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

+ RC.REV. 451/2017 & CM No.36117/2017 (for stay).

KEWAL KISHAN

..... Petitioner

Through: Mr. Satish Kumar and Mr. Rajiv
Sachar, Advs.

versus

NATHU RAM

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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24.10.2017

1. This Rent control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 20th July, 2017 in ARC.No.25743/2016 of the Court of Additional Rent Controller (West), Tis Hazari] 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 on ground floor of property No.C-146, Tagore Garden Extension, New Delhi.

2. The counsel for the petitioner / tenant was heard on 9th October, 2017, when hearing was adjourned to enable the counsel to file certain document. Though the document claimed to be filed by the counsel is not on record but the counsel has today in Court handed over an index dated 13th October, 2017 with copy of the Rent Agreement dated 30th June, 2014 and which is taken on record.

3. The counsel for the petitioner / tenant has been heard.

4. The counsel for the petitioner / tenant on the last date of hearing and

as recorded in the order of that date, stated that the petitioner / tenant did not controvert the ownership of the respondent and the existence of relationship of landlord and tenant between the petitioner and the respondent.

5. The respondent instituted the petition for eviction from which this petition arises, pleading (i) that the respondent has no permanent source of income and undertakes only some casual work which cannot fulfil the financial needs of the respondent and members of his family comprising of himself, son, two unmarried daughters and wife, all of whom are dependent upon the respondent; (ii) that the son of the respondent is also unemployed and jobless; and, (iii) that the shop in the tenancy of the petitioner is required by the respondent for personal use of himself and for members of his family dependent upon him, to run some business in the same, for his livelihood.

6. The petitioner / tenant sought leave to defend pleading, (i) that the respondent, in the site plan has not shown all the shops situated on the ground floor of the property; (ii) that the petitioner is a tenant in shop no.3, situated on the ground floor of property no.C-146, Tagore Garden Extension, New Delhi – 110 027; (iii) that the respondent has no *bona fide* requirement of the shop in the tenancy of the petitioner in view of the fact that the respondent, on 30th June, 2014, has let out a shop situated adjacent to the shop in the tenancy of the petitioner to one Shri Udit, S/o Shri Rampal, R/o 46, Janta Flats, Pocket-3, Paschim Puri, Delhi vide Rent Agreement dated 30th June, 2014 and copy of which was annexed to the application for leave to defend; (iv) the same shows the *mala fide* intention of the respondent; (v) that the respondent is receiving rent from the six tenants on the ground floor and three tenants on the first and second floors of the property; and, (vi) that

had there been any intention of the respondent to start any business, he would not have given the shop on rent to Shri Udit on 30th June, 2014.

7. The petitioner / tenant, along with this petition did not file copy of the site plan filed by the respondent along with the petition for eviction. However during the hearing on 9th October, 2017 when this petition first came up before this Court, the counsel for the petitioner / tenant handed over the said site plan and which was taken on record. No site plan of his own was filed by the petitioner / tenant.

8. It was the contention of the counsel for the petitioner / tenant during the hearing on 9th October, 2017, that the respondent having let out another shop in the property on 30th June, 2014 to Shri Udit and the respondent in reply to the application for leave to defend having denied that there was any tenant in the property by the name of Shri Udit, the same raised a triable issue on which leave to defend ought to have been granted to the petitioner / tenant.

9. However the petitioner / tenant having not filed before this Court the Rent Agreement between the respondent and the said Shri Udit, claimed to have been filed with the application for leave to defend, the matter was adjourned to today to enable the counsel for the petitioner / tenant to produce the said Rent Agreement.

10. The Rent Agreement which has been handed over today, comprises of only two sheets with the first sheet containing only the name of the parties thereto and the second sheet having only clauses 8&9 of the agreement. The intervening page/s of the Rent Agreement are missing.

11. The counsel for the petitioner / tenant states that the petitioner / tenant

received only these two sheets and is not possessed of any intervening sheets.

12. From the two sheets handed over in the Court, all that can be deciphered is (i) that the document is a Rent Agreement; and, (ii) it is between Nathu Ram, S/o Shri Ganga Sahai R/o C-146, Tagore Garden Extension New Delhi and Shri Udit S/o Shri Ram Pal R/o 46, Janta Flats, Pocket-3, Paschim Puri, Delhi. Else, the premises to which the Rent Agreement pertains, cannot be known from the two sheets of the document.

13. The counsel for the petitioner / tenant has however drawn attention to para 9 of the impugned order where the stand of the respondent to the effect that no shop was let out to anyone on 30th June, 2014 and that though the Agreement took place but it could not materialise, is recorded.

