

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

% **Date of decision: 20<sup>th</sup> November, 2017**

+ **RC.REV. 527/2017 & CM No. 41896/2017 (stay)**

**SARDAR KIRPAL SINGH** ..... **Petitioner**

Through: Mr. Deepak Tyagi, Advocate.

Versus

**CHAMAN LAL** ..... **Respondent**

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**CM No. 41897/2017 (Exemption)**

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

**RC.REV. 527/2017**

3. This Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 11<sup>th</sup> July, 2017 in RC/ARC No. 1181/16 of the Court of Rent Controller (East district), Karkardooma 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 filed by the respondent and the consequent order of eviction of the petitioner from the corner shop on the ground floor of property no. 3/58, Geeta Colony, Delhi-110031.

4. Counsel for the petitioner has been heard and the copies of the trial court record annexed to the petition have been perused.

5. Counsel for the petitioner states that it has not in dispute that the respondent is the owner of the shop in the tenancy of the petitioner and the relationship of landlord and tenant exists between the parties.

Thus the discussion hereafter will be on the aspects of bonafide requirement if any and availability of alternate suitable accommodation to the respondent.

6. The respondent/landlord instituted the petition for eviction from which this petition arises, pleading that i) the respondent/landlord is 76 years of age and on account of his old age and ill health and paucity of residential space bonafide requires the premises in the tenancy of the petitioner/tenant for his residential purposes; ii) that the respondent/landlord is suffering from cardiac problem and also from various old age ailments and on account of the same it has become difficult for the respondent/landlord to use the stairs for his daily purposes and requires space on the ground floor for his residential accommodation and the tenanted premises is the only available and suitable premises which can serve the residential requirements of the respondent/landlord; iii) that the property No.3/58, Geeta Colony is constructed over land admeasuring 50 sq. yards and comprises of four shops besides the shop in the tenancy of the petitioner/tenant on the ground floor and from one of which shops the younger son of the respondent/landlord namely Raj Kumar is running a confectionary business for the past more than 20 years and the income from which business is supporting his family comprising of himself, his wife, two daughters aged 18 years and 15 years; iv) that one of the shops on the ground floor was sold in the year 1993 and another shop was sold in the year 2013, to arrange for the funds for marriage of the daughters of the respondent/landlord and for construction of the two floors above the shop for growing need of the family, respectively; v) that the first

floor of the property comprises of two rooms, bathroom, kitchen which are being used for residential purposes of Raj Kumar, his wife and two daughters; vi) that the second floor of the property also comprises of two rooms, bathroom and kitchen which are being used for residential purposes of the elder son of the respondent//landlord, who resides there alongwith his wife and three children aged 23, 22 and 21 years; vii) that the respondent/landlord is a widower and resides from time to time with either of his sons on either of the two floors; viii) that there is paucity of accommodation for the entire family; and, ix) that the respondent/landlord otherwise also, on account of his old age and inability to climb stairs has requirement for independent accommodation.

7. The petitioner/tenant sought leave to defend pleading that a) it was not disputed that the property is constructed over land admeasuring 50 sq.yards but contending that the respondent/landlord has available to him an area of 6'6" X 15' on the ground floor which is twice in length of the tenanted shop and is in two parts and out of which the front portion was always used as a shop and the rear portion for residence; b) that the respondent/landlord had in 2013 also, filed a petition for eviction of the petitioner/tenant with respect to the subject property on the ground of his requirement and which petition for eviction was dismissed for the reason of the respondent/landlord in that petition for eviction having concealed the said portion in his possession; c) that the residential portion behind the shop aforesaid, earlier was being used by the respondent/landlord for his own residence but the respondent/landlord, in June, 2013 has removed the

wall between the shop and the residence; d) that had the respondent/landlord any requirement of ground floor for residential purpose, he would not have removed the said wall and continued to reside on the ground floor; d) that the first, second and third floors of the property consists of two rooms, kitchen and bathroom on each floor; e) that the family members of the respondent/landlord are using third floor for the residence; f) that the respondent/landlord is having good and sound health; g) that the younger son Raj Kumar of the respondent/landlord is not running a confectionary shop and the said shop is being run by the respondent/landlord himself and Raj Kumar is doing a private job; h) that the respondent/landlord is merely interested in enhancing the rent of the tenanted premises; and, i) that the shop in the tenancy of the petitioner/tenant is not habitable as a residence.

8. The respondent/landlord filed reply to the aforesaid application for leave to defend but at this stage it is not deemed necessary to refer to the contents of the same.

9. Counsel for the petitioner/tenant has commenced his arguments by stating that the shop in the tenancy of the petitioner/tenant admeasures 7'5" X 8'8" i.e. 64.28 sq. ft. in size and is not habitable as a residential room.

