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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 324/2017, CM No.25339/2017 (for stay) & CM No.25341/2017 (u/S 151 CPC for placing on record additional documents)

JAI PRAKASH

..... Petitioner

Through: Mr. Sushil K. Tekriwal & Mr. Deepak Singh, Advs.

Versus

CHOTTO DEVI

..... Respondent

Through: Mr. Rohit Kaliyar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.07.2017**

CM No.25340/2017 (for exemption)

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

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3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 5th April, 2017 in E.No.99/2016 of the Court of Additional Rent Controller (ARC) (North), Rohini Court, Delhi) of eviction, after full trial, of the petitioner from shop bearing private No.2, forming part of property No.126, Gali No.13, Plot No.50, Onkar Nagar-B, Tri Nagar, New Delhi.
4. The counsel for the petitioner / tenant has been heard at length and the copies of the Trial Court record annexed to the petition perused.
5. The counsel for the petitioner / tenant has not disputed that the respondent is the owner within the meaning of Section 14(1)(e) of the Act and is the landlady of the petitioner / tenant.

6. The thrust of the argument of the counsel for the petitioner / tenant is that the respondent / landlady does not *bona fide* require the shop in the tenancy of the petitioner and has sufficient alternative accommodation available to her.

7. The counsel for the petitioner / tenant, to demonstrate so, has taken me through the cross-examination by the petitioner / tenant of the respondent / landlady at pages 174 to 177 of the paper book.

8. Before referring to the said cross-examination, it is deemed appropriate to give a brief perspective.

9. The respondent / landlady sought eviction of the petitioner / tenant pleading the requirement of the shop in the tenancy of the petitioner / tenant for her son to commence business therefrom and which son suffers from handicap and is dependent upon the respondent / landlady for accommodation.

10. It is not in dispute that the respondent / landlady along with her son aforesaid is residing on the upper floors of the same property.

11. The counsel for the petitioner / tenant has at the outset contended that another shop on the ground floor of the same property is admittedly lying locked and which is sufficient to satisfy the requirement, as pleaded, of the son of the respondent / landlady.

12. The counsel for the petitioner / tenant has in this regard drawn attention to the cross-examination of the respondent / landlady where the respondent / landlady has stated that her aforesaid son was then not working as he has met with an accident resulting in handicap of the right hand and that the said son was then of 40 years of age, married with two sons.

13. The learned ARC has in the impugned order, with respect to the said shop, has held (a) that the petitioner / tenant in cross-examination of the respondent / landlady did not give a suggestion that the said shop is sufficient to satisfy the requirement of the respondent / landlady's son; (b) that the site plan filed by the respondent / landlady and proved as Ex.PW1/1 showed both the shops; (c) that the shop which was lying closed had stairs going through it and a portion of the shop was thus unusable as a shop; (d) that in the absence of the petitioner / tenant putting to the respondent / landlady in the cross-examination that the requirement of the son of the respondent / landlady would be satisfied therefrom, the same could not be considered as alternative accommodation; and, (e) in fact, it is the own argument of the counsel for the petitioner / tenant that the shop in the tenancy of the petitioner / tenant is also barely 100 sq. ft. in size.

14. The petitioner / tenant has not even chosen to file the site plan before this Court and on enquiry states that the entire property is constructed over land ad-measuring 10 ft. x 12 ft. and the upper floors of the property are with the respondent / landlady.

15. It is thus quite evident that from the other shop which has stairs passing through it, the requirement of the respondent / landlady of a shop premises cannot be satisfied.

16. No error is found in the said reasoning of the ARC, which is supported by plethora of judgments.

17. The counsel for the petitioner / tenant has next taken me through the remaining cross-examination of the respondent / landlady where the respondent / landlady though has admitted that she herself and her husband

are the owner of several other properties but has given the explanation for the same not being alternate suitable accommodation and which explanation has been accepted by the learned ARC.

18. One of the said properties, though an industrial plot of land, is admittedly unconstructed and the other property is belonging to the husband of the respondent / landlady from where he is carrying on business.

19. The counsel for the petitioner / tenant, with respect to the industrial plot, states that it is always open to the respondent / landlady to construct the same and the same once constructed will be suitable accommodation for the respondent / landlord.

