

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

% **Date of decision: 5th September, 2017**

+ **RC.REV. 417/2017**

KRISHAN KUMAR DUA **Petitioner**
Through: Mr. Vineet Chadha, Adv.

Versus

GIRDHAR GOPAL GUPTA **Respondent**
Through: Mr. P.P. Ahuja and Mr. J.S. Kohli,
Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.32254/2017 (for exemption)

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

RC.REV.417/2017 & CM No.32253/2017 (for stay)

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 27th February, 2017 in E No.903/14/12 of the Court of Additional Rent Controller (ARC) (Central), Tis Hazari Courts, Delhi] of eviction, after full trial, of the petitioner from shop No.4748 at Ground Floor, Main Road, Pahari Dhiraj, Delhi-110006.
4. The counsel for the respondent appears on advance notice/seeing the matter in the Cause List.
5. The counsel for the petitioner has been heard.

6. The respondent instituted the petition for eviction from which this petition arises *inter-alia* pleading (i) that the petitioner is an old tenant in the shop, then paying rent of Rs.200/- per month; (ii) that the family of the respondent consisted of, besides himself, his two married sons and their respective families; (iii) that the respondent was doing business of paper and cardboard from shop No.4753, Ahata Kidara, Pahari Dhiraj, Delhi-110006 in the name and style of M/s S.B. Marketing Co.; (iv) that the respondent was earlier carrying on the said business from shop No.4752, Ahata Kidara, Pahari Dhiraj, Delhi but since the same was a residential premises, Municipal Corporation of Delhi (MCD) sealed the same due to its misuser; (v) that the son Amit Gupta of the respondent was compelled to do his business from the same shop No.4753, Ahata Kidara, Pahari Dhiraj, Delhi as proprietor of Gopal Sales Corporation; (vi) that the second son of the respondent Sachin Gupta was also carrying on business of paper and cardboard in the name and style of S.B. Board House earlier from shop No.4753, Ahata Kidara, Pahari Dhiraj, Delhi only but under compelling circumstances had taken on rent a small office premises at 947-949, Chippiwara, Chawri Bazar, Delhi-06 at a rent of Rs.500/- per month.

7. The contention of the counsel for the petitioner/tenant is (a) that the petitioner/tenant, in the application for leave to defend, pleaded that the respondent was the owner of property No.947-949, Chippiwara, Chawri Bazar, Delhi and had falsely claimed that his son was a tenant therein; (b) that the respondent, in reply to the application for leave to defend, reiterated that his son was a tenant in the said premises; (c) that however when the petitioner/tenant in the written statement filed post grant of leave to defend again pleaded that the respondent was the owner of property No.947-949,

Chippiwara, Chawri Bazar, Delhi, the respondent in the replication, at one place pleaded that the said premises at property No.947-949, Chippiwara, Chawri Bazar, Delhi earlier in the tenancy of Sachin Gupta earlier belonged to Deepak Aggarwal who was owner landlord thereof and at another place pleaded that the said property was now owned by Sachin Gupta and at yet another place that Sachin Gupta was no longer the tenant in property No.947-949, Chippiwara, Chawri Bazar, Delhi and that the same had been purchased by Amit Gupta; (d) that the respondent/landlord in his cross-examination however refused to produce the documents of purchase of property No.947-949, Chippiwara, Chawri Bazar, Delhi stating that since his son was the exclusive owner of the said property and was carrying on his own business therefrom, he could not produce the documents therefor.

8. On the aforesaid, it is contended that the requirement of the respondent, pleading which eviction of the petitioner is sought, is not *bona fide* and that the respondent has been indulging in falsehood. It is argued that at the stage of leave to defend, the respondent maintained that his son Sachin Gupta was tenant in property No.947-949, Chippiwara, Chawri Bazar, Delhi; thereafter, in replication at two different places inconsistent stands were taken, at one place of ownership of Sachin Gupta and at another place of ownership of Amit Gupta was pleaded; in the cross-examination, the respondent refused to produce the documents to show when was the ownership of property No.947-949, Chippiwara, Chawri Bazar, Delhi acquired.

9. It is argued that the aforesaid inconsistency and suppression of documents of ownership not only shows lack of *bona fide* but also falsifies

the claim of the sons of the respondent being dependent upon the respondent for commercial accommodation. It is argued that while on the one hand it is claimed that the sons of the respondent are dependent upon the respondent and the respondent in his old age is dependent upon his sons but on the other hand the inability of the respondent to even produce the documents of title of the property owned by the son on the ground of independence of the son shows that the respondent cannot seek eviction of the petitioner for the requirement of his son.

10. Having found in the record that property No.947-949, Chippiwara, Chawri Bazar, Delhi is not in main Chawri Bazar but “in a *Gali* off Chawri Bazar” and on the first floor, I have enquired so from the counsel for the petitioner/tenant.

