

\$~58.

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

+ CM(M) No.1040/2017.

SATPAL SINGH

..... Petitioner

Through: Mr. A.C. Bhasin and Mr. Amit
Bhasin, Advs.

versus

MANJU & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.09.2017**

CM No.34260/2017 (for exemption).

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

CM(M) No.1040/2017.

3. This petition under Article 227 of the Constitution of India impugns the order (dated 24th August, 2017 in RCT No.30197/2016 of the Court of Rent Control Tribunal, Headquarters, Tis Hazari Courts, Delhi) of dismissal of appeal under Section 38 of the Delhi Rent Control Act, 1958 preferred by the petitioner against the order (dated 30th September, 2014 in E-591/14/08 of the Court of Additional Rent Controller-02 (North) District, Tis Hazari Courts, Delhi) of allowing the petition, filed by the petitioner for eviction of the respondents, under Section 14(1)(a),(c),(e) and (j) of the Act, only under Section 14(1)(a) and dismissing the petition for eviction insofar as under Section 14(1)(c),(e) and (j) of the Act.

4. I have at the outset, only informed the counsel for the petitioner / landlord that this petition under Article 227 of Constitution of India against

CM(M) No.1040/2017

page 1 of 4

a concurrent finding of facts by the of Additional Rent Controller and Rent Control Tribunal, of the petitioner / landlord having not substantiated the grounds of eviction under Section 14(1)(c),(e) and (j), has to be considered within the confines of Article 227 of the Constitution of India and by not converting the jurisdiction under Article 227 of the Constitution of India into that under Section 39 of the Delhi Rent Control Act, 1958 providing for second appeal and which provision has vide the amendment w.e.f. 1.12.1988 of the Delhi Rent Control Act been deleted.

5. The ground of eviction under Section 14(1)(c) i.e. of misuse, was on account of the respondent no.1 having used the premises let out for residential purpose and in which the respondent no.1 is admittedly residing, also for the purposes of making 'mangori' including by employing some other girls therefor and by selling the said 'mangori' therefrom.

6. The business of making 'mangori' is a household business and if the tenant, while continuing to reside in the premises, makes 'mangori' therefrom, the same would not amount to misuse and it cannot be said that the order of the Additional Rent Controller and / or Rent Control Tribunal suffers from any perversity on account of dismissal of the petition for eviction under Section 14(1)(c).

7. The counsel for the petitioner / landlord has fairly not even urged any argument with respect to the dismissal of the petition for eviction insofar as on the ground under Section 14(1)(j) of the Rent Act.

8. With respect to the ground of eviction under Section 14(1)(e), nothing can be understood from the order of the Rent Control Tribunal but a perusal of the order of the Additional Rent Controller shows the petitioner / landlord

to have sought eviction of the respondents / tenants from the premises at Shradha Nand Market, Lahori Gate, Delhi – 110 006 on the ground of the son and daughter-in-law of the petitioner/landlord residing with the petitioner / landlord in a 350 sq. yds. house in Gujranwala Town, Delhi – 110 009 wanting to live separately. The learned Additional Rent Controller reasoned that in the course of evidence it was admitted that the son of the petitioner/landlord was not dependent on the petitioner / landlord and was doing his own independent business and assessed to income tax and it was also in evidence that the son and daughter-in-law are educated and leading their lives happily and there is no Police complaint or other legal proceeding between the petitioner / landlord and his wife on the one hand and the son and daughter-in-law on the other hand. It was thus held that the petitioner / landlord had failed to prove his *bona fide* need of the premises in the tenancy of respondents for use as residence of his son / daughter-in-law.

9. The counsel for the petitioner / landlord has contended that the petitioner / landlord deposed about the strained relationship with his son and daughter-in-law.

10. Though it is not in the confines of Article 227 to re-appreciate evidence but I have perused the testimony of the petitioner / landlord and the other witnesses and do not find any perversity in the conclusion reached, of the petitioner / landlord having failed to prove any *bona fide* requirement of the tenancy premises situated in a crowded old Delhi area when the petitioner / landlord along with his son and daughter-in-law is residing in posh large house of 350 sq. yds.

11. The counsel for the petitioner / landlord has also argued that the defence of the respondents was struck off on account of non-filing of the written statement within the prescribed time.

12. Merely because of the said fact it cannot be said that the Additional Rent Controller or Rent Control Tribunal erred in being not satisfied on the basis of eviction led, of a ground of eviction under Section 14(1)(c),(e) and (j) to have been not made out.

13. The counsel for the petitioner / landlord has referred to *Shukla Malhotra Vs. Dee Pee Kagajudyog Pvt. Ltd.* 94 (2001) DLT 724 and to *R.K. Surekha Vs. J.P. Jain & Sons (HUF)* 186 (2012) DLT 761 on the scope of cross-examination after striking off of the defence but with which we are not concerned at this stage. The counsel for the petitioner / landlord has also referred to *Sushila Bhatia Vs. Gurbux Singh Randhir* 1990 (19) DRJ 80 where the claim of the landlady for eviction of tenant to live separately from her married son on account of differences with the daughter-in-law was upheld. In the present case, the petitioner / landlord has filed the petition pleading requirement for residence of his son and daughter-in-law with whom the petitioner/landlord has been residing till now. There is a huge difference in the two situations and the said judgment also has no applicability.

14. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 18, 2017/‘pp’..

CM(M) No.1040/2017

page 4 of 4