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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 413/2018**

RAJKUMAR @ JAYA Petitioner
Through: Mr.Ashish Kumar Sharma, Advocate

versus

GAUTAM DEV SHASTRI Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **28.08.2018**
CM APPL. 34770/2018 (Exemption)

This is an application filed on behalf of the petitioner for exemption from filing certified copies of the annexures.

Exemption allowed, subject to just exceptions.

R.C. Rev. 413/2018 and CM APPL. 34771/2018

1. Vide the present petition, the petitioner assails the impugned order dated 21.5.2018 of the learned ARC West in Eviction Petition No. 26270/2016 filed by the respondent herein as the petitioner of the said petition under Section 14 (1) (e) of the Delhi Rent Control Act read with Section 25B of the Delhi Rent Control Act, 1958 (as amended), whereby vide the impugned order, the application filed by the petitioner herein seeking grant of 'leave to defend' has been declined and the petitioner of the present petition had been directed to be evicted from the tenanted premises, i.e., Shop No.1, Ground Floor of the Property No. R-764/A, Raghbir Nagar, Delhi-110027 as

shown in red colour in the site plan annexed with the petition, with it having been held vide the impugned order that the relationship of the landlord and tenant between the petitioner of the said eviction petition and the respondent thereto arrayed as petitioner of the present R.C. Rev. No. 413/2018 stood established at the outset. In relation to this aspect the record indicates clearly that there is no dispute in relation to the aspect of the relationship of the landlord and the tenant between the parties which was not even so sought to be urged during the course of the submissions made now on behalf of the tenant, i.e., the petitioner.

2. The impugned order takes into account the factum that the landlord has urged that he needs the tenanted premises for running a General store to be run by his son, who is not gainfully employed and is jobless. The averments made in relation to the said aspect in the Eviction Petition No. 26270/16 are at paragraph 18 A, Sub Clause 4 which reads to the effect:

“18.(A) (iv) that the elder son namely Sh. Gaurav Sharma of the petitioner is jobless on date and the petitioner wants to settle him and his wife namely Smt. Nisha w/o Sh. Gaurav Sharma by opening the general store of any other small shop to them in the said tenanted premises.”

3. A response to this assertion made in the eviction petition, as filed by the respondent to the said eviction petition i.e., the tenant, i.e., the present petitioner through paragraphs No.18 of the application seeking leave to defend are to the effect:

“18. That the content of the para no.18 of the affidavit are wrong, false and hence denied. It is specifically denied that from scheme of the Act it is evidence that if tenant discloses the grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave to defend his case against the eviction sought by the landlord. The enquiry envisaged for the purpose is a summary enquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. If the tenant brings to the notice of the Controller, such facts as would disentitle the landlord from obtaining an order for recovery of possession, the Controller shall give him leave to contest. The law envisages the disclosure of facts and not the proof of the facts. It is submitted that no ground to disclose the grounds made by the respondent if the petitioner require his tenanted shop for the bonafide requirement in order to settle down his son and his daughter-in-law to stand up on their feet by starting some small scale shop as it is very much convenient for the daughter-in-law also to come and go from her house to shop in being a lady.”

with a vague denial in relation thereto.

4. During the course of submissions made, presently, the learned counsel for the petitioner sought to place reliance on a testimony dated 13.11.2017 of Mr.Gaurav Sharma, the son of the landlord, the landlord being Gautam Dev Shastri arrayed as respondent to the present petition to contend that the qualification of the son of the landlord as testified by him himself was a Post Graduate Degree in Library Sciences through Distance Education and it was thus contended on behalf of the petitioner that such a well educated person would not run a General store and that too in such a small dimension

of premises as the tenanted premises.

5. A further submission raised on behalf of the petitioner herein, i.e., the tenant is to the effect that the testimony dated 13.11.2017 of Mr.Gaurav Sharma in Petition No. 25511/16 under Section 14(1) (a) & (j) of the Delhi Rent Control Act, 1958 (as amended) qua which it has been submitted in reply to a specific Court query of the Court, by the learned counsel for the petitioner that the said petition is presently pending is to the effect:

“ In the year 2005, I had worked with Taxman Publication Pvt. Ltd. till the year 2010. In the year 2013, I joined job in a Law Firm which I quit in the year 2014. I used to get salary of Rs.25,000/- per month. Thereafter, I never did any job on continuous basis. I sometime used to work for 2-3 days in some school. This situation is continuing even today. ”

to contend that the son of the landlord had earlier been working with the Taxman Publication Pvt. Ltd. from the year 2005 to 2010 and that he had worked in a law firm in the year 2013 and used to get a salary of Rs.25,000/- per month, and the same itself indicates the lack of *bona fides* of landlord qua the contention raised by the landlord that the son of the petitioner would run a general store in the tenanted premises.

6. It is essential to observe that this portion of the testimony dated 13.11.2017 of the son of the landlord is categorical to the effect that he quit his job in the year 2014 and thereafter he never did any job on a continuous basis and sometimes he worked for two-three days in some school and this situation was continuing on the date of

testimony dated 13.11.2017.

7. As rightly observed vide the impugned order at the time of institution of the petition in the year 2016 on 15.7.2016, the son of the petitioner was jobless and continued to be jobless even on the date of his testimony on 13.11.2017, recorded during the course proceedings in another eviction petition that the contention of the petitioner of the present petition that the son of the landlord would not run a general store in view of the educational qualifications cannot be accepted as being sufficient to negate the plea of the landlord seeking the tenanted premises on the ground of *bona fide* requirement of his own son in as much as the son of the landlord has categorically stated that he is jobless and it is submitted by the landlord that he needs the tenanted premises for the livelihood of his son.

8. As regards the contention raised on behalf of the tenant to the effect that the petitioner had sold shop No.3 to Mohd. Azam Khan on 5.9.2016 and also another shop No. 4 to Titu Jassal and the sale deeds in relation thereto were placed on record, it has been observed vide the impugned order to the effect that said two shops as averred by the petitioner in response to the submissions made in the leave to defend were categorical to the effect that the said premises had been sold to the tenants due to a financial crunch and in discharge of the landlord's responsibility towards his family. A contention was raised on behalf of the petitioner herein that there had been concealment of facts by the landlord by not putting across that he had sold two of the shops. It is essential to observe that these two shops had already been sold prior to the institution of the petition as rightly observed by the

learned Trial Court and the statement made through the response of the landlord to the leave to defend to the effect that the said tenanted premises had been sold in view of the financial crunch cannot be negated. There are no other contentions raised neither through the petition nor urged now and there appears no reason to disbelieve the *bona fides* of the landlord seeking eviction of the petitioner herein from the tenanted premises.

9. It is apparent thus that no triable issues had been raised by the respondent to Eviction Petition 26270/2016 and there is thus no infirmity in the impugned order dated 21.5.2018 in Eviction Petition No.26270/2016.

The present petition R.C.Rev. 413/2018 and the accompanying applications are thus declined.

ANU MALHOTRA, J

AUGUST 28, 2018/sv