

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

% **Date of decision: 28th August, 2017.**

+ **RC.REV. 400/2017**

NOOR MOHAMMD **Petitioner**

Through: Mr. Dinesh Kumar, Adv.

Versus

KANTA AGGARWAL **Respondent**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

Caveat No.770/2017

1. None appears for the caveator/respondent inspite of advance copy stated to have been given.
2. The caveat stands discharged.

CM No.31106/2017 (for exemption)

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

RC.REV. 400/2017 & CM No.31107/2017 (for stay)

5. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 16th May, 2017 in E No.127/2013 of the Court of Additional Rent Controller (ARC), Shahdara, Karkardooma 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.11 on the first floor of property No.1/6709, East Rohtash Nagar, Shahdara, Delhi-110032.

6. The counsel for the petitioner has been heard.

7. The counsel for the petitioner has first argued that the respondent/landlady has been trying to hurriedly obtain an order of eviction of the petitioner/tenant on the ground of requirement.

8. I do not understand how the same can be a ground in law. The Legislature itself, for the purposes of disposal of petitions for eviction on the ground of self-requirement of the tenancy premises by the landlord, has provided for a summary procedure whereunder only fifteen days time is permitted to the tenant on receipt of notice of the petition for eviction to apply for leave to defend. No grievance can thus be made of the respondent/landlady being in a hurry. Even otherwise, a litigant who approaches the Court ought to act expeditiously and take steps diligently, hurriedly and not delay the lis.

9. The counsel for the petitioner/tenant has next urged that the respondent/landlady had earlier tried to obtain the order of eviction by showing service of notice on the petitioner/tenant and which order was set aside by this Court vide order dated 18th May, 2016 in RC.REV. No.664/2015 earlier preferred by the petitioner/tenant.

10. However, on enquiry, how the same is relevant at this stage, the counsel fairly agrees that it is not.

11. The next argument of the counsel for the petitioner/tenant is that the respondent/landlady, prior to filing the petition for eviction from which this petition arises, got issued a legal notice to the petitioner/tenant for non-payment of rent and in which requirement was not pleaded. It is contended that thus there is no cause of action.

12. A petition under Section 14(1)(e) of the Act is not required to be preceded by a legal notice as is the requirement in the case of a petition for eviction under Section 14(1)(a) of the Act i.e. default in payment of rent and thus non-mentioning, if any of the requirement in the notice of demand of rent, cannot defeat the petition for eviction on the ground of requirement of premises for self-use or entitle the petitioner/tenant to leave to defend such petition.

13. The counsel for the petitioner/tenant, on specific enquiry, states that the petitioner/tenant does not dispute that the respondent is the owner of the premises in the tenancy of the petitioner and that there is a relationship of landlord and tenant between the respondent and the petitioner.

14. The counsel for petitioner/tenant has not made any other argument. I have however, to satisfy myself that the order impugned is in accordance with law, within the meaning of Section 25B(8) of the Act, perused the copies of Trial Court record filed with the petition.

15. The respondent/landlady sought eviction of the petitioner/tenant pleading (i) that the respondent/landlady purchased the property aforesaid, shop wherein is in the tenancy of the petitioner, on 8th May, 1996; (ii) that the said property comprised of several shops; (iii) that the respondent/landlady in the year 2010 sold shops No.2&3 on the ground floor

and the same are in possession of the purchasers thereof; (iv) that the husband of the respondent/landlady, since prior to the purchase by respondent/landlady, is a tenant in one of the shops and is running business in the name and style of M/s Jeevan Book Depot / Jeevan General Store therefrom; (v) that the respondent/landlady is also the owner of land admeasuring 12 sq. yds. on the ground floor and 19 sq. yds. on the first floor in the said property and which was also in the tenancy of the husband of the respondent/landlady and used for storing books and stationary; (vi) that the respondent/landlady had given shops No.8,9&13 situated on the first floor on rent to Sh. Vijay Mohta who is doing his business under the name and style of Minto System & Software with monthly rent of Rs.4,000/- per month therefrom; (vii) that the respondent/landlady had given shop No.1 on the ground floor of the property on rent to one Sh. Suraj Dhawan at a rent of Rs.13,200/- per month and the tenant therein is carrying on business in the name and style of M/s Gurukirpa Communication therefrom; (viii) that the respondent/landlady has three sons, all of whom are assisting the husband of the respondent/landlady in the business of M/s Jeevan Book Depot / Jeevan General Store; (ix) that the said sons of the respondent/landlady are dependent on the respondent/landlady for the purposes of accommodation; (x) that the middle son of the respondent/landlady who is also assisting the father, wants to start his separate whole-sale business of stationary and has no accommodation available to him; (xi) that shops No.5,6&7 on the ground floor and shops No.10&12 on the first floor are already in the tenancy of other tenants.

