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

+ RC.REV. 489/2017 and CM No.38927/2017 (for stay).

RAMA BAGGA & ANR

..... Petitioners

Through: Mr. Rama Shanker and Mr. Saurabh,
Advts.

versus

INDRAWATI

..... Respondent

Through: Mr. Babu Lal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **30.10.2017**

CM No.38928/2017 (for exemption).

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

RC.REV. 489/2017 and CM No.38927/2017 (for stay).

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 5th July, 2017 in RC ARC No.6468/16 of the Court of Additional Rent Controller (South), Saket Court Complex, New Delhi) of dismissal of the application of the petitioners / tenants for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent / landlady and the consequent order of eviction of the petitioners / tenants from shop no.94/A-2, Adhchini, Sri Aurobindo Marg, New Delhi – 110 017.
4. The counsel for the respondent / landlady appears on advance notice.
5. The counsels have been heard and the copies of Trial Court record filed along with this petition perused.

6. Since the counsel for the petitioners / tenants has not controverted ownership of the respondent / landlady and existence of relationship of landlord and tenant, the discussion hereafter will not refer thereto.

7. The respondent / landlady instituted the petition for eviction from which this petition arises, pleading (i) that the shop aforesaid was let out to the husband and father respectively of the petitioners / tenants in the year 1984-85 and the petitioners / tenants are paying rent of Rs.825/- per month therefor; (ii) that the shop in the tenancy of the petitioners / tenants along with adjacent shop no.94/A-1 and the hall situated on the first floor above the same are in the ownership of the respondent / landlady; (iii) that the respondent / landlady is residing in property no.23, Adhchini, Sri Aurobindo Marg, New Delhi along with her husband, two married sons with their wives and children; (iv) that two shops in the ground floor of property no.23, Adhchini, are in possession of old tenants; (v) that in the shop no.94/A-1 adjacent to shop in tenancy of petitioners / tenants one of the sons of the respondent / landlady namely Kapil Dev is running cable service business in the name and style of JMD Cables; (vi) the hall above the two shops is being used by the husband of the respondent / landlady, who is an Advocate, as his law office; (vii) that Mohit Kumar, younger son of the respondent / landlady is unemployed and the respondent / landlady wants to settle him in his life and to make him financially independent; and, (viii) that the shop in the tenancy of the petitioners / tenants is required, for the younger son of the respondent / landlady to open a fast food shop and the respondent / landlady does not have any other alternative suitable premises.

8. The petitioners / tenants sought leave to defend pleading (i) that the respondent / landlady has no *bona fide* requirement for the premises in the tenancy of the petitioners / tenants; (ii) that the husband of the respondent / landlady has been working as an office boy in the chambers of several Advocates in the Tis Hazari District Courts and himself has no practice of law and is not an Advocate; (iii) that the adjacent shop no.94-A/1, Adhchini, Sri Aurobindo Marg, New Delhi is lying vacant; (iv) that the elder son of the respondent / landlady namely Kapil Dev, an erstwhile bouncer, is happily unemployed and dependent upon the rental income of the respondent / landlady; (v) that the younger son of the respondent / landlady is also unemployed and thriving on the rental income of the respondent / landlady and also has no inclination to work; (vi) that the respondent / landlady had in the year 2015 got the adjoining shop no.94/A-1 Adhchini, Sri Aurobindo Marg, New Delhi vacated from the tenant in possession thereof by paying Rs.25,00,000/- to the said tenant; (vii) that however after getting possession of the said shop, the same is lying vacant; (viii) that the requirement if any of the respondent / landlady for opening fast food shop for her younger son can be fulfilled from the adjoining shop no.94/A-1 Adhchini, Sri Aurobindo Marg, New Delhi which is of same size; and, (ix) that the two shops in the property no.23, Adhchini, Sri Aurobindo Marg, New Delhi can also satisfy the requirement if any of the respondent / landlady.

9. Significantly, the petitioners / tenants did not dispute or controvert that the two shops in property no.23 Adhchini, Sri Aurobindo Marg, New Delhi are in possession of old tenants.

10. The contention of the counsel for the petitioners / tenants before this Court is twofold. Firstly, of the availability of adjoining shop no.94/A-1 Adhchini, Sri Aurobindo Marg, New Delhi and secondly, of availability of yet another accommodation at 105 Adhchini, Sri Aurobindo Marg, New Delhi to the respondent / landlady.

