

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

% **Date of decision: 4th July, 2017.**

+ **RC.REV. 298/2017**

SMT. VIJAY SHARMA (THROUGH LRS) Petitioner
Through: Mr. Ashok Gurnani, Adv.

Versus

RAJ KUMAR AHUJA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.22812/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. This Revision Petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 preferred by a landlady impugns grant to the respondent/tenant of leave to defend a petition for eviction under Section 14(1)(e) of the Act.

4. The requirement pleaded of the premises in the tenancy of the respondent/tenant was for the husband and sons of the petitioner/ landlady to commence their business. The learned Additional Rent Controller (ARC) has granted leave to defend *inter alia* on the ground of suppression by the petitioner/ landlady of property No.641-D/2, Loni Road, Shahdara, Delhi belonging to the husband of the petitioner/landlady and sale of a portion of the said property by the husband of the petitioner/landlady during the pendency of the petition for eviction.

5. I have at the outset only enquired from the counsel for the petitioner/landlady as to how fault can be found with the reasoning given by the learned ARC for granting leave to defend. This Court in exercise of jurisdiction under Section 25-B(8) of the Act cannot substitute its own opinion in place of the order of the learned ARC, when the same opinion is supported with sound cogent reasoning in law.

6. The counsel for the petitioner/landlady however contends that the respondent/tenant in his application for leave to defend did not even take the plea of any other property available to the husband of the petitioner/landlady and took such a plea by way of application filed after the expiry of the period stipulated in law for applying for leave to defend and which plea could not have been taken into consideration and form the basis for grant of leave to defend.

7. I have however drawn the attention of the counsel for the petitioner/landlord to para 4(g) of the affidavit of the respondent/tenant accompanying the application for leave to defend in which it was pleaded that the petitioner/landlady was the owner in possession of property bearing Municipal No.641-D/2 covering an area of about 1000 sq. yds. at Loni Road, Shahdara, Delhi comprising of 8 shops and one tin shed and ample vacant open space and in one of which shops and tin shed the petitioner/landlady was carrying on business in the name and style of Rama Ara Machine and which accommodation was more than sufficient to meet the requirement pleaded in the petition for eviction of commercial premises for the husband and sons of the petitioner/landlady.

8. I have further drawn attention of the counsel for the petitioner/landlady to the affidavit of the husband of the petitioner/landlady

(the petitioner/landlady died soon after the filing of the petition for eviction and was substituted by her husband and sons) accompanying the reply to the application for leave to defend and in which, in reply to para 4(g) supra, it was denied that property bearing Municipal No.641-D/2, Loni Road, Shahdara, Delhi was in possession of the petitioner/landlady or that the petitioner/landlady was carrying on any business therein.

9. It is thus not as if the respondent/tenant in the leave to defend filed within the prescribed time did not take the plea of the said alternative premises bearing Municipal No.641-D/2, Loni Road, Shahdara, Delhi being available to the petitioner/landlady and her husband and which premises had been suppressed from the petition for eviction. Only the deed of sale effected of a portion of the said premises during the pendency of the petition for eviction was sought to be brought on record by filing an application after the expiry of the time prescribed for filing leave to defend and which application has also been allowed vide the same impugned order and which factum of sale has been taken into consideration.

10. The counsel for the petitioner/landlady agrees.

11. I have again enquired from the counsel for the petitioner/landlady the fault if any in granting leave to defend for the reason of the petitioner/landlady while invoking Section 14(1)(e) of the Act indulging in suppression of premises available to the persons pleading whose requirement the petition for eviction is filed. It has further been put to the counsel for the petitioner/landlady whether not the only inference possible from such suppression is that the premises suppressed are sufficient to satisfy the requirement of premises pleading which the tenant is sought to be evicted.

12. The counsel for the petitioner/landlady instead of replying to the aforesaid query contends that the commercial requirement of the premises pleaded in the petition for eviction was not only of the husband but also of the sons of the petitioner/landlady and that the premises bearing Municipal No.641-D/2, Loni Road, Shahdara, Delhi could only satisfy the requirement of the husband of the deceased petitioner/landlady and not of the sons of the deceased petitioner/landlady.

13. There is no merit in the said contention also. The requirement of premises in the tenancy of the respondent/tenant pleaded in the petition for eviction is of the husband and sons of the petitioner/landlady to carry on business jointly. Once the premises for carrying on business are available to the husband of the deceased petitioner/landlady, the same would satisfy the requirement of the sons as well, inasmuch as no case of the sons of the deceased petitioner/landlady requiring separate accommodation from their father for carrying on their business was pleaded.

14. I have further enquired from the counsel for the petitioner/landlady, whether only the mother i.e. the deceased petitioner/landlady was responsible for providing accommodation to her sons to carry on business and the father has no such responsibility.

15. The counsel for the petitioner/landlady, to be fair to him, does not contend so and states that the responsibility is of both mother and father.

16. The requirement (within the meaning of Section 14(1)(e) of the Act) of a landlord of a premises in occupation of a tenant is statutorily required to be “*bona fide*”. It is further the stipulation in Section 14(1)(e) of the Act that for the same to be invoked, the landlord should have no other reasonably suitable accommodation. Once the plea in the application for leave to defend

of reasonably suitable accommodation being available to the family members of the landlord pleading whose requirement petition for eviction was filed was supported by sale deed executed by the husband of the petitioner/landlady of the said accommodation, the reasoning of the learned ARC for grant of leave to defend cannot be said to be not in accordance with law. Suppression practiced by a landlord of reasonably suitable accommodation capable of satisfying the requirement pleading which the tenant is sought to be evicted is antithesis to the statutory stipulation of *bona fide* and once serious doubts are cast on the *bona fides* of the landlord in filing a petition for eviction, no error can be found in the order of grant of leave to defend. Suppression of an accommodation available to the landlord or to the family members pleading whose requirement petition for eviction is filed leads to only one inference i.e. that the landlord is unable to satisfy the Court as to how the other accommodation available is incapable of satisfying the requirement of landlord.

17. There is no merit in the petition.

18. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 04, 2017

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