

\$~14 to 16 (*common order*)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 1st May, 2018

+ RC.REV. 2/2017 and CM APPL.90/2017

VIJAY KUMAR Petitioner

Through: Mr. M.L. Mahajan, Advocate with
Mr. Gaurav Mahajan, Adv.

versus

SEEMA GUPTA Respondent

Through: Mr. Bhagat Singh, Advocate with
Mr. Abhishek, Advocate

+ RC.REV. 151/2017 and CM APPL.12392/2017

VINOD KUMAR JAIN & ANR Petitioners

Through: Mr. Brij Bhushan Gupta, Senior
Advocate with Mr. Jai Sahai Endlaw,
Adv.

versus

SEEMA GUPTA Respondent

Through: Mr. Bhagat Singh, Advocate with
Mr. Abhishek, Advocate

+ RC.REV. 155/2017

SALEKH CHAND JAIN & ANR Petitioners

Through: Mr. Brij Bhushan Gupta, Senior
Advocate with Mr. Jai Sahai Endlaw,
Adv.

versus

SEEMA GUPTA

..... Respondent

Through: Mr. Bhagat Singh, Advocate with
Mr. Abhishek, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners in each of these revision petitions are admittedly the tenants in premises described as shop in the area of Chitla Gate, Chawri Bazar, New Delhi, under the respondent, the premises described as bearing municipal shop Nos. 684-A in the first captioned petition, No.684-B in the second captioned petition and No.685 in the third captioned petition. The said shops abut each other and form part of a building which includes premises of adjoining municipal properties bearing No.686 and 687 as well. The petitioners are aggrieved by the separate orders passed on different eviction petitions instituted by the respondent, each on the ground of *bona fide* need under Section 14 (1) (e) of the Delhi Rent Control Act, 1958, the cases having been registered as E.No.119/2015, E.No.122/2015 and E.No.121/2015 respectively.

2. Having regard to the nature of grounds on which eviction was sought, the special procedure envisaged in Section 25-B of the Delhi Rent Control Act, 1958 was invoked. These petitioners, upon being served by the summons, had moved applications under Section 25-B seeking leave to contest. The said applications were considered by the additional rent controller (ARC) but dismissed by separate, almost identical orders, passed on 05.07.2016, in the consequence whereof

eviction orders were granted in favour of the respondent. It is the said denial of leave to contest and the eviction orders passed which are assailed by the revision petitions at hand.

3. The tenant in each case is different, the landlady being common, it having been conceded at the hearing that the grounds on which the latter sought eviction are identical. It was further brought out at the hearing that the grounds on which these petitioners had sought leave to contest were also similarly placed, if not identical, the prime contention urged on their behalf being that the respondent/landlady has not acted *bona fide* in her pleadings, she being guilty of suppression of facts, there having been concealment of suitable alternative accommodation available for the purposes of which eviction is sought.

4. Since the questions of fact and law which have come up for consideration are common, these matters have been heard together and are being decided through this common order.

5. It is an admitted case of the respondent that the petitioners herein have been tenants in their respective portions from times prior to she acquiring right, title and interest in the said property. She claims ownership on the strength of gift deed executed on 10.11.2009 by her mother Smt. Nisha Rani transferring her right in the subject property and the adjoining premises referred to earlier in her favour. Her case is that her husband Mr. Sanjeev Gupta is a jeweler by avocation, he presently doing business in the name and style of M/s. Basheshar Nath & Sons from a portion in property bearing No.96, Dariba Kalan, Delhi-110 006. It is her claim that the portion in the

Dariba Kalan property, in use and occupation of her husband, consists only of 18 sq. mts. area which is a rented accommodation, there always being an apprehension of possibility of eviction.

6. The petitioners by their respective applications for leave to contest pleaded that the dimensions of the space available to the husband of the respondent in Dariba Kalan property have not been correctly indicated in the eviction petitions, he being in use of much larger space at the ground floor, mezzanine floor and first floor levels. This is sought to be refuted by the respondent who places reliance on copy of the rent agreement dated 21.04.2014, entered upon by the firm of her husband with the owner of the property in Dariba Kalan. Even a cursory look at the said document gives an impression that the dimensions of the available space in the tenanted portion in the said property to the husband of the respondent are more than what is indicated in the eviction petitions.

7. Be that as it may, given the pleadings in the eviction petition that the husband of the respondent needs a larger space (115 x 120 sq. mts.) to construct showroom for his jewelry business, which he intends to expand, the premises in Dariba Kalan even otherwise being a tenanted portion, the contentions of the petitioners with regard to the said property may be ignored for the present.

8. Reference, however, also came to be made in the applications for leave to defend to the other portions, particularly at the first and second floor of the property together described by municipal nos. 684-A, 684-B, 685, 686 and 687 in the area of Chitla Gate, Chawri Bazar,

New Delhi and property bearing No.4947, Plot No.48, Lekhram Road, Darya Ganj, New Delhi.

9. The petitioners in the second and third captioned petitions had particularly referred to the first abovesaid property in their leave to defend applications, the contention being that the other portions therein are also commercial and being used accordingly by the husband of the respondent. The respondent, in reply, simply came with a plea of denial. The additional rent controller while dealing with the contention with respect to the said accommodation short-shifted the plea by observing that the petitioners had admitted that the said space is on the second floor and, thus, could not be termed as alternative suitable accommodation. There is no such admission on the part of the petitioners as has been referred to by the ARC. There is no explanation with regard to use of such spaces, particularly at the first and second floor of the first mentioned property of Chitla Gate, Chawri Bazar, Delhi.

10. The petitioners had referred to the property of Darya Ganj, New Delhi as one providing accommodation, admeasuring 400 sq. mts., stating that the entire ground floor was lying vacant, it being a property meant for commercial use. The respondent, in reply, came up with a vague denial. The documents filed by her would, however, show otherwise. Reference is made to the income tax returns (ITRs) of the respondent for the assessment years 2013-2014 and 2014-2015. The Darya Ganj property is reflected in the said returns as one of her several assets. In sharp contrast to her pleadings wherein existence of interest in the Darya Ganj property was disputed, it was argued before

the ARC that the said accommodation is not suitable. The plea of the respondent about non-suitability of the Darya Ganj property could have been accepted if there was an upfront disclosure of availability of such alternative accommodation. The fact that the pleadings of the respondent were conspicuously silent in that regard and the fact that an attempt was made to come up with a vague denial in answer to the application for leave to contest shows that the matter requires deeper scrutiny.

11. In the above facts and circumstances, it cannot be said that the petitioners by their respective applications for leave to contest had not raised triable issues. The eviction cases cannot be decided by blindly accepting the version of the respondent. The petitioners are entitled, in the above factual matrix, to put in contest and show that the respondent has not conducted herself *bona fide*.

12. The impugned orders are, thus, set aside. The leave to contest is granted to the petitioners. Consequently, the eviction orders stand set aside. The proceedings before the additional rent controller are revived. The parties shall appear before the Additional Rent Controller on 31st May, 2018. Needless to add, the petitioners here as the respondent in the eviction proceedings will be obliged to file written statements on the said date.

13. As a natural consequence of the above order, the parties will have to go back to the contractual terms of tenancy wherein the responsibility of the petitioners as the tenants would be restricted to the agreed rate(s) of rent. Therefore, the respondent landlady is directed to refund the amount received under the interim orders

towards user/occupation charges after adjusting the up-to-date rent. Necessary compliance shall be made on or before the date fixed as above.

14. The petitions and the pending applications stand disposed of in above terms.

R.K.GAUBA, J.

MAY 01, 2018

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