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

+ RC.REV. 476/2017

INDERJEET DUGAL

..... Petitioner

Through: Mr. Arun Khatri, Adv.

Versus

GURDEEP SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **25.10.2017**

Caveat No.915/2017

1. None appears for the caveator/respondent.
2. The caveat stands discharged.

CM No.37981/2017 (for exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

RC.REV. 476/2017 & CM No.37982/2017 (for stay)

5. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 19th August, 2017 in E-272/2017, Unique ID No.313/2017 of the Court of Additional Rent Controller (ARC), Central District, Tis Hazari Courts, Delhi] 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 and the consequent order of eviction of the petitioner from Garage No.70, Ground Floor, situated in premises No.70, Motor Market, Gulabi Bagh, near Sanjay Nagar, Delhi-110007.

6. The counsel for the petitioner has been heard and the record perused.

7. The respondent filed the petition for eviction from which the petition arises, pleading i) that the petitioner is an old tenant in the said premises and was paying rent of Rs.2,000/- per month therefor to the respondent; ii) that the respondent and his two grown up sons were possessed of only this commercial property and have no other house, residential or commercial in Delhi and are all residing in House No.63, Gali No.3, behind Gurudwara, Shibban Pura, Ghaziabad (UP); iii) that the subject property was the only commercial property in the name of the respondent and the respondent had no other commercial property in Delhi either in his own name or in the name of his two sons; iv) that the respondent required the premises in the tenancy of the petitioner for running business of automobile works for himself and his second son Jitender Pal Singh who is completely dependent upon the respondent for the purpose of his non-residential accommodation for running his business; v) that the respondent became the owner of the said property vide Registered Gift Deed dated 12th February, 2009 and the petitioner, who was earlier paying rent of Rs.1,500/- per month to the previous owners with effect from the year 2010 started paying rent of Rs.2,000/- per month to the respondent; vi) that the second son of the respondent viz. Jitender Pal Singh is running his business in a rented accommodation bearing No.76, Motor Market, Ground Floor, Gulabi Bagh, Delhi under the name and style of “Advance Machine”; the said premises belong to one Ms. Renu Khera who has let out the same to Jitender Pal Singh at a rent of Rs.4,100/- per month; vii) that the respondent or any of his family members have no other accommodation available to them in Delhi; viii) that the elder son of the respondent viz. Naginder Singh is running his business / workshop from another portion of the subject property in the name and style of “M/s Guru

Nanak Industries”; and, ix) that the second son of the respondent viz. Jitender Pal Singh is solely dependent upon the respondent for the purposes of non-residential accommodation and the respondent requires the premises in the tenancy of the petitioner to start his own independent business with the help of his second son Jitender Pal Singh.

8. The need to reproduce here the contents of the application for leave to defend is not felt as the counsel for the petitioner has raised only one argument.

9. Attention is drawn to pages no.240 to 244 of the paper book which are photocopies of ledger of Ghaziabad Nagar Nigam pertaining to properties Nos.CC63737, CC53360, KN7650, CC36704 and CC10897 in the name of Naginder Pal Singh, Gurdip Nagend Pal & Jitender Pal, Jitender Pal Singh, Baljeet Kaur S&o Gurdeep Singh, M&s G.P. Have Ele. (Pro. Gurdeep Singh) respectively and has contended that the respondent and his sons are owners of the aforesaid properties at Ghaziabad and the said documents, earlier at the time of filing of the application for leave to defend or at the time of pendency of the petition for eviction before the ARC were not available to the petitioner and the petitioner has learnt of the same now. It is argued that the respondent concealed ownership of himself and of his other family members of the aforesaid properties at Ghaziabad and the petitioner is entitled to leave to defend the petition for eviction on the said plea.

10. There is no merit in the argument aforesaid of the counsel for the petitioner/tenant.

11. The respondent/landlord, in the petition for eviction, as the aforesaid narrative of its contents would show, categorically stated that he had no other

premises at Delhi. For seeking eviction of a tenant from a premises, particularly commercial, in Delhi, the alternate accommodation which can disentitle the landlord from an order of eviction under Section 14(1)(e) of the Act has to be at Delhi and suitable for the purpose for which the requirement is pleaded. Admittedly, the alternate accommodation disclosed for the first time before this Court is not at Delhi and is situated at Ghaziabad. Such accommodation at Ghaziabad is not alternative suitable accommodation within the meaning of Section 14(1)(e) of the Act.

