additional Rent Controller in the impugned order in itself is a ground of permitting the petitioner to be granted a limited leave with regard to the *bona fide* requirement and the availability of alternative accommodation for the purpose of running the business by Aman Gupta.

8. For the above-mentioned reasons, I feel that the learned Additional Rent Controller has fallen into serious error by denying an opportunity to the petitioner to establish this fact which, if proved that Aman Gupta is doing the business along with his brothers, becomes a case of additional accommodation which in any case has to be proved by the respondent/landlord or if he is doing a business as a routine then he cannot be treated to be unemployed and this may disentitle the respondent/landlord from retrieving the premises. This at this stage requires further adjudication by permitting the parties to produce evidence and hence it becomes a triable issue.

9. I, accordingly, set aside the order passed by the learned Additional Rent Controller and grant leave to defend to the petitioner limited to the extent of prove of *bona fides* of the respondent and the availability of alternative accommodation only.

10. Let the petitioner/tenant filed the written statement within 30 days from today with an advance copy to the respondent, who may file response thereto within three weeks thereafter.

11. The parties to appear before the learned Additional Rent Controller on 3rd December, 2015.

12. A copy of the order be sent to the learned Additional Rent Controller.

V.K. SHALI, J.

NOVEMBER 04, 2015
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