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

+ RC.REV. 289/2016 & CMs No.19458/2016 & 41804/2016 (both for stay)

ROSHAN LAL CHAWLA Petitioner
Through: Mr. C.P. Vig, Adv.

Versus

NAVIN SINGH SOLANKI Respondent
Through: Mr. M.M. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.09.2017

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 1st February, 2016 in E No.77/2012 (UID No.02401C0182772012) of the Court of Additional Rent Controller (ARC)-1, (Central), Tis Hazari Courts, Delhi] of eviction after full trial of the petitioner from one shop admeasuring 8'-6" X 15'-3" on the ground floor of property No.XV/3793, Gali Ram Nath Patwa, Tel Mandi Chowk, Paharganj, New Delhi-110055.

2. The petition was entertained and notice thereof ordered to be issued and the counsel for the respondent has been appearing.

3. There being no stay by this Court of the order of eviction impugned in this petition, the same was executed and the respondent has recovered possession in pursuance to the order of eviction impugned.

4. It was the contention of the counsel for the respondent on 1st May, 2017 that this petition had become infructuous for the reason aforesaid.

5. I am unable to agree with the aforesaid contention; merely because the order of eviction impugned in this Rent Control Revision Petition has been executed, does not make this petition infructuous. In the event of this petition being allowed, the respondent can always be asked to put back the petitioner into possession of the premises by way of restitution.

6. The counsels have been heard and the Trial Court record requisitioned, perused.

7. The need to deal with pleadings and the evidence and the findings returned by the ARC in the impugned order is not felt owing to the course which the arguments have taken.

8. The undisputed position is (i) that the respondent is the owner of property No.XV/3793, Gali Ram Nath Patwa, Tel Mandi Chowk, Paharganj, New Delhi in one room wherein on the ground floor whereof, being used as a shop, the petitioner was a tenant; (ii) the father of the respondent/landlord was the owner of adjoining property No.XV/3794, Gali Ram Nath Patwa, Tel Mandi Chowk, Paharganj, New Delhi; (iii) that property No.XV/3793, Tel Mandi Chowk, Paharganj, New Delhi admeasures 75 sq. yards and comprises of ground, mezzanine, first and terrace floor; (iv) that the property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi is constructed over land admeasuring 125 sq. yards and comprised of ground, first, second and terrace floors; (v) that the petitioner/tenant admits the relationship of landlord and tenant with the respondent; (vi) that the family of the respondent/landlord comprises of his wife, two sons and one daughter aged

12, 9 and 5 years at the time of institution of the petition for eviction in the year 2012; (vii) that the families of the brothers of the respondent/landlord are residing in property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi and the father of the respondent/landlord also, when alive, was residing in that property; (viii) that the respondent is an Ayurvedic Vaid by profession and has his clinic in property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi.

9. The contention of the counsel for the petitioner/tenant is (a) that the respondent/landlord along with his family was also residing in property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi on the ground floor and was also having his clinic in one room on the ground floor and the brothers of the respondent/landlord were residing on the upper floors; (b) that besides the room in property No.XV/3793, Tel Mandi Chowk, Paharganj, New Delhi in tenancy of the petitioner and from which the petitioner/tenant was running his shop, the remaining property was lying vacant; (c) that the respondent/landlord for the purpose of seeking eviction of the petitioner/tenant, before the filing of the petition for eviction, shifted to the property No.XV/3793, Tel Mandi Chowk, Paharganj, New Delhi and is now residing there; (d) that thus the respondent/landlord has no need for the premises in the tenancy of the petitioner. Reliance is placed on ***Tarun Pahwa Vs. Pradeep Makin*** (2013) 198 DLT (CN) 15, ***Prahlad Rai Mittal Vs. Rita Devi*** (2013) 196 DLT 703, ***Vinod Kumar Vs. Ajay Kumar Singhal*** (2016) 158 DRJ 642 and ***Bharat Glass And Plywood Co. Vs. Sushan Pal Soni*** 2014 SCC Online Del 1232.

10. The counsel for the respondent/landlord of course controverts that the respondent/landlord was earlier residing in property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi; his case is that the respondent/landlord since the purchase of the subject property way back in the year 1996 been residing in property No.XV/3793, Tel Mandi Chowk, Paharganj, New Delhi only.

