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

+ RC.REV. 381/2017 & CM No.29834/2017 (for stay)

KAMLA DEVI HINGORANI Petitioner
Through: Mr. S.C. Singhal, Adv.

Versus

SATPAL GROVER & ANR Respondents
Through: Mr. R.K. Bedi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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23.10.2017

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 16th May, 2017 in ARC No.25369/2016 of the Court of Additional Rent Controller (ARC) (West), Tis Hazari Court, 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 respondents and the consequent order of eviction of the petitioner from one shop bearing private No.4 situated at the ground floor of property No.18/52, East Patel Nagar, New Delhi.

2. The counsel for the respondents appeared in pursuance to the earlier order dated 21st August, 2017.

3. The counsel for the petitioner has been heard.

4. The petitioner does not dispute that the respondents are the owners of the shop, within the meaning of Section 14(1)(e) of the Act, with respect to

which order of eviction has been passed and the relationship of landlord and tenant exists between the parties. Thus, the discussion hereinafter would be confined to the aspect of *bona fide* requirement and the availability of alternate suitable accommodation.

5. The respondents filed the petition for eviction from which this petition arises *inter alia* pleading (i) that the shop in the tenancy of the petitioner is required by the respondents for expansion of their business of restaurant; (ii) that except the shop in question, the entire ground floor of property No.18/52, East Patel Nagar, New Delhi is in occupation and possession of the respondents where they are carrying on the business of restaurant; (iii) after the shop in question is vacated by the petitioner, the respondents would remove the intervening walls between rest of the ground floor and the said shop and would expand their restaurant by including the area of the shop into the restaurant and which would expand the business of the respondents' restaurant.

6. The petitioner sought leave to defend disclosing (a) that adjoining shops No.5&6 which are much bigger in size have also been given on rent by the respondents and the tenant therein is running a shop of air conditioner service, repair and sale; (b) that the respondents have no intent to get the same vacated from him; (c) that as such there is no material plan for expansion of business of the restaurant and the petition for eviction has been filed only to harass the petitioner; (d) that the respondents also have portion admeasuring 150 sq. ft. adjacent to shops No.5&6 and from where the respondents are running kitchen of the restaurant; (e) that even after using the said space for the purpose of kitchen, enough space is available to the

respondents for expansion of their restaurant, if any.

7. The respondents in their reply to the leave to defend application denied that there was any tenant in shops No.5&6 and reiterated that the entire ground floor save the shop in the tenancy of the petitioner is with the respondents.

8. The counsel for the petitioner has first argued that the respondents have not disclosed as to how they intend to expand their restaurant.

9. In my opinion, the respondents, in the petition for eviction, have sufficiently explained as to how they intend to expand their restaurant i.e. by breaking the intervening walls between the restaurant and the shop in the tenancy of the petitioner.

10. Even otherwise, the counsel for the petitioner/tenant, on enquiry, states that the total area of the property in a shop wherein the petitioner is a tenant, is 91 sq. mtr. and the covered area of the entire ground floor is 800 sq. ft. Out of the said 800 sq. ft., the petitioner/tenant herself claims a kitchen for the restaurant running in 150 sq. ft., leaving an area of 650 sq. ft. for dining purposes where tables and chairs for the patrons of the said restaurant can be put. I fail to understand, as to how one can explain expansion of the business of restaurant. It is common knowledge that with the additional space available, more tables and chairs accommodating more patrons can be accommodated in the restaurant thereby increasing the number of patrons who can be seated in the restaurant and resulting in increased sales and profits from the restaurant. Such common things do not have to be pleaded. In fact, I have wondered that if the counsel for petitioner were to be asked, as to how he is practising law or as to how he

can improve his practise of law, what answer will follow.

11. Though the counsel for the petitioner has before this Court not urged the factum of letting out of the shops No.5&6 and has argued on the premise that the remaining ground floor is with the respondents but I may notice that the plea in that regard in the leave to defend application is even otherwise very vague. It is not even the plea that the said shops have been recently let out. Once, it is not so, even if the other two shops if any on the ground floor are occupied by old tenants, the same cannot be a ground for disentitling the respondents from an order of eviction of the petitioner under Section 14(1)(e) of the Act and which is the parameter prescribed in Section 25(5) of the Act, on the anvil whereof the application for leave to defend is to be considered. The counsel for the respondents however asserts that there are no such tenants and the entire remaining ground floor is with the respondents and is being used for the restaurant.

12. The counsel for the petitioner/tenant has next contended that the claim of the respondents being for additional accommodation, leave to defend has to be necessarily granted. Reliance in this regard is placed on ***Santosh Devi Soni Vs. Chand Kiran*** (2001) 1 SCC 255 and the judgments of this Court in ***Kishore Vs. Prabodh Kumar*** 2012 (132) DRJ 562 and ***Khem Chand Vs. Arjun Jain*** 2013 (138) DRJ 154 and ***Mohd. Jafar Vs. Nasra Begum*** (2012) 191 DLT 401 following the same.

