

\$~64.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. No.322/2017 & CM No.25131/2017 (for stay).
MANISH KUMAR Petitioner
Through: Mr. Kanwal Chaudhary, Adv.
versus
ASHOK KUMAR & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **19.07.2017**

CM No.25132/2017 (for exemption).

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

RC.REV. No.322/2017 & CM No.25131/2017 (for stay).

3. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (after full trial) dated 6th February, 2017 of the Court of the Rent Controller (Shahdara), Karkardooma Courts, Delhi in RC/ARC No.324/16 of eviction of the petitioner / tenant from shop no.779/2, Khasra No.185/22, Jheel Khurenja, Delhi which was let out to the father of the petitioner / tenant and of which petitioner / tenant is in occupation after the demise of his father.
4. The learned Additional Rent Controller in the impugned order has held that on the basis of evidence led, a ground of eviction under Section 14(1)(e) of the Delhi Rent Control Act was made out.
5. The counsel for the petitioner / tenant has been heard.

6. The counsel for the petitioner / tenant has at the outset argued that the respondent no.1 / landlord has ceased to be the owner of the property, shop wherein is in occupation of the petitioner / tenant. It is contended that though the respondent no.1 / landlord and his brothers were the owners of the property but the property was situated over leasehold land, lease whereof was granted by the Delhi Development Authority (DDA), and the term of which lease has come to an end by efflux of time.

7. The learned Additional Rent Controller has in the impugned order referred to *Shanti Sharma Vs. Ved Prabha* AIR 1987 SC 2028 which was an identical case, where also the lease of the land underneath the property granted by the Government had come to an end, and it was held that so long as the Government does not dispossess the landlord from the property, the landlord remains the landlord of the tenant in the property and entitled to evict the said tenant including on the ground under Section 14(1)(e) of the Act. It was held that the requirement under Section 14(1)(e) of being the “owner” only required the landlord to be something more than the tenant and not an absolute owner.

8. The aforesaid principle of law has consistently been followed for the last 30 years.

9. No error can thus be found in the reasoning of the learned Additional Rent Controller for concluding that the respondent no.1 / landlord was the owner and the landlord of the shop in the tenancy of the petitioner.

10. The counsel for the petitioner / tenant has next argued that the respondent no.1 / landlord had sold another shop in his possession shortly

prior to the institution of the petition for eviction from which this petition arises and which was indicative of the respondent no.1 / landlord not having need / requirement for the premises in the tenancy of the petitioner / tenant.

11. It is not as if the Additional Rent Controller has not dealt with the said aspect.

12. The Additional Rent Controller has in the impugned order, on the basis of evidence led, found that the respondent no.1 / landlord had sold the said other shop owing to compelling circumstances, to re-pay the loan which the respondent no.1 / landlord had incurred for his wife's medical treatment and for other family needs. The learned Additional Rent Controller after being satisfied in this respect has proceeded to hold that the requirement of a landlord may change from time to time and from the undisputed position of the respondent no.1 / landlord being unemployed, his requirement of the shop in the tenancy of the petitioner / tenant for commencing his own business could not be said to be not *bona fide*.

13. No dent can possibly be made on the said reasoning also of the Additional Rent Controller which again is in consonance with the judicial precedents.

14. The counsel for the petitioner / tenant has lastly contended that besides the shop in the tenancy of the petitioner, the respondent no.1 / landlord has other portions of the property also available to him. Attention in this regard is invited to the site plan at page 70 claimed to have been filed by the petitioner / tenant and it is contended that the respondent no.1 / landlord is in possession of the entire portion shown in green colour in the said site

plan.

15. It is however the admitted position that the property, in a shop wherein the petitioner is a tenant, is the joint property of the respondent no.1 / landlord and his brothers. I have thus asked the counsel for the petitioner / tenant to show the evidence led in this regard.

16. Though the counsel for the petitioner / tenant has drawn attention to the cross-examination by the petitioner / tenant of the respondent no.1 / landlord at page 89 of the paper book but in the said cross-examination the respondent no.1 / landlord has categorically stated that the green portions claimed by the petitioner / tenant to be in possession of the respondent no.1 / landlord were in fact in possession of the brothers of the respondent no.1 / landlord and the respondent no.1 / landlord was not in possession thereof. The petitioner / tenant could not even suggest to the contrary in the cross-examination or to suggest as to what use the respondent no.1 / landlord was putting the said portions to, if owner thereof.

17. Not only so, on being asked to show the evidence of the petitioner / tenant in this regard, attention is drawn to the affidavit by way of examination-in-chief but wherefrom no such evidence has been shown.

18. In fact the counsel for the petitioner / tenant states that the affidavit at page 93 to which attention has been drawn is not affidavit of the petitioner / tenant.

19. All that can be observed is that the document at page 93 of the paper book describes itself as “affidavit by way of evidence” and is of the

petitioner / tenant.

20. Be that as it may, from the fact that the petitioner / tenant is not even able to show from the paper book that the finding returned by the Additional Rent Controller in this regard is not borne out from the record, no ground for interfering, in revisional jurisdiction, with the said findings is made out.

21. There is thus no merit in the petition.

22. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 19, 2017

‘pp’..