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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ RC.REV. No.313/2016  
RAJENDER KUMAR GOEL ..... Petitioner  
Through: Mr. Satya Prakash Gupta, Adv.  
versus  
SURENDER LAL (SINCE DECEASED)  
NOW REPRESENTED BY SANJEEV  
KUMAR DAWAR & ORS ..... Respondents  
Through: Mr. Parvinder Chauhan and Mr. Nitin  
Jain, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **10.08.2017**

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 23<sup>rd</sup> February, 2016 in E.No.702/14/09 of the Court of Additional Rent Controller-02 (Central), Tis Hazari Courts, Delhi) of dismissal after trial of the petition for eviction under Section 14(1)(e) of the Act filed by the petitioner / landlord.
2. The petition was entertained and notice thereof ordered to be issued and the Trial Court record requisitioned.
3. The counsels have been heard.
4. I may at the outset record that though ordinarily petitions filed by tenants against the order of eviction are being given precedence in the matter of hearing but this petition has been taken up for hearing finding the order impugned to be against the grain of other orders of the same Additional Rent Controller which are coming up before this Court.

5. The counsels admit that there is no dispute that the petitioner is the owner of premises in tenancy of respondents and there exists a relationship of landlord and tenant between the petitioner and the deceased respondents.
6. The discussion hereinafter would thus be confined to the aspect of requirement and suitable alternate accommodation only.
7. The petitioner / landlord filed the petition for eviction of the deceased respondent / tenant, since substituted by his legal representatives, from shop no.1030, Gali Teliyan, Tilak Bazar, Delhi which had been let-out by the predecessor-in-interest of the petitioner / landlord to the respondent / tenant and of which shop the respondent / tenant at the time of institution of the petition for eviction was paying rent of Rs.137.50p per month. The ground of eviction was (i) that the shop in the tenancy of the respondent / tenant was required *bona fide* by the petitioner / landlord for his son namely Sachin Goel aged 29 years, to carry on business therefrom; (ii) that the petitioner / landlord and his said son Sachin Goel had no other reasonable suitable accommodation in Delhi for the said purpose; (iii) that besides the said Sachin Goel, the petitioner / landlord also had another younger son namely Deepak Goel who was carrying chemical business along with the petitioner / landlord from the shop adjoining to the shop in the tenancy of the respondent; (iv) that the first and second floors above the said two shops are in possession of different tenants of the petitioner / landlord; Sachin Goel will carry on business of chemicals from the shop in the tenancy of the respondent and the petitioner / landlord was possessed of sufficient funds needed to set-up the said business for his son; (v) that the son of the petitioner / landlord Sachin Goel was wholly dependent on the petitioner /

landlord and was residing with the petitioner / landlord; (vi) that the said Sachin Goel is married and has one daughter; and, (vii) that the shop adjoining to the shop in the tenancy of the respondent/tenant from which the petitioner / landlord and his younger son Deepak Goel are carrying on business was not large enough to accommodate another son namely Sachin Goel.

8. Needless to state, the respondent / tenant disputed the claim of the petitioner / landlord and was granted leave to defend and the parties went to trial.

9. The counsel for the respondent / tenant has at the outset contended that (i) this Court has prohibited carrying on of chemical business from the entire walled city and alternative chemical business market has been set-up at Holambi Kalan on the outskirts of Delhi and the petitioner / landlord also has been allotted a plot of land at Holambi Kalan, to stop carrying on business from the walled city and to set-up the business at Holambi Kalan; (ii) the petitioner / landlord did not disclose the said fact in the petition for eviction; (iii) however the petitioner / landlord, when the said plea was taken by the respondent / tenant, admitted the said fact though pleaded that the petitioner / landlord had not even got the plans for constructions on the said plot of land sanctioned; and, (iv) that once chemical business is prohibited from being carried on, the requirement set-up of the shop in the tenancy of the respondent/tenant for commencing chemical business therefrom cannot be *bona fide* and the petition for eviction has been rightly dismissed by the learned Additional Rent Control on the said ground.

10. I have enquired from the counsel, for the respondent / tenant, who incidentally is also the standing counsel for statutory bodies and authorities and thus in the knowledge of the facts in this regard, whether not notwithstanding the prohibition, the chemical market continues to thrive as before.

11. The counsel for the respondent / tenant has contended that though it continues but no notice can be taken by the Court of the illegality.

12. The counsel for the petitioner / landlord states that the Division Bench of this Court in *All India Lawyers Union (Delhi Unit) Vs. Union of India* 93 (2001) DLT 501 (DB) has only directed that the chemical trade be shifted from the walled city to Holambi Kalan on execution (completion) of the work relating to development of the site. The counsel for the petitioner / landlord states that since the work relating to development of Holambi Kalan has not been executed / completed till now, it is for this reason only that the authorities have not taken any action against the chemical traders who continue to function as before.