13. I have in a number of judgments and of which reference may be made to only ***S. Kesar Singh Vs. S. Paramjeet Singh*** 2017 SCC OnLine Del 10747 held:

“9. Supreme Court, in **Rahabhar Productions Pvt. Ltd. Vs. Rajendra K. Tandon** (1998) 4 SCC 49 held that the plea that the landlord was already in occupation of sufficient accommodation and was seeking additional accommodation by evicting the tenant does not disentitle the landlord from recovering possession of the premises in question and upheld the order of refusal of leave to defend. This Court also in **Krishan Kumar Alag Vs. Jambu Prasad Jain** (2009) 161 DLT 511 held that the plea of the tenant, that since the landlord had sought additional accommodation, it was a good case for grant of leave to defend, must fail. It was held that once on assessing the requirement of the landlord and the accommodation already available with the landlord, it was found that the landlord requires additional accommodation, leave to defend has to be denied. SLP(C) No.2207/2009 preferred against the said judgment was dismissed on 13th July, 2009. This Court again in **Vinod Arora Vs. Deepak Aggarwal** 2010 (119) DRJ 221 held that the fact that the landlord is in occupation of a part of the ground floor did not entitle the tenant to leave to defend, once the requirement of the landlord for the remaining ground floor in occupation of the tenant was made out. SLP(C) No.028027/2010 preferred thereagainst was also dismissed on 2nd September, 2013. To the same effect are judgments of this Court in **Budh Singh & Sons Vs. Sangeeta Kedia** (2011) 185 DLT 580 and **Megh Raj Roshan Lal Vs. Rashmi Jain** 2013 SCC OnLine Del 4001. Earlier also, in **K.D. Gupta Vs. H.L. Malhotra** 1992 (23) DRJ 234 (SLP(C) No.007073/1992 preferred whereagainst was dismissed on 22nd July, 1992) it was held that it cannot be laid down as a matter of principle that in every case of additional accommodation, leave to defend must necessarily be granted.

10. Even otherwise, no limitation, neither in Section 14(1)(e) nor in Section 25B of the Act to the said effect is to be found. Neither of the said provisions carve out a difference between requirement of tenanted premises when the landlord is not in possession of any accommodation and requirement of tenanted

premises when the landlord is in possession of some accommodation and needs more or additional accommodation. No difference in law can be made in the two situations and to create a difference between the two situations would amount to arbitrary discrimination. Requirement of tenanted premises, whether it be on account of no accommodation or for additional accommodation have thus to be treated at par. It cannot be said that the summary procedure under Section 25B of the Act is available only when the landlord is literally on the road, with no accommodation available to him and is not available when the landlord has some accommodation, even though it may be insufficient for his requirement. Supreme Court, in **Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde** (1999) 4 SCC 1 held that the phrase “reasonably and bona fide required by the landlord” is not to be tested on par with “dire need” of a landlord because the latter is a much greater need. Similarly, in **Raghunath G. Panhale Vs. Chaganlal Sundarji & Co.** (1999) 8 SCC 1 it was held that the word “reasonable” connotes that the requirement or the need is not fanciful or unreasonable but need not also be a “compelling” or “absolute” or “dire necessity”. A reasonable and bona fide requirement was held to be something in between a mere desire or wish on the one hand and a compelling or dire or absolute necessity on the other hand.

11. The counsel for the petitioner has drawn attention to **Santosh Devi Soni Vs. Chand Kiran** (2001) 1 SCC 255 and **S.M. Mehra Vs. D.D. Mallik** (2001) 1 SCC 256 where it has been observed “there is no need to take a summary procedure since it is a case of additional accommodation”.

12. Both the aforesaid are without discussing any facts and without discussing any law and in fact are not even judgments and are reported as orders only. Supreme Court recently in **Pratap Kishore Panda Vs. Agni Charan Das** (2015) 17 SCC 789 held that with exponential increase in the decisions delivered by it, it has become an imperative for Advocates to distinguish between orders and judgments and to correctly cull

*out the ratio of the judgments. It was held that the decision being relied upon by the counsel before it was an order of the Supreme Court which decided the dispute before it and did not even attempt to or intend to expound the law and was therefore not in the nature of a binding precedent. I may in this regard notice that this Court in **K.D. Gupta** supra also held that **S.M. Mehra** supra did not give the facts in detail and leave to contest in that case was granted in peculiar facts and circumstances of that case and it cannot be held as laying down as a matter of principle that in every case of additional accommodation, leave to defend must necessarily be granted. **Santosh Devi Soni** and **S.M. Mehra** supra, in **Budh Singh & Sons** supra also were not treated as laying down any such ratio.*

*13. For the same reasons, the reference to **S.K. Seth Vs. Vijay Bhalla** 191 (2012) DLT 722, relying on the orders aforesaid of the Supreme Court is of no avail.”*

14. No other argument has been urged.
 15. There is thus no merit in the petition.
 16. Dismissed.
- No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 23, 2017

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