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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.REV. 80/2022**

KUSUM SHARMA (DECEASED) THROUGH LEGAL HEIRS

.....Petitioner

Through: Mr. Arvind Mishra, Mr. Ankit Verma,
Mr. Sachin Verma, Ms. Archana
Mishra and Dr. Raj Kumar Sharma,
Advocates

versus

VIPIN NANDA

.....Respondent

Through: Respondent in person.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

21.01.2025

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1. The present Petition has been filed by the Petitioner/landlord seeking to challenge the Order dated 29.10.2021 passed by the learned Additional Rent Controller-1 (Central District), Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the leave to defend/contest Application filed by the Respondent/tenant was allowed on a limited aspect of the matter. The premises in issue is shop No. 1, ground floor in the property bearing no. 2762A/22, Beedan Pura, Karol Bagh, New Delhi-110005 as shown in red colour in the site plan attached with the Eviction Petition [hereinafter referred to as "subject premises"]
2. This is effectively the second round of litigation for the Petitioner/landlord. In the first round, the leave to defend/contest Application filed by the Respondent/tenant was dismissed and the Eviction



Petition was allowed by the learned Trial Court on 21.07.2012. The Order dated 21.07.2012 passed by the learned Trial Court was challenged by the Respondent/tenant before this Court by filing a Petition being RC REV. 519/2012. The Coordinate Bench of this Court, by Order dated 01.07.2014 [hereinafter referred to as 1st July Order"], after hearing the parties, directed the learned Trial Court to restrict the examination under the leave to defend on two issues:

- (i) To determine the area which was sold by late Shri Mukut Bihari by the registered sale deed dated 06.09.2003.
- (ii) Whether the property/shop/common gallery alleged by the tenant to be in occupation of Shri Sukhdev Kapoor is in anyway owned or let out by either the Petitioner/landlord, Smt Kusum Sharma or her daughter-in-law, Ms. Anjali Bhardwaj.

2.1 By the 1st July Order, the matter was subsequently remanded back to the learned Trial Court for a decision on the aforesaid aspects. Both parties led their evidence on this aspect of the matter and subsequently, by the Impugned Order, the learned Trial Court decided the first issue in favour of the Petitioner/landlord while the second issue was decided against the Petitioner/landlord and passed a direction that "*the leave to defend/contest Application filed by the Respondent/tenant is allowed*". It is this Order, that has been challenged before this Court in the present Petition.

3. Learned Counsel appearing on behalf of the Petitioner/landlord makes three submissions. In the first instance, he submits that in essence, the only issue before the Trial Court was the determination of what would be an alternate suitable accommodation available to the Petitioner/landlord which, it was stated by the Respondent/tenant, to have been given on lease. On this



aspect learned Trial Court gave a finding that it was Petitioner No.1 who had let out the shop on the gallery on ground floor of property bearing no. 2762/22, Beedan Pura to Sukhdev Kapoor. Thus, thereby creating an artificial scarcity.

3.1 Learned Counsel appearing on behalf of the Petitioner/landlord further submits that this finding of the learned Trial Court is incorrect. The Petitioner/landlord has from the beginning of the Petition, has maintained the same stand - that the shop admeasuring 10 x 12 ft in property bearing no. 2762A/22, Beedan Pura, Karol Bagh, New Delhi-110005 [hereinafter referred to as "2762 shop"] initially belonged to the husband of the predecessor-in-interest and upon his death was inherited by Smt. Kusum Sharma. The 2762 shop was thereafter sold to a person called Shri Chandra Prakash. Thus, the 2762 shop was not available.

3.2 Learned Counsel appearing on behalf of the Petitioner/landlord further submits that this aspect was set out by the Petitioner/landlord in his Eviction Petition. He seeks to rely upon paragraph 18(c) in this regard which is extracted below:

“18(c) That during the life time of Shri. Mukat Behari sold two shop to some other person in 1989/2000 and kept two shops in this possession. Both the two shops which were kept by Mukat Behari were let out to two tenants i.e. shop No. 1 was let out to the Respondent in 1989 and a small Kolki Type Shop under the stair case to some other tenant. Hence both shops are occupying by two tenants. The shop No. 1 is occupying by Tenant/Respondent @ Rs.564/- P.M. and another shop which is under the stair case is occupying with other old tenant.”

3.3 Learned Counsel appearing on behalf of the Petitioner/landlord submits that after the passing of the 1st July Order, the evidence was led on the issues framed and after evidence, the Impugned Judgment has been passed allowing the leave to defend/contest Application filed by the



Respondent/tenant which in itself, is not in accordance with law. He submits that on this short ground alone, the Impugned Order suffers from infirmity.

3.4 Learned Counsel further submits that in any event, the Petitioner/landlord has filed Affidavit by way of evidence before the learned Trial Court and had filed a certified copy of the sale deed dated 06.09.2003 and even produced the original before the learned Trial Court, to show that 2762 ft. shop was sold by Shri Mukat Behari [husband of Shri Smt. Kusum Sharma and predecessor-in-interest of the Petitioners] to Shri Chandra Prakash. It is contended that although this person is in relation of the Petitioner/landlord, the Petitioner/landlord has nothing to do with these premises and the same is being independently used by the said Shri Chandra Prakash from date of sale until today.

3.5 Learned Counsel further seeks to rely upon cross examination of RW-2/Mr. Sukhdev Kapoor, who was the tenant in the 2762 ft. shop, to submit that in his cross examination, Mr. Sukhdev Kapoor has voluntarily admitted that the owner of the 2762 ft. shop was a “gent”. It is, thus, contended that it could not have possibly been found by learned Trial Court that the owner of the 2762 ft. shop was the daughter in law of the erstwhile Petitioner i.e., Ms. Anjali Sharma [Petitioner No.1].

4. Learned Counsel for the Petitioner/landlord thus, submits that the Impugned Order cannot be sustained.

5. The Respondent appears in person and submits that his Counsel is not available today.

6. At his request, list on 18.02.2025.

7. It is made clear that no further adjournment shall be granted to the Respondents.



8. The parties are at liberty to file short note of contentions, not exceeding three pages, at least one week before the next date of hearing, along with compilation of judgments, if any, they wish to rely upon. All judgments sought to be relied upon shall be filed with an index which also sets out the relevant paragraph numbers and the proposition of law that it sets forth.

TARA VITASTA GANJU, J

JANUARY 21, 2025
g.joshi

Click here to check corrigendum, if any