13. The counsel for the respondent / tenant states that there is no evidence to the said effect.

14. From the factum of the authorities having not taken any action for stopping the chemical trade from thriving in the walled city area, it can safely be inferred that the direction of the Division Bench of this Court of shifting of the chemical trade has not come into force till now.

15. Unfortunately the learned Additional Rent Controller, though has in the impugned order referred to *All India Lawyers Union (Delhi Unit)* supra, but has not noticed the said aspect.

16. I am of the view that once it is not disputed that the plot allotted to the petitioner / landlord at Holambi Kalan has not even been constructed till now and no action has been taken against the petitioner / landlord and others for continuing to carry on the chemical trade, the sole reason on which the learned Additional Rent Controller dismissed the petition for eviction cannot be upheld and the order of dismissal of the petition for eviction cannot be sustained.

17. As far as the contention of the counsel for the respondent / tenant, of the petitioner / landlord in the petition for eviction having not disclosed the allotment at Holambi Kalan is concerned. Supreme Court in ***Ram Narain Arora Vs. Aska Rani*** (1999) 1 SCC 141 held that the non-disclosure of accommodation which the Court also agrees cannot be alternate suitable accommodation, cannot be fatal to the petition for eviction. I have also in judgment dated 12<sup>th</sup> January, 2009 in RC (R) No.78-79/2005 titled ***Mumtaz Begum Vs. Mohd. Khan*** held that non-disclosure of other accommodation available is not always fatal. To the same effect are ***Surinder Singh Vs. Jasbir Singh*** (2010) 172 DLT 611, ***Sukhbir Singh Vs. Dr. I.P. Singh*** (2012) 193 DLT 129, ***Manju Devi Vs. Pratap Singh*** (2015) 219 DLT 260 and ***Hameeda Shahzad Vs. Shahjahan Khatoon*** 2017 SCC OnLine Del. 7203. I have recently in ***Sunil Kumar Goyal Vs. Harbans Singh*** 2017 SCC OnLine Del. 9289, referring to earlier judgments, also held that once the facts have come before the Court and the Court has, after dealing therewith held in favour of landlord, the petition for eviction cannot be dismissed on ground of concealment. A mere plot of land at an alternative site for setting up of chemical market and where the chemical market has not come up as

yet, cannot be said to be alternative suitable accommodation for non-disclosure whereof the petition for eviction can be dismissed.

18. The counsel for the respondent / tenant has argued that though the learned Additional Rent Controller in the impugned order has not given any other reason but the respondent / tenant also contested the petition for eviction on the ground of shop no.1043, Gandhi Gali, Tilak Bazar, Delhi being available to the petitioner / landlord for meeting the need / requirement pleading which the petition for eviction was filed. Attention in this regard is invited to page 88 of the paper book being part of the affidavit by way of examination-in-chief of the petitioner / landlord where he has deposed that his elder brother Subhash Chand had allowed him to work in shop no.1043, Gandhi Gali, Tilak Bazar, Delhi w.e.f. 1-4-1998 because he was not having any property for carrying on his business; that after the petitioner / landlord purchased the said property in which the shop in the tenancy of the respondent / tenant is located, by Sale Deed dated 29<sup>th</sup> May, 1998 and after getting one of the shops vacated from the tenant in possession thereof, he has started doing his business from the shop adjacent to the shop in the tenancy of the respondent / tenant and had not done any business from shop no.1043, Gandhi Gali, Tilak Bazar, Delhi after the year 2002.

19. The counsel for the respondent / tenant has argued that shop no.1043, Gandhi Gali, Tilak Bazar, Delhi was in the tenancy of the father of the petitioner / landlord and after the demise of the father of the petitioner / landlord the petitioner / landlord along with his siblings has inherited the said tenancy rights and it is thus not as if the petitioner / landlord has no

right to the said shop or was carrying on business therein with the permission of his brother Subhash Chand.

20. I have enquired from the counsel for the respondent / tenant whether it is the plea of the respondent / tenant that the petitioner / landlord is even now carrying on business or is in occupation of shop no.1043, Gandhi Gali, Tilak Bazar, Delhi.

21. The counsel for the respondent / tenant states that there is no evidence to the said effect but it was for the petitioner / landlord to explain.

22. In my view, the petitioner / landlord has made the position sufficiently clear in his affidavit by way of examination-in-chief and nothing in the cross-examination of the petitioner / landlord in this respect has been shown.

