

**Court No. - 4**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 7864 of 2018

**Petitioner :-** Shyam Sunder Agrawal

**Respondent :-** Smt. Geeta Devi And 3 Others

**Counsel for Petitioner :-** C.K.Parekh(Senior Adv.),Kamal Kumar Singh

**Counsel for Respondent :-** Ankur Azad,Ram Chandra Shukla,Shashwat Anand,Vijay Kumar

**Hon'ble Ajit Kumar,J.**

**Re: Civil Misc. Recall/ Restoration Application No.- 8 of 2024**

Explanation offered for non-appearance of the counsel on the date fixed and the petition was dismissed for want of prosecution are taken to be sufficient and accordingly, recall application is allowed.

The order dated 2nd July, 2024 is hereby recalled.

The petition is restored to its original number with the same status as it had prior to the passing of the order dismissing the petition in default which has been recalled herein above.

**Order on Petition**

Heard Sri Kamal Kumar Singh, learned counsel for the petitioner and Sri Shaswat Anand, learned counsel for the respondents.

The petitioner before this Court, who is a tenant of the landlord respondent, has assailed the order dated 18th September, 2018 passed by the court of appeal as well as the order dated 7th February, 2017 passed by the prescribed authority, whereby release application of the landlord-respondent has been granted.

The submission advanced by learned counsel for the petitioner is that findings returned by the prescribed authority as well as of court of appeal on the point of *bona fide* need are absolutely unsustainable for the reason that petitioners are residing with the respective families at different place and the place where the shops in question situate, there is already a shop in their possession and they are jointly doing business in the shop in question.

From the perusal of the pleadings raised in the release application as well as in the written objections filed by the tenant it clearly transpires that the shop to which the tenants suggest to be in possession of landlord-respondent was originally in possession of their father. After the death of the father, it appears, that landlord-respondents have separated in business and the applicant No.- 2 came to be settled in the shop in question.

Regarding the other son, who is the applicant No.- 1 and applicant Nos.- 3 & 4 though are sought to be allegedly doing the same business vide paragraph 14 of the written objection but it has been pleaded before the court of appeal that both the landlords are doing business jointly. Since it is an admitted position of fact on record that there were three sons of late Rama Kant Gupta, who were in need of the shops in question and one of the shops has gone to respondent No.- 2 Mr. Rakesh Gupta, the other three persons, who have set up their claims for the release to start business have been left with no accommodation.

It is settled legal position to the effect that landlord is always in a position or an arbiter of his own requirement and if his two sons are unemployed and wife of late Rama Kant Gupta is also there merely, because they have one shop, it cannot be said that those remained no *bona fide* after the death of the husband, who was running mobile repair work in the shop.

In the considered opinion of the Court, therefore, the concurrent findings that have come to be returned by both the authorities, namely prescribed authority and appellate authority are based upon sound reasonings that each individual son if required to be settled by the landlord and he is having own property, the tenant cannot be permitted to guide them that since they have using earlier one shop as a joint business they should continue to do the same, nor it lies in the domain of the tenant to suggest that since they are already earning sufficient amount from the rent, therefore, they can be survived on the same **(Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta (1999) 6 SCC 222)**.

It is an admitted position of fact that the tenant who was in a position of another shop likewise had also been directed to release

the same pursuant to the order passed by the appellate authority in another rent case.

In view of the above, therefore, I do not find any manifest error in the orders of the prescribed authority or of the appellate authority.

The petition on the *bona fide* need stands devoid of merit and so also on the point of comparative hardships.

Accordingly, the same is dismissed with no order as to cost.

**Order Date :-** 9.12.2024

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