

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

% **Date of decision: 16th August, 2017.**

+ **RC.REV. No.368/2017 & CM No.29038/2017 (for stay)**

NARINDER SHAH

..... Petitioner

Through: Mr. Raman Kapoor, Sr. Adv. with Mr.
Sanjay Kumar, Adv.

Versus

MOHAN KUMAR GANDHI

.... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.29039/2017 (for exemption).

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

RC.REV. No.368/2017 & CM No.29038/2017 (for stay).

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 4th May, 2017 in E-38/16/13 (New No.78757/16) of the Court of Additional Rent Controller-02, Central District, Tis Hazari Courts, Delhi) of dismissal of the application filed by the petitioner for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent and the consequent order of eviction of the petitioner from Shop No.947/10, First Floor, Kucha Kabil Attar, Chandni Chowk, Delhi – 110 006.

4. The senior counsel for the petitioner contends that it was the plea of the petitioner / tenant in the leave to defend application that eleven shops adjoining to the shop in the tenancy of the petitioner were lying vacant and were available to satisfy the requirement of the respondent pleaded in the petition for eviction. It is further stated that the respondent, in the reply to the

application for leave to defend, merely pleaded that the said shops were let-out and gave a list of the said tenants and filed the counterfoils of the rent receipts, without disclosing that the said tenants are none other than the family members or firms of the family of the respondent.

5. I have enquired from the senior counsel for the petitioner, to what use the other shops are being put, inasmuch as if any business activities are being carried on therefrom, even if by the family members of the respondent / landlord, the respondent / landlord for the sake of keeping a tenant cannot force his family members to shut down their business and provide accommodation for the pleaded requirement.

6. The senior counsel for the petitioner under instructions states that no business activity is being carried on from the said shops and the same are lying vacant. However on second thought when instructions are taken from the petitioner / tenant stated to be present in person, the petitioner / tenant states that the said shops are being used as “godowns” by the respondent / landlord.

7. It is deemed appropriate to record the statement of the petitioner / tenant.

8. The petitioner/tenant has deposed that the respondent/landlord is carrying on business from two of the shops and in the remaining shops, goods are stored and though the shutters of the said shops remain open but none sits over there.

9. The aforesaid does not amount to the other shops lying vacant, as was earlier contended by the senior counsel for the petitioner / tenant.

10. Once it is found that the other shops claimed to be available, as per the petitioner / tenant himself, are being used by the respondent / landlord for the business already being carried on by the respondent / landlord from the premises, it cannot be said that the said shops are available to the respondent / landlord for the requirement pleaded in the petition for eviction of the younger son of the respondent / landlord who has graduated with honours in Management and Marketing of Textiles and has gained two years experience in Textile business and is wanting to establish his own independent business of Textiles at Chandni Chowk.

11. The senior counsel for the petitioner / tenant has next drawn attention to para 18(a) of the petition for eviction and has contended that the respondent / landlord therein has pleaded carrying on business only from one of the shops and use of the second shop as godown of the said business and has not pleaded the use of the other eight shops and it is further argued that only in reply to the application for leave to defend it was pleaded that the said other shops are in the tenancy and use of the other family members but the rent receipts filed are all in the same handwriting and are without any Revenue Stamp.

12. Ordinarily, the Revenue Stamp would be on the rent receipt and not on the counterfoil of the rent receipt which would be in possession of the respondent as landlord of the said shops. Thus no undue weightage can be given to the absence of the Revenue Stamp on the counterfoil of the rent receipt.

13. Supreme Court in ***Ram Narain Arora Vs. Aska Rani*** (1999) 1 SCC 141 held that the non-disclosure of accommodation which the Court also

agrees cannot be alternate suitable accommodation, cannot be fatal to the petition for eviction. I have also in judgment dated 12th January, 2009 in RC (R) No.78-79/2005 titled **Mumtaz Begum Vs. Mohd. Khan** held that non-disclosure of other accommodation available is not always fatal. To the same effect are **Surinder Singh Vs. Jasbir Singh** (2010) 172 DLT 611, **Sukhbir Singh Vs. Dr. I.P. Singh** (2012) 193 DLT 129, **Manju Devi Vs. Pratap Singh** (2015) 219 DLT 260 and **Hameeda Shahzad Vs. Shahjahan Khatoon** 2017 SCC OnLine Del. 7203. I have recently in **Sunil Kumar Goyal Vs. Harbans Singh** 2017 SCC OnLine Del. 9289, referring to earlier judgments, also held that once the facts have come before the Court and the Court has, after dealing therewith held in favour of landlord, the petition for eviction cannot be dismissed on ground of concealment.

14. Here from the pleadings and clarification by the petitioner given today, it has emerged that the other shops are not lying vacant as was sought to be contended during the hearing but are being used for storage of goods of the business admittedly being carried on by the respondent / landlord from one/two of the shops.

15. The senior counsel for the petitioner / tenant has next argued that use for storage is no use, without the person who is claimed to be the tenant sitting in the premises.

16. I am unable to agree. A tenant in the property or a person in use thereof is not necessarily required to personally present himself in the premises everyday and merely because the said person does not personally remain present in the premises everyday cannot be a ground for stating that he is not in use of the property. The premises are admittedly in the cloth

market and the premises therein are used not only for retail of cloth but also for storage of cloth and storage of cloth is also use of the shop and the landlord is not expected to, for his requirement, curtail the use of the premises available for the purpose for which they are already being used, for the sake of not evicting the tenant.

16. As far as the plea of all these issues being required to be decided at the stage of trial is concerned, once it is the own case of the petitioner / tenant that the other shops are being used for storage of goods, the law has to be applied to the said fact, whether it is at this stage or after trial and no purpose will be served by trial.

17. No case for interference in exercise of jurisdiction under Section 25B(8) of the Rent Act, scope whereof, in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 has been held to be narrower than that of appeal, is made out.

Dismissed.

No costs.

P.S.: Though the senior counsel for petitioner was asked to make the petitioner wait to sign his statement and the senior counsel for petitioner assured so but the petitioner and his counsel after reading the statement wanted to change the same and which was refused and the senior counsel inspite of being requested did not appear, the statement recorded of petitioner remains unsigned.

RAJIV SAHAI ENDLAW, J.

AUGUST 16, 2017

‘pp’