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

% *Date of Order: 31.10.2018*

+ **RC. REV. 513/2018 CM No.45716-45717/2018**

M/S. METRO BEARINGS Petitioner
Through: Mr. Alamgir, Advocate.

versus

MRS. FAIZUNNISA & ORS. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

CM No.45717/2018 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

RC. REV. 513/2018 & CM No.45716/2018

3. The impugned order dated 31.05.2018 passed by the Court of the learned Additional Rent Controller (Central) Delhi (ARC) allowing the eviction petition filed by the respondents against the petitioner under Section 14 (1) (e) of Delhi Rent Control Act, 1958 (DRC Act) is the subject matter of challenge in this revision petition filed under Section 25-B (8) of DRC Act.

4. The respondents sought ejection of the petitioner from the suit property used as a godown on the ground floor bearing No.2190,

Mohalla Rodgran, Lal Kuan, Delhi, as shown with red colour in the site plan, for their *bona fide* requirement. In sub-para (viii) of para 19, the respondents have given the detail of her family members. The details of other accommodation available with the respondents and their family members are set out in sub-para No.(ix) to para (xxiii) of para 19 of the petition. The respondents pleaded that they have been doing their business but due to paucity of accommodation they have taken certain premises on rent and are facing difficulty in expanding their business and required the tenanted premises for expansion of their business. It is further pleaded by the respondent that the premises in question is situated near to their accommodation and more suitably located for expanding the business. It is made clear by them that apart from the said property they do not possess any other reasonably suitable non-residential accommodation for their own use and occupation.

5. In its written statement, it is, *inter alia*, pleaded by the petitioner/tenant that the premises in question is absolutely unfit for commercial purposes being situated in a narrow *gali* far away from the main road, and is too small to serve the purpose of the respondents; the respondents are in possession of several additional accommodation as stated in the petition and thus they do not require the tenanted premises for any purpose; the respondents have even been allotted one commercial property bearing F-407 measuring 600 square yards situated at Road No.28, UPSIDC, Phase-1, Masoori, Dasna Road, Ghaziabad, U.P; the sole motive of the respondent is to sell the suit

property, and the premises in question being situated in a *gali* can only be used for the purposes of a godown and not for commercial purposes.

6. In support of their case, the respondent No.4 examined himself as PW1. In his deposition, PW1 reiterated the averments made in the petition and despite opportunity, the petitioner did not cross-examine him and his testimony went unrebutted and unchallenged. The petitioner has not adduced any evidence and their evidence was closed on 09.02.2018. The petitioner thereafter stopped appearing and was proceeded *ex parte* on 19.03.2018 by the Ld. ARC. As neither did the petitioner cross-examine PW1 (petitioner No.4) nor did he adduce any evidence, the learned ARC after referring to the relevant case law passed an order of eviction against the petitioner and made it clear that the order shall not be executable before the expiry of six months as provided in Section 14 (7) of the DRC Act.

7. It is contended by the learned counsel for the petitioner that in-fact the learned counsel for the petitioner has been negligent and neither did he inform the petitioner about the date of hearing nor did he cross-examine PW1. He urges that after the closing of the petitioner's evidence, learned counsel for the petitioner did not communicate to the petitioner that the matter is listed for their evidence for a particular date and ultimately the case resulted in *ex parte* proceedings against them on 19.03.2018. He submits that to meet the ends of justice, the petitioner may be granted one more

opportunity to cross-examine PW1 and a date to adduce their evidence.

8. I have heard the learned counsel for the petitioner and perused the material on record.

9. In **Sarwan Dass Bange vs. Ram Prakash, 167 (2010) DLT 80** the Hon'ble Single judge of this court discussed the judgment of the Hon'ble Supreme Court in the case of **Baldev Singh Bajwa v. Monish Saini (2005) 12 SCC 778**, and interpreted the law laid down by the Apex Court on the presumption of the bonafide requirement to be drawn in the favour of the landlord and concluded that the judgment of the Supreme Court applies not only to the cases of NRIs but also extends to general cases. The Single Judge reiterated that "*the legislative intent is of expeditious disposal of the application for ejection of tenant filed on the ground of requirement by the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only. It was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the*

Court for ejectment of the tenant unless his need is bona fide – no unscrupulous landlord in all probability, under this section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him. It was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the Court his requirement shall be presumed to be genuine and bona fide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine. The tenant is required to give all the necessary facts and particulars supported by documentary evidence if available to prove his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord; a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.”

10. It is thus clear from the above said position that whenever a landlord seeks ejectment of the tenant for *bona fide* requirement, the requirement shall be presumed to be genuine and bonafide. Though, the burden lies upon the tenant to prove that the requirement is not genuine, it is also, however, settled in law that it should be more than just a mere assertion on the part of the tenant to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.

11. The testimony of PW1 (respondent No.4) went unrebutted and unchallenged. Despite opportunity the petitioner did not adduce any evidence in support of their contentions. So far as the negligence of the lawyer for the petitioner before the learned ARC is concerned, the petitioner has not even indicated the name of his lawyer in the grounds of appeal. Even now during the course of the arguments the learned counsel for the petitioner is not able to name the counsel for the petitioner before the learned ARC. He admits that the petitioner has not lodged any complaint against his counsel. Since the evidence of PW1 (petitioner No.4), on *bona fide* requirement of the premises in question and on the point that no other alternative suitable accommodation is available to them, went unrebutted and unchallenged, and in the absence of anything contrary, the respondents have been able to prove their *bona fide* requirement for the property in question.

12. In view of the above discussion, I do not find any illegality in the impugned order for ejectment and the same is in accordance with law. The petition along with application bearing CM No.45716/2018 is dismissed.

VINOD GOEL, J.

OCTOBER 31, 2018
“sandeep”