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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 17.05.2024
Judgment pronounced on: 22.05.2024

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RC.REV. 120/2022 & CM APPL.25011/2022**YATTI DAWAR AND ORS.**

..... Petitioners

Through: Mr Himalaya Gupta, Advocate.

versus

ASHOK KR. GUPTA

..... Respondent

Through: Mr. Nitin Ahlawat and Mr. Kshitiz
Ahlawat, Advocates.**CORAM: JUSTICE GIRISH KATHPALIA****J U D G M E N T**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, 1958, the petitioners/tenants have assailed order dated 18.12.2021 of the learned Additional Rent Controller, Central District, Delhi, whereby the application of the present petitioners no.2-4 for leave to contest the proceedings under Section 14(1)(e) of the Act was dismissed; and since there was no application of the present petitioner no.1 for leave to contest, eviction order against all the present petitioners was passed. On service of notice of these proceedings, respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for present purposes are as follows.

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2.1 The present respondent, claiming himself to be the owner of shop no. 1126/2, Kucha Natwa, Chandni Chowk, Delhi (hereinafter referred to as “the subject premises”) filed eviction petition against the present petitioners under Section 14(1)(e) of the Act, pleading that originally, Sh. Sunil Dawar was inducted as a tenant in the subject premises for non residential purposes and he passed away on 07.04.2018, leaving behind the present petitioners as his legal representatives, in possession of the subject premises, though according to the present petitioner no.1, she is in exclusive possession thereof; that the subject premises were purchased by him by way of registered sale deed dated 23.08.2007 and Sh. Sunil Dawar, who was already a tenant in the subject premises, started paying him rent; that now he is in *bona fide* requirement of the subject premises so that his unemployed 25 year old son Shobhit Gupta may start business of readymade ladies garments from there; that the subject premises are situated in a market well known for wholesale and retail business of clothes; that he owns another property in Naraina, which is being used by him for his own business and another property in Pitampura in which he and his family are residing; and that he does not have any reasonably suitable alternate accommodation.

2.2 On service of summons in the prescribed format, petitioners no.2-4 filed a joint application under Section 25B(5) of the Act for leave to contest but no ground at all was pleaded in the same. Rather, the prayer clause of the said application was as follows:

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“It is, therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to order:

- 1. Allow the application for change of vakalat.*
- 2. Direct the connected matters listed on the next date of hearing.*
- 3. Stay the further action of Eviction till the final disposal or the next date of hearing of the matter.”*

A perusal of the contents of the said application would reflect that the present petitioners no.2-4 authorized their counsel and disclosed his address for service of all communications; and that a connected matter was already listed before the learned Additional Rent Controller for deposit of rent. Although in paragraph 4 of the said application, it was pleaded that an affidavit also was being filed, but actually no such affidavit was filed. Even the learned Additional Rent Controller observed in the impugned order that no such affidavit had been filed.

2.3 On the basis of the above mentioned application of the present petitioners nos. 2-4, the learned Additional Rent Controller observed that no ground for seeking leave to contest had been pleaded and even that application was not supported by any affidavit disclosing the grounds on which they wanted to contest the eviction proceedings. Therefore, the impugned eviction order was passed.

2.4 In the present petition, the petitioners pleaded that petitioner no.1 also had filed an application for leave to contest, but that application was not taken on record and is missing from the file. A copy of the said application, allegedly filed on behalf of the present petitioner no.1 and not



taken on record, was filed with the present petition and the same is at *pdf page 136*. But even that application is verbatim same as the application of the remaining present petitioners and raises no ground on which leave to contest is sought.

2.5 Hence, the present petition.

3. In the backdrop of the above peculiar factual matrix, it was considered appropriate, so the arguments advanced on behalf of both sides were recorded in order sheet dated 17.05.2024 and relevant extract thereof is as under:

“5.The petitioners have assailed denial of leave to contest the proceedings under Section 14(1)(e) of the Delhi Rent Control Act. The learned counsel for petitioners himself submits that the applications of the present petitioners no.2-4 cannot even be considered as applications for leave to contest and that was so because of negligence of the erstwhile counsel. As regards, the leave to contest application on behalf of petitioner no.1, it is alleged that staff of the court removed it from record. The ownership of the respondent over the subject premises and relationship of tenancy between the parties is not in dispute. The dispute is regarding bona fide requirement according to learned counsel for petitioners insofar as the respondent has stated that they want the subject premises so that his son may commence his business of garments whereas son of the respondent is engaged in steel business. It is further alleged that mala fide of the present respondent is clear because he filed eviction petition on getting to know about death of father of present petitioners no. 1, 3 and 4.

6. On the other hand, learned counsel for respondent contends that when counsel for petitioners himself has admitted that the applications for leave to contest were without merit, nothing further is required to be addressed. It is submitted by learned counsel that the requirement of the respondent is that he wants to settle his son in business of garments from the subject



premises and there is no bar that a person engaged in steel business cannot enter into garments business.

7. No other argument has been advanced by either side. Final arguments thus heard and concluded.

8. Judgment reserved.”

4. As mentioned above, none of the present petitioners presented before the learned Additional Rent Controller any ground on which they want to contest the eviction petition. The allegation of the present petitioners that staff of the learned Additional Rent Controller removed from record the leave to contest application of the present petitioner no.1 is not only without any material, but also not believable. Moreover, as mentioned above, even the copy of application alleged to be of the present petitioner no.1 does not lay any ground on which she wanted to contest the eviction proceedings.

5. At the most, it can be said that the counsel who drafted the said applications for leave to contest was not aware of law. It is for the petitioners to take appropriate action against the counsel who drafted such applications. But the fact remains that on record of the Additional Rent Controller there was no ground on which leave to contest could be granted. On account of incompetence of the counsel, the litigant ought not to suffer. But in such a case the issue is as to why the opposite litigant should suffer to the premium of the litigant whose counsel misconducted.

6. Despite the above circumstances, I also heard learned counsel for both sides as extracted above to satisfy myself if there is any ground at all on which it could be found a fit case to be taken through full dress trial. As



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mentioned above, the present petitioners do not dispute that the subject premises are owned by the present respondent and that they are tenants therein under him. The only resistance to the eviction proceedings, as set up by the present petitioners is that the requirement of the subject premises projected by the present respondent is not *bona fide* since his son, for whose business of ladies garments the subject premises are sought to be vacated, is engaged in steel business. In my considered view, merely because son of the landlord is engaged in a particular type of business, it cannot be inferred that he cannot commence business of any other type. Therefore, I find no reason to suspect the *bona fides* of the requirement of the subject premises set up by the present respondent.

7. In view of the aforesaid discussion, I am unable to find any infirmity in the impugned order, so the same is upheld and the petition as well as the pending application are dismissed.

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**GIRISH KATHPALIA
(JUDGE)**

MAY 22, 2024/ry