11. Again, significantly the property no.105, Adhchini, Sri Aurobindo Marg, New Delhi was not disclosed by the petitioners / tenants in their leave to defend application and though not disclosed by the respondent / landlady in the petition for eviction has been disclosed by the respondent / landlady in the reply filed to the application for leave to defend. With respect to the said property, the respondent / landlady has pleaded that the same is constructed over land *ad measuring* 25 to 27 sq. yds. only and comprises of five single rooms which are let out on single tenement basis for residential purposes and the said property is residential in nature. Needless to state that the aforesaid disclosure of property no.105, Adhchini, Sri Aurobindo Marg, New Delhi being of the respondent / landlady herself and not of the petitioners / tenants, what the respondent / landlady herself has said with respect thereto has to be accepted and the same cannot be a ground for grant of leave to defend to the petitioners / tenants and which leave to defend as per Section 25B(5) is to be granted on the basis of disclosures by the tenant in the leave to defend application, of facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. Rather the said self declaration by the respondent / landlady in the reply to the leave to defend application shows the *bona fides* of the respondent / landlady.

12. As far as the first argument of the counsel for the petitioners / tenants is concerned, the counsel for the petitioners / tenants states that a triable issue arises as to whether the elder son of the respondent / landlady namely Kapil Dev is carrying on any business from shop no.94A/1, Adhchini, Sri Aurobindo Marg, New Delhi. Attention is drawn to page 54 of the paper book being the Registration Certificate dated 6th / 9th September, 2016 issued by senior Postmaster, Lodi Road, New Delhi – 110 003 of registration of JMD Cable TV of Kapil Sejwal as a Cable TV operator from 94/2, Adhchini, Sri Aurobindo Marg, New Delhi. It is argued that the said certificate was obtained just two months before the filing of the petition for eviction and no documents of any operation as Cable TV operator have been filed by the respondent / landlady.

13. The petitioners / tenants have pleaded possession of the said shop no.94/A1, Adhchini, Sri Aurobindo Marg, New Delhi having been obtained by the respondent / landlady in the year 2015, without specifying the month, and by payment of huge compensation. Ordinarily, an owner / landlord would not pay such a huge compensation to the tenant to vacate the shop and thereafter keep the shop vacant. The registration obtained in September, 2016, within less than a year's time when the respondent / landlady obtained possession of the said shop, cannot be said to be only for the purposes of filing the petition for eviction. Supreme Court in ***Faruk Ilahi Tamboli Vs. B.S. Shankarrao Kokate*** (2016) 15 SCC 431 has similarly drawn inference to the effect that when the owner / landlord purchases a tenanted property fetching meagre rent, the said purchase is for the personal requirement of the owner / landlord and not as an investment.

14. Supreme Court in (i) *Mattulal Vs. Radhe Lal* (1974) 2 SCC 365; (ii) *Raghunath G. Panhale Vs. Chaganlal Sundarji* (1999) 8 SCC 1; and, (iii) *Raj Kumar Khaitan Vs. Bibi Zubaida* (1997) 11 SCC 411 has also held that commencing a business takes time and merely because the landlord has not taken any preparatory steps of the same cannot cause a doubt as to the genuineness of the requirement of the landlord. It has been held that considering the time which litigations in India take and uncertainty of the outcome thereof, the landlord cannot be expected to make all preparations for carrying on business before filing a petition for eviction. It was further held that merely because intent to commence one business was pleaded and subsequently the landlord was intending to carry on another business, cannot be a factum for doubting the requirement.

15. It is not in dispute that the respondent / landlady has two married sons and both according to the petitioners / tenants are unemployed. The respondent / landlady for maintaining harmony in her family also is required to treat both her sons equally and if there are two shops, to give one shop each to her two sons for them to carry on their business therefrom.

16. Thus, from none of the pleas in the leave to defend application, it can be said that any doubt is created as to the genuineness of the requirement pleaded of the respondent. It is only when there is such a doubt, that leave to defend is to be granted; else the Court has to presume that the requirement pleaded by the owner / landlord is genuine.

17. Moreover, Section 19(2) of the Rent Act entitles the tenant to seek re-possession of the premises if the landlord, after evicting the tenant on the ground of self requirement, does not occupy the premises.

18. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 30, 2017'

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