16. The petitioner/tenant, in the affidavit accompanying the application for leave to defend, has pleaded (a) that the respondent/landlady, her husband

and sons are property dealers/property agents/land grabbers; (b) that the respondent/landlady having let out one shop at a rent of Rs.4,000/- per month and another shop at a rent of Rs.13,200/- per month, is not entitled to seek eviction under Section 14(1)(e) of the Act and has filed the petition for eviction only to earn higher rent from the petitioner/tenant; (c) that the respondent/landlady is the *benami* owner of the property; (d) that as per the petition for eviction itself, the respondent/landlady has other shops available to her; (e) that the sons of the respondent/landlady do not reside with the respondent/landlady and are not dependent upon the respondent/landlady.

17. In my view, the aforesaid pleas of the petitioner/tenant do not amount to disclosing any facts which would disentitle the landlord from an order of eviction under Section 14(1)(e) of the Act within the meaning of Section 25(5) of the Act. The rest of the affidavit accompanying the application for leave to defend is like a written statement i.e. of mere denial of the contents of the petition for eviction.

18. As far as the plea in the petition for eviction, of letting out of three shops at rent of Rs.4,000/- and one shop at a rent of Rs.13,200/- per month, the petitioner/tenant in the leave to defend application, has not disclosed, as to when were the said tenancies created. Unless it was disclosed that the tenancies were created shortly prior to the institution of the petition for eviction and after the requirement pleading which the petition for eviction has been preferred had accrued, the same cannot constitute a fact which would disentitle the landlord from an order of eviction under Section 14(1)(e) of the Act. Merely because the landlord has other tenants, does not

constitute a ground for dismissal of a petition for eviction under Section 14(1)(e) of the Act.

19. Supreme Court, in *Anil Bajaj Vs. Vinod Ahuja* (2014) 15 SCC 610 held that merely because the landlord is in occupation of other premises, does not constitute triable issue to entitle the tenant to leave to defend. Similarly, in *Bhupinder Singh Bawa Vs. Asha Devi* (2016) 10 SCC 209, Supreme Court approved of the reasoning that the fact that the landlord's son was director in a family company and earning salary therefrom cannot be impediment to his requirement for premises in tenancy of tenant for running his separate business. Similarly in *Faruk Ilahi Tamboli Vs. B.S. Shankarrao Kokate* (2016) 15 SCC 431 it was held that merely because the landlord was in joint business with other family members, did not disentitle him from seeking order of eviction of tenant for also commencing his own business. It was further held that considering the low rent which the tenant was paying, it could not be presumed that landlord purchased the property for earning rent therefrom and was indication of the landlord having purchased the property for carrying on business therefrom after evicting the tenant. It was yet further held that acquisition of possession by the landlord, during the pendency of eviction proceedings, of a much larger accommodation did not disentitle the landlord from order of eviction if the requirement pleaded was of a smaller premises. To the same effect is *Gulshera Khanam Vs. Aftab Ahmad* (2016) 9 SCC 414, laying down that the landlord is the sole judge to decide as to how much space is needed to start or expand any of his/her activity. Mere parrot like repeating that these are triable issues cannot entitle the tenant to leave to defend.

20. As far as the plea of the son of the respondent/landlady (pleading whose requirement the petition for eviction was filed) being not dependent upon the respondent/landlady is concerned, the emphasis of the counsel for the petitioner/tenant is that the respondent/landlady in the petition for eviction itself has pleaded that the said middle son of the respondent/landlady, along with his wife and children is residing separately from the respondent/landlady.

21. Merely because a son, for certain reasons may be residing separately, does not in any case make him not dependent upon the respondent/landlady for accommodation when it is not disputed that the said son is assisting the father in the business of the father and/or has no other business and when it is not disclosed what is the independent business or vocation of the son or what are the other properties independently available to him. Supreme Court, in ***Gulshera Khanam*** supra, though in the context of U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972, held that eviction of tenant can also be sought for requirement of married daughter. Similarly, in ***Nidhi Vs. Ram Kripal Sharma*** (2017) 5 SCC 640, also in the context of same Act, it was held that the marriage of landlady during the pendency of eviction proceedings does not extinguish her requirement. It was held, “being married and shifting to other place does not automatically result in extinguishing of *bona fide* requirement”.

22. The counsel for the petitioner/tenant then contends that unless leave to defend is granted, he cannot show anything.

23. The said argument negates the summary procedure prescribed in Section 25B of the Act for adjudicating the petitions for eviction under Section 14(1)(e) of the Act.

24. If it were to be held that in all cases, the landlord has to step into the witness box to prove his requirement, there would have been no need for insertion of Section 25B in the Act.

25. There is no merit in the petition.

26. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 28, 2017

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