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

+ RC.REV. 167/2015 & CMs No.6543/2015 (for stay), 1202/2016 (for condonation of 167 days delay in filing written synopsis), 8296/2016 (of respondents for directions) & 23191/2017 (u/S 151 CPC)

JOGINDER SINGH

..... Petitioner

Through: Mr. Rambhakt Aggarwal and Mr.
Anuj Kumar Garg, Advs. with
petitioner in person.

Versus

HARMINDER SINGH CHOWDHARY & ORS Respondents

Through: Mr. V.M. Issar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.08.2017

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 30th September, 2014 in E No.45/2013 UID No.02401C0439252013 of the Court of Additional Rent Controller (ARC) (West), Tis Hazari Courts, Delhi) of dismissal of the application filed by the petitioner for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondents No.1&2 and the consequent order of eviction of the petitioner from shop bearing private No.2 in property No.WZ-199, G-Block, Jail Road, Hari Nagar, New Delhi-110058 which was let out in the year 1986 to the petitioner by the predecessor of the three respondents at a rent of Rs.375/- per month.

2. The petition was entertained and notice thereof issued and vide order dated 13th April, 2015 the execution of the order of eviction stayed. Vide subsequent order dated 8th September, 2015, the continuance of the interim

order of stay was made conditional upon the petitioner paying to the respondents No.1&2 compensation of Rs.3,000/- per month towards use and occupation charges and which is stated to have been paid.

3. The counsel for the petitioner has been heard.

4. The respondents No.1&2 sought eviction of the petitioner/tenant pleading (i) that their father Sh. Pritpal Singh was the owner of half of property No.WZ-199, G-Block, Jail Road, Hari Nagar, New Delhi vide a decree for partition between the said Sh. Pritpal Singh and his brother Sh. Jagdish Singh; (ii) that the half portion of the property which came to the ownership of Sh. Pritpal Singh i.e. father of the respondents No.1&2 comprised of four shops facing the main Jail Road and residence behind; (iii) that the said Sh. Pritpal Singh, in the year 1986, let out shop bearing private No.2 to the petitioner/tenant herein; (iv) that Sh. Pritpal Singh left the respondents No.1&2 as his sons, Smt. Gurbachan Kaur as his widow and the respondent No.3 Sukhwinder Kaur Kwatra as his daughter; (v) that the family members of Sh. Pritpal Singh were residing in the residential portion of the property behind the shops; (vi) that Smt. Gurbachan Kaur, being the mother of the respondents, instituted a petition for eviction of the tenant in shops bearing private Nos.3&4 under Section 14D of the Act and after obtaining eviction order, was running her furniture business from the said shops; (vii) that the shop bearing private No.1 is also with another tenant; (viii) that after the death of Smt. Gurbachan Kaur, respondent No.3, being the daughter of Smt. Gurbachan Kaur and sister of the respondents No.1&2, has been carrying on the said furniture business; (ix) that the respondents No.1&2 are Advocates by profession and require the shop in the tenancy of the petitioner herein for setting up their law office as they have no other

place for their office and are presently sitting in the chamber of another advocate in Tis Hazari Courts, Delhi; (x) that the said shop is most suitable for the respondents No.1&2 to have their law office inasmuch as the respondents No.1&2 are residing behind the said shops and can conveniently have their law office in the said shop.

5. The petitioner/tenant applied for leave to defend and after completion of pleadings wherein, the learned ARC, on going through the leave to defend, has not found the same to be disclosing any such facts which required trial and which if put to trial would result in dismissal of the petition for eviction.

6. The first argument of the counsel for the petitioner/tenant is that the mother of the respondents No.1&2 got the shops bearing private No.3&4 vacated under Section 14D of the Act; that thereafter the mother of the respondents No.1&2 Smt. Gurbachan Kaur filed a petition for eviction of the petitioner/tenant also under Section 14D of the Act; that the petitioner/tenant applied for leave to defend the said petition for eviction. Attention is invited to the order dated 31st July, 2008 granting leave to defend to the petitioner/tenant in the said petition for eviction *inter alia* on the submission of the petitioner/tenant that though Smt. Gurbachan Kaur had got shops bearing private No.3&4 vacated pursuant to order of eviction under Section 14D of the Act pleading that she required the said shops for being used as law office by her sons but instead of the said shops bearing private No.3&4 being used for law office of respondents No.1&2, a business of furniture was commenced therefrom. It is argued that the same shows that the respondents No.1&2/their mother have been repeatedly filing petitions for eviction against different tenants on the ground of requirement of the

premises for law office of the respondents No.1&2 but the premises when got vacated are not used for the said purpose.

7. The counsel for the petitioner/tenant, on specific query, categorically accepts that the business of furniture in shops bearing private No.3&4 was being run by the mother of the respondents No.1&2.

8. On further enquiry, it is disclosed that Smt. Gurbachan Kaur being the mother of the respondents No.1&2 died during the pendency of the petition for eviction under Section 14D of the Act and though the respondents No.1&2 applied for substitution in her place but the petition was abated observing that ground of eviction under Section 14D of the Act was personal to Smt. Gurbachan Kaur and could not be survive to the respondents no.1&2.

