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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 8th May, 2018

+ R.C. REV. 273/2015 & CM Nos. 10261/2015, 7031/2017

AMRIK SINGH Petitioner

Through: Mr. R.S. Sahni, Adv.

versus

BRAHAM PRAKASH YADAV (DECEASED) THRU
LRs. Respondent

Through: Mr. S.K. Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner admittedly is a tenant in premises described as shop admeasuring 10 feet x 15 feet on ground floor forming part of property no. 5-B (private number) – 1/3rd of property no. 5, Krishan Kunj Colony, Laxmi Nagar, Main Market, he having been inducted therein by the erstwhile owner Sohan Lal Yadav during his lifetime. On the case (E-81/2012) instituted on 16.07.2012 by Braham Prakash Yadav (since deceased), now represented by his legal heirs, against the respondent, eviction order has been passed against him by the additional rent controller on 30.01.2015 whereby the application for leave to contest of the petitioner was dismissed. It may be mentioned here that the grounds on which the eviction was sought, and has been granted, are under Section 14 (1) (e) of Delhi Rent Control Act, 1958.

Since the special procedure under Section 25 B of Delhi Rent Control Act, 1958 would apply, the petitioner had moved an application for leave to contest. It, however, did not impress the additional rent controller leading to the impugned order being passed. The said order was challenged by the revision petition at hand, the petitioner also seeking to place reliance on a “subsequent event” on the basis of facts mentioned in another application (CM No. 7031/2017), to which reply has been filed.

2. The property, as stated above, was originally owned by Sohan Lal Yadav, the late father of the respondent Braham Prakash Yadav (since deceased). It has been the case of the respondent that after the death of Sohan Lal Yadav, the property had devolved on three of his sons including Braham Prakash Yadav (the respondent), the other shareholders being his brothers Ram Prakash Yadav and Ramesh Chander Yadav. Madhuri Yadav, the widow of Braham Prakash Yadav who along with her sons has been substituted in his place after his death. A detailed site plan has been submitted indicating the status of the property after its division between the three brothers, the middle portion having fallen to the share of her husband which is shown in colour red in the site plan. (page 217 of the paper book). The said site plan would show that the property is primarily a four storeyed structure with one room and a toilet besides open terrace even at the fourth floor level. The premises which is in occupation of the petitioner, concededly let out for commercial purposes, is described as shop in front, the rear portion at the ground floor having been shown in the said site plan as three rooms.

3. It is one of the contentions of the petitioners that the said three rooms are wrongly described as the residential portion, they having been let out and used for commercial purposes with the tacit consent of the landlord (the respondent).

4. As mentioned above, the eviction petition from which the present proceedings arise was instituted on 16.07.2012. There were no clear averments at that stage as to the use of the said rear portion shown in the site plan as three rooms, the impression thereby created being that for the need for commercial space for setting up the sons in the business, the said three rooms were not suitable alternative accommodation. But, by the additional material brought on record through the application pleading subsequent events, it has been revealed that the said rear portion had been let out by late Braham Prakash Yadav, during his lifetime on 02.02.2014, in favour of one Bijender Singh, the copy of the rent deed executed at that stage having been submitted by the respondents on 16.02.2017. The rent deed dated 02.02.2014 though indicating the letting purpose of the said portion to be residential, also shows that Bijender Singh, the tenant thereby inducted had signed the lease contract in his capacity as proprietor of an entity named V3F Beauty India. The petitioner has placed on record, with his rejoinder submitted on 24.11.2016, the documents that include certain invoices, referable to the said entity V3F Beauty India, the same indicating the rear portion mentioned above to be its business premises.

5. The above material shows that the argument of the petitioner that suitable alternative accommodation was available for the purposes

to sub-serve which the eviction was sought but the same having been concealed by the respondent cannot be lightly brushed aside. The counsel for the respondent submitted that Bijender Singh, the tenant of the rear portion had dishonestly and with an afterthought endorsed the rent deed reflecting it to be a contract by the company. This, however, would be a fact which will have to be proved by the respondents. There being no connection between V3F Beauty India on one hand and the petitioner herein on the other, dishonest intention, if any, on the part of Bijender Singh cannot be attributed to the petitioner. The possibility that the said rear portion was let out in February, 2014 with the tacit consent for it to be used for commercial purposes cannot be ruled out and needs probe. The fact that the said space has since been vacated by the said tenant, as is admitted in the reply to the above mentioned application, justifies that leave be granted to the petitioner to put in contest.

6. For the foregoing reasons, the revision petition and the pending applications are allowed. The impugned order dated 30.01.2015 is set aside. The leave to contest is granted to the petitioner. Consequently, the eviction order stands set aside. The proceedings before the additional rent controller are revived. The parties shall appear before the Additional Rent Controller on 13th July, 2018. Needless to add, the petitioner as the respondent in the eviction case will be obliged to file written statement which he must do on the date fixed as above for next appearance before that forum.

R.K.GAUBA, J.

MAY 08, 2018/nk