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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 373/2018 & CM APPL. 31361-31362/2018**
AJAY BUDHI RAJA Petitioner
Through Mr. Mayank Soni, Adv.

versus

VIKAL ROHTAGI & ANR Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **07.08.2018**

CM APPL. 31361/2018 (exemption)

1. Exemption allowed subject to all just exceptions.
2. Application is disposed of.

RC.REV. 373/2018 & CM APPL. 31362/2018

3. Submissions have been made on behalf of the petitioner assailing the impugned order dated 20.12.2017 of the Rent Controller, District Central, Tis Hazari Courts, Delhi in Eviction Petition No. 79125/16 whereby an application filed by the present petitioner as respondent to the said eviction petition seeking leave to defend the said eviction petition was declined.
4. It has been submitted during the course of the submissions made on behalf of the petitioner herein that several triable issues arose in the instant case and that the petitioners thereof arrayed on record as the respondents no. 1 & 2 to the present petition had not filed the said Eviction Petition No.

79125/16 bonafide in as much as vide the legal notice issued to the petitioner herein, there had been a categorical averment made vide paragraph 5 of the said notice dated 20.08.2014 to the effect that : -

“That since you are an old tenant in the said tenanted premises, my clients now being the absolute owner/landlord fixes your rent as Rs.35,000/- per month in respect of the aforesaid shop in your occupation, which is just, proper and reasonable keeping in mind the commercial area and the accessibility with the surrounding area of ISBT, Metro Station and other facilities. This rate of rent will be excluding electricity charges and other taxes and maintenance charges. That it is hereby informed for your goodself that the present notice may kindly be treated also under the provision of section 6A read with section 8 of DRC Act from the date of receipt of the same.”

and the same itself indicates that the landlord wanted an enhancement of the amount of Rs.35,000/- per month and had thus filed the petition for eviction malafide.

5. Vide the impugned order, it has been observed to the effect that the bonafides of the petitioners of the eviction petition could not be doubted in as much as the petitioners had claimed that he required the shop in question for running the business of motor parts for himself and his family members. A bare perusal of the very same legal notice dated 20.08.2014 issued on behalf of the respondent to the present petition i.e. the petitioner of the eviction petition indicates that vide para 6 thereof, it has been stated that the landlord despite being the legal owners / landlords of the premises in question as per the Will dated 20.04.1999 had been living a very miserable

life and hardly could be able to make ends meet by doing private jobs and thus the premises are required for renting the commercial work so that the landlord may earn his livelihood for their expanded family.

6. It has not been disputed on behalf of the petitioner to the present petition that there exists a relationship of landlord and tenant between the parties. The factum that the premises in question are situated in the main area where a motor parts business is run in the area is not refuted on behalf of the petitioner herein.

7. A bare perusal of the eviction petition filed by the petitioner indicates that it has been stated in para 9 of the affidavit filed on behalf of the petitioners to the effect : -

“I state on oath and say that the deponent has expanded family including himself, petitioner no. 2 (younger brother of petitioner no. 1), his widow aged Mother, Wife, unemployed major son, and unmarried minor daughter. The responsibility of all the members of family is on the deponent. The petitioners are hardly met out the requirement of their family in a meagre salary that they earned by doing private job and as such leading a very wretched life.

The need of the petitioners, thus, are genuine and bonafide and as such the petitioners are entitled to get the respondent evicted from the suit shop enabling them to run their own business of motor parts in conjunction with his son.”

which indicates categorically to the effect that the landlord i.e. the respondent to the present petition had sought the eviction of their tenant in order to enable them to run their own business of motor parts in conjunction with the son of the respondent no. 2 to the present petition.

8. A submission was made during the course of the arguments addressed on behalf of the petitioner that the said premises in question i.e. Shop No. 22, at 1st Floor of Building no. 1238, Bara Bazar, Kashmiri Gate, Delhi-06 is at the 1st floor and that the respondent could have sought eviction of the ground floor premises to seek eviction of other tenants situated on the ground floor and furthermore, the business of running of the motor parts even if so required to run by the landlord can effectively be run on the ground floor on the premises. It is not disputed on behalf of the petitioner in response to a specific Court query that all other accommodations available to the landlords are under tenancy.

9. The same is also categorically observed vide para 13 of the impugned order to the effect that all other shops owned by the landlord were occupied by the tenants and do not constitute alternative suitable accommodation where the landlords i.e. the petitioner can run their proposed business. A submission was also made on behalf of the petitioner to the present petition that the legal notice issued itself stated that the tenanted premises was in a dilapidated condition and that itself indicated that the said premises was not suitable to run any business. The said contention raised on behalf of the petitioner to the present petition essentially cannot be accepted, as it was apparently for the landlord owner to make the premises into a suitable condition for running a business. That the premises in question falls within the area where a business of motor parts is run and it is the avowed contention of the petitioners to the eviction petition to the effect that they want to run a motor part business. There is no ground to disbelieve the bonafides of the petitioner of the eviction petition. In the circumstances,

there is nothing to indicate any triable issues having been raised by the petitioner of the present petition and the prayer made by the present petitioner is disallowed. The petition and the accompanying applications are declined.

ANU MALHOTRA, J

AUGUST 07, 2018/MK