

IN THE COURT OF SH. DHARMENDER SINGH:
ACJ/CCJ/ARC: SOUTH DISTRICT: DISTRICT COURT SAKET:
NEW DELHI.

Eviction Petition No. 5966/2016

Shiv Devi

W/o Late Suresh Chandra Meena
R/o 01/17526, 2nd Floor
Yusuf Sarai, Gautam Nagar Road,
New Delhi

...Petitioner

Versus

M/s. J.S. Sharma & Sons

Through its proprietor
Sh. Mukesh Sharma
1/17526, Ground Floor,
Yusuf Sarai, Gautam Nagar Road,
New Delhi.

....Respondent

ORDER

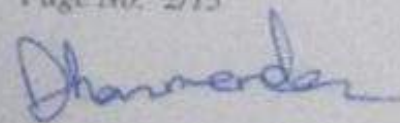
1. Vide this order, I shall dispose of application for leave to defend moved by respondent.
2. Arguments have already been heard on the same.

Dharmender

3. Record perused.

4. It is relevant to mention here that while deciding the present application, Court shall also take into record the fact and documents which are mentioned in application under Order VIII Rule 8 read with section 151 CPC moved by respondent and application under Order VII Rule 14 CPC moved by petitioner and which have been allowed vide separate orders.

5. The brief facts of the present case are that the shop no. 1 & 3 in property no. 1/17526, Ground Floor, Yusuf Sarai, Gautam Nagar Road (**hereinafter referred as tenanted premises**) were initially let out to respondent by deceased husband of petitioner Sh. Suresh Chandra Meena in the year 1985 and after that shop no. 2 (**hereinafter referred as tenanted premises**) which was vacated by earlier tenant Sh. Om Prakash was also let out to respondent on 18.01.1997 by late husband of petitioner. It is submitted that said shop no. 2 was let out vide a written agreement and by said written agreement permission was also given to respondent to combine/join the three shops and it was agreed that from that day it will be treated as a single tenancy for all three shops and consolidated monthly rent was agreed to be paid for all the three shops. It is submitted that husband of petitioner expired on 20.03.2011 and left behind the petitioner and other legal heirs i.e. two sons, namely, Ajay

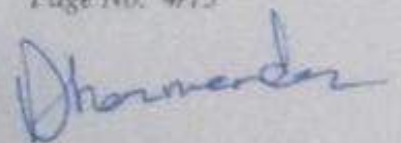


Kumar Meena and Ravi Kumar Meena and one daughter Smt. Pushpa Meena and now all of them are co-owners and landlords of tenanted premises. It is submitted that other legal heirs have no objection to the filing of the present petition by petitioner. It is submitted that younger son of petitioner Sh. Ravi Meena is running his business in the name of M/s. Ganpati Enterprises from shops bearing no. 4 & 5 on the ground floor. It is stated that shop no. 5 was vacated by earlier tenant Sh. Jagmohan Kashyap and after that said shop has been combined with shop no. 4 and same is being used by younger son of petitioner. It is submitted that there is one more store on the ground floor which is being used as a godown by son of petitioner for storing his goods. It is submitted that from the first floor of property in question, the elder son of petitioner, namely, Sh. Ajay Meena is running a departmental store in the name and style of M/s. A.R. Trader. It is submitted that second floor of the property is being used by petitioner and her family members as a residence and same is consisting of three bedrooms, drawing cum dining room, one bathroom, one toilet and one kitchen. It is submitted that same is occupied by petitioner, her elder son Sh. Ajay Meena, his wife Urmila and their two kids. It is submitted that petitioner is also availing the services of a female attendant who takes care of her and stay with her during day time. It is submitted that petitioner wants to avail the services of attendant round the clock but due to paucity of accommodation, she is unable to take the services round

Sharma

the clock. It is submitted that top floor of property is occupied by younger son of petitioner who is residing in the same with his wife and daughter.

