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

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Date of Decision: 07.09.2016

+ RC.REV. 432/2016

ANITA DHAWAN

..... Petitioner

Through
versus

Mr.H.R.Jha, Advocate.

SMT.RAJ BALA

..... Respondent

Through

None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAI)

CM(M) 32786/2016 (exemption)

Exemption is allowed subject to all just exceptions.

RC.REV. 432/2016 and CM No. 32785/2016 (delay)

1. The present petition is filed under Section 25 B of the Delhi Rent Control Act (DRC Act) to impugn the order of the Additional Rent Controller (ARC) dismissing the application for leave to defend filed by the petitioner and passing an eviction order under Section 14(1)(e) of the DRC Act against the petitioner.

2. The brief relevant facts are that the respondent filed an eviction petition under Section 14 (1)(e) read with Section 25B of the DRC Act regarding the shop on the ground floor of the premises bearing No. WZ-508-B/3, Village Basai Darapur, New Delhi. It was stated in the eviction petition that the property in question was let out to the petitioner on 01.06.1993 by the respondent. The present monthly rent is said to be Rs. 3,230/- excluding

other charges. It is stated that the father-in-law of the respondent was the owner of three properties, namely, WZ-508-B/3, WZ-417A and WZ-383, Village Basai Darapur, New Delhi. He had two sons, namely, late Bir Singh Tanwar i.e. the late husband of the respondent and Sh. Dheer Singh Tanwar. During his lifetime the properties were divided. Property No. WZ-417A came to the share of the husband of the respondent and property No. WZ-508-B/3 was divided in equal share between the sons, the area shown in green colour in the site plan is said to be the share of the late husband of the petitioner. Shop on the ground floor measuring about 120 sq. ft is the tenanted shop which is said to have been let out by the respondent to the petitioner. The husband of the respondent Sh. Bir Singh Tanwar is said to have died on 22.01.1993 leaving behind his legal heirs, namely, the respondent and a minor son who at that time was only four months old, namely, Abhishek Tanwar.

3. It is the contention of the respondent that her son is now a qualified young boy and has passed a three year degree course i.e. Bachelor of Science in Hospitality and Hotel Administration in 2014. In 2014 it is urged that a request was made to the petitioner that the son of the respondent wants to start his own business for his livelihood and the petitioner was requested to vacate the property. As the petitioner failed to vacate the property, the son had no option but to join a private company in December 2014 and is getting a salary of only Rs. 7,890/- per month.

4. The petitioner filed an application under Section 25B (4) of the DRC Act seeking leave to contest the eviction petition. A perusal of the application shows that it is bereft of any material facts or contentions which can be said to entitle the petitioner for grant of leave to defend. The

petitioner has made some vague averments as follows:

- (i) That the respondent is not the owner of the property and has not filed any document to show her ownership.
- (ii) That the respondent is seeking eviction on account of the bona fide need of her son whereas she admits that the son is doing a private job and hence, there is no bona fide need.
- (iii) In the recent past, other shops have been let out on a higher rate of rent by the respondent.
- (iv) That the respondent wants to get the property vacated and thereafter, sell the property at a higher price or let it out at a higher rate of rent.

5. Above is the sums and substance of the defence of the petitioner on which grounds leave to defend was sought.

6. The ARC on the issue of relationship of landlord and tenant noted that the respondent had let out the premises to the petitioner and hence, the petitioner cannot challenge the ownership of the respondent now.

7. On the issue of alternative suitable accommodation, the ARC noted that the petitioner has mentioned about the other property i.e. WZ-417-A and has also filed certain photographs where a name plate showing the names of the respondent, her husband and her son is affixed. The Rent Controller noted that in the leave to defend application itself, the petitioner has admitted that all the shops in the said premises are let out. Hence, it cannot be said that any alternative suitable accommodation is available to the respondent. The Rent Controller thereafter also noted that the admitted fact is that the respondent has a 23 year old son who wants to start his own

business after completion of his studies. The requirement is clearly bona fide as he has a right to grow and earn more money. Merely because he is doing a private job and earning a salary less than Rs.8,000/- per month cannot mean that there is no bona fide requirement on behalf of the respondent. The ARC accordingly dismissed the application for grant of leave to defend and passed an order of eviction.

8. Learned counsel appearing for the petitioner has relied upon his application for leave to defend where he has pointed out to para 8 where an averment is made that the property (presumably property No. WZ-508-B/3) comprises two shops and six halls and the petitioner also states that all the shops and halls are rented out by the respondent. He also relies upon a reply filed by the respondent to the said averments where the respondent has denied the contention of the petitioner. Hence, it is submitted by learned counsel for the petitioner that as per the respondent themselves, alternative accommodation is available to the respondent. It is further urged that the son of the respondent is living in London and has no intention of coming back.

9. Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

.....

(e) that the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof , or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation;”

10. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family member dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

11. In the present case, the admitted position is that the property in question was let out by the respondent to the petitioner on 01.06.1993. The petitioner has been paying rent to the respondent. This is evident from the fact that in the reply to the application for leave to defend, there is a categorical averment made by the respondent that the petitioner has been paying rent to her. In the rejoinder there is no denial of the same. The petitioner is estopped from challenging the title of the respondent to the shop in question.

