

\$~12

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 19th April, 2018

+ RC.REV. 112/2013 & CM APPL.4911/2013

SURENDER KUMAR

..... Petitioner

Through: Mr. Sanjeet Singh, Advocate

versus

SATISH KUMAR BANSAL & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner concededly was inducted as a tenant in the premises described as a shop forming part of property bearing No. Municipal No. C-10/14, Krishna Nagar, Delhi-110051 as specifically shown in 'yellow' colour in the site plan which was filed with the case (Eviction Petition No.13/2012) instituted by the respondents on 01.02.2012 seeking his eviction on the ground of bonafide need under Section 14(1)(e) of the Delhi Rent Control Act, 1958. Having regard to the nature of the ground taken, the special procedure under Section 25B of Delhi Rent Control Act, 1958 was applied. In answer to the summons served on him, the petitioner filed an application for leave to contest. The said application came up before the Additional Rent Controller on 28.01.2013. By order passed on the said date, the application for leave to contest was dismissed and consequently an

eviction order was passed against the petitioner which is under challenge by the eviction petition at hand.

2. The prime contentions urged by the counsel for the petitioner are that the impugned order suffers from non-application of mind, the approach of the Additional Rent Controller being mechanical and further that some crucial pleas raised in the application for leave to contest have remained unaddressed.

3. Learned counsel for the petitioner has been heard at length and the records perused with his assistance. Having heard him, this Court finds no reason to interfere with the judgment of the additional rent controller. The reasons may be set out hereinafter.

4. It does appear that the trial court has indulged in copy and paste method in preparing the judgment which is not a very healthy approach. This may be illustrated by three facts; one, being reference to 'M/s. Susham Beauty Parlour', the name of the proprietary business of the petitioner in the array of parties which was corrected later, as per the submissions of the learned counsel for the petitioner, on this error being pointed out by him; the second the rate of rent being indicated as Rs.330/- per month which is against the pleadings of the eviction petition showing it to be Rs.750/- per month; and third, reference to a petition under Section 44 of the Delhi Rent Control Act, 1958, there being no pleadings to such effect.

5. The above noted errors do indicate the possibility that the additional rent controller may have used some template, bodily lifting

some of the paragraphs from some other judgment in a similar case. While this is not healthy, by itself it does not mean the order is to be set aside. It needs to be examined if the contentions of the petitioner which have been considered and rejected are conclusions that suffer from error or infirmity. Further it needs to be examined as to whether such contentions have remained unaddressed as would result in the conclusion being different from the one reached by the additional rent controller.

6. It is the submission of the petitioner that he had taken the plea that there was no relationship of landlord and tenant between the parties, he going to the extent of pleading that property had been earlier sold by the father of the respondent to Mr. Ashok Kumar Mehan who, in turn, had sold it to the petitioner, the petitioner having made the payment of Rs.5,00,000/- to his father which was treated as *pagdi* in June, 1990. The petitioner relies on the document captioned as Receipt-cum-Agreement dated 27.05.2010 (at Page 62-A) purportedly executed by one Mr. Ashok Kumar, son of Mr. M.L. Mehan, agreeing to sell the plots/houses to Mr. S.K. Chopra for a consideration of Rs.5,00,000/-. There is concededly no document available to substantiate the claim that Mr. Ashok Kumar had acquired the right, title of interest in the property which was the subject matter of any such transaction. In these circumstances, the plea of the petitioner to above effect was not only unfounded but wholly frivolous.

7. It is noted that the Additional Rent Controller has gone by, and correctly so, the admission of the petitioner in the affidavit filed with the application for leave to defend to the effect that the third respondent (who was party to the eviction petition with others) was the person who had been collecting rent from him. These assertions indicate the petitioner to have attorned in favour of one of the three parties who were seeking his eviction by a joint petition. The rule of estoppel under Section 116 of the Evidence Act thus would preclude him from questioning the title.

8. The other contention is that the respondent had alternative space available in the property in question. The petitioner admittedly did not file any site plan to demonstrate any other accommodation available within the property in question. In the course of the arguments, reference was made to the site plan filed by the respondents with the eviction petition. It indicates that the only space available on the ground floor portion, besides the suit premises (shops) which were in possession of the petitioner, is another similar premises (also a shop), in addition to the other spaces described as drawing room-cum-dining room, a room in addition to kitchen, toilet etc. Having regard to the fact that the prayer for eviction is to facilitate the first respondent, a retired government servant to set up his counseling business, the residential portion of the property cannot be treated as suitable alternative space available.

9. In the above facts and circumstances, the petition at hand is found to be devoid of substance. Thus, it is dismissed.

R.K.GAUBA, J.

APRIL 10, 2018

Rekha

