

\$~46

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 361/2018**

ROHIT AGGARWAL Petitioner
Through: Mr.Anil Kher, Sr.Advocate with
Ms. Subiya Akbar, Advocate

versus

DR SWARAN BHATIA Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **31.07.2018**
Cav. 687/2018

Since the learned counsel for the caveator has entered appearance, the caveat is discharged.

CM No.30322/2018

Exemption allowed, subject to just exceptions.

RC.REV. 361/2018 and CM Nos.30321/2018 and 30323/2018

Learned senior counsel for the petitioner and the learned counsel for the respondent have been heard.

Vide the present petition, the petitioner assails the impugned order dated 23.1.2018 of the learned ARC, Tis Hazari Courts, Delhi in Case No.E-688/17 (CIS No.797/17) vide which an eviction petition filed by the respondent to the present petition seeking eviction of the petitioner herein, i.e., the tenant of the tenanted premises i.e., Corner shop on the Western end of the

Building No. A-90, Kamla Nagar, Delhi at ground floor (inclusive of mezzanine), admeasuring about 120 sq. Fts. At ground and 70 sq. Ft6s at mezzanine, total area being 190 sq. Ft. as shown in red colour in the site plan annexed to the petitioner filed on the ground of *bona fide*, requirement under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (as amended) was allowed and the tenant, i.e., the petitioner herein was directed to be evicted from the tenanted premises vide the impugned order dated 23.1.2018 with the application filed by the tenant, i.e., the petitioner herein seeking leave to defend having been declined it having been observed to the effect that the respondent, i.e., the petitioner had failed to raise any triable issue, which requires evidence to be proved with it having been directed that the order dated 23.1.2018 would operate only after the expiration of the period of six months from the date of the impugned order in view of the provisions given in Section 14(7) of the Delhi Rent Control Act, 1958 (as amended).

On behalf of the petitioner, it has been urged that the landlady, i.e., the respondent to the present petition has no *bona fide* requirement of the premises in question in as much as she has retired as a doctor in the year 2004 as an Additional M.H.O from the MCD and her submission that she now seeks to start the medical practice at the tenanted premises is apparently not *bona fide* and is wholly *mala fide* to evict the petitioner from the premises in question. It has further been submitted on behalf of the petitioner that no explanation in relation to the aspect as to

why the landlady did not choose to seek to run any medical clinic from 2004 till the filing of the Eviction Petition No.688/17 at any stage has been put up whatsoever and has also not been considered in the impugned order.

On behalf of the respondent, reliance has been placed on the averments made in the eviction petition itself, with specific reference to the averments in paragraph 12 of the Eviction Petition which reads to the effect:

“Xii. That the petitioner is of the age of 72 years, doctor by profession and qualification. She did her MBBS from Lady Hardinge Medical College, New Delhi. She retired as Addl. M.H.O. from MCD in 2004. After retirement she started taking personal care as well as medical care of her husband Sh. Jitender Kumar Bhatia who was long suffering from multiple ailments such as Heart Disease, having undergone By-pass surgery, insertions of Stents, I.C.D, etc. Parkinsonism, CLL (Chronic Lymphocytic Leukemia), Knee problem for which replacement surgery were required. In these circumstances, the petitioner had to devote her entire time with her ailing husband as he was not able to walk even most of the time bed ridden.”

The other contention that has been raised on behalf of the petitioner is that as per the Will of the deceased spouse of the landlady, there are several properties available to the landlady of which she could have sought eviction of the persons under tenancy and occupation thereof and that there are available

factory premises also in an industrial area, SMS Cooperative Industrial Area and other premises under tenancy or in possession of her sons Rohit Bhatia and Mohit Bhatia and despite the same she seeks eviction of the petitioner herein of the tenanted premises.

The tenanted premises are mentioned as described in the eviction petition, dimensions of which description are not refuted on behalf of the tenant, i.e., the petitioner. Apparently the tenanted premises are on the ground floor A-90, Kamla Nagar, Delhi-110007.

Apparently, the land lady is 73 years of age, the requirement of running a medical clinic on the ground floor in the circumstances cannot be termed to be *mala fide* in any manner. Significantly, the learned ARC has also taken into account the factum that patients who would require treatment would have to climb up the stairs in the other tenanted premises qua which it has been submitted by the petitioner that the respondent could have availed of the same. There is no dispute in relation to the relationship of the landlord and the tenant between the petitioner and the respondent in as much as the petitioner apparently after the demise of the deceased spouse of the respondent landlady has paid the rent to the landlady, i.e., the respondent herein and has attorned to her. There is thus on the record no infirmity in the impugned order dated 23.1.2018 in Eviction Petition No. 688/17. The petition RC 361/2018 and the accompanying applications are thus declined.

At this stage, on behalf of the petitioner, learned senior counsel for the petitioner, submits that time may be granted to the petitioner to vacate the premises in as much as the petitioner is in occupation since 5.10.1994 qua which it has been submitted on behalf of the respondent by the learned counsel for the respondent that time, even if be granted may be granted, only on payment of market rate occupation charges by the petitioner.

On a consideration of the rival submissions, the petitioner is granted time to vacate the tenanted premises latest by the date 31.1.2019 subject to payment of electricity charges and payment of occupation charges @ Rs.35000/- per month w.e.f. from the month of July, 2018 to be paid into the account of the respondent the details of which be submitted on the record during the course of the day and be deposited in the account of the respondent each month by the 7th day of each succeeding English calendar month w.e.f. 7.8.2018. The undertaking be also submitted by the petitioner that he will also handover the vacant possession of the suit premises as directed herein above.

The petition is disposed of accordingly.

ANU MALHOTRA, J

JULY 31, 2018/SV