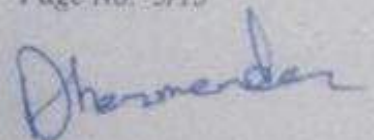
6. It is submitted that petitioner is suffering from chronic Osteo Arthritis in both knees and is receiving treatment at AIIMS Hospital. It is submitted that due to her medical condition she has been advised to avoid stairs and she requires a full time attendant. It is submitted that she is also a patient of hyper tension and diabetes. It is submitted that petitioner is unable to use stairs without help. It is submitted that in view of above health condition, petitioner has been advised to stay on the ground floor. It is submitted that property of petitioner is residential cum commercial in nature and half of the portion of ground floor is already being used by younger son of petitioner for running his business and other half is occupied by respondent. It is submitted that petitioner has requested several times to respondent to vacate the tenanted premises as same is required by her for her residence, however, respondent has not vacated the same. It is submitted that if tenanted premises is vacated, the petitioner will shift to the ground floor. It is submitted that petitioner wants to partition the tenanted premises by making one room for herself, one small room for her attendant and one attached bathroom. It is submitted that tenanted premises is required by petitioner for her bonafide need so the present petition has been moved under section 14 (D) of



The Delhi Rent Control Act, 1958.

7. In pursuance of the notice/summons issued in present petition, appearance was made on behalf of respondent and he filed the application for leave to defend supported with detailed affidavit wherein he has taken the several pleas. Respondent has taken the plea that petitioner is not exclusive owner of tenanted premises so she is not competent to file the present petition. It is submitted that there are other legal heirs of Late Suresh Chand who have not been joined as petitioner or respondent in the present petition so petition is bad for non-joinder of parties. It is submitted that even as per the admission of petitioner she has sufficient space for her residence on second and third floor of the property. It is submitted that petitioner has concealed the material facts from Court and false averments have been made by her regarding her age and medical condition. It is submitted that in present petition, she has stated her age 60 years, however, in eviction petition bearing no. E. 184/09 an application under Order XXII Rule 3 CPC was moved on 20.04.2011 in which her age is stated 51 years. It is submitted that petitioner does not suffer from any alleged disease and nor she is unable to walk without the help of others. It is submitted that petitioner has further concealed fact regarding tenancies created in favour of respondent.

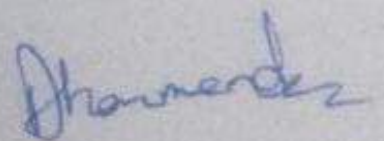
8. It is submitted that the actual fact is that three



separate tenancies were created in favour of respondent in respect of three different shops by three different documents. It is submitted that perpetual lease/sale was effected by deceased husband of petitioner in favour of respondent. It is submitted that first shop admeasuring 9X13 sq. ft. was given on lease on 10.02.1986 and said lease was for 99 years and respondent has paid a sum of Rs. 1.5 lakh to deceased husband of petitioner so as per the said agreement respondent cannot be asked to vacate the same before expiry of 99 years.

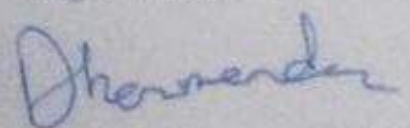
9. It is submitted that second shop let out was numbered as Shop No. 6 which was earlier occupied by Sh. Bhishan Swaroop Goel. The said shop was let out to respondent vide agreement dated 14.01.1991 and Rs. 2.5 lakh was paid by respondent to deceased husband of petitioner and Rs. 50,000/- was paid to Sh. Sh. Bhishan Swaroop Goel. It is submitted that the third shop i.e. Shop No. 2 was given on perpetual lease of 99 years to respondent by deceased husband of petitioner vide agreement dated 18.01.1997 against a sum of Rs. 3,55,000/-. It is submitted that aforesaid agreement clearly shows the tenancies were perpetual in nature for a period of 99 years and before that same cannot be terminated. It is submitted that petitioner has concealed the said material fact.

10. It is submitted that aforesaid tenanted premises



are incapable of being used for residential purpose. It is submitted that the entire Gautam Nagar Road has been notified as commercial street under the master plan of Delhi 2021 so the tenanted premises cannot be used for residential purpose. It is submitted that there is no provision of any toilet/bathroom in tenanted premises and even the vehicular traffic in the locality is heavy which creates noise and air pollution.

