

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

R.C.Rev.527/2012, CM 18382-84/2012, CAV.1107/2012

Date of Decision: 22.11.2012

SHRI JAGMOHAN KASHYAP Petitioner
Through: Mr. Rajiv Kumar Ghawana, Advocate

Versus

SMT. SHIV DEVI & ORS. Respondent
Through: Mr. N.N.Aggarwal and Mr. Rohit Gandhi, Advs.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This revision petition under Section 25B(8) of Delhi Rent Control Act is directed against the judgment and order dated 05.06.2012 of Senior Civil Judge-cum-Rent Controller (South) whereby leave to defend application filed by the petitioner, who was respondent in the eviction petition, was dismissed.
2. The petitioner is tenant in respect of a shop under the respondents in property No. 1/17526, Gautam Nagar Road, Yusuf Sarai, New Delhi. His eviction was sought by the respondents for bonafide requirement of the said shop for enabling her younger son Ravi Kumar Meena to set up his business.
3. The main pleas which were taken by the petitioner in the leave to defend application were that the respondents have reasonably sufficient accommodation on the ground, first, third and fourth floors of the suit premises. It was averred that the respondents have got two shops adjoining the suit shop and have also got another shop measuring 10ft x 10 ft. at the corner.
4. The learned ARC rejected the leave to defend application, filed by the petitioner, observing that the petitioner has not been able to raise any triable

issue which would disentitle the respondents to seek his eviction. It was observed that one of the two shops on the ground floor is with the tenant and other was occupied by her and thus none of these two shops can be said to be available for setting up a new business by her son Ravi Kumar Meena. With regard to the third shop at corner, it was observed that the said shop was of smaller size of 10 ft x 10 ft. and could not be said to be reasonably suitable for setting up a new business. It was undisputed that her elder son Ajay Kumar Meena was running his general store business at the first floor of the suit premises and that being so, there was no space available for setting up a business by her younger son Ravi Kumar Meena. It is not in dispute that the respondents are residing at 2nd floor of the suit premises. With regard to the third and fourth floors, it was observed by the learned ARC, and rightly so, that these floors cannot be said to be reasonably suitable for business purposes. There cannot be any dispute with regard to the proposition that any business which is running from the ground floor of the premises would attract more customers than the business running from basement and upper floors. With regard to the accommodation available with the respondents in the suit premises, as noticed above, I do not see any illegality or infirmity in the impugned order of the ARC.

5. Further, it was also averred by the petitioner that respondent Smt. Shiv Devi has acquired another shop in property bearing No. 25 at Central Road, Bhogal and the same is lying vacant and can be used by her for setting up business by her son Ravi Kumar Meena. Having regard to the response of the respondents to this plea, the learned ARC observed, and rightly so, that this shop is located at far away place from the present business place of the respondent at Yusuf Sarai and also that this shop is of smaller size than that of the suit shop and thus cannot be said to be reasonably suitable for setting up a new business. There cannot be any dispute to the proposition that it is the prerogative of the landlord to use the premises at a place of his choice and neither the tenant nor this Court can dictate the landlord as to how and in what manner he should use his premises. Further, it is also settled proposition of law that the alternative accommodation which may disentitle the claim of the landlord, must be reasonably suitable, in comparison to the accommodation from where the tenant is sought to be evicted. The respondent Smt. Shiv Devi with her family has been living at the 2nd floor of the suit premises and her elder son Ajay Kumar Meena is running his business from the first floor and she is doing the business from the shop at the ground floor. Undisputedly, it would be convenient and safe for her to enable her younger son also to set up his business in the same

premises. The respondents have been able to prima facie show their bonafide requirement of the suit premises. There is no dispute that the landlord is also under a moral obligation to help her son to set up his business independently. It is not the case of the petitioner that younger son of the respondent Smt. Shiv Devi is employed or has any source of income of his own.

From all these, the requirement of the respondents of the tenanted shop is apparently found to be bonafide, genuine and honest.

From the above discussion, I do not see any infirmity or illegality in the impugned order and thus the petition merits dismissal, which is accordingly dismissed.

Sd/-
M.L. MEHTA, J.

NOVEMBER 22, 2012