

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

% **Date of decision: 29th August, 2017.**

+ **RC.REV. 385/2017**

SARANJIT SINGH BHATIA **Petitioner**

Through: Mr. Aditya Madan, Adv.

Versus

KAMLESH CHUGH **Respondent**

Through: Ms. Rashmi B. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

Caveat No.753/2017

1. The counsel for the caveator/respondent has appeared.
2. The caveat stands discharged.

CM No.30396/2017 (for exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

RC.REV. 385/2017 & CM No.30395/2017 (for stay)

5. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 26th April, 2017 in Ev. No.5182/2016 of the Court of Additional Rent Controller (ARC), South-East District, Saket Courts, New Delhi] of dismissal of the application filed by the petitioner for leave to defend and the consequent order of eviction of the petitioner from private shop No.5 on the ground floor of property No.B-102, Lajpat Nagar-I, New Delhi.

6. The ground on which eviction of the petitioner is sought is that the respondent wants to convert the shops in the property including the shop in tenancy of the petitioner into residential use, owing to her inability to climb stairs to the upper floor residential portion of the property.

7. The counsels have been heard.

8. The respondent/landlady instituted the petition for eviction *inter alia* pleading that she along with her family members was residing on the upper floors of the property and that the shop in the tenancy of the petitioner is required by the respondent/landlady to convert a part of the ground floor into residence for the respondent/landlady owing to the inability of the respondent/landlady in old age and owing to her medical condition, to climb the stairs to the upper floor.

9. A copy of the site plan of the ground floor portion of the property in ownership of the respondent/landlady is at page 94 of the paper book. The same shows the entire ground floor to be comprising of six shops and does not show any toilet or kitchen facilities anywhere on the ground floor.

10. The counsel for the respondent/landlady, on enquiry, as to how, in the absence of a toilet and kitchen, the respondent/landlady would use any part of the ground floor for residence, states that the respondent/landlady will construct a toilet and a kitchen on the ground floor and has filed a proposed site plan also before the ARC and copy of which is at page 95 of the paper book.

11. It is also on record that the respondent/landlady is already in possession of four out of six shops on the ground floor and of which, in one shop the son of the respondent/landlady is carrying on business and in

another the respondent/landlady herself is carrying on business and the other two shops are stated to be lying vacant, according to the respondent/landlady for conversion of use of part of ground floor for residential purposes.

12. The counsel for the respondent/landlady, on enquiry, states that the shop from which the respondent/landlady is carrying on business of car seat covers was earlier in the tenancy of a tenant and after obtaining possession thereof about two years back, the respondent/landlady has commenced business therefrom, earlier of a boutique and now of car seat covers.

13. On enquiry, as to why the respondent/landlady cannot use the shop from where she herself is carrying on business and the other vacant shops, for residence, the counsel states that the respondent/landlady needs to have an income by carrying on business and in any case the space of that shop is very less.

14. The aforesaid explanation cannot be considered plausible at the stage of leave to defend in as much as the proposed residential use of ground floor can also be achieved by using the portions of ground floor presently in possession of respondent/landlady. However the same has not been done.

15. I, even otherwise am of the view that the intent of the respondent/landlady to convert authorised commercial portions of the property, capable of yielding business or rental income much more than from residential portions, and which is controverted by the petitioner/tenant, is such which is required to be tested by cross-examination of the respondent/landlady. Though undoubtedly the landlord has absolute discretion and choice in the matter but when the choice exercised by landlord is contrary to the normal, prudent human conduct and behaviour and which

choice landlords are ordinarily not known to make, in my view, the Courts are certainly entitled to ask the landlord to prove/establish the basis of such choice. I am unable to find any judgment to the effect that the choice/selection of the landlord is to always prevail, at the stage of leave to defend, howsoever whimsical and unbelievable and extraordinary it may be. If however after trial, it is so established, certainly such choice/selection will be respected and eviction order will follow. This is more so when respondent/landlady already has some shops on the ground floor in her possession and which can be put to immediate residential use if of emergent nature. Else, notice can be taken of the fact that use of shops, without any ventilation and opening only in a busy market, for residential use is improbable if not impossible. To give into such demands of the landlord, without even giving an opportunity to the tenant to cross-examine the landlord, by denying to the tenant leave to defend, would in my view amount to permitting the landlord to evict the tenant as and when the landlord desires, and to prevent which the Rent Acts were enacted.

16. I am also of the view that when the pleaded requirement of the respondent/landlady admittedly cannot be met/satisfied without reconstruction of premises and without converting a commercial premises into residence, unless a strong case based on material on record or circumstances is made out, a case for grant of leave to defend would be made out because the Act otherwise provides for eviction, under Section 14(1)(g) thereof, on the ground of requirement of premises by landlord for building or rebuilding or making substantial additions/alterations and which works cannot be carried out without the premises being vacated. However, neither is the summary procedure under Section 25B applicable to such ground of

eviction nor is the landlady entitled to invoke the same without satisfying the Rent Controller that the proposed construction will not radically alter the purpose for which the premises were let or that such radical alteration is in public interest and that the plans and estimates for such reconstruction have been properly prepared and that necessary funds for the purpose are available with the landlord. Per Section 20, the tenant in such cases has option of re-occupying the premises.

17. The learned ARC, in the impugned order, is not found to have given due consideration and weightage to the said facts and to the improbability of conversion of commercial premises into residential.

18. The petition accordingly succeeds; the impugned order is set aside and the application of the petitioner for leave to defend is allowed and the petitioner is granted leave to defend the petition for eviction.

19. The petitioner to file written statement with advance copy to the counsel for the respondent/landlady within 30 days of today.

20. The file of the eviction petition is restored to its original position.

21. The parties to appear before the ARC on 11th October, 2017.

22. The petition is disposed of.

No costs.

Copy of this order be given *dasti*.

RAJIV SAHAI ENDLAW, J.

AUGUST 29, 2017

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