

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

% **Date of decision: 15th September, 2017.**

+ **RC.REV. 427/2017**

S. KESAR SINGH

..... Petitioner

Through: Mr. R.R. Bhardeaj and Mr. Kamal
Gupta, Advs.

Versus

S. PARAMJEET SINGH & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.33689/2017 (for exemption)

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

RC.REV. 427/2017 & CM No.33688/2017 (for stay)

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 25th July, 2017 in ARC No.25826/2016 of the Court of Additional Rent Controller (ARC) (West), Tis Hazari Courts, Delhi] of dismissal of the application filed by the petitioner for leave to defend the petition for eviction filed by the two respondents under Section 14(1)(e) of the Act and the consequent order of eviction of the petitioner from the corner ground floor shop as shown in the site plan filed with the petition for eviction and forming part of property No.C-112, Jail Road, Fateh Nagar, New Delhi.

4. The counsel for the petitioner has been heard.
5. The counsel for the petitioner having not filed the copy of the site plan as filed by the respondents along with the petition for eviction, has during the hearing handed over a copy thereof and which is taken on record.
6. Considering the arguments raised, need to deal with the contents of the petition for eviction and the application for leave to defend is not felt.
7. The first argument of the counsel for the petitioner is, that it is not as if the two respondents are not in possession of any shop; they are admittedly in possession of two shops in the property and the petition for eviction of the petitioner from another shop in the tenancy of the petitioner, is to seek additional accommodation. It is argued that whenever a petition for eviction is to seek additional accommodation, leave to defend has to be granted on this ground alone.
8. There is no such principle in law.
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. There is thus no merit in the said contention.

15. The counsel for the petitioner has next urged that merely because shops already in possession of the two respondents are not situated on the main Jail Road, as the shop in the tenancy of the petitioner, and have their opening in a narrow lane/gali, is no ground to allow the petition for eviction.

16. The said argument is also contrary to the dicta of the Supreme Court in ***Uday Shankar Upadhyay Vs. Naveen Maheshwari*** (2010) 1 SCC 503 and ***Dhanna Lal Vs. Kalawatibai*** (2002) 6 SCC 16 holding that it is in common knowledge that commercial premises have different value depending upon the location and the floor at which they are situated and shops situated at an inconvenient location do not attract customers and no lucrative business can be carried on therefrom as from a shop located strategically.

17. A perusal of the site plan shows that while the shop in the tenancy of the petitioner has its opening on main Jail Road, which has a flourishing furniture market, the shops in occupation of the two respondents have their opening in a narrow lane/gali off Jail Road and which shops would not even be visible from the main Jail Road. Rather, a perusal of the site plan also shows one of the two shops with the two respondents being much smaller and having a very narrow end, making that part of it unusable. Supreme Court in *Siddalingamma Vs. Mamtha Shenoy* (2001) 8 SCC 561 reiterated that if the landlord wishes to occupy the comfort of his premises, law does not command and compel him to squeeze or dwell in lesser premises so as to protect the tenant's continued occupation in tenancy premises.

18. The only other argument of the counsel for the petitioner is that while in the petition for eviction, it was stated that from the shop in the tenancy of the petitioner, the respondents intend to expand their already existing business but during arguments and as recorded in the impugned order, it was contended that furniture business is intended to be commenced therefrom.

19. Till a business is commenced, the intending businessman is always entitled to change his plans from time to time. I have in fact enquired from the counsel for the petitioner, whether not in Law College, most of the students desire to practice corporate law and join Law Firms and thereafter change their mind and even shift to litigation or to other arenas requiring acumen in law. The counsel for the petitioner is unable to rebut the same.

20. Once that is so, the requirement for the shop cannot be said to be *mala fide* merely because the landlord, during the time for which the petition for

eviction remained pending, thought it more prudent to commence furniture business therefrom instead of expanding his existing business therein.

21. The counsel for the petitioner then states that he is not saying that the petition for eviction should be dismissed but is only seeking trial.

22. Once that is the aforesaid position in law and when on the given facts the respondents shall be entitled to an order of eviction under Section 14(1)(e) of the Act, the question of granting leave to defend merely for the sake of putting parties to trial and doing away with the summary procedure prescribed for such matters in Section 25B of the Act, on mere asking, to enable the tenant to continue for more time in the premises, cannot be permitted.

23. There is no merit in the petition.

24. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 15, 2017

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