

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Judgment: 02.3.2012

RC.REV. No.114/2010

SRI KISHAN

..... Petitioner

Through: Mr.V.P.Chaudhary, Sr.Adocate with Mr.Sanjay Saxena,
Advocate.

versus

ROHITAS SAINI

..... Respondent

Through: Mr.Uchit Bhandari, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The eviction petition filed by the landlord had been decreed; the application seeking leave to defend had been dismissed. The premises are property bearing No.1531A, Tri Nagar, Tota Ram Bazar, Delhi. Premises had been rented out for a commercial purpose. Present petition had been filed by the landlord under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the "DRCA"). Contention was that the petitioner and his son are both unemployed and present accommodation at Tota Ram Bazar is required by the petitioner for carrying out a business for him and his son; both of whom are not employed. It has been averred that the petitioner is the landlord/owner of the premises. In the application for leave to defend there is no dispute about the ownership of the landlord. The triable issue sought to be sought to be set up by the tenant is that the landlord has an adjoining shop from where he is already doing a business of bangles and artificial jewellery etc. The photographs depicting the said shop as also other documentary evidence including visiting cards showing the name

“Sandeep Bhai Choori Wala” had been relied upon to substantiate this submission.

2. The landlord had denied these averments. It is not in dispute that this shop “Sandeep Bhai Choori Wala” is adjoining the shop of the tenant and which is in the occupation of the landlord; contention of the landlord is that this is only a passage which goes inside into the interior where the landlord is living with his family; no business is being run from the said shop; submission being that no other triable issue has arisen on this count.

3. This court is not in agreement with this submission of the landlord. The photographs and the visiting cards filed by the tenant (part of the record of the trial court) show that a shop under the name of “Sandeep Bhai Choori Wala” is being run from the adjoining shop i.e. the shop adjoining and adjacent to the tenanted shop; bangles/chooris and other items of artificial jewellery are being sold from that said shop. The name-board of “Sandeep Bhai Choori Wala” is clear and evident on the said shop; there are more than five photographs depicting this status. It is also not disputed that Sandeep is the son of the landlord. These photographs show that this is a busy lane where public persons go on foot as also on two wheeler scooters; contention of the landlord that this board has been fabricated is clearly negated as the photographs have depicted it to be a busy working day and a board could not have been put up clandestinely in the aforementioned situation. This documentary evidence has in fact depicted the clear status of this shop i.e. “Sandeep Bhai Choori Wala” which is in fact selling bangles and chooris as also other items of artificial jewellery; as is also evident from its display counter which is clearly visible; this cannot be a passage leading to an interior as has been contended by the learned counsel for the landlord; the display of the aforementioned items is apparent; the landlord has not come to the court with clean hands; his submission that this is only a passage and he and his son Sandeep are unemployed is negated by this documentary evidence.

4. Triable issues have arisen in this case. In this background the eviction petition having been decreed noting that no triable issue has arisen thus suffers from an infirmity. The judgment passed by this Court in RC.REV. No.242/2011 titled Sushil Mittal Vs. Arun Kumar and RCR No. 67/2012 titled A.K.Kakar Vs. Sheela Khanna relied upon by the learned counsel for the respondent were all on different facts. Each case has to be adjudged in its factual scenario.

5. The impugned judgment is accordingly set aside. Leave to defend is granted to the tenant. Written statement be filed in four weeks with advance copy to the petitioner. Parties are directed to appear before the concerned ARC on 15.3.2012.

Sd/-
INDERMEET KAUR, J