

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC REV No. 33/2012

DATE OF DECISION : 28th July, 2014

SH. SOHAN LAL GUPTA

.....Petitioner

Through: Mr. Ankit Jain, Advocate.

VERSUS

SH. NAND KISHORE

..... Respondent

Through: Mr. Tamay Nagar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

RC. REV. No.33/2012, C.M. Nos. 1263/2012 (for stay) & 1264/2012 (for additional documents)

1. This petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller dated 3.11.2011 which has dismissed the leave to defend application filed by the petitioner/tenant and has directed eviction from the tenanted premises being one shop no.2 forming part of property bearing Municipal no.1464 (new) (743/E old no.), Gurudwara Road, Kotla Mubarakpur, New Delhi-110003.

2. The case of the respondent/landlord was that he needed the suit shop/tenanted premises for opening of a business with respect to selling of paints, enamels, hardware and sanitary items by his son Sh. Gaurav Verma. It was stated that the suit property is situated in a busy market and which is very suitable for running of the business by the son of the respondent/landlord.

3. Before the court below, though there were disputes raised with respect to relationship of landlord and tenant and also with respect to the tenanted premises being not of the respondent, these aspects have not been urged before me. Only two aspects are urged before this Court and which are that firstly the premises in which the respondent/landlord is living namely 1898/1, Uday Chand Marg, Kotla Mubarakpur, New Delhi, there is one shop which is vacated and such shop is an alternative suitable premises, and the second aspect is that the respondent has recently sold one shop which is adjacent to the tenanted premises to one Sh. Sattu of M/s. Balaji Kiryana Store and which is a shop if it would have not been sold would be an alternative premises.

4. Both the arguments urged on behalf of the petitioner are misconceived and liable to be rejected. The reasons are given hereinafter.

5. So far as the shop existing in the residence of the respondent is concerned, it could not be disputed before this Court that it is not the case of the petitioner/tenant before the Additional Rent Controller that the residential premises where the alleged shop is available to the respondent/landlord is situated in a busy market like the tenanted shop. I may also note that the respondent/landlord has disputed the aspect that at all there is any shop which is available in his residence from where the son of the respondent/landlord can carry on business. In any case, taking the case of the petitioner at best that would mean that there is one shop at a premises which is not in the main market and in law it is not open to a tenant to dictate to the landlord which premises are more suitable for carrying on the business and in the present case undoubtedly the tenanted premises in the market is more suitable than another premises which is away from the market and not in the middle of the market. This has been held by the Supreme Court in the case of Anil Bajaj and Anr. Vs. Vinod Ahuja in Civil Appeal No.5513/2014 decided on 8.5.2014 : 2014 (210) DLT 58 (SC). Therefore, though the so called shop in the tenanted premises is actually not existing, but even if it is existing, the same is not an alternative suitable premises.

6. The second aspect urged was that there was a shop to the adjoining tenanted premises which has been sold by the respondent. On the first blush this argument seemed to have merit, however, the Additional Rent Controller notes that the petitioner did not file any document and this was only a bald plea. The petitioner has thereafter filed a document in this Court

to show that the adjacent shop was sold about six years prior to filing of the eviction petition, and though I cannot look this document in view of the judgment of the Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15 which requires that all grounds, all facts and all documents have to be stated and filed within the inflexible statutory period of 15 days for filing of the leave to defend application, and beyond which period there cannot be condonation of delay particularly even one day, yet if the document is looked into it is clear that the transfer of the shop by means of the general power of attorney is around more than six years prior to filing of the eviction petition and therefore it cannot be stated that the shop which was sold six years prior to filing of the eviction petition would amount to an alternative premises because Courts cannot dictate as to how the landlord wants to utilize his property including by selling of the same and getting moneys from the same because moneys would be required by any person for myriad reasons. And even which has happened more than six years prior to filing of the eviction petition, in my opinion, cannot raise a bonafide triable issue.

7. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

At the time of dismissing of this petition, it is made clear that interim order dated 23.1.2012 passed by learned Single Judge of this Court directing interim user charges at the rate of Rs.20,000/- per month in view of the judgment of the Supreme Court in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd. (2005) 1 SCC 705 is confirmed.

JULY 28, 2014

Sd/-
VALMIKI J. MEHTA, J.