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

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Date of decision: 23.08.2016

+ R.C. REV. 402/2016

OM PRAKASH GUPTA

..... Petitioner

Through

Mr.Siddhant Bambha & Mr.Dhruv
Dwivedi, Advocates

versus

NIRMAL KANTA

..... Respondent

Through

None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No. 29899/2016(exemption)

Allowed subject to all just exceptions.

CM No. 29900/2016(delay)

By this application, the petitioner seeks condonation of delay of 22 days in re-filing the accompanying revision petition. For the reasons stated in the application, the delay of 22 days in re-filing the accompanying revision petition is condoned and the application is disposed of.

R.C. REV. 402/2016 & CM Nos. 29898/2016 & 29901/2016

1. By the present revision petition, the petitioner seeks to impugn the order dated 22.01.2016 by which the application for leave to defend filed by the petitioner was dismissed.

2. The respondent filed an eviction petition under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (*hereinafter referred*

to as the 'DRC Act') regarding a shop on the ground floor of property bearing No.307/1/116, Old Rohtak Road, Shahzada Bagh, Delhi – 110 035. It was the contention of the respondent that she is the owner of the property in question. She is an old lady of 64 years and is having no source of income. Her family consists of herself, two married daughters and two married sons. One son namely Raman Sharma, aged about 29 years is also married. It was urged that Raman Sharma is still unemployed and is having no commercial premises to carry out his own business. The husband of the respondent Rajeev Pradhan was a doctor and he expired on 29.11.2008. While the husband of the respondent was alive, the son Raman Sharma used to sit with his deceased father. The eldest son Pawan Sharma has also expired. Hence, it is claimed that the premises is required by the respondent so that the son of the respondent can start his business on the ground floor. The son was said to be unemployed.

3. The petitioner filed an application for leave to defend. It was contended in the leave to defend application that the respondent/landlord is in possession of other premises including Shop No.111/2-B, Shahzada Bagh Extension, Old Rohtak Road, Delhi from where Raman Sharma is running a shop under the name and style of 'M/s Jai Mata Motors'. It was further stated that Raman Sharma is dealing with money lending and property business. In the reply, the respondents denied that they have any other property under their ownership including shop No. 111/2-B, Shahzada Bagh Extension, Old Rohtak Road, Delhi. It was also denied that neither the respondent/landlord nor her son Raman Sharma is doing any business under the name and style of 'M/s Jai Mata Motors'. It was reiterated that son of the respondent is unemployed and is not doing any business.

4. The trial court by the impugned order noted that the petitioners themselves admitted that they are tenant of the said property for last 25 years and paying the rent @ Rs.1900/- per month to the respondent. The relationship of landlord and tenant stood established.

5. On bonafide requirement, the trial court noted that the respondents have denied any title to the property being shop No. 111/2-B, Shahzada Bagh Extension, Old Rohtak Road, Delhi. The reliance of the petitioner on photographs of the said property was held to be misplaced as merely showing the photographs does not mean that son of the respondent is carrying on any business in the said property. The trial court noted that merely making an allegation cannot lead to any conclusion that the property was not required bona fide by the respondents.

6. On alternative accommodation, a submission had been made that the respondents had first and third floor of the property and the same can be used by the respondents. The respondents had clarified that the said property was her residence. In any case, the premises of the ground floor would fetch more customers as compared to a shop situated on first or third floor. Hence, the trial court concluded that the respondents do not have any other alternative suitable accommodation. The application by the petitioner for leave to defend was accordingly dismissed.

7. The learned counsel for the petitioner vehemently argued that he has placed on record photographs to show that the husband of the respondent Dr.Rajeev Pradhan was having a flourishing business. It is urged that said Dr.Rajeev Pradhan was doing his practice from a shop which is still in possession of the respondent and her son from where her son is carrying his business. It is urged that the son of the respondent is also a qualified doctor

and it was for the respondent to give the full details of this fact.

8. I may first see the scope of the present petition. The Supreme Court in *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222* described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law". For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available...”

9. The essential ingredient which a landlord/respondent was 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 members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

10. As rightly noted by the ARC in the present case there is no controversy about ownership, rate of rent and the purpose of letting.

11. On bona fide requirement, the ARC noted the contention of the respondent that she requires the said premises bona fide for herself and for her son to start his business since the son of the respondent is unemployed. The respondent is a widow. Her elder son has expired. The only argument raised by the petitioner before the ARC was that property No.111/2-B, Shahzada Bagh Extension, Old Rohtak Road, Delhi was available to the son of the respondent from where he is running a business under the name and style of 'M/s Jai Mata Motors'. The respondents have denied the ownership of the shop or the business. The contention made by the petitioner is completely moonshine. The petitioner has failed to place on record anything to show any remote connection of the respondent with the said business or the premises. Merely filing a photograph of a shop does not *per se* show anything. The view expressed by the ARC cannot be faulted.

12. Coming to the availability of alternative accommodation, the submission of the respondent was noted that she does not have any alternative suitable accommodation in her possession. The petitioner stated that first and third floor of the property in question can be used by the respondent for her bona fide requirement. The ARC noted the submission of the respondent that the said area is used as a residential accommodation of the respondent and her son, hence the question of converting that

accommodation to commercial use does not arise. Even otherwise, the premises on the ground floor is better suited for opening a shop.

13. Before this court the petitioner has placed on record photographs showing hoarding of Dr.Rajeev Pradhan. It is urged that these photographs show that the late husband of the respondent was doing commercial work and those premises in question would obviously be available with the respondent.

14. It may be noted that this contention was never raised before the ARC and is being raised here before this court for the first time. In view of the judgment of the Supreme Court in the case of *Prithipal Singh v. Satpal Singh, 2010 (2) SCC 15*, at this stage, the petitioner cannot start raising additional grounds. Even otherwise the argument is utterly vague. It does not any manner show that any alternative accommodation is available to the respondent. As noted above merely filing photographs which contains hoarding of the deceased husband who died on 29.11.2008 does not show any facts which should entitle the petitioner to leave to defend.

15. The learned counsel for the petitioner has confirmed that the respondents have already executed the impugned order and taken over the possession of the suit property on 18.08.2016.

16. There is no merit in the present and the same is dismissed.

JAYANT NATH, J.

AUGUST 23, 2016/v