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

+ **C.R.P. 3/2025**

SURESH KUMAR JAI BHAGWN, THROUGH

LR OF SURESH KUMAR, LUV BANSALPetitioner

Through: **Mr. Nishant Yadav,**
Advocate.

versus

SATISH CHAND GOEL

.....Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **08.01.2025**

CM APPL. 528/2025 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

C.R.P. 3/2025 & CM APPL. 529/2025 (Stay)

3. The present petition is filed challenging the order dated 03.10.2024 (hereafter '**impugned order**'), passed by learned Senior Civil Judge ('**SCJ**'), in RC ARC 79660/2016, whereby the application of the petitioner seeking dismissal of the eviction petition filed by the respondent was dismissed.
4. The eviction petition was filed by the respondent under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 seeking eviction of the petitioner from the tenanted shop, being, shop no. 821, Chhota Bazar, Kashmere Gate, Delhi-110006 ('**subject premises**').
5. It is the case of the respondent that his son requires the subject premises to start his independent business.
6. The respondent in his petition contended that the shop adjoining the tenanted shop is available, however, the space is insufficient and after the eviction, the subject premises would be

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joined with the said shop, which would make it viable for his son to start independent business.

7. During the pendency of the proceedings, the application was filed by the petitioner stating that the adjoining shop which was in occupation of the respondent has been given on rent to a third person, and thus, the cause of action does not survive.

8. In the impugned order, the learned SCJ held that whether the requirement of the petitioner is *bona fide* or not is a matter of trial and can only be tested after evidence is led.

9. The learned counsel for the petitioner submits that the *bonafide* requirement of the respondent was expansion of the existing shop, and once the existing shop had been given on rent, the cause of action did not survive.

10. I have heard the arguments on behalf of petitioner and find no merit in the petition.

11. At the outset, it is relevant to note that the concerned application was filed by the petitioner seeking dismissal of the case on the ground that no cause of action subsists in favour of the respondent.

12. The learned counsel for the petitioner insists that the same was not filed under Order VII Rule 11 of the Code of Civil procedure, 1908 ('CPC') and the application makes no mention of the said Order or Rule.

13. A bare perusal of the impugned order shows that it had been argued before the learned SCJ by the petitioner that the eviction petition should be dismissed under Order VII Rule 11 of CPC. Even though the application doesn't spell out the said provision, however, the ground raised is akin to the one under Order VII Rule 11 (a) of the CPC which provides for rejection of plaint if the same does not disclose a cause of action.



14. Order VII Rule 11 of the CPC provides for summary dismissal of a suit at the threshold, before the parties have led their evidence, if one of the grounds stipulated therein, including, no cause of action being made out in the plaint, is made out. The purpose of the said provision is to stifle sham civil actions at the very start without further wasting judicial time.

15. Considering that the power to terminate the action without even allowing the claimant to lead evidence and establish its case is a drastic one, the Court is required to limit itself to discerning whether the plaint *prima facie* discloses a cause of action by perusing the substance of the averments, without paying any heed to the pleas taken in the written statement. While the Court is not precluded from intervening when the litigation is manifestly vexatious, at the same time, if a *prima facie* case is made out, it is not open to the Court to conduct an enquiry into the merit or trustworthiness of the allegations [Ref. ***Dahiben v. Arvindbhai Kalyanji Bhanusali* : (2020) 7 SCC 366**].

16. Undisputedly, the eviction petition was filed by the respondent claiming possession of the subject premises, which is in possession of the petitioner as a tenant. The respondent had claimed that the shop is required for the *bona fide* use of his son so that he has sufficient area to start an independent business.

17. The respondent has also mentioned in the eviction petition that he and his son do not have any other reasonably suitable alternative accommodation. The respondent had also mentioned that the adjoining shop has recently been evicted, however, the same may not be adequate in size.

18. Thus, the case of the respondent was not that he needs the shop evicted from the petitioner solely for the purpose of joining of the other shop. The case of the respondent was that he requires



the shop for the *bona fide* purpose of his son to start his own business independently.

19. The concerned application mentions that the respondent, in his reply to the petitioner's application for amendment of its Written Statement, had argued that the adjoining shop had been let out for a limited time as the proceedings in relation to the subject premises had been pending for more than 6 years.

20. It is trite law that it is not open for the tenant to dictate the landlord about his *bona fide* necessity or how he can adjust himself without getting possession of tenant premises [Ref. ***Sarla Ahuja v. United India Insurance Co. Ltd. : (1998) 8 SCC 119***].

21. As rightly held by the learned SCJ, whether the requirement is *bona fide* can only be tested after the evidence is led by the parties and the petition cannot be rejected on the basis of the application is filed by the petitioner herein claiming that the requirement no longer subsists.

22. In the opinion of this Court, dismissing the eviction petition of the respondent in such circumstances, without him having had an opportunity to establish his case, will be unjust. It cannot be said that the eviction petition does not *prima facie* disclose any cause of action.

23. The present petition is therefore meritless and dismissed with a cost of Rs. 20,000/-, to be deposited by the petitioner with the Delhi High Court Legal Services Committee, within eight weeks from today.

AMIT MAHAJAN, J

JANUARY 8, 2025

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