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

+ RC.REV. 299/2017 & CM No.23345/2017 (for stay)

**BHAGWANTI RAI GANDHI (DECEASED)
THROUGH LRS**

..... Petitioner

Through: Mr. Sanjay Suri, Mr. Vishal
Bhatnagar and Mr. Nitin Sharma,
Advs.

Versus

MAM CHAND VERMA & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.07.2017

1. This Rent Control Revision Petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 impugns the order dated 11th January, 2017 of the Additional Rent Controller (ARC) of, after trial, passing an order of eviction of the petitioners from shop No.7, property No.117, Jail Road, Fateh Nagar, New Delhi. The order of eviction has been passed in a petition for eviction filed by the respondent No.1 Mam Chand Verma under Section 14(1)(e) of the Act.

2. The counsel for the petitioners/tenants has been heard at length.

3. The learned ARC has in the impugned order held (i) that the ownership/landlordship of the respondent No.1 had not been disputed by the petitioner/tenants; (ii) that the subject shop was let out by the earlier owner to one Rajender Kumar Gandhi; (iii) that on the demise of Rajender Kumar

Gandhi his mother inherited the tenancy rights; (iv) on demise of the mother of the original tenant, another son i.e. brother of Rajender Kumar Gandhi inherited the tenancy rights and on the demise of the said son his children i.e. the present petitioners and the respondent No.2 Naresh Gandhi had inherited the tenancy rights; (v) that the respondent No.1/landlord had sought eviction from the said shop from the fourth generation of the original tenant on the ground of the shop being required by the respondent No.1 /landlord to settle his younger son; (vi) that it was the plea of the petitioners/tenants that alternative premises were available to the respondent No.1/landlord to settle his younger son in property No.C-117, Jail Road itself which comprises of seven shops of which one is in occupation of the petitioners/tenants, four other shops are in occupation of other tenants and two shops were in possession of the respondent No.1/landlord and that the said two shops were enough to settle the younger son.

4. The learned ARC, on the basis of the evidence led and qua which there is no dispute found that the two shops in possession of the respondent No.1/landlord had been merged into one and the elder son of the respondent No.1/landlord had been carrying on business therefrom. The learned ARC thus held that the said shops were not alternative accommodation for the requirement pleaded.

5. It was further the case of the petitioners/tenants that the respondent No.1/landlord also had available to him premises bearing No.WZ622/A/1-B, Shiv Nagar, Jail Road, New Delhi.

6. Again, on the basis of the evidence led and which is not in dispute, the ARC has found that in the said premises at Shiv Nagar, the respondent

No.1/landlord in partnership with his brother was carrying on business. The learned ARC has thus held that the respondent No.1/landlord had no other alternative accommodation to settle his younger son.

7. It has also come in evidence and which is again not in dispute that the younger son of the respondent No.1/landlord during the pendency of the petition has commenced business of doing job work relating to furniture. The learned ARC has held that the younger son of the respondent No.1/landlord could not be expected to sit idle during the pendency of the petition.

8. The counsel for the petitioners/tenants has firstly argued that the respondent No.1/landlord in the petition for eviction did not disclose the factum of two shops in Property No.C-117, Jail Road itself being available to him or the premises at WZ 622/A/1-B, Shiv Nagar being available to him and the petitioners/tenants were granted leave to defend on that basis.

9. The respondent No.1/landlord has already suffered for the concealment, if any practised by him in not disclosing the aforesaid premises available to him and the use thereof by grant of leave to defend and going to trial with resultant delay. However at this stage, the matter has to be decided as per the pleadings in the eviction petition and the evidence led and on which pleadings and the evidence, the respondent No.1/landlord has been able to satisfy the ARC that no alternative accommodation is available for the requirement pleaded in the petition.

10. In fact, I have enquired from the counsel for the petitioners/tenants, whether not the act of the respondent No.1/landlord of providing separate

premises in his property to his elder son for carrying on business and not providing such separate premises to the younger son would cause disharmony in the household of the respondent No.1/landlord.

11. No answer has been forthcoming.

12. I am of the opinion that a landlord at the cost of causing disharmony in his own household cannot be compelled to retain the fourth generation of the tenant to whom the premises were let out.

13. It is also not as if the younger son, pleading whose requirement the petition for eviction is filed, is not carrying on any business or is in employment. From the factum of the younger son, for about nine years during which the petition for eviction remained pending, commencing business, even if by giving the address of the premises from where the father and uncle are carrying on business in partnership, the need for the premises is found to be *bona fide*.

14. The counsel for the petitioners/tenants has further contended that the respondent No.1/landlord did not plead merger of the two shops.

15. Though the petitioners/tenants in their affidavit by way of examination-in-chief stated that two shops were available to the respondent No.1/landlord in property No.C-117, Jail Road but in their cross-examination admitted that the same stood merged.

16. It is always open to a landlord to carry on his own business from his premises of such size as he feels required for the business and the landlord, for the sake of retaining the tenant, cannot be compelled to carry on his business or his son's business from smaller premises than required.

17. The counsel for the petitioners/tenants has next argued that the sale deed of property No.WZ 622/A/1-B, Shiv Nagar has not been produced by the respondent No.1/landlord and it was incumbent upon the respondent No.1/landlord to satisfy the ARC that the said property is owned jointly by the respondent No.1/landlord and his brother.

18. It is an admitted fact that the respondent No.1/landlord from the said premises is carrying on business in partnership with his brother. It matters not whether the title to the said premises is in the respondent No.1/landlord alone or jointly in respondent No.1/landlord and his brother's name. From the factum of the respondent No.1/landlord carrying on business in partnership with his brother, it is evident that the respondent No.1/landlord cannot be compelled to accommodate his younger son also in the same premises.

19. The counsel for the petitioners/tenants has lastly stated that the petitioners/tenants have now at the time of filing of the present petition learnt that the respondent No.1/landlord has also recovered possession of another shop out of the four let out shops in property No.C-117, Jail Road.

20. The counsel for the petitioners/tenants has in this regard drawn attention to ground (R) in the Memorandum of this RC Revision Petition.

21. In the said ground, it is not stated that the respondent No.1/landlord had instituted a petition for eviction against another tenant. What has been pleaded is that the tenant in occupation has handed over possession of that shop to the respondent No.1/landlord in the year 2015. Reference is also made to a photograph at page 171 of the paper book which shows a vacant shop with shutter open.

22. The said shop, on enquiry, is stated to be adjacent to the shop in tenancy of the petitioners/tenants.

23. A perusal of the site plan at page 76 shows the dimension of each of the shops to be 7 ft 6 inch X 5 ft 4 inch.

24. In my view, at this stage, there is no ground to entertain such a plea. Even if it were to be believed that the respondent No.1/landlord vide negotiation has got another shop vacated, considering the small size of the shops which is even below the prescribed habitable area of 100 sq. ft. (the counsel for the petitioners/tenants, on enquiry from the petitioners/tenants present in Court states that the area of each shop is 52 sq. ft), the same confirms the need of the respondent No.1/landlord pleading which the petition for eviction was filed.

25. Moreover, Section 19(2) of the Act sufficiently guards the interest of the tenant by providing that if the landlord in spite of obtaining an order of eviction under Section 14(1)(e) of the Act does not occupy the premises or parts with possession of the premises, the tenant is entitled to recover back possession thereof.

26. There is thus no merit in the petition; dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 10, 2017

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