

\$~1&2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 536/2016 & CM No.42607/2016 (for stay).
RAMESH KUMAR Petitioner
Through: Mr. Harish Pandey, Adv.
versus

YASHMEEN FATIMA
(SINCE DECEASED) & ORS Respondents
Through: Mr. A.K. Suri and Ms. Sumbal
Nizam, Advs.

AND

RC.REV. No.262/2015, CM No.9601/2015 (for stay), CM
No.14671/2015, CM No.29178/2016 and CM No.36109/2016 (all
under Section 151 CPC).
BIHARI LAL Petitioner
Through: Mr. Harish Pandey, Adv.
versus

YASHMEEN FATIMA (DECEASED) & ORS Respondents
Through: Mr. A.K. Suri and Ms. Sumbal
Nizam, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.07.2017**

1. These petitions, both under Section 25B(8) of the Delhi Rent Control Act, 1958, impugn the orders (dated 11th November, 2014 and 24th May, 2016 of the Court of the Rent Controller, Shahdara, Karkardooma Court in E.No.202/208 and in RC/ARC No.819/16 respectively) of eviction, after full trial, of the petitioner in each of the petitions in petitions filed by the respondents / landlords under Section 14(1)(e) of the Act.
2. The counsel for the petitioners / tenants was partly heard on 10th July, 2017 and has addressed remaining arguments today.

3. The Trial Court record has been requisitioned.
4. The respondents / landlords instituted the petitions for eviction of the petitioner / tenant in each of the petitions from shop in the tenancy of each of them in property no.D-328A, Gali No.12, C.R. Road, Laxmi Nagar, Delhi, pleading (i) that property no.D-328A, Gali No.12, C.R. Road, Laxmi Nagar, Delhi was purchased by the predecessor of the respondents / landlords on 17th May, 1978; (ii) that the said predecessor of the respondents / landlords expired on 3rd April, 1993 leaving the respondents as his heirs; (iii) that the respondents no.2 & 4 Syed Shadab Hussain and Syed Saeed Akhtar are of young age and are unemployed, having no source of income and require the shops in the tenancy of the petitioner / tenant for carrying on therefrom business of sale / purchase of mobile coupons and repair of mobile phones; (iv) that the respondent no.4 Syed Saeed Akhtar had started running the said business since June, 2008 in a tenancy premises paying huge rent therefor, while earning meagre rent from the petitioners who are old tenants since the year 1981 or so; and, (v) that the respondent no.3 Sajida Fatima was running tuition classes in one of the portion of the said property.
5. The petitioners / tenants were granted leave to defend, pleadings were completed and evidence led by the parties.
6. The learned Rent Controller, on the basis of evidence led, has found the respondents / landlords to have proved their requirement for the shops in the tenancy of the petitioner / tenant in each of these petitions and passed the impugned orders of eviction.

7. Aggrieved therefrom these petitions were preferred and which were entertained and notice thereof issued.

8. The counsel for the petitioners / tenants has during the hearing not controverted the ownership of the respondents / landlords of the premises, the relationship of landlord and tenant with the respondents / landlords and has only contended that the findings of the Rent Controller, in the impugned orders of eviction, of no other alternative premises being available for the need / requirement of the respondents / landlords is perverse.

9. The counsel for the petitioners / tenants has in this regard invited attention to the orders of eviction in RC. Rev. No.536/2016 at pages 30 and 31 where the plea in the written statement of the petitioners / tenants of alternative premises available to the respondents / landlords is recorded.

10. It is the plea in the written statement of the petitioners / tenants (i) that the shops on the ground floors of property no.D-328A, Gali No.12, C.R. Road, Laxmi Nagar, Delhi itself are available to the respondents / landlords; (ii) that the respondents / landlords also had available to them the first floor of property no.12/439, Lalita Park, Laxmi Nagar, Delhi where earlier a school was running; and, (iii) that the respondents / landlords have let out a part of the portion where the school was earlier running to one homeopathy doctor.

11. I have enquired from the counsel for the petitioners / tenants as to how the requirement / need for a premises, for a shop for carrying on business, can be satisfied by the first floor of property no.12/439, Lalita Park, Laxmi Nagar, Delhi. The customers generally do not patronise or frequent shops on first floors, resulting in the same being not good for

business.

12. The counsel for the petitioners / tenants has fairly stated that he is not pressing the said plea.

13. Thus the only alternative place which according to the petitioners / tenants is available to the respondents / landlords are the shops in the remaining portion of the ground floor of property no.D-328A, Gali No.12, C.R. Road, Laxmi Nagar, Delhi.

14. The counsel for the petitioners / tenants on asking, has drawn attention to the site plan at page 64 of the paper book in RC. Rev. No.536/2016, of the said ground floor and which besides the two shops in the tenancy of two petitioners herein shows one barber shop, one juice shop, one big shop of Iqwal Hussain and Intkhab Hussain and one vacant shop.

15. The counsel for the petitioners / tenants admits that though it was his plea before the Rent Controller that the tenancies of the juice shop and barber shop had been changed during the pendency of the petitions for eviction but there is no evidence to the said effect. He also states that he could not have produced any Rent Agreement.

16. I have enquired from the counsel for the petitioners / tenants as to whether the petitioners / tenants have led any evidence as to who were the tenants in the juice shop and the barber shop at the time when the petitions for eviction were instituted and now.

17. The counsel for the petitioners / tenants states that no such evidence also has been led.

18. If the petitioners / tenants who are in occupation of adjoining shops are unable to tell as to who were the old tenants in the juice shop and barber

shop and who have since been inducted in the said shops, the only inference is that the plea has no legs to stand on and the tenants of the juice shop and barber shop are old tenants.

19. I have further enquired from the counsel for the petitioners / tenants, whether there is any cross-examination of the witnesses of the respondents / landlords in this regard i.e. whether it was suggested to them that who were the old tenants and who have since been inducted and when.

20. There is no such evidence also.

21. The counsel for the petitioners / tenants has contended that though the respondents / landlords along with their paternal uncle were the owners of property no.D-328 and property no.D-328A, Gali No.12, C.R. Road, Laxmi Nagar, Delhi but the said paternal uncle also has since died issueless and the respondents / landlords have succeeded to the share of the said paternal uncle also.

22. The counsel for the respondents / landlords controverts and states that while the property no.D-328A, Gali No.12, C.R. Road, Laxmi Nagar, Delhi comprising of two shops in the tenancy of the petitioners only is in the ownership of the respondents / landlords, the property no.D-328, Gali No.12, C.R. Road, Laxmi Nagar, Delhi was owned by the paternal uncle who has died leaving other heirs as well. It is also stated that the said paternal uncle has died after the passing of the orders of eviction.

23. I have asked the counsel for the petitioners / tenants to show the admissions of the respondents / landlords of having become exclusive owner of the portion of their paternal uncle aforesaid.

24. The counsel for the petitioners / tenants states that the admission is of having not become exclusive owner but owner along with others. However the counsel for the petitioners / tenants is unable to show any such evidence either.

25. Such arguments raised without any basis in the pleadings or in the evidence cannot call for interference in the finding of the Rent Controller of the respondents / landlords having proved their requirement for the premises let out to the petitioners / tenants in or about the year 1981 for the own need / rent of the respondents / landlords.

26. I have otherwise, after going through the records, satisfied myself that the orders of eviction impugned in these petitions are in accordance with law.

27. There is thus no merit in these petitions.

28. The orders of eviction are found to be in accordance with law.

29. The petitions are dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 18, 2017

‘pp’..