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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 16th March, 2018

+ RC.REV. 332/2017

RAJENDER NARAYAN RASTOGI (SINCE DECEASED)
& ORS. ... Petitioners

Through: Mr. C.S. Bhandari along with
Ms. Devagya Kainth,
Advocates.

versus

JAGDISH SETHI Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The revision petition at hand seeks to assail the order dated 21.03.2017 of the Additional Rent Controller passed on the file of case (RC/ARC no.440/16) which was instituted by the petitioners seeking an order of eviction of the respondent on the ground of *bona fide* need under Section 14(1)(e) Delhi Rent Control Act, 1958 whereby while dealing with an application under Section 151 of Code of Civil Procedure, 1908 (CPC), submitted to bring on record an additional affidavit in evidence post the death of second original petitioner Ashok Kumar Rastogi, the Additional Rent Controller found the case itself meriting no further proceedings, dismissing it and thereby guillotining further process.

2. The respondent is present in person.

3. It may be mentioned here that first original petitioner Rajender Narayan Rastogi also died on 14.06.2017 and his legal representatives have been brought on record by order dated 13.12.2017.

4. The petition for eviction was instituted by the said Rajender Narayan Rastogi (since deceased), Ashok Kumar Rastogi (since deceased) joining with two others, namely, Anand Kumar Rastogi and Sudha Rastogi, all petitioners before this Court, they being co-owners of the subject property. It is not in dispute that the respondent has been a tenant in the subject premises, it being described as shop no.6, forming part of property no. E-4/10, Krishna Nagar, New Delhi-110051. The eviction order is sought on the ground that Nitin Rastogi, then aged about 28 years, an unmarried youth, son of the second original petitioner Ashok Kumar Rastogi wanted to establish himself in business and thus, the need for vacation of the subject premises by the tenant had arisen.

5. The petition was entertained and notice was issued to the respondent. The respondent upon being served with special summons appeared and submitted an application seeking leave to contest. While the said application under Section 25B of Delhi Rent Control Act, 1958 was pending, the second petitioner Ashok Kumar Rastogi died. In view of this subsequent development, an additional affidavit of his widow Shobha Rastogi who had been brought on record was sought to be submitted with the application under Section 151 CPC, during the consideration of which the impugned order was passed. The said prayer for permission to bring on record additional affidavit was

resisted by the respondent on the ground that with the death of Ashok Kumar Rastogi, the need had come to an end, the petitioners, on the other hand, seeking to plead that after the death of Ashok Kumar Rastogi his business (of poly-bags) had been taken over by his widow Shobha Rastogi and, therefore, the requirement of the son Nitin Rastogi subsists.

6. The observations of the Additional Rent Controller leading to the impugned order being passed need to be noted, in extenso, thus:

“4. The petition was moved for the alleged need of son of petitioner no.2 who was 28 years of age as on 25.08.2012 (this is the day when the affidavit supporting the petition was sworn in). The need was that Nitin Rastogi had no independent business of his own and his father i.e. petitioner no.2 had his business of poly bag items which was conducted from shop no.2 in the building in which the premises i.e. shop no. 6 is situated. In these circumstances, Nitin Rastogi wanted to conduct his business of General store from the premises and therefore the premises was needed.

5. At the outset, it is trite to mention that the present case was not a case of need but want. At this sole basis, the petition warrants to be dismissed. The said case of want is made out from the contents of para no.4 of the petition as reproduced below:

“He wants to carry on his own business in the suit premises of general store and other connected/allied goods....”

6. There were four petitioners to the present petition. The reason that four petitioners were there is that they all succeeded their mother Ramkali who

was the owner of the premises. Thus, at the time when the petition was moved the property was not divided and after the death of petitioner no.2, another stripe of succession has arisen. The status of Nitin Rastogi being dependent was neither pleaded and the affect of death of petitioner no.2 upon his status of being dependent has neither been pleaded thereafter.

7. Accordingly, the alleged cause on which the present petition is brought is determined with the death of petitioner no.2.”

7. To say the least, the approach of the Additional Rent Controller in dealing with case as aforesaid was wholly misdirected, if not unjust and unfair.

8. Having entertained the eviction petition on the existing pleadings, it was not correct mid course to jump to conclusions by construing the use of expression “*want*” so as to treat the case as one not being “*a case of need*”. The observations as to the effect of the death of the second original petitioner on the claim of Nitin Rastogi regarding his dependence could not be commented upon in the manner done in the context of the prayer then being considered for permission to place on record additional affidavit.

9. In view of above, the impugned order is set aside. The eviction case is restored on the file of Additional Rent Controller with directions for it to be considered afresh after hearing the parties and an appropriate order in accordance with law, to be passed on the application of the petitioner under Section 151 CPC as indeed the application of the respondent for leave to contest.

10. The parties are directed to appear before the Additional Rent Controller on 10th April, 2018.

11. The petition stands disposed of in above terms.

R.K.GAUBA, J.

MARCH 16, 2018

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