11. It is also not in dispute that besides the room earlier in the tenancy of the petitioner, the ground floor of property No.XV/3793, Tel Mandi Chowk, Paharganj, New Delhi comprises only of one toilet, one store and one kitchen, all of sizes below habitable prescribed under the Delhi Building Bye-Laws, 1983; the mezzanine floor comprises of two mezzanines; the first floor comprises of one room and one kitchen and the terrace floor comprises of one tin shed only. Thus, the habitable spaces in property No.XV/3793, Tel Mandi Chowk, Paharganj, New Delhi are only of two rooms. This Court, in *Subhash Chander Marwah Vs. Jagjit Singh Sood* (1988) 35 DLT 258 held that room of less than 100 sq. ft. cannot be considered habitable.

12. In the aforesaid state of affairs, the only argument which remains to be considered is, of the respondent/landlord earlier residing in property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi.

13. I am of the view that once it is the admitted position that the respondent/landlord along with his family is now residing in property No.XV/3793, Tel Mandi Chowk, Paharganj, New Delhi, title whereof of the respondent/landlord is not in dispute, merely because of the fact that the

respondent/landlord may have been earlier residing in property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi would not disentitle the respondent/landlord from obtaining an order of eviction of the petitioner from room in the tenancy of the petitioner in property No.XV/3793, Tel Mandi Chowk, Paharganj, New Delhi.

14. The counsel for the petitioner/tenant has sought to waive in this Court the photocopy of the electoral record to contend that the respondent/landlord and his family members were registered at the address of property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi.

15. The counsel for the respondent/landlord states that the said documents were never proved before the ARC.

16. I am of the view that even if the respondent/landlord and his family members are shown registered at property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi in the electoral record, in the face of the father of the respondent/landlord and the brothers of the respondent/landlord residing in property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi, the same cannot be determinative.

17. As aforesaid, the earlier residence, even if any, though disputed of the respondent/landlord, along with his father and brothers in property No.XV/3794, Tel Mandi Chowk, Paharganj, New Delhi would not disentitle the respondent/landlord from residing in his own property of which he is the exclusive owner and from seeking eviction of the petitioner/tenant to make available to himself the additional accommodation in property No.XV/3793, Tel Mandi Chowk, Paharganj, New Delhi.

18. Supreme Court recently in *Bhupinder Singh Bawa Vs. Asha Devi* (2016) 10 SCC 209, *Anil Bajaj Vs. Vinod Ahuja* (2014) 14 SCC 610, *Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal* (2005) 8 SCC 252 and *Sarla Ahuja Vs. United India Insurance Co. Ltd.* (1998) 8 SCC 119 has reiterated that it is not for the tenant to dictate to the landlord how the landlord should live and once a need for accommodation is made out, the decision of the landlord of his requirement is to be respected by the Court and the Court is not to give its precious advice to the landlord. Reference can also be made to my recent judgment dated 17th July, 2017 in RC.REV. No.315/2017 titled *Asha Sawhney Vs. Kamini Gupta*.

19. As far as the judgments cited by the counsel for the petitioner/tenant are concerned, *Tarun Pahwa*, *Prahlad Rai Mittal* and *Bharat Glass And Plywood Co.* supra are of the stage of consideration of leave to defend and would have no application to the present case, where the order of eviction against the petitioner has been passed after full trial. Qua *Vinod Kumar* supra, the counsel for the petitioner/tenant on being asked, reads only the head note thereof which merely reiterates what is provided in Section 14(1)(e) of the Rent Act itself. Merely because in that case, the requirement was held to have been not made out does not mean that the said judgment becomes a precedent for holding that in no case the requirement is to be found to be not made out.

20. At this stage, the counsel for the petitioner/tenant has also contended that the respondent/landlord had earlier instituted a suit for recovering possession of the room aforesaid from the petitioner/tenant treating the petitioner/tenant to be an unauthorised occupant.

21. A large number of such suits were being filed in Delhi on the premise that after the quashing by this Court in ***Raghunandan Saran Ashok Saran (HUF) Vs. Union of India*** (2002) 95 DLT 508 of Sections 4 and 6 of Delhi Rent Control Act, the landlord was entitled to claim rent as per the prevalent rent and on which claim being made, the premises would go out of the purview of the Rent Act and a suit for recovery of possession can be filed in the Civil Court, till the question was settled by the Division Bench in ***Model Press Pvt. Ltd. Vs. Mohd. Saied*** (2009) 107 DRJ 58 & in ***Santosh Vaid Vs. Uttam Chand*** (2012) 188 DLT 293 Merely because the respondent/landlord may have also pleaded the petitioner to be an unauthorised occupant does not disentitle the respondent/landlord from invoking the statutory provisions in the Rent Act.

22. There is thus no merit in the argument also.

23. The counsel for the petitioner/tenant states that the suit is still pending. However, the counsel for the petitioner/tenant himself states that the suit is not maintainable as he was a tenant protected by Rent Act.

24. There is no merit in the petition.

25. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 11, 2017
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