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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ RC.REV. 206/2018, CM APPL No.19319/2018, 30698/2018  
SHARWAN KUMAR GHANDI ..... Petitioner  
Through : Mr.Dharmraj Ohlan, Advocate  
versus  
PUSHPA JAIN ..... Respondent  
Through : Mr.Rajiv Mangla and Mr.Devendra  
Dagar, Advs. with respondent in  
person

**CORAM:**  
**HON'BLE MR. JUSTICE YOGESH KHANNA**

**ORDER**  
% **05.04.2019**

1. This petition challenges the impugned order dated 06.12.2017 passed by the learned Trial Court whereby leave to defend application of the petitioner/tenant was dismissed in eviction petition No.4503/2016 titled *Pushpa Jain vs Sharwan Kumar Ghandi* in respect of one shop on the ground floor, admeasuring 8.6 X 9 feet approximately, forming part of property No.RZ-I-36, Arya Samaj Road, Uttam Nagar, New Delhi (hereinafter '*tenanted shop*') and an eviction order was passed in favour of the respondent/owner.

2. The respondent filed an eviction petition under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (hereafter '*DRC Act*') in respect of tenanted shop on the premise she is an owner of the said shop and the ground floor of her property consists of four shops besides a passage to enter such property from main road - Arya Samaj Road, Uttam Nagar, Delhi and the tenanted shop is two side open – one is towards 30 feet on Arya Samaj Road and the other is on 15 feet Road towards Mahajan Nursing

Home. The tenanted shop was given on rent to the petitioner vide rent deed dated 31.12.1986 on a monthly rent of Rs.300/- per month. The said agreement was signed by the father of the petitioner on behalf of petitioner and such agreement was never renewed. The petitioner is running a fruit juice shop under the name and style of M/s.S. Kumar Juice Corner.

3. The respondent has three sons, but unfortunately one of her son namely Mr.Mahavir Prasad Jain expired on 02.10.2015. The family of the deceased son comprises of his widow - Smt.Renuka Jain, aged 45 years, two daughters namely Ms.Bhavya Jain and Kritika Jain aged 19 and 14 years respectively, who are students and the amount is to be spent on their education as well. Smt. Renuka is suffering from hyper tension and blood pressure disease, hence not competent to work outside the house and for survival of the family of her deceased son, the respondent has decided to hand over the possession of tenanted shop to Smt.Renuka Jain to earn her livelihood and to bear her household expenses. The respondent hence require the tenanted shop for her bonafide need and does not have any other suitable property to be given to Smt.Renuka, her daughter-in-law.

4. The petitioner/tenant filed leave to defend application before the learned Trial Court and took four objections – *a*)he has paid a sum of Rs.50,000/- as *pagri*, hence is not a tenant and is owner of entire construction. However admittedly the petitioner has been paying rent to the respondent herein; *b*) the son of the respondent died in October 2015 and was running a readymade garment business from the adjoining shop, but such shop was given on rent in March, 2016 to a third person. It was alleged before giving the shop on rent, Smt.Renuka Jain was asked to continue with

the garment business of her deceased husband but she declined as she used to give coaching classes and only to augment her income, the said shop was let out; *c)* the respondent is getting rental income of Rs.90,000/- from other three shops, hence she intends to get the tenanted shop vacated from the petitioner to let it on such higher rent; and *d)* the respondent is demanding an increased rent of Rs.30,000/-, hence petition is malafide.

5. The respondent/owner filed a reply to leave to defend application and has denied the allegations made and rather stated due to her ill health, Smt.Renuka Jain had to leave her teaching job and while she was giving tuitions, she was not able to bear her household expenses and thus shop earlier used by her deceased husband was let out by the respondent. However, now as since Smt.Renuka Jain has decided to start business, the respondent has decided to give her tenanted shop.