11. It is submitted that petitioner has admitted in her petition that one shop was vacated by earlier tenant Sh. Jagmohan Kahsyap which has now been merged by son of petitioner with other shop in his possession. It is submitted that if the petitioner genuinely requires the portion at ground floor due to her medical condition she could use the said shop for the purpose of her residence. It is submitted that the plea of bonafide requirement taken by petitioner is false. It is submitted that son of petitioner had contacted a property dealer, namely, Sh. Harish Chand Gupta and made enquiry about the value of tenanted premises so the purpose of present petition is to get vacated the tenanted premises from respondent and plea of bonafide requirement is false. It is submitted that petitioner and her husband are in the habit of evicting the old tenant by one way or other and to give the property at higher rent after taking *pagri*. It is submitted that the shop which was got vacated from Bhishan Swaroop Goel was let out to respondent after receiving the amount of Rs.

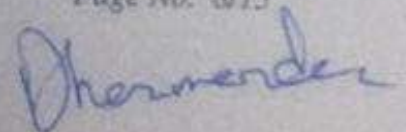


2.5 lakh by husband of petitioner and similarly another shop was got vacated from one Sh. jaina and same was let out to Sh. Jagmohan Kashyap for Rs. 3.5 lakh.

12. It is submitted that petition has been filed against the respondent as a proprietorship whereas M/s. J.S. Sharma & Sons is a partnership firm comprising of Sh. J.S. Sharma and his two sons, namely, Dinesh and Mukesh Sharma. It is submitted that all the partners and partnership firm have not been made a party to the present proceeding, so petition is not maintainable.

13. It is submitted that petitioner has wilfully concealed the material fact that she and her children have acquired residential property at Chhattarpur and Gurugram and which are lying vacant. It is submitted that petitioner also owns a shop in Bhogal, Delhi which is also lying vacant so petitioner has sufficient accommodation available with her.

14. It is submitted that petitioner has wrongly claimed that one shop at ground floor is store room because said shop is lying vacant and is not being used for any purpose. The tenanted premises is being used by respondent for carrying on the business of jewellery for last 27 years and said business is only source of income of the family of the respondent and respondent does not have any other property for carrying on his business.



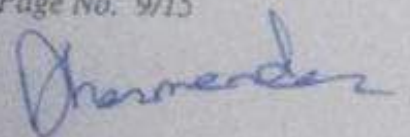
15. It is submitted that proper site plan has not been filed by petitioner.

16. It is submitted that in view of above grounds/pleas, several triable issues have been raised by respondent which cannot be decided without giving the reasonable opportunity to respondent to lead evidence on the same so prayer has been made to grant the unconditional leave to defend to respondent to contest the present eviction petition.

17. Reply was filed by petitioner to the application for leave to defend. It is submitted that respondent has failed to disclose any triable issue so he is not entitled to leave to defend and his application is liable to be dismissed. It is submitted that due to typographical mistake, the age of petitioner is wrongly mentioned as 51 years in eviction petition bearing number E. 184/09 and her actual age is 60 years. The petitioner has denied the plea taken by respondent and reiterated her case as mentioned in the petition.

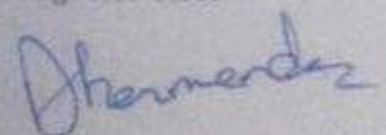
18. The respondent filed the rejoinder to the reply filed by petitioner and reiterated his case as mentioned in the leave to defend application.

19. Now this Court shall deal with grounds/pleas taken by respondent. The higher Courts have laid down guidelines



regarding the leave to defend application in several cases. In case title **Rita Lal Vs. Raj Kumar Singh, AIR 2002 SC 3341**, the Hon'ble Supreme Court of India has held that "the law is settled that if the tenant has made out a prima facie case raising such pleas that a triable issue would emerge then that would be sufficient to grant leave. The trial Court is not precluded from forming an opinion whether on the material available on record, a triable issue, that is, issue worth being tried arises or not. Raising a triable issue, as sub-section (5) of **Section 14** suggests is disclosing by tenant in his affidavit such facts as would disentitle the landlord from obtaining an order of eviction. If the Court is satisfied that though in the pleadings an issue is raised but that is not a triable issue than the Court is justified in refusing the leave to defend. A defence, which is practically moonshine, sham or illusory cannot be held to be raising a triable issue. The defendant is raising a plea, which he is estopped from raising and, therefore, the plea raised by him in his affidavit seeking leave to defend does not amount to raising a triable issue."

