

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

% **Date of decision: 16th August, 2017**

+ **RC.REV. No.407/2013 & CM No.17536/2013 (for stay).**

PARMANAND

..... Petitioner

Through: Mr. Dharmendra Kumar, Adv.

Versus

MOHINDER KAUR

..... Respondent

Through: Mr. Rohit Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The matter has been taken up today as 14th August, 2017 was declared a holiday.

2. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 10th July, 2013 in E.No.129/2011 of the Court of the Additional Rent Controller (North District), Rohini, Delhi) of dismissal of the application filed by the petitioner for leave to defend the petition for eviction filed by the respondent / landlady under Section 14(1)(e) of the Act and the consequent order of eviction of the petitioner from shop no.1 with *verandah* on the ground floor of 23, Community Centre, Central Market, Ashok Vihar, Phase-I, Delhi - 110 052.

3. The petition was entertained and notice thereof ordered to be issued and in accordance with *Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.* (2005) 1 SCC 705, the petitioner / tenant, instead of continuing to pay rent @ Rs.350/- per month, was directed to pay use and occupation charges of Rs.5,000/- per month as a condition for grant of stay of the order of eviction.

4. The counsel for the respondent appears.

5. The Trial Court record has been received.
6. The counsel for the petitioner / tenant has been heard.
7. The counsel for the petitioner / tenant, on enquiry, states that the petitioner / tenant does not dispute the ownership of the respondent / landlady and the existence of relationship of landlord and tenant. Thus the discussion hereinbelow is confined to, whether the petitioner / tenant in the application for leave to defend disclosed any facts which would require trial on the aspects of *bona fide* requirement of the premises in the tenancy of the petitioner / tenant by the respondent / landlady and availability of alternative suitable accommodation to respondent / landlady.
8. The respondent / landlady pleaded requirement of the premises in the tenancy of the petitioner stating (i) that the respondent / landlady along with her husband and two sons was residing in House No.476, Nimri Colony, Ashok Vihar, Phase-4, Delhi – 110 052; (ii) that the younger son of the respondent / landlady namely Har Gobind Walia and the husband of the respondent / landlady were carrying on business of photostat / electrostat, mobile recharge and computer typing in the basement under the shop in tenancy of the petitioner / tenant; (iii) that the respondent / landlady had received show cause notice from Delhi Development Authority (DDA) (Commercial Land Branch) on 19th January, 2005; that license cannot be issued to person who is carrying on business activity in the basement; (iv) that the elder son of the respondent / landlady was carrying on his business of a computer institute from the first floor above the shop in tenancy of the petitioner / tenant; (v) that the

other portions of the property are occupied by tenants; (vi) that the husband and younger son of the respondent / landlady want to carry on the business hitherto before being carried on by them from the basement, from the ground floor shop in the tenancy of the petitioner / tenant; (vii) that the husband of the respondent / landlady was a heart patient having suffered a major heart attack in May, 2005 and was having breathing problem due to old age and was unable to take proper breath in the basement from where he was carrying on his business; and, (viii) that the respondent / landlady had no other suitable accommodation.

9. The counsel for the petitioner / tenant has at the outset argued that the husband and younger son of the respondent / landlady are carrying on business from the basement *ad measuring* 1600 sq. ft., while the shop in the tenancy of the petitioner / tenant *ad measures* only 54 sq. ft. and it is inconceivable that the husband and younger son of the respondent / landlady would be able to carry on the business which they are carrying from an area of 1600 sq. ft., from the shop *ad measuring* 54 sq. ft. only.

10. I have enquired from the counsel for the petitioner / tenant, whether not a landlord / his family members who had as far back as in the year 1974 let-out the subject shop to the petitioner / tenant are entitled to, with the passage of time, desire to shift their business from the basement to the ground floor.

11. The counsel for the petitioner / tenant without replying thereto states that the plea, of the DDA not permitting business to be carried on from the basement is wrong. It is argued that business can be carried on even from the basement. Attention is also invited to the order dated 15th

October, 2014 in the present case directing the respondent / landlady to file the lease deed as well as other documents to show the prescribed user of the basement.

