

(2012) 08 DEL CK 0091**Delhi High Court****Case No:** RC. Rev. 470 of 2011 and CM No"s. 21389-21390 of 2011

Shri. Ramesh Chand Bhardwaj

APPELLANT

Vs

Smt. Kusum Gupta

RESPONDENT

Date of Decision: Aug. 24, 2012**Acts Referred:**

- Delhi Rent Control Act, 1958 - Section 14(1)(e), 25B(8)

Citation: (2012) 2 RCR(Rent) 311**Hon'ble Judges:** M.L. Mehta, J**Bench:** Single Bench**Advocate:** S.C. Singhal, for the Appellant; R.K. Gupta and Mr. Rajiv Kanwar, for the Respondent**Final Decision:** Dismissed**Judgement**

M.L. Mehta, J.

This revision petition has been filed u/s 25-B (8) of the Delhi Rent Control Act (herein after referred to as the "Act") against the order dated 27.08.2011, whereby eviction order qua tenanted shop bearing private No. 3 measuring 13"x10" situated on ground floor of property bearing No. 3767, A-2, Kanhya Nagar, Tri Nagar, Delhi (suit premises), was passed against the petitioner tenant. The respondent landlord had preferred an eviction petition u/s 14 (1) (e) of the Act for the bonafide requirement of the tenanted shop, stating that she is the owner and landlord of the suit premises and the tenanted shop was let out to the petitioner on 01.04.1994 for commercial purpose. It was submitted that there are three shops on the ground floor of the suit premises, including the tenanted shop, and two of which are occupied by her son Naveen, wherein he is running a small unit of making handkerchiefs. It was stated that there are two rooms each on the first and second floor of the suit premises. It was further stated that at the time of letting out the tenanted shop, her children were teenagers but, with the passage of time, her family had expanded and the accommodation available with her is not sufficient to meet the residential

requirements of herself, her husband, and her two married sons. It was stated that they do not have any guest room for overnight stay of guests and married daughter Meena. It was further stated that the respondent wanted to shift to the tenanted shop on the ground floor, so that each of her sons could have an independent floor, and the drawing room on the first floor could be used as a guest room.

2. The petitioner/tenant was granted leave to defend vide order dated 18.4.2009. He filed his written statement wherein the ownership of the respondent over the suit premises was disputed. It was further averred that the tenanted shop was let out for commercial purpose and the eviction petition was filed on the ground of bonafide requirement for residential purpose and, hence not maintainable. The next contention raised by the petitioner/tenant was that the two shops on the ground floor, which are alleged to be in possession of the respondent's son, are lying vacant and her son is not running any small unit of handkerchief in the said shops, as projected in the eviction petition. It was further averred that the said two shops could easily be used by the respondent to meet her residential requirements and therefore, the eviction petition was liable to be dismissed. The respondent filed replication to the written statement of the petitioner, and reaffirmed the contents of the eviction petition and denied the submissions made by the petitioner/tenant.

3. The respondent examined herself as PW-1 and deposed in terms of the petition. The husband of the respondent was examined as PW-2, who admitted the ownership of the respondent over the suit premises in his cross examination. PW-3 Naveen Gupta, son of the respondent also reiterated the contents of the eviction petition and maintained in his cross examination. Sachin Gupta, another son of the respondent was examined as PW-4. The petitioner/tenant examined himself as RW-1 and reaffirmed the contents of his written statement and affidavit. Upon perusal of the testimony of the witnesses and evidence produced on record, the learned Trial Court arrived at a conclusion that the respondent/landlord was able to prove the factum of a small unit of handkerchief being run in the two shops situated on the ground floor of the suit premises, by her son Naveen, and also her bonafide need of the tenanted shop for meeting her residential requirements and, consequently decreed the eviction petition in favour of the respondent/landlord. Hence, the present petition.

4. The Learned Counsel for the petitioner/tenant urged before this Court that the learned Trial Court has passed the impugned order in spite of the fact that no evidence was led by the respondent to prove that her son is running the unit of handkerchief in the two shops situated on the ground floor of the premises. It is further submitted that the suit premises falls under the category of mixed land use according to the Delhi Master Plan, and there was no proof of any permission taken from the MCD by the respondent's son to carry the business of handkerchief, which goes to show that the shops are, in fact, lying vacant, and not being used for any commercial purpose by the respondent's son. It is also urged that no proof of any

employees engaged by the respondent's son or separate commercial electricity connection being taken by the respondent's son, has been brought on record. It is further contended that the tenanted shop does not have any amenities like bathroom, water connection, etc. and cannot be used by the respondent for residential purpose. It is submitted that the Ld. ARC passed the order after due consideration of material evidence and testimonies of witnesses and it requires no interference by this Court.

5. Heard the submissions and perused the record.

6. The only issue argued before this Court by the Learned Counsel for the petitioner is regarding the claim of the respondent that the two shops on the ground floor of the suit premises, were being utilized by her son for commercial purpose. This has been vehemently refuted by the petitioner/tenant stating that no conclusive proof has been produced by the respondent. The perusal of the evidence proves otherwise. The respondent had examined herself, her two sons and her husband before the learned Trial Court. They were also cross examined at length on this issue. But, their testimonies are consistent on the point that the two shops are, in fact, being utilized by the respondent's son Naveen to run a small unit of handkerchief. Their testimony could not be shaken or proved to be incorrect. Mere denial by the petitioner of this fact is not sufficient to disregard the credible testimonies of the four witnesses. The petitioner has not examined any independent witness to refute this claim of the respondent and has also not brought on record any material evidence to support his contention. Moreover, PW-2 Shri Roshan Lal Gupta has maintained in his cross examination that there are two electricity meters installed in the suit premises, one being commercial and the other domestic, which lends credence to the submission of the respondent that the two shops are utilized by her son for commercial purpose.

7. This is common knowledge that in the premises falling in mixed land use areas, certain commercial activities are permissible on the ground floors and for some activities even licences are not required from the civic Authorities. This is beyond the scope of power of tenant and this Court to see as to why and how, the son of respondent was running handkerchief unit and if he was paying or not mixed user charges. The fact that the respondent has not led any evidence regarding the income tax or the employees' records of the unit being run by her son, could not be the factors to discredit her case in this regard. The respondent has, from her testimony and those of her sons and the husband, which have remained un-assailed, been able to prove that her son has been running a small unit of manufacturing of handkerchiefs on the ground floor portion of the suit premises.

8. It is undisputed that the family of the respondent comprised of self, her husband and also two married sons, and the present accommodation available with her on the first and second floor comprised of two rooms each. Having regard to the requirement of three couples, besides the accommodation that may be required for

the visiting married daughter as also the guests and drawing room, the present accommodation available with the respondent cannot be said to be sufficient and suitable for the residential purposes. There is no bar for the respondent to use the tenanted shop for the residential purposes. Consequently, I am of the considerate opinion that the respondent had conclusively proved the fact that a small handkerchief unit is indeed being run by her son Naveen in the said shops on the ground floor of the suit premises.

9. The contention raised by the Learned Counsel for the petitioner that the tenanted shop does not have any water connection or bathroom, and hence cannot be used by the respondent for residential purpose, is untenable. The respondent can always make such arrangement after obtaining the possession of the tenanted shop and cannot be denied the right to utilize her property on this frivolous ground. In view of the above discussion, the findings of fact arrived at by the learned ARC cannot be faulted with. I find no illegality or perversity in the impugned order. The petition being without any merit is hereby dismissed.