20. The Court has to consider the alternative accommodation as existing and available and not as the landlord is capable of making available to himself / herself.

21. The other argument of the counsel for the petitioner / tenant is that the son of the respondent / landlady, pleading whose requirement the petition for eviction was filed, is in fact working with his father. It is argued that the said son today is about 44 years of age and cannot be expected to commence any new business at this advance age.

22. The learned ARC in this regard has rightly relied upon the judgments holding that it is not for the tenant to dictate to the landlord as to how the landlord should live and arrange his / her affairs and once it is found that the son of the respondent / landlady pleading whose requirement the petition for eviction has been filed has no other alternative accommodation and it would be convenient to him, owing to his handicap, to carry on business from the ground floor of the property, this Court cannot, by speculating that if the

landlady arranges her affairs in another manner, would not have the need for the tenancy premises of the petitioner, direct the respondent / landlady to do so.

23. In the same vein, the son of the respondent / landlady cannot be forced to work with his father and is entitled to set up his own business. It is not in dispute that the said son is residing with the respondent / landlady as a member of the family and the requirement of the said son would definitely be requirement of the respondent / landlady.

24. The counsel for the petitioner / tenant has lastly argued that the requirement pleaded is for setting up of a dyeing business and which is not permissible in the locality. It is argued that the locality is residential in nature.

25. I have enquired from the counsel for the petitioner / tenant the use to which the petitioner / tenant is putting the tenancy premises.

26. The counsel for the petitioner / tenant states that though the petitioner / tenant is using the shop for commercial purpose but only for ironing the cloths of the residents of the neighbourhood.

27. Even if it were to be believed that the business of dyeing cannot be carried out from the said shop, once the requirement of the son of the respondent / landlady is established, it is always open to the respondent / landlady / her son to carry on whatever business may be legally permissible therefrom. In fact, the dyeing activity, even if prohibited, can be carried on from a property where it is permitted and the goods delivered from the shop in the suit property.

28. The order of the ARC is thus found to be in accordance with law and

not calling for any interference.

29. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 21, 2017

30. Before the aforesaid order dictated in Court, could be corrected and released, the counsels have mentioned the matter on 24th July, 2017.

31. The counsel for the petitioner/tenant states that the petitioner/tenant does not want to challenge the order of eviction and be granted time to vacate the premises.

32. The counsel for the respondent/landlady, with resistance, has been made to agree.

33. The counsel for the petitioner/tenant states that the petitioner/tenant is in control and possession of the entire tenancy premises and will be able to abide by the undertaking and will deliver possession of the entire premises of which the order of eviction has been passed.

34. The petitioner/tenant through his advocate undertakes to this Court:

(i) to hand over vacant peaceful physical possession of the premises in his tenancy / possession to the respondent / landlady on or before 31st October, 2018;

(ii) to pay to the respondent/landlady arrears of rent @ Rs.1,000/- per month with effect from 1st August, 2011 upto 31st July, 2017, on or before 15th August, 2017 and to with effect from 1st August, 2017 till the date of delivery of possession on or before 31st October, 2018 pay use and occupation charges of Rs.2,500/- per month, month by

month in advance for each month by the 10th day of each English Calendar month;

(iii) to clear the electricity and water dues of the premises till the date of occupation thereof, before leaving the premises; and,

(iv) to hereinafter not induct any other person into possession of the premises and to not damage the premises.

35. The aforesaid undertakings of the petitioner/tenant are accepted and the petitioner/tenant/his legal representative is ordered to be bound therewith.

36. The petitioner/tenant has been explained the consequences of breach of undertaking given to this Court.

37. Subject to the petitioner/tenant complying with his undertakings aforesaid, the order of execution is made inexecutable till 31st October, 2018.

38. It is however made clear that if the petitioner/tenant/his legal representative is in breach of the undertaking aforesaid or any part thereof, the respondent/landlady, besides initiating proceedings against the petitioner/tenant/his legal representative for breach of undertaking given to the Court shall also be entitled to forthwith execute the order of eviction.

39. It is also made clear that in terms of above, the suit for recovery of rent stated to have been filed by the respondent/landlord against the petitioner/tenant shall also stand disposed of.

RAJIV SAHAI ENDLAW, J.

JULY 24, 2017

‘gsr/bs’..

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