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

+ **RC.REV. 483/2017**

HITESH KUMAR AGGARWAL Petitioner

Through: **Mr. R.K. Singh, Advocate**

versus

KUSUM LATA & ORS Respondents

Through: **Mr. Shivcharan Garg, Mr. Imran
Khan, Advocates**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

07.11.2017

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Cav. No.925/2016

1. The counsel for the caveator appears.
2. The caveat stands discharged.

RC.REV. No.483/2017 & CM No.38647/2017 (for stay)

3. This Rent Control Revision Petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 24th April, 2017 in Eviction Petition No.E-116/2017 of the Pilot Court (Central District), Tis Hazari Courts, Delhi] of dismissal of the application of the petitioner for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent and the consequent order of eviction of the petitioner from one shop on the ground floor of property No. 58, Kucha Bela Mal, Naya Bans, Delhi – 110006.
4. The counsel for the petitioner has been heard and the copies of the trial court record filed along with this petition perused.

5. The counsel for the petitioner on enquiry states that the petitioner is not challenging that the respondents are the owners of the shop in the tenancy of the petitioner and that the relationship of landlord and tenant exists between the parties. Thus, the discussion hereinafter is confined to the aspect of bona fide requirement and availability of alternate suitable accommodation.

6. The respondents instituted the petition for eviction from which this petition arises pleading i) that the ground floor of the property comprises *inter alia* of two shops and of which one shop had been sold to one Anu Sethi long back and the other shop is in occupation of the petitioner; ii) that from the remaining portion of the ground floor, the respondent No.3 herein Vipin Kumar Gupta is carrying on business of supplying small bottles of cold drink of Xalta and Jyanti company etc. to the retailers in the nearby area and the said portion is also used to store and supply vegetables in early morning for supply in the nearby localities; iii) that on the upper floor of the property, the respondents are residing; iv) that the respondent No.1 is a widow and has no other source of income except the monthly widow pension of Rs.1,500/-; v) that the respondent No.1 is only 53 years of age and to supplement her income, requires to carry on the business of kirana/grocery from the shop in the tenancy of the petitioner; vi) that the respondent No.2 being the daughter of the respondent no.1 is also dependent upon respondent No.1; vii) that the respondent No.2 can open either consumable / non-consumable or durable / non-durable or kirana / grocery products shop in the subject shop; and, viii) respondent No.2 has no other suitable commercial accommodation.

7. The counsel for the petitioner/tenant has fairly stated that though the petitioner in the leave to defend application took a plea of the respondents being not entitled to an order of eviction for the reason of sale of the other shop on the ground floor to Anu Sethi, but the respondents have placed on record documents to show sale of the said shop in the time of the predecessor in interest of the respondents.

8. The argument of the counsel for the petitioner/tenant however is that it was also the plea of the petitioner/tenant in the application for leave to defend that the respondents had allowed one room on the ground floor to be used by someone else for storing of vegetables. It is contended that leave to defend should have been granted on the said plea.

9. I may notice that the respondents in the petition for eviction itself stated that the respondent No.3 is carrying on business from the remaining portion of the ground floor, of sale of small bottles of cold drink of Xalta and Jyanti company and of supply of vegetables to the neighbouring vendors.

10. The petitioner, on the other hand, in the leave to defend application, save for stating that the respondents had so allowed use of one room on the ground floor for storage of vegetables, did not give the name or any other particulars of any person to whom any part of the ground floor may have been let out shortly prior to the filing of the petition for eviction.

11. I have in judgment dated 24th July, 2017 in RC.REV. No.112/2016 titled ***Ram Saroop Vs. Viney Kumar Mahajan*** held that the tenant, under the procedure prescribed under Section 25B of the Act, particularly in sub-section (5) thereof, is required to, in the application for leave to defend, disclose facts which would disentitle the landlord from obtaining an order of

eviction under Section 14(1)(e) of the Act. Such disclosure of facts was held to be materially different from a bare denial or even specific denial of the contents of the petition for eviction and which suffices for the purposes of a written statement. If it were to be held that a mere denial by the tenant of the requirement pleaded by the landlord would suffice for the purpose of Section 25-B of the Act, the same would nullify the legislative intent in providing for a summary procedure for a petition for eviction of the tenant on the ground of requirement of the premises for self use by the owner/landlord. Thus, a bald plea, of the landlord prior to the filing of petition for eviction, having let out any room, would not entitle the tenant to leave to defend particularly when the use described of the room is the same as the landlord has already in the petition for eviction pleaded the said space being put to use for by landlord himself.

12. The counsel for the petitioner/tenant has also argued that in fact the shop of the petitioner is situated in a very narrow gali and it is not suitable for carrying on any business.

13. The said argument is not available to the petitioner/tenant. Once the petitioner/tenant has himself taken the said premises on rent for commercial purposes, the tenant cannot be permitted to say that while he can carry on business from there, the landlord cannot. The proverb, what's sauce for the goose is sauce for the gander, is apt.

14. The counsel for the petitioner states that the petitioner is using the premises in his occupation for the purposes of godown.

15. Even if that be so, if goods can come into the premises and go out of the premises, I fail to see as to why the said premises cannot be used for the purpose of a shop.

16. I may also mention that the shop in the tenancy of the petitioner is the only large part, besides the part which has been sold to Anu Sethi, of the ground floor of the property. The remaining portion of the ground floor is found to be of very narrow width and comprising of small spaces.

17. Though the counsel for the petitioner also states that in fact the property, besides having opening on the side where the shop of the petitioner is, also has a opening on the other side and which is the main road, but there is no such plea in the application for leave to defend.

18. It is not in dispute that the entire property is situated on 67 sq.yds. of land only. The same is indicative of the accommodation therein, considering the size thereof, the members of family of respondents and the requirement of respondents, being not large enough to leave space for the respondents to accommodate the petitioner / tenant also therein.

19. No other argument has been urged.

20. In the circumstances, the order of the Additional Rent Controller impugned in this petition cannot be said to be not in accordance with law within the meaning of Section 25-B(8) of the Act.

21. There is no merit in the petition and the same is accordingly dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 07, 2017

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