

\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Judgment: 16.3.2016

+

RC.REV. 168/2013

BHARAT BHUSHAN

..... Petitioner

Through Mr.S.D.Ansari and Mr.I. Ahmad,
Advocates.

versus

ABDUL GHAFAR

..... Respondent

Through Mr.Jabbar Hussain, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1 Petitioner-tenant is aggrieved by the order dated 19.01.2013 vide which the Additional Rent Control (ARC) had dismissed the review petition filed by the petitioner-tenant seeking a review of the earlier order dated 24.4.2012. Vide order dated 24.4.2012 the ARC had dismissed the application filed by the tenant seeking leave to defend in the pending eviction petition under Section 14(1)(e) of the Delhi Rent Control Act.

2 At the outset, learned counsel for the respondent submits that since this petition is impugning the order dated 19.01.2013 which was an order passed on a review petition, the present petition which is a Civil Revision is not maintainable and the proper recourse would be to petition under Article 227 of the Constitution of India.

3 This Court in the present jurisdiction is dealing with petitions under Article 227 of the Constitution of India and thus without going into the submissions and counter submissions of the parties, treats this revision petition as a petition under Article 227 of the Constitution of India.

4 Record discloses that the present eviction petition has been filed by the landlord against tenant for a shop on the ground floor forming part of shop No.2143 forming part of the property bearing.2142-2145, Ward No. XIV, Gali No Chuleh Wali, Pan Mandi, Sadar Bazar, Delhi. The area of the shop is 15.3 feet x 13.3 feet which is depicted in red colour in the site plan. Contention was that the petitioner and his wife are the joint owners of the aforementioned property. Petitioner has purchased ½ undivided share of the said property by a registered sale deed dated 21.7.1992. His wife has purchased the remaining ½ share

of the property from the previous owner by virtue of the registered sale deed dated 04.6.2007. The family of the petitioner consists of himself, his wife and a daughter. He also has five married brothers who are dependent upon the petitioner for their residence and other necessities of accommodation. The petition further discloses that the ground floor is having 8 shops and one godown. 6 shops are in occupation of the different tenants including the shop in question. One godown and the two other shops are in occupation of Shri Abdul Salam and Abdul Malik (the brothers of the petitioners) who are running their business from there. The first floor comprises of four small rooms, one store, latrine, kitchen and bath room, passage and verandah which are in possession of the petitioner and his family members. One room is used by the petitioner for manufacture of his election material i.e. flags which is the source of his livelihood. This is in fact a godown. Another room on the first floor is used as his office while the rest of the accommodation i.e. two rooms, one store, latrine, kitchen and bath and passage and verandah are being used for residential purposes. One room is in possession of his adult daughter of the petitioner and the second room is in occupation of the petitioner

and his wife. The petitioner has no guest room, drawing room, dining room. The shop in question is required for running his business of manufacture of election material and the petitioner wants to convert the room in his occupation on the first floor (which in fact is a godown) as a residential room. The second floor also comprises of 5 small rooms, one store room. The entire second floor is in occupation of two married brothers of the petitioner namely Abdul Sattar and Abdul Jabbar. The family of Abdul Sattar consists of himself, his wife and six children of whom three sons are unmarried but they are adult. Family of second brother Abdul Jabbar consists of five children; of whom two are sons are aged 22 years and 18 years. The third floor comprises of four rooms, two store rooms, open terrace, kitchen and latrine and bath and they are in occupation of his another brother Abdul Rahim and his family members. The family of Abdul Rahim comprises of himself, his wife and three school going children. The accommodation presently available with the petitioner and his family is short as there is no room for the guests who visit them very often. They also have no Ibadatkhana. The shop in question shall be a suitable alternate accommodation for the petitioner to carry on his

business of the sale and manufacture of election material as the godown which he is presently using on the first floor is in fact very small and not suitable for this commercial business. It is further stated that the wife of the petitioner is an educated lady and she also require the suit shop from where she can carry out a business to augment the family income. It is further contended that another property bearing No.2147, Sadar Bazar is also owned by the petitioner but the ground floor and the first floor of the said property is in occupation of tenants. All this finds mention in the eviction petition.

5 In the application seeking leave to defend the primary contention was that there is no relationship of landlord and tenant. This controversy has however been set to rest in view of the averments made in review petition filed by the petitioner. In this review petition, in the first paragraph itself the relationship of landlord and tenant has been admitted by the petitioner-tenant. There is no bone of contention qua this issue.

6 The second submission is that there is enough accommodation with the landlord and this premises is not required bona fide by him.

7 This submission has been examined and dealt with in detail by the Trial Judge; the Trial Judge while dismissing the application seeking leave to defend, as also while considering the review petition had considered and again reconsidered the facts and had rightly noted the submission that the family of the petitioner comprises of five married brothers of whom each brother has a large family. The accommodation presently available with them has to accommodate a family of more than 20 members. There is no dining room or a guest roomss. A guest room is a necessity for them especially when they have four married sisters- which they propose to convert the godown on the first floor where the petitioner is storing his businss material becomes vacant. The bona fide need as disclosed in the petition is the need of the landlord to run his manufacturing business of election material which the petitioner wishes to carry out from the shop in question which being on the ground floor is in a commercially viable area. The godown on the first floor is very small and not suitable and conducive for running this business; but is being used for storing material. There is also no dispute to the fact that the landlord is at present is using the godown on the first floor for his business purpose

also no gain saying to the undisputed fact that viability for purposes of business of a first room vis-a-vis a shop on the ground floor is much more suitable of the latter. The shop on the ground floor is much more suitable for the need of the landlord vis-a-vis godown on the first floor. This was noted by the ARC in the correct perspective.

8 Thus, no triable issue has arisen on either of the aforementioned two scores.

9 The last submission of the learned counsel for the petitioner is that the eviction petition itself discloses that the half of the property has been purchased by the landlord in the year 1992 for which he is not raising any dispute but the latter half of this property (which has been purchased by his wife in the year 2007 and the eviction petition having been filed in the year 2011 (that is within less than five years from the date of transfer) and in view of the bar contained in Section 14(6) of the DRCA) such a petition would be maintainable.

10 This argument has been negated.

11 Record shows that submission now made before this Court has not been raised in the application seeking leave to defend. On a

query, learned counsel for the petitioner submits that this is a legal submission and it can be raised at any stage. This Court notes that this eviction petition has been filed by only one person i.e. the landlord Abdul Gaffar. He had purchased this property by a registered sale deed dated 21.7.1992. His wife had purchased the remaining half portion of the property vide the registered sale deed dated 04.6.2007. Legal position is settled. A single co-owner can file an eviction petition. The other co-owner does not have to join unless and until there is any dispute. There is no argument that there is any dispute qua the co-owners even otherwise the only petitioner before this Court is Abdul Gaffar who had purchased half of this property vide a sale deed dated 21.7.1992. The rent agreement qua this shop which has been tenanted out to the tenant dates back much prior thereto. The status of the present petitioner as the landlord vis-à-vis the respondent in his capacity as a tenant already stood established in 1992. The question of the hurdle of Section 14(6) of the DRCA coming in the way of the petitioner does not arise.

12 The fact that one co-owner can maintain an eviction petition has been settled in a catena of Judgments.

13 Even otherwise, this submission has not been taken as a ground in the application seeking leave to defend. Dehors this, this argument also does not raise a triable issue. No triable issue having arise, the eviction petition having been decreed in favour of the landlord suffers from no infirmity.

14 This Court has been informed that possession of the suit property has already been taken over by the landlord as way as on 19.02.2013.

15 This petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 16, 2016
ndn