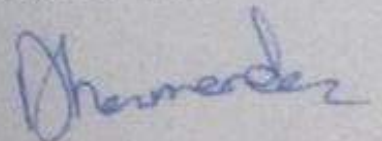
20. The respondent has taken the plea that petitioner is not the exclusive owner of the tenanted premises and there are other legal heirs of late husband of petitioner who have not been joined as petitioners or respondents. This Court is of the considered view that one declaration/NOC dated 03.08.2013 is on record which has been signed by all the remaining three legal heirs of late husband of petitioner



whereby they have given no objection in favour of petitioner to institute the present eviction petition so in view of the above, above ground is not maintainable.

21. Respondent has taken the plea that even as per the admission of petitioner, she has sufficient space available on second and third floor of the property. This Court is of the considered view that as per the case of petitioner, she requires the residential premises at ground floor due to her medical condition so this ground is also not maintainable.

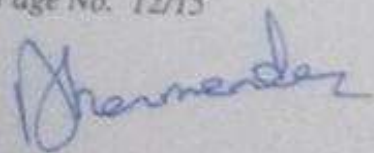
22. Respondent has taken the plea that petitioner has concealed the material fact regarding her age and medical condition. This Court is of the considered view that in reply to leave to defend application, petitioner has clearly stated that in eviction petition bearing no. E.184/09, her age was wrongly mentioned as 51 years and she is actually 60 years old. This Court is of the considered view that respondent has not brought on record any reliable document such as birth certificate etc. to prove the claim that petitioner is not of the age of 60 years or above. It is also relevant to mention here that the children of petitioner are married and she is having grand children also which also favours the claim of petitioner that she is of the age of 60 years. So far as the medical condition is concerned, petitioner has filed on record one OPD Slip of AIIMS Hospital in which it is diagnosed that her both knee are suffering from O.A. and she has been advised to



avoid stairs. Petitioner has also filed on record one X-ray report dated 14.01.2014 issued by "Focus Imagine and Research Centre Pvt. Ltd.", in which some osteoarthritic problem is mentioned. It is also relevant to mention here that petitioner is of the age of 60 years and generally at such stage of age people face difficulty while using stairs. In view of the above, this ground is also maintainable.

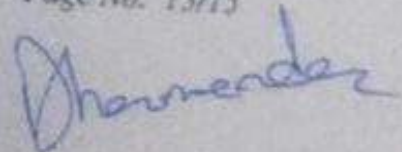
23. Respondent has taken the plea that tenancies are perpetual in nature for a period of 99 years therefore, lease cannot be terminated before said period. This Court is of the considered view that in respect of lease agreements dated 10.03.1986, 14.01.1991 and 18.01.1997, he has filed on record three photocopies, however, all the three documents show that these three agreements are unregistered documents and as per the requirement of The Registration Act, 1908 any lease of the period of one year and above requires compulsory registration so in view of above these three agreements have no value in the eyes of law. Accordingly, present ground is not maintainable.

24. Respondent has taken the plea that tenanted premises are incapable of being used for residential purpose as the entire area where tenanted premises is situated has been notified as commercial under the master plan of 2021. This Court is of the considered view that respondent has not filed on record any document which shows that use of



property for residential purpose is completely barred in the locality where tenanted premises is situated. Even as per the admission on the part of respondent, the upper floors of the property are being used for residential purposes by family of petitioner. So this ground is also not maintainable.

