

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC. REV. 290/2013

DATE OF DECISION : 28th July , 2014

**NARENDER KUMAR SHAH PROPRIETOR M/S. JAY BHARAT
STEELSPetitioner**
Through: Mr. Chetan Sharma, Sr. Advocate with Mr. Saurabh Seth,
Advocate

VERSUS

SMT. MALTI NARANG & ANR. Respondents
Through: Mr. Prabhjit Jauhar, Ms. Anupama Kaul, Advocates

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

VALMIKI J. MEHTA, J (ORAL)

1. This revision petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') against the judgment of the Additional Rent Controller dated 30.4.2013 by which the leave to defend application filed by the petitioner/tenant has been dismissed and the eviction petition filed for bona fide necessity has been decreed with respect to the premises bearing municipal no. 223, ground floor, ward no. 8, Ajmeri Gate, Delhi – 110006.

2. The facts of the case are that respondents/landladies are the daughters of late Smt. Kamla Beri and they became the owners of the suit property on the death of Smt. Kamla Beri by virtue of the Will of late Smt. Kamla Beri. The suit premises on the ground floor are required by the respondents for opening of a cosmetic shop inasmuch as respondents have no source of income. The husband of the respondent no. 1 expired on 27.3.2003 and the husband of the respondent no. 2 is a heart patient having undergone open heart surgery in the year 2004, and therefore, he left his business due to poor

health in the year 2008. It is pleaded that except the suit premises no other premises are available with the respondents at the ground floor for the opening of the cosmetic shop.

3. The petitioner filed the leave to defend application and did not dispute the relationship of landlord and tenant but contended that the following properties were available to respondents, and that consequently the bona fide necessity as pleaded by the respondents/landladies did not exist:

- (i) Property no. E-35 A, Sector-40, Noida, U.P.
- (ii) A property at Jawahar Nagar, Delhi.
- (iii) Property bearing no. DU-107, Pitampura, Delhi.
- (iv) Property no. 3837, Gali Lohe Wali, Chawri Bazar, Delhi-110006.
- (v) Property no. ND-12, Pitampura, Delhi.
- (vi). Shop nos. 225 and 226 in the very same premises were sold in the years 2008 and 2009 to Sh. Sudhir Madan and Sh. Manoj Madan, and therefore, such shops if had not been sold would have been available to the respondents for their business, and consequently the need of the respondents-landladies is not bona fide.

4. So far as the properties at Jawahar Nagar and Pitampura are concerned, admittedly, those properties are/were residential properties, and therefore, the same cannot be considered as alternative suitable properties once the suit properties required for commercial purposes for opening of a shop. The same would be the position with respect to the property at Noida where respondent no. 2 is residing with her family members with the important aspect that in a petition for bona fide necessity under the Delhi Rent Control Act the alternative properties which are pleaded to be alternative properties by the tenant as being available with the landlord, have necessarily to be situated only in Delhi and not outside Delhi as per settled law in terms of various judgments passed by this Court, and therefore, the property at Noida cannot be considered as an alternative property.

5. This Court is therefore, required to consider only three properties, namely, the property at Gali Lohe Wali, and the two shop nos. 225 and 226, which were sold in 2008 and 2009.

6. So far as the property at Gali Lohe Wali is concerned, the respondents have stated that the property was sold over 12 years prior to the filing of the eviction petition in 2010 and once a property which has been sold way back, the same cannot become alternative suitable premises.

7. So far as the shop nos. 225 and 226 in the same premises are concerned, it is not the law that a landlord cannot sell any of his shops, more so in the present case where the respondent no. 1 is a widow and the husband of the respondent no. 2 suffered from heart problems, and therefore, cannot carry on business. Therefore, if the shops were sold, and consequently they are not available, only on this ground mala fides cannot be attributed to the respondent/landladies in the facts of the present case where the respondent no. 1 is a widow having no source of income and the respondent no. 2's husband suffered from heart problems in the year 2004, and selling of shops is one way of generating income for various needs including for medical treatment and family needs. In my opinion, therefore, no mala fides can be imputed to the respondents for selling shop nos. 225 and 226.

8. In view of the above, I do not find any illegality in the impugned order dismissing the leave to defend application, and therefore, this petition is dismissed, leaving the parties to bear their own costs.

JULY 28, 2014

Sd/-
VALMIKI J. MEHTA, J