23. The counsel for the petitioner / landlord has in this regard drawn attention to the cross-examination of the respondent / tenant recorded on 1<sup>st</sup> April, 2015 where the respondent / tenant has replied that he did not know anything about shop no.1043, Gandhi Gali, Tilak Bazar, Delhi and had seen the said shop five to seven years prior thereto and did not remember what work was being done in the said shop.

24. Once according to the petitioner / landlord the said shop no.1043, Gandhi Gali, Tilak Bazar, Delhi was not available to the petitioner / landlord, the onus was on the respondent / tenant to prove that the same was available to the petitioner / landlord at the time of filing of the petition for eviction and continued to be available to the petitioner / landlord to satisfy the requirement on the ground of which the petition for eviction was filed. Even otherwise, once it is not in dispute that the rights if any of the petitioner / landlord in shop no.1043, Gandhi Gali, Tilak Bazar, Delhi are

tenancy rights along with his siblings, in my view the said shop cannot be considered as alternate suitable residential accommodation; no one would like to commence the business from a place which is temporarily available and from which the person can be removed or deprived of right to carry on business at any time. The rights if any in shop no.1043, Gandhi Gali, Tilak Bazar, Delhi being commonly held by the petitioner / landlord along with his siblings, the petitioner / landlord cannot be expected to set-up his son's business from such a shop and removal wherefrom would result in loss of the goodwill developed over the years of the business.

25. The counsel for the respondent / tenant has also contended that the shop no.1043, Gandhi Gali, Tilak Bazar, Delhi was concealed.

26. What has been observed hereinabove about Holambi Kalan equally applies to shop no.1043, Gandhi Gali, Tilak Bazar, Delhi also qua the plea of concealment.

27. The counsel for the respondent / tenant has next drawn attention to the cross-examination by the respondent / tenant of the petitioner / landlord on 19<sup>th</sup> September, 2012 where the petitioner / landlord had denied the suggestion that the licence held by him for running the chemical business continued to be at the address of shop no.1043, Gandhi Gali, Tilak Bazar, Delhi which had not produced for that reason only. It is argued that though the petitioner / landlord had volunteered that he was prepared to file the same if required and the counsel for the respondent / tenant had asked the petitioner / landlord to produce the same. The counsel for the respondent / tenant has argued that the said licence was not produced on any subsequent date of hearing.

28. The respondent / tenant concluded his cross-examination of the petitioner / landlord on 19<sup>th</sup> September, 2012 itself. Ordinarily, when such a direction is issued to the witness under cross-examination to produce any document, either the cross-examination is not closed or closed reserving the right to further cross-examine on production of the document. Nothing of the sort was done. The only inference is that the counsel for the respondent / tenant did not intend to cross-examine the petitioner / landlord any further with respect to the documents which the petitioner / landlord had been asked to produce.

29. I have also asked whether the respondent / tenant at any subsequent stage of the proceedings asked for production of the said document.

30. The reply is in the negative but it is contended that it was for the petitioner/landlord to prove the same.

31. This Court cannot pass orders on the basis of such surmises and conjectures, without the parties following the procedure prescribed by law. The respondent / tenant, even at the stage of arguments, could have sought enforcement of the direction to produce the same but did not do so and cannot at this stage when this Court is exercising revisionary jurisdiction, raise the argument.

32. Save for the aforesaid, the only other argument which has been urged is that the view taken by the Hon'ble Supreme Court in ***Satyawati Sharma Vs. Union of India*** 2008 (5) SCC 287 is bad and is under re-consideration.

33. Copy of the order dated 10<sup>th</sup> July, 2017 in SLP (C) No.35206-35207/2016 (XIV) titled ***Ram Gopal Vs. Prem Chand Sharma*** handed over, nowhere shows that the intent of the Bench was to re-consider ***Satyawati***

*Sharma* supra. In fact *Satyawati Sharma* is a judgment of a two Hon'ble Judges Bench and the Bench which considered the said SLP also comprised of two Hon'ble Judges only and there is no reference of the matter being returned to a larger Bench. Supreme Court having declared the law in exercise of powers under Article 142 of the Constitution of India, it is for the Supreme Court to re-consider the same and is not within the domain of this Court.

34. The petition thus succeeds. The impugned order is set aside.

35. Axiomatically, the petition for eviction filed by the petitioner / landlord is allowed and an order of eviction of the respondents / tenants from shop in property No.1030, Gali Teliyan, Tilak Bazar, Delhi as described in para nos.1,2&8 of the petition for eviction and as shown in red colour in the site plan exhibit PW1/2, is passed in favour of the petitioner / landlord and against the respondents / tenants.

36. The said order of eviction however, in accordance with Section 14(7) of the Act, shall be executable after six months herefrom.

No costs.

**RAJIV SAHAI ENDLAW, J**

**AUGUST 10, 2017**

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