25. Respondent has taken the plea that petitioner has no intention to use the tenanted premises for residential purpose as shop which was vacated by earlier tenant Sh. Jagmohan Kashyap has been merged by son of petitioner in his other shop. It is submitted that petitioner's son has contacted one property dealer and made enquiry about the value of tenanted premises and earlier shops which were got vacated by petitioner and her husband from earlier tenants were later given on higher rent. This Court is of the considered view that as per the case of petitioner, she requires the premises for her accommodation and also for the purpose that same can be used by her attendant and for the purpose of washroom and even as per the plea of respondent, son of petitioner took possession of shop vacated by earlier tenant Sh. Jagmohan Kashyap in October, 2012 and present petition has been filed in the year 2013. So the necessity arose in the year 2013. Even otherwise, if petitioner makes attempt to lease out the property, section 19 of The Delhi Rent Control Act, 1958 will be applicable for the benefit of respondent. So in view of the above, this ground is also not maintainable.



26. Respondent has taken the plea that respondent is a partnership firm and remaining partners and partnership firm have not been made a party in the present petition so present petition is not maintainable. This Court is of the considered view that as per Indian Partnership Act, 1932, a partner is an agent of remaining partner and partnership firm and can defend the suit/proceedings on behalf of firm and remaining partners. So this ground is also not maintainable.

27. The respondent has taken the plea that petitioner and her children have other properties also at Chhattarpur, Gurugram and Bhogal which can be used for residential accommodation. This Court is of the considered view that it is for the petitioner to decide his/her preference and respondent cannot compel him/her to shift in another property. It is also relevant to mention here that petitioner is residing in the locality where tenanted premises is situated for a long time so her preference for tenanted premises for her residential purpose is not without any substance. So this ground is also not maintainable.

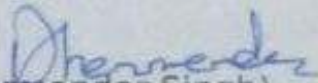
28. Respondent has taken the plea that petitioner has wrongly contended that one vacant shop at ground floor is being used as store room, however, actually same is lying vacant. This Court is of the considered view that respondent has not filed on record any proof that said portion is lying

Dharmander

vacant. Even otherwise, as per the case of petitioner, she requires large space for her necessity as she requires space for her attendant and washroom also. In view of the above, this ground is also not maintainable.

29. In view of the above discussion, respondent has failed to raise any triable issue which entitles him to contest the petition accordingly, leave to defend application is dismissed and petition under section 14 (D) of The Delhi Rent Control Act, 1958 is allowed as petitioner has proved her case.

30. She has filed on record relevant document to show that she is the widow of Late Suresh Chandra Meena who gave the tenanted premises on rent to respondent and now same is required by petitioner being widow of Late Suresh Chandra Meena for her residential purpose. Accordingly, leave to defend application is disallowed and petition under section 14 (D) of The Delhi Rent Control Act, 1958 is allowed.


(Dharmender Singh)
ACJ/CCJ/ARC (South)
Saket Courts, New Delhi/23.05.2020

Eviction Petition No. 5966/2016
Smt. Shiv Devi Vs. M/s. J.S. Sharma & Sons

23.05.2020

In view of the circular bearing no. Judl II/F.7/South/Sake/2020/LKD-11, New Delhi dated 04.05.2020 issued, the present matter is preponed and intimation about the preponment was duly communicated through telephonic message to both Ld. Counsels of parties on 19.05.2020 by Ahimad of this Court Sh. Mahipal. The proceeding of pronouncement of order/judgment is being conducted through Video Conference.

Present :

~~Sh. Rajeev Kumar Ghawana, Ld. Counsel for petitioner~~
Sh. Rajeev Kumar Ghawana, Ld. Counsel for respondent.

Ld. C. for petitioner not present despite information

Vide two separate orders, application under Order VIII Rule 8 read with section 151 CPC moved by respondent and application under Order VII Rule 14 read with section 151 CPC moved on behalf of petitioner are allowed.

Vide another separate order, application for leave to defend moved by respondent is disallowed and petition under section 14 (D) of The Delhi Control Act, 1958 is allowed.

File be consigned to Record Room after due compliance.

D
(Dharmender Singh)
ACJ/CCJ/ARC (South)
Saket Courts, New Delhi/23.05.2020

Eviction Petition No. 5966/2016
Smt. Shiv Devi Vs. M/s. J.S. Sharma & Sons

23.05.2020

Order

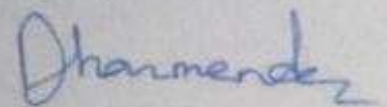
Vide this order, I shall dispose of application under Order VIII Rule 8 read with section 151 CPC moved by respondent.

