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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th January, 2018

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CM(M) 2736-2739/2005

M/S SHIV CHARAN DAS & SONS & ORS Petitioners

Through: Mr. Naveen Kumar Chaudhary,
Advocate

versus

DHARMINDER KUMAR DECD. THR.LRs Respondent

Through: Mr. Vivek Malik, Mr. Angad
Mehta and Mr. Dhawal Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners have instituted the eviction case (E-16/1992) against the respondents in respect of the premises described as bearing no.36, Katra Bariyan near Farash Khana, Lal Kuan, Delhi, the tenancy having been created concededly in 1960s at a rental which would render it a protected tenancy governed by the provisions of Delhi Rent Control Act, 1958, the prayer for eviction pressed being on the grounds of sub-letting; misuse for non-residential purposes; it not having been used for purposes of residence for which it had statedly been let out; it having been rendered unsafe and unfit for human habitation and so required bonafide for repairs; and, the tenant having acquired vacant possession of another residence, invoking clauses (b),

(c), (d), (f) and (h) of sub-Section (1) of Section 14 of Delhi Rent Control Act, 1958. The petition was resisted, *inter alia*, on the grounds that the purpose of letting was residential-cum-commercial, the allegations of sub-letting, acquisition of alternative residence, mis-user, non-user or dis-repair having been denied. After the trial in which both sides led evidence, the Additional Rent Controller passed the judgment dated 20.01.2001 holding that the petitioners had failed to prove their case. The petitioners challenged the said decision before Additional Rent Control Tribunal by appeal (RCA 183/2001) which was dismissed by judgment dated 14.07.2005.

2. The petition at hand was filed to bring a challenge to the judgments of the two said authorities under the Rent Control law.

3. It may be mentioned at this stage that the ground of sub-letting under Section 14(1)(b) of Delhi Rent Control Act has since been given up by the petitioners and, thus, the petition is to be considered from the perspective of the provisions contained in Section 14(1)(c), (d), (f) and (h) of Delhi Rent Control Act, 1958.

4. It was conceded at the outset by the counsel on both sides that the issue of purpose of letting goes to the root of the matter in the context of clauses (c), (d) and (h) of Section 14(1). While the element of residential tenancy is *sine qua non* for maintaining a case for eviction on the grounds under Section 14(1)(d) and (h), in the present case the allegations of mis-user of the premises stem from the fact that the petitioners allege that use for commercial purposes constitutes mis-user within the meaning of Section 14(1)(c). Therefore, the fate of the case for eviction brought by the petitioners on the grounds

under Section 14(1)(c) (d) and (h) hinges on their success in proving the purpose of letting to be residential only.

5. Having heard the learned counsel on both sides and having perused the record, this court finds the view taken on the letting purpose by the Additional Rent Controller and the Additional Rent Control Tribunal to be correct. While it may be that the respondents had set up a case that the tenancy was created in 1965 by a formal rent deed which they were unable to prove, they relying on the sole word of Dharmender Kumar (RW1), the original tenant against whom the respondents claim, it cannot be ignored that it is the petitioners who had instituted the case on the averments that the letting purpose was residential only. The burden of proof thus was on the petitioners. They did examine a number of witnesses to prove that the property in question is primarily built for use as residence. Reference by the counsel for the petitioners to the evidence to this effect given by Dev Karan (P-4), Pawan Kumar (PW-6), Sudeshi Ram (PW-7), M.K. Garg (PW-8) and Gopal Kishan (PW-9) only brings home the fact that the building is primarily meant for use as residence. But then, cases of premises built for use as residence being let out for composite purposes of residential-cum-commercial or, for that matter, even for non-residential purposes, are not unknown.

6. The purpose of letting had to be proved by better evidence which, in the present case, though available was not even offered. From amongst the petitioners, only Naveen Khanna (AW-1) appeared in the witness box. He conceded that the tenancy was not created in his presence. He spoke about Jagdish Prasad, a *munim* (clerk) of the

petitioners, being the person who had let out the premises. It is clear from his testimony that *munim* Jagdish Prasad was alive during the period the matter was at the stage of evidence. Jagdish Prasad may have become old or may have left the services of the petitioners but these facts would not mean that the petitioners could not call him as a witness to prove the letting purpose. The evidence of AW-1 that Jagdish Prasad had intimated that the letting was for residential purposes is hearsay which cannot be acted upon. Just as the petitioners argue that the respondents not having brought the rent deed in evidence it should lead to adverse inference against them, the non-examination of Jagdish Prasad, privy to the letting purpose, also must result in similar adverse inference against the petitioners.

7. In the given facts and circumstances, the finding returned by the two forums below on the letting purpose do not call for any interference. Thus, the petition cannot succeed on the grounds under Section 14(1)(c), (d) and (h) of Delhi Rent Control Act, 1958.

8. This court has given anxious consideration to the remaining ground under Section 14(1)(f) of Delhi Rent Control Act, 1958 but finds the view taken by the Additional Rent Controller on this issue to be correct and appropriate. One of the petitioners appearing as witness (AW-1) had admitted during evidence that he had not seen the construction which is described as unauthorized. There is no other evidence led to prove that any construction has been added without prior approval of the landlord over and above what was let out. Particularly, there is no evidence to show that such addition or alterations have rendered the premises unsafe or unfit for human

habitation. The case, thus, does not meet the basic requirements of the ground under Section 14(1)(f) of Delhi Rent Control Act, 1958.

9. For the above reasons, the petition is found devoid of substance and is dismissed.

R.K.GAUBA, J.

JANUARY 30, 2018

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