* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RC. REV. No. 302/2012**

% **8th September, 2014**

INDIAN COFFEE WORKERS CO-OP. SOCIETY LTD. ......Petitioner
Through: None.

VERSUS

MEHTAB CHAND JAIN ...... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.11814/2012 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+ RC. REV. No.302/2012 and C.M. No.11815/2012

2. On the first call, a pass over was sought. At the time of granting pass over, it was made clear that in view of the adjournments being sought on behalf of the petitioner on five times earlier the matter will not be adjourned, and that the case should be argued. However, no one is present on behalf of the petitioner even on the second call.

3. The challenge by means of this petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') is to the impugned judgment dated 02.05.2011 of the trial court decreeing the *bonafide* necessity eviction petition under Section 14(1)(e) of the Act. The case has been decreed after evidence/trial. The respondent/landlord filed the case for *bonafide* necessity pleading that the tenanted premises were required for the commercial purposes of the respondent and his family members viz his sons. The tenanted premises are a godown on the ground floor of the property bearing no.6029-6037, 1-UB, Jawahar Nagar, Delhi-110007 measuring 41'X 16'.

4. In the property, different portions were occupied by different tenants besides by the landlord and his family members. The occupation of different portions by the persons was duly proved in terms of the different site plans of the different floors being Ex.PW1/1, Ex. PW1/1A, Ex. PW1/1B, Ex. PW1/1C and Ex. PW1/1D i.e with respect to mezzanine floor, first floor, second floor and the third floor respectively. There was no challenge by the petitioner/tenant to the occupation of the different portions of the property by different tenants and the family members of the respondent and this is noted by the Additional Rent Controller in the following terms in the

impugned judgment and wherein another aspect is also mentioned that there is no challenge to the number of family members of the respondent/landlord:-

> "It is not in dispute between the parties that the petitioner and his other three brothers are also residing in the suit premises and that the petitioner is doing his business of sale and trading of garments and a firm namely Subha Creation is in the name of the petitioner's wife.
>
> In the cross examination of the PW1 there is no question or suggestion being asked on behalf of the respondent to deny the extent of accommodation available with the petitioner and his brothers in the suit premises. Even the site plans Ex.PW1/1 to Ex.PW1/1-D are not been disputed. No question or suggestion has been asked to the PW 1 in his cross examination to deny the veracity of the site plans. There is also no question or suggestion been put to the PW1 to deny that the office space available with the petitioner is not a small space. The extent of accommodation available with the petitioner and his family and with his other brothers is deemed to be admitted by the respondent. Moreover, the requirement of the petitioner of the suit property to start business for his sons cannot be said to be not a bonafide one considering that the petitioner has two sons and that the petitioner only has a space of small office at Kamla Nagar and no accommodation available in the suit premises for starting a business for his sons."

5. I do not find any illegality in the aforesaid reasoning and conclusion of the Additional Rent Controller because once the site plans are not disputed, obviously the stand of the respondent with respect to occupation of the different portions of the property by the family members of the respondent and his other brothers stood admitted. Additional Rent

Controller was therefore justified in arriving at a conclusion that the suit/tenanted premises were required *bonafidely* by the sons of the respondent for carrying on the business.

6. So far as the aspect of ownership of the respondent/landlord is concerned, this has been held in favour of the respondent/landlord in terms of the following observations of the Additional Rent Controller:-

> "Now I will proceed to examine the second contention of the learned counsel for the respondent that the petitioner is not the exclusive owner of the suit property on the basis of the material and the evidence on the record. PW-1 has deposed in his examination in chief that he alongwith his other three brothers are the co-owners of the suit property. The PW-1 has also filed the copy of the sale deed Ex. PW-1/4 to prove their ownership of the suit property. PW-1 has further deposed that the tenanted portion which is in tenancy of the respondent comes in his share as per family settlement arrived amongst the co-sharers and he is receiving rent from the respondent by cheque and there is a relationship of landlord and tenant between him and the respondent. PW-1 in his cross-examination has stated that the family settlement was not in writing but it was oral and mutual and after the settlement the suit property has fallen in his share. He further deposed that after the family settlement the rent paid by the tenant through cheques used to be in his name till date. There is no question or suggestion put to the PW-1 in his cross examination to deny the rent was not been paid by the respondent to the petitioner. There is also no question or suggestion put to the PW-1 to deny the ownership and the relationship of landlord and tenant between the petitioner and the respondent, even there is no question or suggestion been put to the PW-1 to deny the oral family settlement between the petitioner and his brothers."

7. I do not find any illegality in the aforesaid reasoning and conclusion because no doubt the family settlement was oral but the petitioner had paid rent to the respondent by cheques and also there was no question in cross-examination of PW1 to dispute this aspect that rent was paid to the respondent/landlord. Also, there was no suggestion in the cross-examination questioning/denying the ownership of the respondent/landlord.

8. Powers under Section 25-B(8) of the Act of the revisions are not to be exercised once there is one possible and plausible view taken by the Additional Rent Controller. In fact, in my opinion, Additional Rent Controller has taken the only possible view that the respondent/landlord is the owner of the suit premises and that the tenanted premises are required *bonafidely* by the respondent/landlord for the business purpose of his sons because they have no other alternative suitable premises.

9. Dismissed.

SEPTEMBER 08, 2014 **VALMIKI J. MEHTA, J.**

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