9. The respondents No.1&2, in the petition for eviction, have pleaded that after the death of their mother, their sister being the respondent No.3 herein, has taken over the furniture business earlier being run by the mother from shops bearing private No.3&4 and in fact the portion behind the said shops is also being used for the purposes of the said business.

10. It is the contention of the counsel for the petitioner/tenant that the respondents No.1&2 have falsely stated that the business of furniture in shops bearing private No.3&4 is being carried on by their sister respondent No.3, whereas in fact the said business is being carried on by respondents No.1&2 themselves. It is argued that the said shops bearing private No.3&4 are also thus available to the respondents No.1&2 for their law office, though they are choosing to run the furniture business therefrom. It is further stated that Municipal Corporation of Delhi has challaned the respondents No.1&2 with respect to the furniture business and it is the

respondents No.1&2 who under their signatures issued bills of sale of furniture.

11. On enquiry, it is informed that the respondents No.1&2 have produced before the Court their Income Tax Returns showing their earning from professional income as a lawyer and documents to show the business of furniture being of their sister respondent No.3. It is however contended that the said documents have been created only two months prior to the filing of the petition for eviction. It is yet further stated that the petitioner/tenant, before this Court, under cover of an application, has filed a DVD showing the respondents No.1&2 sitting in the said shops bearing private No.3&4 and carrying on business therefrom.

12. I have enquired from the counsel for the petitioner/tenant, whether he as a lawyer, has seen the respondents No.1&2 practising in the Courts.

13. The counsel for the petitioner/tenant states that he has not seen.

14. All that I can observe is that at least I, in my years in the Courts, have seen the respondent No.2 Mr. Satinder Singh Chowdhary present in Court practising in the Court, though I cannot say so about the respondent No.1 Mr. Harminder Singh Chowdhary.

15. The counsel for the petitioner/tenant however admits that both respondents No.1&2 are enrolled with the Bar Council and in law are not entitled, while being so enrolled, to carry on any business of furniture or otherwise.

16. The aforesaid argument has to be seen and considered in the light of the aforesaid facts and circumstances.

17. As far as the plea of, the mother of the respondents Smt. Gurbachan Kaur after having evicted the tenant of shops bearing private No.3&4 under

Section 14D of the Act commenced using the said shops for furniture business is concerned, the order of eviction of tenants in shops bearing private No.3&4 was admittedly of before the dictum of the Supreme Court in *Satyawati Sharma Vs. Union of India* (2008) 5 SCC 287. Under the then law, eviction under Section 14D as also under Section 14(1)(e) of the Act could be obtained only for residential requirements. It is only vide the dictum of the Supreme Court in *Satyawati Sharma* supra that the words of Section 14(1)(e) which permitted the landlord to evict the tenant only for requirement of landlord were struck down as arbitrary.

18. Another fact which needs to be taken noted is that the tenants in shops bearing private No.3&4 vacated the same in terms of compromise arrived at with Smt. Gurbachan Kaur and it was in the said compromise that Smt. Gurbachan Kaur stated that she, after recovering possession, would be at liberty to use the shops for commercial and/or for office purposes of her sons i.e. the respondents No.1&2.

19. It cannot be lost sight of that Smt. Gurbachan Kaur was also the owner of the property after the demise of Sh. Pritpal Singh and having made the tenants in shops no.3&4 vacate the premises on the ground of her own requirement, was entitled to put shops bearing private No.3&4 to whatever use she desired and the respondents No.1&2 being sons and otherwise could not have interfered with Smt. Gurbachan Kaur, instead of allowing the respondents No.1&2 to set up their law offices, finding it more expedient to carry on business from the said shops.

20. Thus, in my view, no adverse inference can be drawn against the respondents No.1&2 for the reason of shops bearing private No.3&4, after

making the tenant therein vacate the same, having been used by their mother for carrying on her own business and not permitting the respondents No.1&2 to set up their law offices from the said shops.

21. Moreover, for drawing the aforesaid inference, no trial is necessary for which it cannot be said that leave to defend ought to have been granted. In fact, there is no dispute about the facts and if on undisputed facts the landlord cannot be deprived of the order of eviction under Section 14(1)(e) of the Act, no case for grant of leave to defend is made out.

22. The next argument urged by the counsel for the petitioner/tenant is, of the respondents No.1&2, by deleting the terms and conditions at the reverse of the rent receipt issued to the petitioner/tenant, having waived the right to evict the petitioner/tenant and the petitioner/tenant having become a permanent tenant in the shop.

23. To deal with the aforesaid argument, I need not go into the facts i.e. whether any terms and conditions were deleted. The argument, as a pure question of law, is misconceived. It has been consistently held in *Nagindas Ramdas Vs. Dalpatram Ichharam @ Brijram* (1974) 1 SCC 242, *Murlidhar Aggarwal Vs. State of Uttar Pradesh* 1974) 2 SCC 472 and *Shalimar Tar Products Ltd. Vs. H.C. Sharma* (1988) 1 SCC 70 that the Rent Control Statutes are a matter of public policy and the rights therein cannot be waived. In that era when the rent legislations were being enacted, the landlords took the stand of the tenants having waived their rights under the Act and which plea was negated. Similarly, the tenants cannot be heard to contend that the landlord has waived the right of eviction under the Act.

