

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

% **Date of decision: 2nd August, 2017**

+ **RC.REV. 352/2017 & CM.No. 27320/2017 (for stay)**

LALTA PRASAD GUPTA

..... Petitioner

Through: Mr. M.P. Sinha & Mr. Yatharth Sinha,
Advs.

Versus

SITA RAM

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 3rd March, 2017 in E.No.6404/16 (Unique ID No.02406C0211792016) of the Court of Additional Rent Controller (South), Court Room No. 204, Saket Courts, New Delhi) of dismissal of the application filed by the petitioner / tenant for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent / landlord and the consequent order of eviction of the petitioner from a shop in House No.3/1, Ground Floor, Dakshin Puri Extension, New Delhi.

2. The counsel for the petitioner/tenant has at the outset drawn attention to para 5 of the petition for eviction wherein the respondent/landlord has pleaded that the shop from which the order of eviction of the petitioner/tenant was sought, was lying sealed by the MCD. The counsel for the petitioner/tenant contends that there can be no petition for eviction on the ground of requirement, of a shop which is lying sealed.

3. I have enquired from the counsel for the petitioner/tenant the date when the said shop was sealed.

4. The counsel for the petitioner/tenant states that the shop was sealed on 25th October, 2007 i.e. nearly 9 years prior to the institution of the petition for eviction.
5. I have next enquired from the counsel for the petitioner/tenant as to what steps the petitioner/tenant has taken for having the shop de-sealed.
6. The counsel for the petitioner/tenant states that the steps should have been taken by the respondent/landlord.
7. I fail to see as to how the factum of sealing of the shop by the MCD has any relevance to the maintainability of the petition for eviction under Section 14(1)(e) or to the grant of leave to defend such a petition. A shop sealed by MCD can always be got de-sealed by removing the objections on account of which the shop was sealed and by complying with other terms and conditions which may be imposed as a condition for de-sealing.
8. Rather, from the factum of the petitioner/tenant having not taking any steps for 9 years to have the shop de-sealed, it appears that the petitioner/tenant has no need for the said shop and is holding on to the same only to coerce the respondent/landlord to gratify the petitioner/tenant for vacating the said shop.
9. The only other argument of the counsel for the petitioner/tenant is, that it was the plea of the petitioner/tenant in the application for leave to defend that the respondent/landlord had sold an adjoining shop in the property from where Rama Medicos is operating, to Rama Medicos and which factum was denied by the respondent/landlord; the same raised a disputed question of fact and on which the leave to defend should have been granted.
10. I have perused the application for leave to defend and the affidavit filed therewith.

11. Therein it is pleaded that “recently” the respondent/landlord had sold two rooms on the ground floor where the shop by the name of Rama Medicos is operating.

12. The respondent/landlord, in reply to the application for leave to defend, in this respect pleaded that the shop where Rama Medicos is running does not belong to him.

13. I have enquired from the counsel for the petitioner/tenant as to when the said shop was sold and what is the document placed by the petitioner/tenant to show the ownership of the respondent/landlord of the said shop and sale thereof.

14. The counsel for the petitioner/tenant states that though no documents have been filed but the same was of 3 or 4 years prior to filing of petition for eviction.

15. The contention of the counsel for the petitioner/tenant however is that once the petitioner/tenant has taken such a plea and which was denied by the respondent/landlord, a case for grant of leave was made out.

16. I am unable to agree.

17. The word “discloses” in Section 25 B (5) of the Rent Act has to be understood as disclosing facts which if proved would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e). Unless the words “discloses such facts” in Section 25B(5) are understood and interpreted as placing before the Rent Controller facts which when proved will result in dismissal of petition for eviction, the Rent Controller will be unable to apply summary procedure prescribed in Section 25B for such petitions for eviction. If it were to be held that every plea in the application for leave to defend, howsoever vague and without particulars and without anything in support

thereof, should be permitted to be proved, the advocates for tenants, with their astute drafting skills, will not allow the summary procedure, prescribed by legislature to be followed for petitions for eviction of tenants on the ground of requirement of the landlord of the tenancy premises for self use, to be followed in any case and leave to defend will have to be granted and each case put to trial.

18. Thus, if the tenant seeks leave to defend controverting the requirement pleaded by landlord on the ground of the landlord, though at the time of requirement having alternate premises, having not used the same and instead having commercially exploited the same, the tenant must plead (a) the particulars of such premises; (b) the right / title of the landlord to the same; (c) that the said premises were vacant and available for use at the time of the pleaded requirement of landlord; (d) how the said premises were suitable for the pleaded requirement; and, (e) how the landlord has deprived himself thereof i.e. by sale or letting and support the said pleas with material on the basis whereof such pleas will be proved. I say that it is essential to place such material before the Rent Controller because the purpose of trial, resulting from grant of leave to defend, is to prove the said pleas and if the tenant has nothing from which he can possibly prove the said pleas, the trial also will not result in the landlord being “disentitled from obtaining an order for recovery of possession of premises on the ground specified in Clause (e) of proviso to sub Section (1) of Section 14” of the Act, within the meaning of Section 25B(5) supra. This is not to say that the tenant should file fool proof documentary evidence at the stage of leave to defend. However there must be placed on record all the requisite particulars. The onus on the tenant, at the stage of seeking leave to defend, is thus somewhere in between fool

proof documentary evidence and a totally vague, bereft of any particulars plea. Where, in between the said onus lies, depends on facts of each case.

19. Applying the aforesaid test, the petitioner/tenant is found to have not discharged the onus.

20. Even otherwise, sale, 3 or 4 years prior to the institution of the petition for eviction, does not entitle the petitioner/tenant to leave to defend.

21. The requirement pleaded by the respondent/landlord of the shop in the tenancy of the petitioner is that (a) he has a room alongwith the store room measuring 4' 7'' x 5' 8'' on the ground floor in his possession; the same is also borne out of Sale Deed in his favour; (b) that he was using the store room for his personal use before giving the same on rent to the petitioner/tenant; (c) that the respondent/landlord at that time had need for rent for Rs.1200/- from the said store room; (d) however now after 13 years of letting of the said store room, the respondent/landlord required the same for use as a residence for himself and his expanding family members; (e) that the respondent/landlord has grown old and is suffering from Asthma and the wife of the respondent/landlord is also unable to move up to the first and second floor of the property; (f) that the respondent/landlord thus required the shop in the tenancy of the petitioner/tenant for his own use.

22. The requirement pleaded by the respondent/landlord having not been controverted, no case for interference with the impugned order in revisionary jurisdiction is made out.

Dismissed.

RAJIV SAHAI ENDLAW, J

AUGUST 02, 2017

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(Corrected and released on 28th September, 2017).