

\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 467/2017**
ANAND KUMAR GUPTA Petitioner
Through: Mr. Sanjay Goswami, Advocate
Versus
INDERJIT SINGH Respondent
Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **23.10.2017**

CM No.37815/2017 (for exemption)

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

RC.REV. 467/2017 & CM No.37814/2017 (for stay)

3. This Rent Control Petition under Section 25-B (8) of the Delhi Rent Control Act, 1958 impugns the order (dated 2nd May, 2017 in New Ev.No. 5188/16 of the Court of ARC-(SE), Saket Court, New Delhi) granting to the petitioner/tenant leave to defend the petition for eviction under Section 14 (1)(e) of the Act, filed by the respondent, restricted to the issues noted in the impugned order.
4. The counsel for the petitioner / tenant has argued that two of the pleas taken in the application for leave to defend have not been considered in the impugned order.
5. Firstly, it is contended that it was the plea of the petitioner/tenant that the petition for eviction was with respect to the only part of the premises in the tenancy of the petitioner. It is stated that the petition for eviction was filed only with respect to Shop no.3 in property no. 109, Samman Bazar, Bhogal,

New Delhi as shown in red in the site plan filed with the petition for eviction but the petitioner is a tenant, besides with respect to said shop, also with respect to a bathroom in property.

6. Attention in this regard is drawn to the rent agreement dated 28th November, 1986 between the parties i.e. between the mother of the respondent /landlord on the one hand and the petitioner and his father on the other hand and which describes the premises being let out thereon as “ground floor Shop No.3 having an area about 300 sq. ft. facing main road together with bathroom facility at back situated in building No.109 (khasra no. 662) Samman Bazar, Bhogal, New Delhi.”

7. The use of the expression “.....*together with bathroom facility at back...*” indicates that the bathroom is not in the exclusive control and possession and the tenancy of the petitioner, but the petitioner has only been conferred the facility of using the same.

8. The counsel for the petitioner also, on enquiry, confirms that other occupants of the property are also using the said bathroom. However, the counsel for the petitioner now states that he is not aware whether others are using the bathroom or not. On further inquiry, whether the petitioner has in his leave to defend application stated that the bathroom is in his exclusive lock and key, the answer is again in the negative.

9. The same does not amount to a ground on which leave to defend is to be granted to the petitioner. It has even otherwise been held in ***Narain Devi Vs. Vinod Kumar*** (1979) 16 DLT 258 that omission to mention details of accommodation is not fatal. Moreover, if facility appurtenant to tenancy premises does not become tenancy premises. The facility of use of bathroom,

detached from shop in tenancy of petitioner, cannot be independently used. Reference in this regard can also be made to ***V.S. Sachdeva Vs. M.L. Grover*** (1997) 67 DLT 737.

10. Thus, notwithstanding the non-consideration if any by the learned Additional Rent Controller of the said plea in the application for leave to defend, need to issue notice of the petition on the said ground is not felt.

11. The other plea which is stated to have been not considered is, that the respondent is not an exclusive owner of the property. It is stated that the respondent claims ownership under a Will of his mother but in an earlier decree between the mother and the respondent and his brothers, the respondent and his brothers were also held to have a right in the property.

12. The counsel is however unable to controvert that the respondent is a co-owner of the property. Once that is so, as per the settled law in ***Kanta Goel Vs. B.P. Pathak*** (1997) 2 SCC 814, ***Pal singh Vs. Sunder Singh*** (1989) 1 SCC 444, ***Dhannalal Vs. Kalawatibai*** (2002) 6 SCC 16 and ***India Umbrella Manufacturing Co. Vs. Bhagabandu Agarwalla*** (2004) 3 SCC 178, the petitioner is not entitle to leave to defend on the said ground either.

13. There is no merit in this petition. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 23, 2017/P..

RC.REV. 467/2017

Page 3 of 3