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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.REV. 6/2023, CAV 21/2023, CM APPL. 1783-84/2023**

SH HARI GOPAL

..... Petitioner

Through: Mr. Girish Kr. Sharma and Mr.
Jitender Kumar, Advocates.

versus

SH SUSHIL KUMAR & ANR.

..... Respondent

Through: Mr. Nagender Yadav, Advocate.

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Date of Decision: 16th January, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 1783/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, this application stands disposed of.

CAV 21/2023

Mr. Nagender Yadav, Advocate, enters appearance on behalf of the Respondents.

Accordingly, the caveat stands discharged.

RC.REV. 6/2023, CM APPL. 1784/2023

1. The present petition has been filed by the Petitioner ('Tenant'), impugning the order dated 26.09.2022 passed by the learned CCJ acting as the Additional Rent Controller, Central, Tis Hazari Courts, Delhi ('Trial

Court') in E-148/2019, whereby the Tenant's application seeking leave to defend has been dismissed and the eviction petition filed by the Respondents Nos. 1 and 2 ('Landlords') under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act') has been allowed.

2. The eviction petition was filed by the Landlords in the year 2019 on the plea that their son, Mr. Kartik Garg, who has recently graduated in the year 2018 and is aged about 21 years requires the tenanted premises to start his business of sale/purchase of hardware and paint items. It was stated in the petition that there was no other alternative suitable accommodation available. The petition was resisted by the Tenant, who sought leave to defend and opposed the prayers as made by the Landlords on the plea of availability of suitable alternate accommodation.

3. In the present proceedings as well, learned counsel for the Petitioner, tenant, states that the Landlords are admittedly the joint owners of the ground floor of the property bearing no. 10944/4, Dori Walan, Mandir Road, Sabzi Bazar, Karol Bagh, New Delhi – 110005 ('subject property'). He states that the Landlords already have in their possession two shops, out of which one shop is being used by the Respondent No. 1, Landlord, wherein he is carrying out his wholesale *kiryana* business ('Shop No. 1'); and in the second shop the Landlords' son, Mr. Kartik Garg, is carrying on a business of property dealing under the name and style of Garg Properties ('Shop No. 2'). He further, states that during the pendency of these proceedings, an area on the rear side of the subject property marked as a godown in the site plan and admeasuring 8' X 7.6' ('godown'), also became available to the Landlords herein, as the Respondent No. 2, Landlady, succeeded in a separate eviction petition filed for recovery of possession of the said

godown. It is stated that the possession of the said godown was recovered on 23.03.2021 by the Respondent No. 2, Landlady, however, this fact was not disclosed to the Trial Court.

3.1. He further states that the eviction petition was filed on the plea that the Landlords' son, Mr. Kartik Garg, is dependent on them for a suitable accommodation, whereas, the facts set out by the Tenant in the application seeking leave to defend discloses that the Mr. Kartik Garg is already gainfully employed and running his business from Shop No. 2. He states that in these circumstances, the Trial Court erred in not granting the Tenant, the leave to defend.

3.2. He states that therefore, the Trial Court failed to appreciate that the need of the Landlords pleaded in the eviction petition was not *bona fide* and the fact that the Landlords have sufficient accommodation available with them in the subject property.

4. In reply, learned counsel for the Respondents, Landlords, states that the Landlords have duly filed a reply to the application seeking leave to defend and categorically stated that the Shop No.1 is being used for operating *kiryana* business by the Respondent No. 1, Landlord, along with his brother, Mr. Vinod Garg and in the Shop No. 2, a business of property dealing is being carried out by Respondent No. 1's brother, Mr. Vinod Garg, in the name and style of Garg Properties. He states that Landlord's son, Mr. Kartik Garg, has no concern with the said business of Garg Properties being carried out in Shop No.2.

4.1. He states that with respect to the submission of the recovery of the godown, the Respondent No. 2, who is a co-owner and landlord of the said godown had filed a separate eviction petition on the specific plea that she

bona fide requires the said godown for starting her independent business of beauty parlour and cosmetics. He states that the Rent Controller in the said petition accepted the plea of Respondent No. 2 and allowed the eviction petition.