12. I have further enquired whether not the landlord is the best judge of his requirement, as held by the Supreme Court in (i) ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*** (1999) 6 SCC 222; and, (ii) ***Prativa Devi Vs. T.N. Krishnan*** (1996) 5 SCC 353 and how can the landlord be compelled to continue occupying the basement when has the ground floor also available, and merely for the sake of continuing with an old tenant. Though the Rent Acts provide protection from eviction of the tenant on the one hand but on the other hand also entitle the landlord to evict the tenant on the grounds stipulated therein and one of the which grounds is the requirement by the landlord of the premises let-out to the tenant for own use. Section 19 (2) of the Rent Act protects the landlord from, after evicting the tenant on the ground of self use, profiteering from the premises by providing that if the landlord after obtaining possession of the premises from the tenant does not occupy the same himself, the tenant is entitled to apply to be put back into possession of the premises. The said legal provision takes care of the fears as expressed by the petitioner / tenant in the present case also. If the respondent / landlady after obtaining possession from the petitioner / tenant lets out the shop to another tenant at a higher rent or does not use it herself or for members of her family, the petitioner / tenant can always apply for being put back in possession.

13. In the present case, not only has the respondent / landlady has expressed desire to shift her husband from the basement to the ground

floor but has also given the reasons of illegality in carrying on business from basement and the medical requirement of her husband. The respondent / landlady along with petition for eviction also filed show cause notice issued by DDA objecting to use of basement by the son and husband of the respondent / landlady and threatening cancellation of lease.

14. As far as the argument of the counsel for the petitioner / tenant, of “at least leave being granted” is concerned, leave is to be granted only when the facts disclosed are such as would require any adjudication by examination and cross-examination. Where the position after trial would be the same and the question which the court would have to decide at that time also would be whether the landlord’s judgment of his requirement and need is to be respected, then no case for grant of leave to defend can be said to have been made.

15. As far as the argument of the counsel for the petitioner / tenant, of the husband and younger son of the respondent / landlady being not able to carry on business hitherto before being carried from 1600 sq. ft. area, from mere 54 sq. ft. is concerned, it will always be open to the respondent / landlady to continue to use the basement while having an office for entertaining the customers on the ground floor, in the shop in the tenancy of the petitioner / tenant. Notice can also be taken of the fact that the prospective customers always find a ground floor shop to be more accessible and are attracted more thereto than the shop in the basement. It is for this reason only that shops on the ground floor fetch much higher rate of rent than the shops if permitted, in the basement or on the upper floors.

16. The counsel for the petitioner / tenant has next urged that the respondent / landlady had also filed a petition for eviction against a tenant in shop no.4B *ad measuring* 200 sq. ft. on the ground floor and against which tenant also, the order of eviction had been passed and who has undertaken to vacate the shop on or before 30th June, 2018.

17. The said argument cuts into the argument of the counsel for the petitioner / tenant of 54 sq. ft. area in the tenancy of the petitioner / tenant being too small for use by the respondent / landlady. The filing of the petition for eviction, besides against the petitioner / tenant, also against the tenant in shop no.4B shows the intent of the respondent / landlady to carry on her business from the ground floor and which the respondent / landlady is definitely entitled to do after more than 40 years of letting of the shop.

18. The counsel for the petitioner / tenant has contended that the respondent / landlady has not pleaded of partial shifting of business from basement to ground floor.

19. This Court is to judge the aspects of requirement, taking into account the normal human conduct and background of the landlord, as held in ***Shiv Sarup Gupta*** supra and it is taking into account all the said factors that the argument, of impossibility of business being shifted to shop in tenancy of the petitioner, has been dealt with above.

20. It is also contended that the portion of the first floor has been let-out in the year 2013.

21. The position of the first floor is more or less the same as the position of the basement as hereinabove.

22. No other argument is urged.

23. No error requiring interference in exercise of jurisdiction under Section 25B(8) is found in the order impugned in the petition.

24. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 16, 2017
‘pp’..

