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

+ **RC.REV. 121/2024**

SH ASHOK KUMAR AND ANR

..... Petitioners

Through: Mr. Himat Akhtar and Mr. Junaid
Salmani, Advocates

versus

SH JAGDISH CHANDER MALHOTRA,

..... Respondent

Through: Mr. Vikas Mehta, Ms. Upasana
Pahuja and Mr. Praveen Pahuja,
Advocates

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

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01.05.2024

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 25256/2024 (exemption)

1. Allowed, subject to just exceptions.

CM APPL. 25255/2024 (stay)

2. This petition has been filed under proviso to Section 25B(8) of the Delhi Rent Control Act by the tenant to challenge the order dated 06.11.2023 of the learned Additional Rent Controller whereby application of the present petitioner for leave to contest the proceedings under Section 14(1)(e) of the Delhi Rent Control Act was dismissed.

3. Today, preliminary hearing is carried out. Learned counsel for petitioner/tenant has assailed the impugned order on two grounds. Firstly, it is contended that the learned Additional Rent Controller did not adjudicate upon the rival site plans insofar as the site plan filed by the respondent/landlord did not depict measurements of the portions other than



the subject premises and the said site plan wrongly depicted the area of godown as bathroom and toilet. Secondly, learned counsel for petitioners/tenants has also challenged the *bona fides* of the requirement set up by the present respondent in the eviction petition insofar as sons of the present respondent, for whose commercial benefit the eviction petition was filed are already well settled and financially independent.

4. The learned Additional Rent Controller in para 12 of the impugned order has elaborately dealt with the issues of *bona fide* requirement and availability of reasonably suitable alternate accommodation and *prima facie* I am unable to find any infirmity in that view, which has been fortified by the learned Additional Rent Controller with a large number of judicial pronouncement from this Court as well as the Supreme Court. It would be significant to note that the requirement set up by the present respondent is that his sons do not have any place where they can start retail showroom or use any space for storage as a godown, so merely because they are financially independent, the *bona fides* of the requirement cannot be suspected. Besides, it is also significant to note that the requirement set up by the present respondent is for not just his sons, but daughters-in-law as well, who intend to start their independent business from the subject premises.

5. So far as the rival site plans are concerned, it is other way round in the sense that the measurements of portions other than the subject premises have been mentioned in the site plan of the present respondent (pdf page 428) and not in the site plan of the petitioner (pdf page 114). The importance of the site plan is twofold, namely identity of the subject premises and the availability of alternate accommodation. Identity of subject premises in the



present case is not in doubt. As regards availability of alternate accommodation, the learned Additional Rent Controller in paras 13-16 and 19 of the impugned order has elaborately dealt with the same and *prima facie* I find no error in that. Ofcourse, it is correct that the learned Additional Rent Controller did not discuss the rival site plan in the impugned order. But that cannot be a ground *prima facie* to set aside the impugned order in the above circumstances.

6. At this stage, learned counsel for petitioners further contends that the present respondent had filed four eviction petitions pertaining to six shops, which have been allowed, so the requirement for the subject premises would cease. But in response to a specific query, learned counsel for petitioners fairly admits that pertaining to those six shops only eviction orders have been passed and the possession is yet to be restored to the present respondent.

7. Considering the above circumstances, I do not find it a fit case to stay the operation of the impugned eviction order. Therefore, the stay application is dismissed.

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8. Learned counsel for respondent who appears on advance notice accepts notice. Digitized record of the learned Additional Rent Controller be requisitioned atleast one week before the next date.

9. Relist for arguments on 09.09.2024.

GIRISH KATHPALIA, J

MAY 1, 2024/rk

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10. At this stage, matter is again taken up on oral request of learned counsel for both sides. It is submitted by learned counsel for both sides on instructions of their respective clients present in the court room that they have settled the disputes. It is agreed by both sides that the present petitioner shall vacate the subject premises on or before 01.07.2025 and till then he may be protected. The petitioner seeks permission to withdraw this petition, undertaking to vacate the subject premises on or before 01.07.2025 and till that day he shall continue to pay the use and occupation charges at a rate of Rs.2,000/- per month plus electricity, water and other utility charges. However, in case the petitioner does not vacate on or before 01.07.2025, the respondent shall be at liberty to execute the impugned eviction order and also claim use and occupation charges at market rate for the period with effect from this date i.e., 01.05.2024. Towards acknowledgment of these terms, both sides have counter-signed this ordersheet.

11. Accordingly, the petition is dismissed as withdrawn with the directions that the operation of the impugned eviction order shall remain stayed till 01.07.2025 but if by 01.07.2025, the petitioner does not vacate the subject premises, the respondent shall be at liberty to get the impugned eviction order executed in accordance with law and claim the use and occupation charges as mentioned above. The date of 09.09.2024 is cancelled.

GIRISH KATHPALIA, J

MAY 1, 2024/rk/ry

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