11. The counsel for the petitioner/tenant confirms that property No.947-949, Chippiwara, Chawri Bazar, Delhi is in a “*Gali* off Chawri Bazar” and on the first floor.

12. Once that is so, the same cannot be said to be alternate suitable accommodation to the shop in the tenancy of the petitioner which is on the ground floor. A shop on the ground floor is always more commercially viable than a shop on the upper floors of the property and it is for this reason only that not only the purchase value but the rental value of shops on the ground floor is more. The premises here are not situated in a Shopping Mall, for it to be said that the floor on which the property is situated is irrelevant. Supreme Court, in *Uday Shankar Upadhyay Vs. Naveen Maheshwari* (2010) 1 SCC 503 held that it is well known that shops and businesses are usually, though not invariably, conducted on the ground floor because the

customers can reach there easily and that the Court cannot dictate the landlord which floor he should use for his business; that is for landlord himself to decide. The view of the Courts below that the sons of plaintiff No.1 in that case should do business in the first floor was held to be wholly arbitrary and unsustainable.

13. Though the respondent is indeed found to have not produced the documents of purchase of property No.947-949, Chippiwara, Chawri Bazar, Delhi and adverse inference can be drawn against the respondent therefor and it can be presumed that the statement in the petition for eviction and in the reply to the leave to defend application, of Sachin Gupta being a tenant in the said shop was only a half truth, inasmuch as his tenancy could also be under his brother Amit Gupta on that date but what has to be remembered is that in a landlord tenant proceeding, particularly in petitions for eviction of tenants in occupation of properties for five or maybe six decades, there is always a cat and mouse game which is at play and it also cannot be lost sight of that the pleadings are drafted by the advocates and the mistakes as pointed out of, in the same pleading, at one place claiming Amit Gupta to be the owner and at another place claiming Sachin Gupta to be the owner are mistakes in drafting and cannot be attributed to the parties. It is for this reason only that the principle of british times of Moffusil Pleadings continues to be applied to Courts in Delhi till date.

14. In my opinion, what has to be seen at the end of the day is the requirement of the landlord and the alternate suitable premises if any available. For the falsehood, if any practised by the respondent, the respondent has already suffered by being unable to have the order of eviction

under the summary procedure and having had to wait, now for about last five years. In my opinion, the landlord cannot be penalised more than that by denying to him even at this stage the order of eviction, if otherwise found entitled to. It is applying the said logic only that I have recently in ***Nalini Kant Gupta Vs. Lajja Gupta*** 2017 SCC OnLine Del 10247 relying on a host of earlier judgments held that once the tenant has had full opportunity and the parties have gone to trial on all facts, the petition for eviction for self-requirement cannot be dismissed on the ground of suppression.

15. When we see the matter in the aforesaid light, it cannot be said that the respondent does not require the premises in the tenancy of the petitioner. It is not in dispute that all three i.e. respondent and his two sons are carrying on business from property No.4753, Ahata Kidara, Pahari Dhiraj, Delhi and the first floor of property No.947-949, Chippiwara, Chawri Bazar, Delhi and which I have already held cannot be a substitute for a shop on the ground floor.

16. It is not the case of the petitioner/tenant that the area of property No.4753, Ahata Kidara, Pahari Dhiraj, Delhi is large enough to allow all three, respondent and two sons, to carry on business therefrom. It is also not disputed that the respondent and his two sons are carrying on, though business in the same goods, but separately. Once that is so, the requirement of the respondent and his family members is writ large.

17. The Courts, in ***J.L Mehta Vs. Hira Devi*** 1970 6 DLT 484, ***Mahantgovind Dass Vs. Shri Kuldip Singh*** (1970) 6 DLT 507, ***Joginder Pal Vs. Naval Kishore Behal*** (2002) 5 SCC 397, ***M/s. Jhalani Tools (India) Pvt. Ltd. Vs. B.K. Soni*** AIR 1994 Delhi 167, ***Anil Kumar Gupta Vs.***

Deepika Verma 224 (2015) DLT 473, *Sushila Devi Vs. Raghunandan Pershad* (1996) 61 DLT 426 and judgment dated 17th July, 2017 in RC.REV No.315/2017 titled *Asha Sawhney Vs. Kamini Gupta* have held that dependence of members of family under Section 14(1)(e) of the Act is not financial dependence but in the Indian family context. It is not disputed that the respondent and his two married sons along with their respective families are staying in one house only. Once it is so, notwithstanding the respondent having refused to produce the sale deed of property No.947-949, Chippiwara, Chawri Bazar, Delhi in the name of his son, the sons would remain dependent upon the respondent and the respondent would be entitled to evict a tenant to accommodate his sons.

18. It cannot thus be said that the order of eviction impugned is not in accordance with law within the meaning of Section 25B(8) of the Rent Act.

19. There is thus no merit in the petition.

20. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 05, 2017

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