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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th May, 2018

+ RC.REV. 465/2015 and CM APPL.17972/2015 (stay)

SHANTI DEVI

..... Petitioner

Through: Mr. Ravi Gupta, Senior Adv.
with Mr. Kumar Shanu, Adv.

versus

KANTA DEVI & ANR.

..... Respondents

Through: Mr. Sunil Goel, Adv. with
Ms. Supreet Bombra, Adv. &
Mr. Mayank Goel, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petitioner concededly has been a tenant under the respondents in respect of premises described as a portion of private shop No.2087, Katra Tambaku, Khari Baoli, Delhi-110006. The respondents/landlords had instituted a case (E. No.378/14/09) on 24.08.2009 against her on the ground of *bona fide* need of the said premises invoking the provision contained in Section 14(1)(e) of the Delhi Rent Control Act, 1958. The case was contested, after grant of leave to defend, by the petitioner/tenant, both sides leading evidence. On conclusion of the trial, the learned additional rent controller (ARC), by judgment dated 09.04.2015, rejected the contentions of the

petitioner and has granted the eviction order in favour of the respondents which is under challenge by the revision petition at hand.

2. The second respondent is son of the first respondent, her daughter (Manju Gupta) has concededly been living in her matrimonial home since her marriage in 1984, she being a widow at the time of filing of the eviction case. The eviction petition was accompanied by site plan (Ex.PW-1/1) which depicts the tenanted premises – shop No.2087, - as rectangular in shape and size of 9 ft. x 13 ft. The site plan would vaguely show the premises to be flanked by other premises described as “*other’s shop’s*” on both sides, the impression created being that the adjoining premises on either side were shops of some other person.

3. In the course of trial, the second respondent Girish Kumar appeared as the sole witness (PW-1) for the landlords, on the strength of his affidavit (Ex.P1). Some better light came to be thrown on the site plan (Ex.PW-1/1) during his cross-examination wherein the portions of one side of the property were referred to as ‘A’ and ‘B’, such portions clarified to be forming part of property bearing No.2089 and the portions on the other side referred to as ‘C’ and ‘D’ to be forming part of property bearing No.2085.

4. In the eviction petition it was vaguely stated that in the property No.2087, there is one shop at ground floor which is in the tenancy of the petitioner herein and there is “*another shop*” occupied by “*the tenant*”. No description of the other shop or the tenant in the occupation thereof was given. Though the pleadings would also state

that the other shop was shown in green colour in the site plan, the site plan actually filed would carry no such clear depiction. During his cross-examination, PW-1 sought to explain that there is only one shop in the property which has been partitioned so as to create two shops, the other shop being in occupation of one Manoj Jain, he being son of his father's friend. Noticeably, he would not describe Manoj Jain, the occupant of the other shop, as a tenant.

5. In the eviction petition, verified on 22.08.2009, it was stated that the premises was required *bona fide* for use by the second respondent (Girish Kumar) for doing business "*by himself*" and by the daughter (Manju Gupta) of petitioner No.1, who was not in a good financial position. It was stated that though Girish Kumar (second petitioner) was doing some business "*separately*", he did not have any "*commercial property/shop to do his business*", the tenanted premises under occupation of the petitioner being consequently required, there being no other suitable commercial accommodation available.

6. The petitioner contested the suit taking the position that the intention of the landlords was to have the premises vacated and thereafter earn premium (*pagri*) by re-letting. The petitioner stated that the adjoining shop had earlier been in use of the second respondent for running his business but he had chosen to shift his business to a platform outside the property and instead let out the said shop to M/s.. Natural Herbs. He also stated that the said other premises was got vacated from the said tenant and re-let to M/s.. Krishna Trading Company and further that even the said tenant M/s..

Krishna Trading Company had vacated whereafter the premises was again let out to another tenant M/s.. Suresh Chand Harsh Kumar at a monthly rental of Rs.20,000/-. In the written statement the petitioner also stated that the premises was not required by the widowed sister of the second respondent, inasmuch as she was a housewife not engaged in any business.

7. The respondents chose to file replication, verified on 09.09.2010, but would not come out with any clear reply to the averments of the petitioner as aforesaid in the written statement, particularly about the letting out of the premises to M/s.. Natural Herbs after the second respondent had abandoned its use and it having been re-let twice thereafter.

8. During the trial, as mentioned earlier, the second respondent (PW-1) was the only witness examined by the landlords. Curiously, in the said deposition under cross-examination, he chose to plead ignorance about the facts of letting out of the adjoining shop initially to M/s.. Natural Herbs and after vacation by the said firm to M/s. Krishna Trading Company and finally to Ms/ Suresh Chand Harsh Kumar, lastly at the monthly rental of Rs.20,000/-.

9. Since the pleadings of the petitioner in the written statement had not been specifically denied, it has to be construed that such facts had been impliedly admitted by the respondents. In these circumstances, really speaking, there was no need for any evidence to be led. None-the-less the petitioner examined himself as a witness (RW1) on the strength of his affidavit (Ex.RW1/A) in which he reiterated the above

facts about the letting out and re-letting twice of the adjoining premises. During his cross-examination, question arose as to documentary proof in confirmation of said letting out. The petitioner was unable to come up with any such proof. It is such failure to muster evidence of said facts on his part which has been taken as his failure to discharge onus of proof.

10. In the considered view of this court approach of the ARC on this subject has been wholly mis-directed. The facts of letting out of the adjoining premises by the second respondent, he having abandoned its use for his own business and his re-letting the said premises first to M/s. Natural Herbs and finally to M/s. Suresh Chand Harsh Kumar were not even in dispute in the pleadings. As observed earlier, they had been impliedly admitted by the respondents. Even otherwise, it was for the respondents to show facts to the contrary by coming up with some evidence as to the identity of the tenant in use and occupation of the adjoining shop and the terms and conditions thereof including, and more particularly, the date(s) of such letting. Since the respondents have chosen to come up with vague pleadings in the eviction petition and have scrupulously avoided coming with any clear evidence, adverse inference will have to be drawn that proof about the letting out of the adjoining premises, if adduced, would have only supported the case set up by the petitioner in his defence.

11. In the above facts and circumstances, on preponderance of probabilities it must be held that the adjoining premises was initially in use and occupation of the second respondent and he consciously

chose to abandon such use and let it out to a tenant and further that the said tenant having vacated, the premises was let out, and re-let, to one tenant after the other. This conduct by itself is sufficient to show that the case for eviction set up by the respondents is not *bona fide*.

12. For the above reasons, the petition is allowed. The impugned order is set aside. The eviction petition of the respondents is dismissed.

13. Pending application also stands disposed of.

R.K.GAUBA, J.

MAY 16, 2018
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