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HIGH COURT OF DELHI : NEW DELHI

RCR No. 142/2010 and CM No.11531/2010

% Judgment reserved on: 6th July, 2010

Judgment delivered on: 8th July, 2010

1. Shri. Tilak,
S/o Late Sh. Madan Lal,
M/s Vijay Industries,
1786-A, Lal Quan,
Delhi.
2. Shri Ashok,
S/o Late Sh. Madan Lal,
M/s Vijay Industries,
1786-A, Lal Quan,
Delhi.
3. Shri Vijay,
S/o Late Sh. Madan Lal,
M/s Vijay Industries,
1786-A, Lal Quan,
Delhi.

...Petitioners.

Through: Mr. Chetan Sharma, Sr. Adv.
With Mr. Manoj Kr. Garg and Mr.
Nitin Gupta, Advocates.

Versus

Smt. Veena
W/o Sh. Rajender Kumar,
R/o E-49, Ashok Vihar, Phase-I,
Delhi.

...Respondent.

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Present revision petition has been filed against judgment and order dated 15th March, 2010, passed by Additional Rent Controller, Delhi, vide which respondent's eviction petition under Section 14 (1) (e) read with section 25B of Delhi Rent Control Act, 1958, (for short as 'Act') was allowed.

2. Brief facts of this case are that one shop situated on ground floor bearing no. 1786-A, Lal Quan, Delhi was let out by respondent to the petitioners for non residential purposes and the same is required bonafide by the respondent. Respondent is the owner of the shop in question and she needs the same for running a shop by her son as neither she nor her son has any other reasonably suitable accommodation in Delhi for the said purpose. The premises in dispute was let out long back to the predecessor in interest of the petitioners for non residential purposes. In the shop in dispute, son of respondent will run a Kirana shop.

3 Respondent is also the owner of one half share in property no. 9/26, Kailash Nagar, Gandhi Nagar, Delhi. There are three rooms on the ground floor of the said property and one hall each on the first floor and second floor portions of

the said property. One room on the ground floor of the said premises has been let out by respondent to a tenant and in the other room Smt. Anita-the sister of the husband of respondent is residing and in the third room situated on the ground floor Smt. Anita is running a shop. The first floor and second floor portions of the said property are also in occupation of tenants.

4. The area of Kailash Nagar, Gandhi Nagar, Delhi is not suitable for running the said business as there is no market for that business in that area and also because no space is available in the aforesaid house of the respondent for the said purpose.

5. The shop in dispute is more suitable for running the business of sale of spices and dry fruits etc. as the shop in dispute is situated in a commercial market and is also near to the wholesale market of Khari Baoli, Delhi where business of wholesale and retails with respect to Kirana goods, spices and dry fruits etc. is being carried on by large number of shopkeepers.

6. As far as the accommodation available on the back side of the shop in dispute is concerned, the same is being used by the father-in-law and the husband of the respondent for grinding of spices since a long time and a grinding machine is installed in the said space and the spices which are being grinded at that place are sold by the father-in-law of the respondent and her husband in the shop which is being run by the father-in-law of the respondent in Khari Baoli, Delhi. For running the aforesaid business by the son of the respondent about Rs.2,00,000/-

would be needed, respondent and her husband have got necessary funds for the said purpose.

7. Petitioner filed an application for leave to contest, which was dismissed by the Additional Rent Controller.

8. It is contended by learned counsel for the petitioners that respondent, her son, her husband and her father-in-law are members of one joint family and all are living together, doing business together and earning together. Trial court failed to deal with this ground, which the petitioners have been taken in their leave application.

9. Other contention is that respondent including her son, have their one more shop at Khari Baoli, Delhi, where admittedly family business is being operated by the respondent. The Court below failed to deal with this ground also.

10. Other contention is that the scope of business of Kiryana and investment and employment in this business at any shop including the shop of respondent at Khari Baoli, Delhi is unlimited and area in which the suit premises is situated has no scope for Kiryana business. The trial court also did not deal with this aspect of the matter.

11. Lastly, it is contended that further additional commercial/business accommodation is available with the respondent and trial court did not deal with this aspect of the defence in the impugned order.

12. Coming to the contentions of learned counsel for the petitioners that respondent, her son and her husband and father-in-law are doing business together and are earning together is just a vague statement. There is no material on record to show that all of them are doing joint business.

13. Regarding other contention, that respondent is having one more shop in Khari Baoli, Delhi, where family business is operated by the respondent. There is nothing on record to show that any family business is being operated at Khari Baoli Shop.

14. In fact, the case of the respondent is that, her father-in-law has been running a shop in Khari Baoli, Delhi, which is in his tenancy, which has not been rebutted by the petitioner.

15. Other ground taken by petitioners is that there is no scope for Kirana business in the area where suit property is situated.

16. In this respect it may be pointed out, that it is well settled law that landlady is the master of her choice and it is for her to decide as to what business she wants to run in her shop. Tenant has no right to dictate to the landlord about the suitability of the premises.

17. In *Satyawati Sharma (Dead) by LRS. Vs. Union of India and Another, (2008) 5 Supreme Court Cases 287* it was observed that;

“Even a premises let out for commercial purposes can be got vacated for bona fide requirement and making distinction between residential and commercial purposes as envisaged under Section 14

(1) (e) of the Act, has been held ultra virus of the Constitution”.

18. Thus, after going through the record, I find that no triable issues have been raised by the petitioners in their leave application.

19. There is no infirmity. illegality or ambiguity in the impugned judgment passed by the Additional Rent Controller.

20. Hence, present petition being not maintainable is hereby dismissed.

21. No order as to costs.

22. Copy of this judgment sent to trial Court.

CM NO. 11531/2010.

23. Dismissed.

8th July, 2010
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V.B.GUPTA, J.