24. The counsel for the petitioner/tenant has in this regard relied on *Laxmidas Bapudas Darbar Vs. Rudravva* (2001) 7 SCC 409 para 18 and on

Ambalal Sarabhai Enterprises Ltd. Vs. Amrit Lal & Co. (2001) 8 SCC 397 para 22.

25. As far as first of the aforesaid judgments is concerned, the same rather than being in favour of the petitioner/tenant is against the petitioner/tenant and the Supreme Court in ***Ambalal Sarabhai Enterprises Ltd.*** supra was not concerned with the issue and I am constrained to state that the counsel for the petitioner/tenant is misconstruing the contents of para 22 of the judgment.

26. Moreover, per Section 105 of the Transfer of Property Act, 1882, in the absence of a registered lease, the tenancy is from month to month.

27. The third argument of the counsel for the petitioner/tenant is that the site plan filed by the respondents No.1&2 along with petition for eviction is not correct.

28. On enquiry, whether the petitioner/tenant filed any site plan of his own, the counsel states that the petitioner/tenant has no access to the entire property and could not file a site plan of his own.

29. However what emerges after hearing the argument is that there are differences in the site plan filed with the petition for eviction and in the site plan forming part of the decree for partition of the property between Sh. Pritpal Singh and his brother Sh. Jagdish Singh. However the differences pointed out are in the residential portion behind the shops.

30. This Court in this petition for eviction of the petitioner/tenant from a shop, is not concerned with the discrepancy, even if any, in the residential portion of the property behind the said shops. The eviction of the petitioner/tenant is not being sought for residential purposes, for it to be seen whether sufficient residential accommodation is available to the respondents

No.1&2 in the remaining property.

31. The counsel for the petitioner/tenant has in reply thereto urged that the respondents No.1&2 are using the residential portion in the rear for their law offices.

32. On enquiry, as to what is the access to the said office, it is stated that the same is from a service lane on the rear.

33. The counsel for the petitioner/tenant, on further enquiry, states that the respondents No.1&2 have constructed their offices in the portion behind the shops which was earlier a court yard.

34. A perusal of the site plan shows, to reach the said portion, one will have to travel from the service lane through the whole house and affecting the privacy of the residents thereof. Moreover, the respondents No.1&2, if are entitled to have their law offices on the main Road, cannot, for the sake of the petitioner/tenant to continue in the shop as a tenant, be forced to sacrifice their own professional interest.

35. The counsel for the petitioner/tenant at this stage states that the law offices can be accessed also from shops bearing private No.3&4.

36. I doubt whether any client would like his lawyer's office to be accessed through a furniture shop. These arguments by a tenant show the desperate attempt to perpetuate his possession.

37. The counsel for the petitioner/tenant at this stage states that he is only seeking a trial and not asking for the petition for eviction to be dismissed on these grounds.

38. When the facts are such which do not require any trial and when the same do not constitute a ground to deprive the respondents from an order of eviction under Section 14(1)(e) of the Act, trial cannot be ordered merely to

prolong the possession of the tenant.

39. The last argument urged is of there being no relationship of landlord and tenant between the petitioner and the respondents No.1&2. It is argued that the rent was paid sometimes to the respondents No.1&2, sometimes to their father and sometimes to Sh. Jagdish Singh, brother of the father of the respondents No.1&2.

40. On enquiry as to when was the rent last paid to the said Sh. Jagdish Singh, it is vaguely stated that it was last paid 7-8 years back.

41. I have further enquired from the counsel for the petitioner/tenant whether in the partition decree, site plan wherein has been minutely examined by the counsel, the shop in the tenancy of the petitioner has fallen to the share of the father of the respondents No.1&2.

42. The counsel replies in the affirmative but states that he does not accept the said partition.

43. No such argument was raised earlier and is an afterthought.

44. Even otherwise it is settled position in law that a tenant is not entitled to challenge the partition in the family of the landlord. Reference in this regard may be made to *Sanjay Mehra Vs. Sunil Malhotra* (2010) 117 DRJ 654.

45. There is thus no merit in the petition.

46. Dismissed.

47. The counsel for the petitioner/tenant at this stage states that the documents showing the business of furniture of the respondent No.3, being the sister of the respondents No.1&2, have been fabricated and require trial.

48. I have hereinabove already held that once it is admitted that from shops bearing private No.3&4, furniture business is being carried on and that

the respondents No.1&2 being Advocates cannot carry on such business, the said argument cannot also entitle the petitioner/tenant to have the petition for eviction dismissed. It cannot be lost sight of that the respondents No.1&2 are residing behind the shops and merely because they may have been sometimes seen sitting in the shop and/or doing any other part of the business of the shop, cannot make the said business of the respondents No.1&2. Moreover, it is not in dispute that the sister of the respondents No.1&2 also has a share in the property and as a co-owner is fully entitled to use a part of the property for whatever purpose she may desire.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 10, 2017

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