Arguments have already been heard.

Record perused.

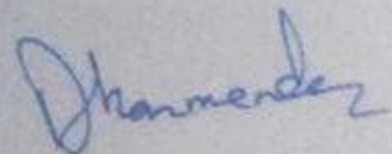
It is submitted on behalf of respondent that by way of present application respondent wants to bring on record subsequent events and certain documents. It is submitted that after filing of present petition and leave to defend application, the elder son of petitioner, namely, Ajay Meena who was residing in the property in question has shifted to Chhattarpur and now additional accommodation in the form of extra space is available with the petitioner. It is further submitted that respondent has already mentioned in his leave to defend application about the alternative accommodation i.e. residential property at Chhattarpur and Gurugram available with petitioner. It is submitted that as elder son of petitioner alongwith his family has shifted to Chhattarpur so the entire second floor of property in question is available with petitioner.

It is further submitted that in his leave to



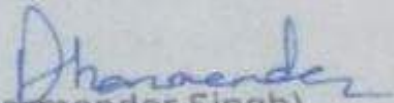
defend application respondent has already mentioned that the tenanted premises i.e. three shops are situated on notified commercial street under the master plan of Delhi, 2021 and same cannot be used for residential purpose and in respect of the same respondent wants to file on record one DDA circular dated 04.08.2015. It is submitted that during the pendency of present petition dispute arose between the parties in respect of payment of rent and respondent has filed three separate DR petitions in respect of three separate tenancies and said petitions were disposed of vide order dated 06.06.2017. Said order was challenged by petitioner before Rent Control Tribunal, however, her appeal was dismissed vide order dated 15.01.2018. It is submitted that said order was further challenged by petitioner before Hon'ble Delhi Court, however, said challenge was subsequently withdrawn vide order dated 09.04.2018. It is submitted that respondent wants to bring on record said order dated 06.06.2017, 15.01.2018 and 09.04.2018. It is submitted that said subsequent fact/event and documents be taken on record as same are relevant for deciding the application for leave to defend.

Petitioner has filed reply to said application and objected the prayer made by respondent and requested to dismiss the said application.



-3-

This Court is of the considered view that respondent wants to bring on record subsequent events which was not in existence at the time of filing of leave to defend application and the documents are copies of orders of different Courts and DDA circular is a public document. In view of this Court in view of above facts and circumstances application in hand is allowed.



(Dharmender Singh)

ACJ/CCJ/ARC (South)

Saket Courts, New Delhi/23.05.2020

Eviction Petition No. 5966/2016
Smt. Shiv Devi Vs. M/s. J.S. Sharma & Sons

23.05.2020

Order

Vide this order, I shall dispose of application under Order VII Rule 14 read with section 151 CPC moved on behalf of petitioner.

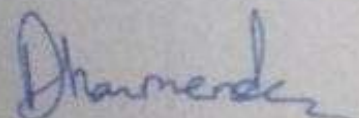
Arguments have already been heard on the same.

Record perused.

By way of present application, petitioner wants to bring on record certain documents i.e. copy of rent receipt dated 14.06.2013, receipt issued by MCD and order dated 15.11.2017 of Ld. Predecessor in RC/ARC No. 91/2017 and order dated 18.02.2020 of this Court in present petition. It is submitted that said documents are necessary to decide the present petition so same be taken on record.

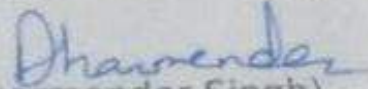
Respondent has filed reply to present application and objected the prayer made by petitioner in this application.

This Court is of the considered view that a matter should be decided on merit rather than on technicalities. This Court does not think that if said documents are taken on record, same shall cause prejudice to respondent. In these circumstance said documents are



-2-

taken on record and accordingly, application is disposed of.



(Dharmender Singh)

ACJ/CCJ/ARC (South)

Saket Courts, New Delhi/23.05.2020