6. Let me see how the learned Trial Court has decided these issues. The reasoning is as under:-

*“13. In view of the fact of the case as well as the contents of the present application, it is worth consideration that although the respondent is raising an objection that he has not signed the rent agreement but when he has failed to submit as to when he is not admitting the rent agreement, in what capacity he is holding the possession of the suit property, hence, the said objection seems to be a bare contention and not acceptable, therefore, it is presumed that the landlord tenant relationship is proved in favour of the petitioner as the same could not be rebutted by the respondent.*

*14. So far as the next objection with respect to the concealment of the fact about the income of the petitioner vide the pension of her retired husband and the income of the daughter in law of the petitioner by allegedly running coaching classes is concerned, no single document is being file in support of these contentions by the respondent. Even the income of the other son of the petitioner is also of no avail to help the respondent in his present application for leave to defend in any manner, hence, the same is also not relevant. The income which is fetched by the petitioner from all the three shops is also not considerable as the income and expenditure are the very subjective things depending upon the lifestyle and circumstances of each and every individual which the individual is entitled to maintain and even if*

*all the submissions made on behalf of the respondent with respect to income of petitioner and her family are presumed in his favour, the same cannot even defeat the claim of the petitioner and even when the leave is granted on such submissions, the same shall give way to the tenants to produce an excuse before the court to cause delay in the proceedings.*

*15. The reliance can be placed upon the observations of the court in **Inderjeet Kaur Versus Nirpal Singh 2001 (1) RCR Rent 33** wherein it was held that "... A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act.."*

*16. It is also a considerable issue that even if a petitioner is having three shops, she is the owner and also entitled to obtain the vacant possession of any of them and no one can raise any question with respect to the same. Moreover, the petitioner is the master of his/her claim.*

*17. There is one more objection raised on behalf of applicant/respondent that previously running business of the deceased elder son of the petitioner is being given on rent to some third person is also of no avail in favour of the applicant as it may be considered that for the sake of convenience or for any other reason, it may not be possible for daughter in law of the petitioner to run the said business.*

*18. In view of the above discussion, it is hereby concluded that the defense raised by the respondent does not raise any triable issue. The applicability of DRC Act is not disputed by the defendant. As this is well settled that leave to defend is to be granted in favour of a tenant in case any triable issue is raised by him which can be adjudicated by the additional evidence, the mere existence of any triable issue is not sufficient. The nature of the triable issue raised by respondent must be such that it will disentitle the landlord from obtaining the eviction order. The prayer for leave to contest should be granted to the tenant only where a prima facie case has been disclosed by him and the Court cannot mechanically and in routine manner grant leave to defend."*

7. The learned Trial Court thus has considered the factum of handing over of the possession of shop used by her deceased son to another person in March 2016 as Smt.Renuka Jain was not inclined to do garment business at such time. The said shop earlier used by her deceased son, was finally let by the respondent in June, 2016. One cannot loose sight of the fact Smt.Renuka has left her teaching job to do coaching classes, but unfortunately her husband died in October 2015, hence she may not be in a fit state of a mind to decide about her future plans and may not have agreed

to continue the garment business of her husband. However, now since she is not earning good amount from tuitions and it being not a regular vocation hence due to financial constraint, if she has decided to start business of her own, then no malafide can be seen in filing of the eviction petition by the respondent and there is no reason for the respondent to deny her daughter-in-law, the use of tenanted shop.

8. *Secondly* qua the amount of *Pagri*, if allegedly paid, may be recovered in appropriate proceedings. *Thirdly* the apprehension of the petitioner viz, the respondent may not let the premises at a higher rent would be taken care of by Section 19 of the DRC Act.

9. Hence, the reasoning given by the learned Trial Court does not suffer from any error of law and is not perverse. It is only when such findings are based on no evidence or misreading of the evidence or is grossly erroneous that if allowed to stand it would result in miscarriage of justice it is open to the High Court to upset such finding. The revisional power cannot be equated with the power of reconsideration of all questions of facts as a Court of first appeal, per *Hindustan Petroleum Corporation Ltd vs Dilbahar Singh* 2014 AIR(SC) 3708.

10. In view of above, the petition is dismissed with no order as to costs. The pending application(s), if any also stands dismissed.

**YOGESH KHANNA, J.**

**APRIL 05, 2019**

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