14. I may notice that otherwise, the respondent in the reply to the application for leave to defend denied that there was any tenant by the name of Udit in the property.

15. In the aforesaid scenario, on 9th October, 2017 I had also directed to the petitioner / tenant to remain present in person in the Court today and had also cautioned the petitioner / tenant that if it borne out that the Rent Agreement copy of which was produced was false and there was no person of the name Udit in the property, appropriate action against the petitioner / tenant shall be taken.

16. The counsel for the petitioner / tenant states that in compliance therewith the petitioner / tenant is present in the Court.

17. I have put questions to the petitioner/tenant and he states there is no

tenant in the property by the name of Udit but on further enquiry states that Udit was in occupation of the property for six or seven months. The petitioner / tenant however is unable to tell which portion of the property was the said Udit in possession as a tenant for six or seven months. He on further enquiry states that Udit had come into possession in October, 2014 or 2015 and remained in possession for six or seven months.

18. I have enquired from the counsel for the petitioner / tenant, that once the petitioner / tenant admits that there is no Udit in the property, what is left in the application for leave to defend.

19. The counsel for the petitioner / tenant states that if Udit is not present in the property, then the shop which was let out to Udit under the Agreement dated 30th June, 2014 is available to fulfil the need of the respondent. He again contends that leave to defend be granted on the said aspect.

20. The aforesaid shifting stand of the petitioner/tenant, with inconsistencies as obvious from above, cannot entitle the petitioner/tenant to leave to defend. The petitioner/tenant, in the leave to defend, conveyed that 'Udit' was let out one shop and in possession thereof. Now, he says 'Udit' was in property from earlier than the date of the Rent Agreement which was referred to. If leave to defend were to be granted on such pleas, it will defeat the legislative intent of summary procedure for the ground of eviction in Clause (e) of sub-Section (1) of Section 14 of the Act. The plea qua 'Udit' is evidently false inasmuch as petitioner/tenant is not even able to tell the portion of property occupied by him, even if for a short time. Leave to defend is not to be granted to commence a fishing and roving enquiry.

21. Section 25B of the Act providing for a summary procedure for petition

for eviction on the ground of requirement of the tenanted premises for self use of the landlord, permits leave to defend to be granted only if the tenant in the application for leave to defend discloses facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. The summary procedure prescribed in Section 25B cannot be negated by permitting leave to defend to be granted on whatsoever plea is taken by the tenant in the application for leave to defend even if the same has no ring of truth or when in the entirety of the circumstances the same appears to be only taken to, by hook or by crook obtain leave to defend. It is well known that once leave to defend is granted, owing to the large pendency of cases for trial before the Courts, the disposal of the petition for eviction takes several years. Merely by astute drafting or imaginative skills of the draftsman of the application for leave to defend, the leave to defend cannot be granted. It is for this reason that the Supreme Court has in **Anil Bajaj Vs. Vinod Ahuja** (2014) 15 SCC 610 held that if requirement pleaded by the landlord is *prima facie* found to be genuine, leave to defend cannot be granted as after all the landlord is the owner of the property and is entitled to use the property for his own purposes. In **Ragavendra Kumar Vs. Firm Prem Machinery & Co.** (2000) 1 SCC 679, **Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal** and **Anil Bajaj** supra it has further been held that as long as the intent to use the property for self purposes is found, it matters not that other premises are available to the landlord and the landlord is also carrying on business therefrom.

22. In the present case, the conduct of the petitioner / tenant right from the beginning and as revealed now has been false and no credence can be lent thereto.

23. It is not as if Rent Agreement is entered into only for a premises, vacant possession whereof is with the landlord. A Rent Agreement entered into may not materialise, also in a situation where the same was to materialise on an old tenant surrendering possession and which does not materialise.

24. The counsel for the petitioner / tenant has also contended that other shops in the property are available but forgetting that the petitioner / tenant himself in the application for leave to defend has pleaded that those are all let out and the respondent is earning rent therefrom. Once they are expressly pleaded to be let out, the question of their availability to the landlord does not arise.

25. For all the aforesaid reasons, it cannot be said that the impugned order of the Additional Rent Controller refusing leave to defend to the petitioner / tenant and passing an order of eviction against the petitioner / tenant is bad in law within the meaning of Section 25B(8) of the Act which as interpreted in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 and *Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh* (2014) 9 SCC 78 is confined only to see whether it is in accordance with law.

26. Resultantly, the petition is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 24, 2017

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