12. This court in the case of ***Puran Chand Aggarwal vs. Lekh Raj, 210 (2014) DLT 131*** held as follows:-

“34. It is settled law that in the context of the Act what appears to be the meaning of the term "owner" is that à the tenant the owner should be something more than the tenant. The position in law is that the "ownership" of the landlord for the purpose of maintaining a petition under Section 14(1)(e) of the Act is not required to be an absolute ownership of the property, and that it is sufficient if the

landlord is a person who is collecting the rent on his own behalf. The imperfectness of the title of the premises can neither stand in the way of an eviction petition under Section 14(1)(e) of the Act, nor can the tenant be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying the rent to the landlord. The tenant inducted by landlord is estopped and cannot dispute the title of his landlord in view of the provisions of Section 116 of the Indian Evidence Act without there being any subsequent change in the situation. This aspect has been discussed in the following judgments:

- i. Shanti Sharma vs. Smt. Ved Prabha, AIR 1987 SC 2028
- ii. Zahid Hussain thr. LRS vs. Aenul Haq Qureshi thr. LRS, 2005 (1) RCR 323
- iii. Ram Chander vs. Ram Pyari, 109 (2004) DLT 388
- iv. Mukesh Kumar vs. Rishi Prakash, 174 (2010) DLT 64
- v. Rajender Kumar Sharma & Ors. vs. Smt. Leela Wati & Ors., 155 (2008) DLT 383
- vi. Meenakshi vs. Ramesh Khanna & Anr., 60 (1995) DLT 524
- vii. Tej Pal Gupta vs. Rattan Singh, 160 (2009) DLT 726
- viii. Kamla Rani & Ors. vs. Texmaco Ltd., 139 (2007) DLT 61
- ix. Keshar Lal H. Pardeshi vs. Vithal S. Patole, (2005) 10 SCC 249
- x. Ramesh Chand vs. Uganti Devi, 157 (2009) DLT 450
- xi. M.M. Quasim vs. Manohar Lal Sharma, (1981) 3 SCC 36
- xii. B.R. Anand vs. Prem Sagar, 2002 (1) RCR (Rent) 234
- xiii. D. Rani Puri vs. Chanan Lal, 65 (1997) DLT 313
- xiv. Shree Ram Sharma vs. Mohd. Sabr, 178 (2011) DLT 1

xv. Bharat Bhushan Vij vs. Arti Teckchandani, 153 (2008) DLT 247

xvi. Jiwan Lal vs. Gurdial Kaur & Ors., 57 (1995) DLT 262”

13. Hence, there are no grounds to interfere in the order of the ARC on the issue of relationship of landlord-tenant.

14. Regarding alternative accommodation, the respondent in her eviction petition has clearly stated that she owns two properties, namely, WZ-417A and half of WZ-508-B/3, Village Basai Daarapur, New Delhi. The petitioner in her leave to defend application in para 8 admits that the two shops and six halls in the property WZ-508-B/3 are rented out including one shop to the petitioner. Similarly, regarding property No. WZ-417 A, the petitioner in para 12 states that all the shops in this property are on rent. No doubt a vague allegation is made that in the recent past, other shops were let out by the respondent at a higher rate of rent. No details have been given as to which shop has been rented out by the respondent recently. This bald allegation is without merit and cannot be accepted.

15. Regarding the contention of the learned counsel for the petitioner relying on para 8 of his application for leave to defend and the corresponding para of the reply to the said application, there is no merit in the contention of the petitioner. The petitioner himself in his application states that the two shops and six halls in the property WZ-508-B/3 are rented. Respondent in her reply has merely clarified the accommodation available in the said property. The respondent has denied that there are two shops and six halls and that all eight shops have been rented out. The respondent states that there is one hall and two shops on the ground floor, one hall one room on the first floor, one hall one room on the second floor

and one room, kitchen on the third floor in the said property. It is stated that the property is situated in the main bazaar/market. The respondent further states that one shop has been let out to the petitioner and the other shop has been let out to another tenant Mr. Rakesh in 1994. There is no averment that any shop or hall is vacant.

16. As far as the contention of the petitioner that the son of the respondent is settled in London is concerned, admittedly, no such averment was made in the application for leave to defend or even otherwise before the Rent Controller. The contention now raised for the first time without any supporting record cannot be permitted to be raised. Even otherwise the contention is baseless on the face of it.

17. On the issue of bona fide requirement, there is nothing pleaded or brought on record to doubt the contention of the respondent. When the property was let out to the petitioner in 1993 her son was barely one year old. Today he is 23 year old having completed his education and is in need of property/shop to carry on his own business. He is doing a private job earning less than Rs.8,000/- per month which in today's age, in a town like Delhi is bare minimum income for sustenance. A clear case of bona fide requirement is made out.

18. In ***G.C. Kapoor Vs. Nand Kumar Bhasin***, AIR 2002 SC 200, (MANU/SC/0736/2001), the Supreme Court noted as follows:

“It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In *Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Anr.*: [1999] 2 SCR 912, this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to

prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.”

19. It is clear that the shop in question is required bona fide by the respondent for his own personal use and she has no other reasonably suitable accommodation.

20. The petitioner has failed to plead any ground which entitles the petitioner for grant of leave to defend the eviction petition.

21. There is no merit in the present petition and the same is dismissed.

JAYANT NATH, J.

SEPTEMBER 07, 2016/rb