10. The family members of the respondent / landlord as disclosed in the petition for eviction have not been disputed in the application for leave to defend. The sale of two shops on the ground floor, in the year 1993 and 2013, is also not in dispute. The total area on which the property is constructed is admitted to be 50 square yards. I have

enquired from the counsel for the petitioner/tenant, how many habitable rooms can be there on each floor of a property constructed over 50 sq. yards.

11. Counsel for the petitioner/tenant states that there can be four rooms of 100 sq. feet each,

12. 50 sq. yds. equals 450 sq. ft. Out of said 450 sq. ft. on ground floor, two shops have already been sold. Some space is also taken by the entrance, stair hall and staircase going to the upper floor. In the remaining space is the shop in the tenancy of the petitioner / tenant and the shop from where, according to the respondent / landlord his son is carrying on business and according to petitioner / tenant the respondent / tenant himself is carrying on business.

13. Though this Court in ***Subhash Chander Marwah Vs. Jagjit Singh Sood*** (1988) 35 DLT 258 has held that according to Building Bye-Laws the minimum size of a habitable room for residential purposes is 100 sq. feet, but the respondent / landlord, being the owner of the property, cannot be denied use of lesser area for residence if, owing to small size of his property, has an area of less than 100 sq. ft. only available to him. The reference to minimum habitable area of 100 sq. ft. for residential purpose prescribed in Delhi Building Bye Laws was made in the judgments including in ***Subhash Chander Marawah*** supra to negate pleas of tenants of accommodation of less than 100 sq. ft. being alternative suitable accommodation for landlords.

14. As far as the plea, of the respondent / landlord having amalgamated the room / space behind the shop in the shop being run

by his son/himself is concerned, the site plan does not show any toilet on the ground floor. If the landlord is entitled to occupy the ground floor, he is also certainly entitled to build a toilet on the ground floor. Moreover, it is not as if the respondent / landlord can occupy no more than 100 sq. ft. The area of 100 sq. ft. prescribed is the minimum and not maximum area for habitable/residential accommodation. The respondent/landlord, as owner, is certainly entitled to make himself comfortable in his house. Also, the respondent/landlord, as owner is fully entitled to decide whether to use the room/space behind the shop for residence or for shop purpose.

15. It is not in dispute that the respondent/landlord is 76 years of age. The respondent/landlord, at this age, cannot certainly be called young. If he desires accommodation, let out as far back as in 1983, to avoid himself the inconvenience of climbing stairs to the upper floors, again, the tenant cannot say that the landlord should not do so. This Court in ***Om Prakash Vs. Dev Raj Kohli*** 1997 (42) DRJ 573 held, for a landlord 73-74 years of age, that old age itself is a disease and if landlord of such age says it is not possible for him to climb stairs, denial thereof by tenant does not raise a triable issue for leave to defend to be granted. To the same effect are ***Aero Traders Pvt. Ltd. Vs. Mohan Singh*** (2014) 207 DLT 202, ***Kuldeep Mahajan Vs. Krishna Uppal*** 97 (2002) DLT 619 and ***Dev Raj Bajaj Vs. R.K. Khanna*** (1996) 61 DLT 784.

16. It thus certainly cannot be said that the requirement of the respondent / landlord is not genuine and which is the only test to be applied at this stage.

17. The only other argument of counsel for the petitioner/tenant is, that the Additional Rent Controller has not considered the site plan filed by the petitioner / tenant along with the leave to defend application.

18. I have herein above discussed on the basis of the site plan of petitioner / tenant only and for this reason, in exercise of jurisdiction under Section 25B(8) the order cannot be set aside.

19. For the family of respondent / landlord, comprising of two married sons with children having ten adult members, the total accommodation available in the property is certainly insufficient.

20. Counsel for the petitioner / tenant has referred to *Uttam Chand Suri Vs. Ram Murti Gupta* 1980 (2) RCJ 410 and *Brij Mohan Vs. Sri Pal Jain* (1993) 49 DLT 543.

21. Supreme Court, in *Dina Nath Vs. Subhash Chand Saini* (2014) 11 SCC 20 and *Nidhi Vs. Ram Kripal Sharma* (2017) 5 SCC 640, has held that there is a shift in the interpretation of Rent Laws from that of the earlier times, with a bias in favour of the tenant and time has come to interpret the laws without any bias and to not deny the landlord, who is the owner of the property, the right to occupy his own property, for the sake of continuing which the old tenant therein. Thus, reference to judgments of yester years, is of no avail.

22. There is no merit in the petition.

23. Dismissed.

**RAJIV SAHAI ENDLAW, J.**

**NOVEMBER 20, 2017**

‘mw’..

**(Corrected & released on 5<sup>th</sup> January, 2018)**