

Vijay Kumar vs.avtar Singh

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Court : Delhi

Decided On : Sep-05-2017

Appellant : Vijay Kumar

Respondent : Avtar Singh

Advocate for Pet/Ap. : Mr. Ashish Anand, Mr. Saurabh Petitioner Kaumar

Judgement :

\$~33. * + IN THE HIGH COURT OF DELHI AT NEW DELHI RC.REV. No.412/2017 & CM No.32041/2017 (for stay). VIJAY KUMAR Through: Mr. Ashish Anand and Mr. Saurabh

... Petitioner

Kaumar, Advs. versus Respondent Through: None. AVTAR SINGH CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW %

ORDER

0509.2017 Caveat No.793/2017.

1. None appears for the Caveator inspite of advance copy stated to have been given.

2. The caveat stands discharged. CM No.32040/2017 (for exemption).

3. 4. Allowed, subject to just exceptions. The application stands disposed of. RC.REV. No.412/2017 & CM No.32041/2017 (for stay).

5. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 15th July, 2017 in ARC No.42/2017 of the Court of Additional Rent Controller (West), Tis Hazari Courts, Delhi) of dismissal of the application of the petitioner / tenant for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent / landlord for eviction of the petitioner / tenant and the consequent order of eviction of the petitioner / tenant from shop bearing private no.3 on the Ground Floor forming part of property no.B-356, Hari RC.REV. No.412/2017 page 1 of 6 Nagar, Clock Tower, New Delhi - 110 064.

6. The counsel for the petitioner / tenant has been heard and the copies of the Trial Court record filed perused.

7. The respondent / landlord instituted the petition for eviction from which this petition arises pleading (i) that the respondent and his brother Balbir Singh were the owners / landlords of the shop in the tenancy of the petitioner / tenant which was let-out by the grandfather of the respondent / landlord in his lifetime and which grandfather had bequeathed the said shop to the respondent / landlord and his brother, being the grandsons and the petitioner was a tenant in the said shop for the last more than 30 years; (ii) that under the Will of the grandfather, the respondent / landlord / and his brother, besides being bequeathed the said shop, were also bequeathed another shop on the ground floor of the property and a room behind the shop; (iii) that the brother of the respondent / landlord who was the co- owner / co-landlord with the respondent / landlord was in possession of the other shop and carrying on business therefrom and the said brother and father of the respondent / landlord were residing in the rear portion of the ground floor of the said property; (iv) that the respondent / landlord had been working as a salesman at a convenience shop and residing in United Kingdom (UK) and wanted to return to India as his stay at UK had extended over for a very long time; and, (v) that the respondent / landlord was desirous of running his own business from the shop in the tenancy of the petitioner / tenant and had no other commercial or residential

property with him in Delhi or anywhere else in India.

8. The petitioner / tenant applied for leave to defend pleading (i) that the RC.REV. No.412/2017 page 2 of 6 respondent / landlord was having another property bearing no.B-129, 3rd Floor at Hari Nagar, Clock Tower, New Delhi; (ii) that the respondent / landlord was also having another property at Chander Vihar, Nilothi Village, New Delhi which was a floor measuring 100 sq. yds. and also another plot of 60 sq. yds. situated at Chander Vihar, Nilothi; (iii) that the respondent / landlord was having a property at Mohan Garden, New Delhi ad measuring 50 sq. yds. and another floor at Hari Nagar, New Delhi bearing no.M-110; (iv) that the respondent / landlord thus had no requirement for the premises in the tenancy of the petitioner / tenant; (v) that there are many other shops in the subject property; and, (vi) that the petitioner / tenant had no other place to carry on his business from and his family was dependent upon him and the petitioner / tenant had been paying rent regularly to the respondent / landlord.

9. The respondent / landlord filed a reply to the application for leave to defend denying that he was the owner of or in possession of or had any rights in any of the other properties mentioned in the leave to defend and / or that there were any other shops in the subject property.

10. The learned Additional Rent Controller, in the aforesaid states of pleadings, has dismissed the application for leave to defend and has ordered eviction of the petitioner / tenant.

11. The counsel for the petitioner / tenant has with reference to the Notarial Certificate (at page 57 of the paper book) of the Power of Attorney executed by respondent in favour of his father and with reference to para 8 of the impugned order indicating the age of the respondent has argued that it emerges therefrom that the respondent / landlord has been staying in UK RC.REV. No.412/2017 page 3 of 6 illegally, in contravention of Immigration and Visa Rules of UK and is liable to be deported therefrom.

12. I have enquired from the counsel for the petitioner / tenant, whether not the aforesaid argument is in the interest of the respondent / landlord. Not only has the

petitioner / tenant in the application for leave to defend not disputed the intent and desire, based on reason, pleaded in the petition for eviction, of the need for the respondent / landlord to return from UK to India but the argument of the counsel for the petitioner / tenant has re-enforced that the respondent / landlord cannot in law continue to remain in UK and has to necessarily return to India and the consequent requirement urged by the respondent / landlord for the premises in the tenancy of the petitioner. The counsel for the petitioner / tenant, by arguing that the respondent / landlord is not lawfully staying in UK, has eliminated any manner of doubt which existed in the mind of this Court about the intent of the respondent / landlord to return from UK and the consequent requirement for the shop in the tenancy of the petitioner / tenant.

13. Notwithstanding the aforesaid being put to the counsel for the petitioner / tenant, no response has been forthcoming and no other argument has been urged.

14. Even otherwise, as would be evident from the narrative of the contents of the leave to defend application, the petitioner / tenant has not controverted ownership of the respondent / landlord and his brother, of the shop in the tenancy of the petitioner and has expressly admitted respondent to be the landlord. Though a number of properties have been stated to be owned by the respondent / landlord, but the counsel for the petitioner / RC.REV. No.412/2017 page 4 of 6 tenant admits that the petitioner / tenant, neither along with the leave to defend application nor, inspite of denial by the respondent / landlord of ownership, title or interest in any of the said properties, has before this Court produced any document to show on what basis the pleas, of other properties owned by the respondent / landlord, were taken. A perusal of the short affidavit accompanying the application for leave to defend and verification thereof does not show the basis of the knowledge of the petitioner / tenant of the other properties claimed to be owned by the respondent / landlord.

15. The summary procedure provided in Section 25B of the Rent Act cannot be defeated by allowing the tenant to state facts in the air, without any basis therefor and without satisfying the Court at least prima facie of truthfulness or possibility of

truthfulness thereof. Only when the tenant shows that there is something, which in trial will be proved to disentitle the respondent / landlord from an order of eviction, is leave to defend to be granted. The expression used in Section 25B(5) is to disclose facts and which has to be necessarily interpreted to mean by disclosing the basis thereof and not by making wild allegations.

15. Even if the averments in the application for leave to defend were to be allowed to raise a triable issue, the floors in other properties in Hari Nagar, New Delhi and / or properties in a Village can by no extent be said to be alternate suitable accommodation for the requirement pleaded for setting up of business.

16. It has thus but to be held that the leave to defend application of the petitioner / tenant indeed does not disclose any ground which would disentitle the respondent / landlord from an order of eviction under Section RC.REV. No.412/2017 page 5 of 6 14(1)(e) of the Act and it cannot be said that the order of the Additional Rent Controller is not in accordance with law within the meaning of Section 25B(8) of the Act.

17. There is no merit in the petition. Dismissed. No costs. SEPTEMBER05 2017 pp.. (Corrected & released on 3rd October, 2017) RC.REV. No.412/2017 RAJIV SAHAI ENDLAW, J page 6 of 6

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