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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. No.441/2017 & CM No.34830/2017 (for stay).
MOHD HANNAN & ANR Petitioners
Through: Mr. Ramesh Kumar, Adv.

versus

ABDUL BASIT Respondent

Through: None.

AND

RC.REV. No.444/2017 & CM No.34872/2017 (for stay).
MOHD. SUBHAN Petitioner
Through: Mr. Ramesh Kumar, Adv.

versus

ABDUL WAHAB Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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22.09.2017

CM No.34831/2017 (for exemption) in RC.REV. No.441/2017 and CM No.34873/2017 (for exemption) in RC.REV. No.444/2017.

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

RC.REV. No.441/2017 & CM No.34830/2017 (for stay) and RC.REV. No.444/2017 & CM No.34872/2017 (for stay).

3. These Rent Control Revision Petitions, both under Section 25B(8) of the Delhi Rent Control Act, 1858, impugn the orders (both dated 6th April, 2017 in E-82/17 and E-83/17 respectively and both of Pilot Court (Central District), Tis Hazari Courts, Delhi) dismissing the application by the petitioner in each case for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent in each case and

consequent order of eviction of the petitioner from shop. No.976 and shop no.975 respectively on the ground floor, Matia Mahal, Jama Masjid, Delhi.

4. The counsel for the petitioners has been heard.

5. The petitions are taken up together since the counsel for the petitioner in both petitions has argued the petitions as one and since the respondent in the two petitions though different are brothers and the facts in both the cases are the same. The leave to defend application also in both petitions for eviction have been drafted by the same Advocate and are also identical.

6. It is not in dispute that the property, in shops wherein the two petitioner/s are tenants, belonged to the mother of the respondent in each case and who has died. According to the petitioners / tenants also, the respondent in each case are co-owners though there is some difference in the pleas with respect to the allocation of the properties.

7. On the ground floor of the property, besides the two shops in possession / tenancy of the petitioners / tenants, there is another shop in the tenancy of another tenant and with respect whereto another brother of the two respondents filed a petition for eviction and in which leave to defend is informed to have been granted on the plea of the mother of the respondents having agreed to sell that shop to the tenant therein.

8. It is also not in dispute that on the floors above the said shops in the property, the mother of the respondents was carrying on business of a Guest House.

9. While according to the respondents, their mother during her lifetime only gifted the said upper floors and the business being carried on therein to the three sisters of the respondents, according to the petitioners / tenants, the

said business of Guest House is being carried on by the respondents and it is the sisters who have been given the shops in the tenancy of the petitioners / tenants and the third shop aforesaid. However on enquiry, whether the sisters have initiated any proceedings against the petitioners / tenants or the tenant in the third shop, the answer is in the negative. Thus it is the admitted position that after the demise of the mother, it is the respondents only who are claiming to be owner / landlord of the shops in the tenancy of the petitioners / tenants therein.

10. That brings me to the aspect of requirement and alternate accommodation.

11. The respondent, in the petitions for eviction, pleaded requirement of the shops to set up himself/ his son in business and have pleaded that they have no other alternate accommodation.

12. The petitioners / tenants in their leave to defend listed as many as 16 businesses being carried on by the respondents from different premises and which were denied by the respondents in their reply to the application for leave to defend.

13. I have enquired from the counsel for the petitioners / tenants, whether the petitioners / tenants placed any material before the Court to substantiate the said businesses claimed to be of the respondents or the right to the accommodation fromwhere the said businesses were averred to being carried on.

14. The counsel for the petitioners / tenants states that the petitioners placed some photographs and visiting cards before the Rent Controller and though the petitioners / tenants have not filed copies of the same with these

petitions, but during the course of hearing has handed over the same.

15. From the said photographs, nothing can be deciphered and the said photographs do not show that the businesses shown therein are of the respondents or that the respondents have any right to the premises from where the said businesses are being carried on. One of the businesses is stated to be carried on from World Trade Centre, Barakhamba Road, New Delhi qua which I may, from knowledge from other litigations, state that the land underneath the same was granted on license and the licensee has granted further license and there is no document of title in favour of anyone whatsoever.

16. Qua the respondent in RC. Rev. No.444/2017, who pleaded requirement for his two sons who had come of age, the petitioner / tenant in leave to defend application has not stated as to what the said sons are doing or from where.

17. In judgment dated 24th July, 2017 in RC Rev. No.112/2016 titled ***Ram Saroop Vs. Viney Kumar Mahajan*** and in judgment dated 2nd August, 2017 in RC Rev. No.352/2017 titled ***Lalta Prasad Gupta Vs. Sita Ram***, I have held that leave to defend application has to be treated differently from a written statement and on the basis of simple denial of averments in the petition for eviction or by merely making vague averments, leave to defend cannot be obtained and that if the same were to be permitted there would be hardly any case where leave to defend would be refused inasmuch as the Advocates with their skilful drafting would be able to take pleas in the application for leave to defend irrespective of whether there is any merit therein or not. Section 25(B)5 of the Delhi Rent Control Act requires the

tenant to, in the application for leave to defend, disclose facts as would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Rent Act. If the facts disclosed, even though disputed by landlord, even if believed, would not disentitle the landlord from obtaining an order of eviction under Section 14(1)(e), then also no leave to defend has to be granted. Only if the facts disclosed in the application for leave to defend are such which though are disputed by the landlord but on trial if proved would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act, can leave to defend be granted. When the tenant does not produce anything at all before the Court on the basis whereof there is any chance of the tenant proving what he has stated, the only inference is that the facts disclosed are not capable of being proved and / or not capable of disentitling the landlord from obtaining an order of eviction under Section 14(1)(e) of the Rent Act.

18. Otherwise also I find that the learned Additional Rent Controller in the impugned order has given cogent reasons for concluding that the present was not a case for grant of leave to defend and there is no ground to interfere with the said findings in exercise of jurisdiction under Section 25B(8) of the Act within the parameters of *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 and *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh* (2014) 9 SCC 78.

There is thus no merit in the petitions.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 22, 2017

‘pp’.. RC.REV. No.441/2017 & RC.REV. No.444/2017

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