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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 11th April, 2018

+ R.C. REV. 656/2015

AMRIK SINGH KHURANA & ORS. Petitioners

Through: Mr. Anil Hooda & Mr. Ajay
Sharma, Advs.

versus

SARDAR JOGINDER SINGH SONI (DECEASED) THRU
LRs. Respondent

Through: Mr. Sanjay Goswami, Mr. Rajiv
Dewan & Mr. Angad Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners are concededly the tenants in premises described as shop admeasuring 8 feet x 9 feet, side portion (facing West) forming part of property no. H-12A, Kalkaji, New Delhi (hereinafter referred to as the “suit shop”) under the respondent. Admittedly, the letting purpose is non-residential, the suit shop being used accordingly for running business in the name and style of Navrang Gift Shop. The respondent had filed an application in the Court of Rent Controller for eviction of the petitioners on the ground of *bona fide* need under Section 14 (1) (e) of Delhi Rent Control Act, 1958. The said proceedings attract the special procedure of Section 25 B. Thus, upon

being served with the special summons, the petitioners had filed an application for leave to contest. The application was considered by the Rent Controller by order dated 31.08.2015. He was of the view that the application does not disclose any triable issues and therefore declined to grant the request and consequently held the respondent entitled to the order of eviction which was simultaneously passed. It is the said order which is under challenge by the petition at hand.

2. From the pleadings and the submissions at the hearing, it is clear that property described as H-12A, Kalkaji of which the suit shop forms a part at the ground floor comprises of four floors, the petitioner concededly using the upper two floors for residential purposes of self and family, the ground and first floor being put to commercial use, it being the case of the petitioner that the property is three sided open located in main Kalkaji market, New Delhi which has been declared a commercial road under the mixed land use scheme in terms of the Master Plan for Delhi, the petitioner having paid the conversion charges.

3. The petitioner was concededly using the front portion of the ground floor of this property earlier for business in the name and style of Soni Electric Works with assistance of his son till about three years prior to the filing of the eviction petition. It is further his case that his daughter-in-law Gurbinder Kaur was sharing the said space for running her business in the name and style of Soni Fab Designer Tailoring. The suit shop was let out statedly in the year 1990. It is stated by the respondent that on account of his advanced age and

illness he was not able to run the business of Soni Electric Works and, thus, decided to retire from such engagement. It is his own case that after retirement from the business of Soni Electric Works, the front portion at the ground floor and the entire first floor were let out and consequently the business of the son Soni Electric Works and that of the daughter-in-law in the name and style of Sony Fab Designer Tailoring were re-located to a smaller portion. It is indicated in the pleadings that the front portion on the ground floor and the first floor were let out to M/s McDonald Fast Food, explained at the hearing to be a restaurant of a third party, one portion at the ground floor being with a bank for its ATM facility.

4. Pleading that the space available with the son and daughter-in-law for their above said business was deficient, a case for eviction is sought to be made out. The contentions of the petitioners about need being not *bona fide* have been repelled, in the opinion of this Court, unjustifiably so.

5. It is clear upon the perusal of the record that the respondent-landlord has not been very forthcoming in his pleadings with regard to the timeline when the use of the various portions of the property underwent change more than once. The site plan filed with the eviction petition *ex-facie* seems to be misleading. This reflects on the *bona fides* of the landlord. The various portions shown in the site plan are described as drawing room, kitchen etc., giving an impression that the part of the premises is residential. The letting out of the said portion to M/s McDonald Fast Food happened sometime prior to the

filing of the eviction petition pleading the need for larger space. Much larger space was available with the landlord and yet he chose to let out the same to a third party and thereafter came with the petition seeking eviction of the petitioner tenant holding a smaller portion.

6. Triable issues arise. The impugned order is set aside.

7. In view of the above, the petition and the applications filed therewith stand allowed. Leave to contest stands granted to the petitioner. The proceedings before the Rent Controller consequently stand revived. They shall be taken up by the Rent Controller for further proceedings in accordance with law on 10th May, 2018 when the parties are directed to remain present. Needless to add, the petitioners shown as respondents in the eviction case, will be obliged to submit written statement on the said date.

R.K.GAUBA, J.

APRIL 11, 2018

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