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

+ **RC.REV. 316/2017 & CM No.24695/2017 (for stay).**

RAMPAL

..... Petitioner

Through: Mr. Manoj Mishra, Adv.

versus

RAM LAL & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.07.2017

CM No.24696/2017 (for exemption).

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

RC.REV. 316/2017 & CM No.24695/2017 (for stay).

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 8th November, 2016 of the Court of Additional Rent Controller (North) Rohini Courts, Delhi in E.No.6/16) of dismissal of the application filed by the petitioner for leave to defend the petition for eviction filed by the four respondents namely Ram Lal, Baljeet, Ranjeet and Shyam Lal under Section 14(1)(e) of the Act and the consequent order of eviction. The petition also impugns the order (dated 17th May, 2017 of the Court of District Judge (North) Rohini Courts, Delhi in RCA No.20/17) of dismissal as not maintainable of RCA No.20/2017 preferred by the petitioner against the order aforesaid of eviction.

4. Before proceeding further with the matter I may record that the order dated 17th May, 2017 of the District Judge (North) Rohini Courts, Delhi though dismisses the appeal preferred by the petitioner / tenant under

Section 96 read with Order XLI of the Code of Civil Procedure, 1908 (CPC) as not maintainable but also records that prior thereto notice of the appeal was issued to the respondents who took objection as to the maintainability of the appeal.

5. It is surprising that the appeal was entertained and notice thereof issued. Once the Rent Control Act is a complete Code in itself and bars the appeal against an order of eviction under Section 14(1)(e) read with Section 25B of the Act, the misconceived appeal even if filed by the petitioner / tenant ought not to have been entertained by the District Judge and should have been dismissed at threshold.

6. A copy of this order be forwarded to the District Judge (North) Rohini Courts, Delhi who is requested to report the circumstances in which notice of the appeal was issued.

7. The counsel for the petitioner / tenant has been heard.

8. He has argued that the order of eviction has been passed against the petitioner / tenant without any evidence being led.

9. The said argument is as misconceived as the filing of the appeal before the District Judge and ignores the procedure prescribed in Section 25B of the Act for dealing with the petition for eviction under Section 14(1)(e) of the Act.

10. I have perused the records.

11. The four respondents being brothers instituted the petition for eviction of the petitioner / tenant from one shop in property no.474, Railway Road, Vilage Azadpur, Delhi – 110033 pleading (i) that the father of the respondents had let out the said shop to the petitioner / tenant in the year

1976 at a rent of Rs.100/- per month; (ii) that the father of the respondents died on 23rd October, 1987 leaving the respondents, their mother and their sister as his only natural heirs; (iii) that the mother and sister of the respondents vide registered Relinquishment Deed dated 28th October, 1987 relinquished their share in the property in favour of the respondents; (iv) that the petitioner / tenant accepted and attorned to the respondents as landlords and had been paying rent to them; (v) that the four respondents, to avoid any dispute between them, by a family arrangement had divided the residential portion of the property amongst themselves and the commercial portion on the ground floor was kept joint; (vi) that the respondent no.1 Ram Lal was employed as a Storekeeper-cum-Account Clerk in the office of Development Commissioner (Handicrafts) wherefrom he had superannuated on 30th April, 2013 and required the shop in the tenancy of the petitioner / tenant to commence grocery business therefrom; (vii) that the son of the respondent no.1 / landlord was temporarily engaged as Home Guard at a fixed emolument of Rs.10,000/- per month and in his off duty hours had in any case been operating a small grocery outlet from one room in the residential portion of the property; and, (viii) that the respondent no.1 / landlord and his son required the shop in the tenancy of the petitioner for their own commercial purposes.

12. The petitioner / tenant sought leave to defend on the grounds (i) that the respondents alone were not the owners of the property; (ii) that the petitioner / tenant took the shop on rent from the father of the respondents in the year 1976 at a monthly rent of Rs.100/-; (iii) that after the death of the father of the respondents the respondent no.2 Baljeet used to collect the rent

of Rs.100/- per month from the petitioner / tenant; (iv) that the respondent no.1 / landlord post his superannuation also was employed on contract basis with Khadi Gram Udyog, besides getting his pension; (v) that the son of the respondent no.1 / landlord besides being employed with Delhi Home Guards was also running his *Kirana* shop from one room; and, (vi) that there were five shops on the ground floor of which two were already in possession of the respondent no.1 / landlord.

13. It can thus be seen that the petitioner / tenant in the leave to defend application did not dispute the ownership of the respondents or the relationship of landlord and tenant with the respondents. Qua the plea in the petition for eviction of requirement also, the essential ingredients were admitted.

14. The only dispute which remained was whether the respondent no.1 / landlord had any other shops available to him for the purposes of his business in the property.

15. In this regard, the Additional Rent Controller has reasoned (i) that the respondents had filed a site plan showing only two shops in the property, of which one was in the tenancy of the petitioner / tenant and the other in the tenancy of Ram Prakash, another tenant; (ii) that the petitioner / tenant though claimed that there were five shops but did not file any site plan of his own; and, (iii) that the place from where according to the petitioner / tenant the son of the respondent no.1 / landlord was carrying on his *Kirana* business was in fact an open space between the two shops on the ground floor.

16. The counsel for the petitioner / tenant before me has not been able to find any fault in the reasoning aforesaid of the Additional Rent Controller.

17. The counsel for the petitioner / tenant before me has argued (i) that the father of the respondents had given the shop to the petitioner / tenant for his livelihood and had said that he will be the owner of the remaining property and the petitioner / tenant can occupy the said shop; (ii) that the petitioner / tenant is now 72 years of age and has no other source of income; and, (iii) that the respondents are wanting to grab the shop in the tenancy of the respondents.

18. The aforesaid arguments, in view of the categorical admissions in the application for leave to defend, are of no avail. Even otherwise, the Delhi Rent Control Act does not permit any comparative hardship to be adjudged.

19. It being the admitted position that the respondent no.1 / landlord had retired from employment as Storekeeper-cum-Account Clerk in a showroom, a bare denial of the petitioner / tenant of the need pleaded of the shop in the tenancy of the petitioner / tenant for the respondent no.1 / landlord to set-up his own business post his retirement, along with his son, did not raise any triable issue for leave to defend to be granted.

20. The order of the Additional Rent Controller impugned in this petition is thus found to be in accordance with law and no ground for interfering therewith is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 18, 2017/‘pp’..