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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 14th March, 2018

+ RC REV. No. 109/2016

TARA CHAND (DECEASED) THRU. LRS. Petitioner
Through: Mr. Raj K. Mittal & Mr. Nitin
Mittal, Advs.

versus

SUMAN LATA (DECEASED) ETC. Respondent
Through: Mr. R.K. Shukla, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The revision petition challenges the eviction order granted in favour of the respondent/landlady, on her petition on ground of *bona fide* need of the portion in tenancy of the petitioner.
2. The petition (E No. 132/2008) was instituted by Suman Lata, the predecessor-in-interest of the respondents herein, against Tara Chand, the predecessor-in-interest of the petitioners herein, on 26.04.2008 seeking an order of eviction on the ground under Section 14 (1) (e) of Delhi Rent Control Act, 1958 in respect of tenanted premises described as shop shown in colour red in the site plan (Ex.PW-1/5) attached to the petition, it forming part of property municipal no, 54/VIII Kesri Mohalla, Gali Jain Mandir, Shahdara, Delhi. Both the said original petitioner before the Rent Controller and

the respondent have since died and they have been substituted by their respective legal representatives.

3. The fact that the said shop was in the tenancy of Tara Chand under Suman Lata, the original petitioner before the Rent Controller is not in dispute. Neither the petitioners nor their predecessor-in-interest raised any dispute about the fact that the property was owned by Suman Lata and after her demise, the same has devolved on the respondents herein.

4. The case presented by the landlord-cum-owner for eviction was on the ground that there are two shops in the subject property, the other having been shown as Mark C in the site plan (Ex.PW-1/5), the shop in colour yellow marked as shop no. C was stated to be in use and occupation of Bishan Swaroop, the eldest son of Suman Lata for purpose of his business of electrical appliances and work of supply of sound systems on rental basis. The landlady sought eviction of the predecessor-in-interest of the petitioner on the ground she required the tenanted premises shown in colour red marked B in the site plan (Ex.PW-1/5) for purposes of her other two sons Anand Swaroop and Lalit Swaroop who were dependent on her, they intending to set up on their own business for which there is no alternative suitable accommodation. As per the pleadings of the landlady and the evidence adduced on her behalf, the property of which the tenanted portion forms a part is primarily a residential building, the only said two portions mark B and C being put to commercial use.

5. The Rent Controller, on the basis of evidence led, found the landlady to have succeeded in establishing her case and, thus, granted the eviction order by judgment dated 08.09.2015 which is assailed by the petition at hand.

6. The prime contention raised at the trial before the Rent Controller was that another part of the same property, it having been shown as room marked A in Site Plan (Ex.PW-1/5) had also fallen vacant, the tenant Sant Ram who was earlier occupying that portion having vacated and handed over possession thereof to the landlady, the dimensions of the said room, having been shown as 13 feet x 3 inches x 8 feet x 6 inches. The said room marked 'A' abuts and opens onto the public street on the southern side of the property. The rent controller, however, was not impressed with the said argument.

7. The petitioner before this Court seeks to assail the eviction order and, with reference to availability and current use of aforesaid portion i.e . room marked A, contending that the said room had been put to use by the younger sons of the landlady for commercial purposes and, therefore, the need for which the eviction was sought stands fulfilled.

8. Having heard the learned counsel on both sides, this Court finds no merit in the contention raised by the petitioners. The tenant Sant Ram, who was occupying portion marked A, stood vacated from the said portion on 20.07.1999 by an order of the Rent Controller in another eviction case E-421/1989. It may be that Sant Ram was using the said portion for commercial purposes, he being a person earning

his livelihood by ironing of clothes. But then, it is the prerogative of the landlord as to how to use such portion in a property which is primarily residential in nature.

9. The shop marked C in use and occupation with the elder son of the landlady abuts the main street on the eastern side of the property in question. The tenanted portion in occupation of the petitioner herein adjoins the said shop and apparently is more suitable for use for commercial purposes. As regards the portion marked A, sufficient explanation has been given in the evidence by the sons of the landlady that the same, after being vacated by Sant Ram, is being used as a store room. Some evidence was led by the petitioners, particularly through the testimony of Khurshida Khatoun (RW-7) to bring on record that the room marked A was also used for commercial purposes, the said witness having claimed to have visited the said portion to make booking of a disc-jockey in connection with a marriage ceremony in her family. But then, during her cross-examination she conceded that she would not even know the name of the person who had made the said booking, no formal receipt having been issued for the payments made. The evidence apparently has no legs to stand on, to be acceptable as credible.

10. The petition is, thus, found to be devoid of substance. It is dismissed.

R.K.GAUBA, J.

MARCH 14, 2018

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