12. Supreme Court, in *Sarla Ahuja Vs. United India Insurance Company Ltd.* (1998) 8 SCC 119 held that to deprive a landlord of the benefit of the ground mentioned in Section 14(1)(e) on account of availability of alternative accommodation, it is not enough that such alternative accommodation is in a far different State; such accommodation must be available in the same city or town or at least within reasonable proximity thereof if it is outside the limits of the city; the said limb of Clause (e) cannot be interpreted as to mean that if the landlord has another house anywhere in the world, he cannot seek recovery of possession of his building under Clause (e). Again, in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 it was held that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction; convenience and safety of the landlord and his family members would be relevant factors; while considering the totality of the circumstances, the Court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and background wherefrom they come. This Court also in *Raj Kumar Sethi Vs.*

Sunil Kumar Verma 2014 SCC OnLine 3617, SLP(C) No.22802/2014 preferred whereagainst was dismissed *in limine* on 8th September, 2014, held that the property at Faridabad which is outside Delhi, cannot be alternative suitable accommodation. Similarly, in ***Smt. Simran Vs. Shri Ramanand Gupta*** 2014 SCC OnLine Del 3777, the property at Ghaziabad was held to not take away the right of a landlord to evict a tenant from a property in Delhi. It was reiterated that the alternative premises have to be necessarily situated at Delhi and the property at Ghaziabad was irrelevant.

13. I may in this regard also notice that it is the plea of the respondent in the petition for eviction and which has not been controverted that the elder son of the respondent is already carrying on business from a portion of the subject premises. The same is indicative of the fact that it is not as if the respondent and his sons and their businesses are confined to Ghaziabad only, for a doubt to arise that the respondent and his family members have no intent to carry on any business at Delhi. Once one of the sons of the respondent has been permitted by the respondent to carry on business from the commercial premises of the respondent at Delhi and is carrying on business therefrom, the requirement pleaded of the respondent of the remaining portion of the said commercial premises at Delhi, to allow his younger son also to set up business therefrom, cannot be said to be not genuine and which is the only test as per ***Precision Steel & Engineering Works Vs. Prema Deva Niranjana Deva Tayal*** (1982) 3 SCC 270, ***Charan Dass Duggal Vs. Brahma Nand*** (1983) 1 SCC 301 and ***Anil Bajaj Vs. Vinod Ahuja*** (2014) 15 SCC 610 to be applied for consideration of the application for leave to defend.

14. Not only so, Supreme Court in *Prithipal Singh Vs. Satpal Singh (dead) through its LRs.* (2010) 2 SCC 15 has categorically held that it is only the pleas taken in the application for leave to defend preferred within the time prescribed therefor under the summary procedure in Section 25B of the Act, which have to be considered and the petitioner admittedly did not take the plea which is sought to be urged before this Court either in the leave to defend application or at any time before the ARC.

15. For the said reason also, the said plea cannot be considered and on the basis thereof it cannot be said that the order of eviction impugned in this petition is not in accordance with law within the meaning of Section 25B(8) of the Act.

16. I may in this context also notice that the volume of trade, commerce and business, as is possible in the city of Delhi and particularly from the Motor Market where the premises in the tenancy of the petitioner are situated, cannot be carried on from Ghaziabad. From the documents to which attention is drawn, the properties mentioned therein, even if in possession and control of the respondent and his family members, are found to be situated in Raj Nagar Extension, Mukand Nagar, Chiranjeev Vihar, Sector-4, Harvansh Nagar, Sibbanpura, Ghaziabad and which can by no stretch of imagination be said to be equivalent to the Motor Market the volumes of trade, commerce and business wherein are much more than the volumes of trade and business in the said localities. For this reason also, it cannot be said that the premises at Ghaziabad are an alternate suitable accommodation within the meaning of Section 14(1)(e) of the Act.

17. The order of the ARC impugned in this petition is otherwise found to be in accordance with law.

18. The petition thus fails and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 25, 2017

‘gsr/bs’