4.2. He states that the godown was recovered by Respondent No. 2 on 23.03.2021 and the said judgment was duly placed on record of the Trial Court in the present eviction proceedings. He states that the recovery of the godown is for *bona fide* need of Respondent No. 2 and the present eviction petition has been filed for the *bona fide* need of the son, which are both for distinct purposes.

4.3. He, therefore, states that there is no alternate accommodation available to the Landlord for enabling his son, Mr. Kartik Garg, to set up his business and therefore there is no error in the impugned order of the Trial Court.

5. This Court has heard the counsel for the parties. There is no dispute in the present proceedings with respect to the existence of landlord-tenant relationship between the parties. It would also be relevant to note that no rejoinder has been filed by the Tenant to the Landlords' reply to the application seeking leave to defend.

6. The Trial Court has noted that after the Landlords categorically stated in the reply to application seeking leave to defend that the business of property dealing was being carried out by the brother of the Respondent No.1, Mr. Vinod Garg, in Shop No. 2 and not by his son, Mr. Kartik Garg; however no further rebuttal was filed thereafter by the Tenant to the said assertion of the Landlord.

7. This Court is of the view that the Tenant is carrying on his business in

the same subject property and had reasonable access to Shop No. 2. However, admittedly the Tenant has not placed on record any document, which would give rise to even an inference that Mr. Kartik Garg is carrying on business from the said Shop No. 2. The Tenant therefore, except for making a bald averment in this regard, did not place any document on record to substantiate his plea. In these facts, the finding of the Trial Court holding that the Tenant has failed to raise a triable issue requires no interference.

8. Similarly, the reply of the Landlords that Respondent No. 1 is carrying on a *kiryana* business with his brother Mr. Vinod Garg, from Shop No.1 was neither rebutted by the Tenant by filing a Rejoinder affidavit, nor any documentary evidence has been placed on record to show otherwise. For the same reasons as noted above, there is no infirmity in the finding of the Trial Court in accepting the reply filed by the Landlords and holding that no triable issue has been raised by the Tenant.

9. With respect to the *bona fide* need it has come on record that Landlord's son, Mr. Kartik Garg, graduated in the year 2018 and the eviction petition was filed soon thereafter in 2019. It was pleaded that tenanted premises are required to enable the Landlords to provide accommodation to their son, Mr. Kartik Garg, for starting his business and it was stated that he is unemployed. The satisfaction recorded by the Trial Court that Mr. Kartik Garg, aged about 21 years, is dependent on his parents, Landlords, for arranging a suitable accommodation to enable him to start a business and be suitably employed, does not suffer from any error. The rival plea set up by the Tenant that Mr. Kartik Garg is gainfully employed from Shop No. 2 is a bald averment unsubstantiated by any material particulars or documents.

10. During the course of arguments, learned counsel for the Petitioner, Tenant, sought to set up an oral plea with respect to availability of other portions of the subject Property delineated on the site plan filed by the Landlords. However, he admitted that no such pleas for other portions were taken by the Tenant in the application seeking leave to defend. Therefore, in the absence of any such plea having been raised in the application for leave to defend, no new oral plea can be considered by this Court.

11. The Trial Court has therefore rightly held that the Landlords have duly established the jurisdictional facts necessary for succeeding in the petition filed under Section 14(1)(e) of the DRC Act.

12. The scope and jurisdiction of this Court in a revisional jurisdiction is limited as held by the Supreme Court in *Abid-Ul-Islam v. Inder Sain Dua*, (2022) 6 SCC 30, at paragraph 23 which reads as follows:

“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.”

13. In the aforesaid facts and circumstances and on an overall review of the facts of this case, this Court of the opinion that the Tenant has not been able to point out any error of law in the order of the Trial Court, which requires any interference from this Court. There is no merit in the present

petition and the same is dismissed along with all pending applications.

MANMEET PRITAM SINGH ARORA, J

JANUARY 16, 2023/msh/aa

