

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ RC. REV. 38/2010 and CM 2786/2010

Decided on 24.05.2010

IN THE MATTER OF :

BAL KRISHAN KHANNA Petitioner
Through: Mr. Naveen Kumar Nayyar, Advocate along
with petitioner in person

Versus

SMT.RAVI KANTA MADHOK Respondent
Through: Mr.Mithilesh Kumar Singh and
Mr.D.Kishor, Advocates along with
respondent in person.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The petitioner (respondent before the court below) is aggrieved by an order dated 5.12.2009 passed by the learned Additional Rent Controller dismissing an application filed by him seeking leave to contest the eviction petition filed by respondent/landlady(petitioner before the trial court), in respect of a

shop bearing No.1, situated on Ground Floor of property No.11/4, West Patel Nagar, New Delhi.

2. The facts relevant to decide the petition are that the respondent/landlady filed an eviction petition in respect of the aforesaid tenanted premises stating *inter alia* that she needs the same *bonafide* for her use, as also for the use of her family members which consists of herself, her son, his wife, a grandson and a married granddaughter. It is averred in the petition that the respondent/landlady, who is aged 80 years and suffering from a number of ailments, is residing on the first floor of the suit premises, consisting of two bed rooms, a dining-cum-drawing room, a toilet, bathroom, kitchen and open space along with her aforesaid dependants. It is further averred that the son of the respondent/landlady is an LIC agent and requires the shop in question and other space on the ground floor, for running his office and that the grandson of the respondent/landlady is 21 years of age and requires some space to set up his own business. The daughter-in-law of the respondent/landlady also requires some space for commercial use as she wants to run her own business. As per the respondent/landlord, she is finding living on the first floor highly inconvenient and that the same is causing acute hardship to her. She has stated that the shop in question and the other space on the ground floor is required for her own *bonafide* use and for her dependants. It is further stated that as and when the married

granddaughter of the respondent/landlady and her husband visit her maternal home, she is unable to stay there because of paucity of accommodation.

3. Summons were issued to the petitioner/tenant in the aforesaid petition, in reply to which an application for leave to defend was filed. The petitioner/tenant stated that the shop in question was let out to him on rent by the father-in-law of the respondent/landlady 40 years ago and ever since, he had been running his business therefrom. It was averred that there was sufficient space available on the ground floor of the suit premises with the respondent/landlady and her family and that they did not require the tenanted premises which is commercial in nature and cannot be put to use for residential purposes and that the son of the respondent/landlady has an office on the first floor of the suit premises which he had been using for the past several years. Thus it was stated that there was no change in the circumstances which necessitated any further accommodation for his business purpose.

4. Arguments were heard by the learned Additional Rent Controller who held that the accommodation available with the respondent/landlady was highly insufficient to meet the growing requirements of her family and that the requirement for acquiring the tenanted shop for commercial/residential purposes was *bonafide*. As a result, the leave to defend application filed by the petitioner/tenant

was dismissed and an eviction order passed in favour of the respondent/landlady.

5. Two fold objections have been raised by the petitioner/tenant to assail the impugned order. Counsel for the petitioner states that the impugned order is liable to be set aside as the learned Additional Rent Controller failed to take into consideration the submission of the petitioner that the deceased father-in-law of the respondent/landlady had an understanding with the petitioner that he would remain in the tenanted premises at his will for the rest of his life, having taken a security amount of Rs.8,000/- from him 40 years ago. Secondly, it is stated that there is sufficient accommodation available in the suit premises and about two years ago, the respondent/landlady has *malafide* let out a portion of the ground floor measuring 155 sq. yards, which demonstrates that her need for additional accommodation is not *bonafide*.

6. In so far as the plea of the petitioner/tenant that there was a mutual understanding between the deceased father-in-law of the respondent/landlady and the petitioner/tenant that the tenanted premises in question shall be used by the petitioner/tenant at his will for the rest of her life is concerned, a perusal of the leave to defend application filed by the petitioner/tenant before the learned Additional Rent Controller shows that no such ground was taken by him to contest the eviction petition. In para 1 of the leave to defend

application, the petitioner/tenant only stated that the tenanted premises was let out to him on rent by the father-in-law of the respondent/landlady 40 years ago after taking security amount of Rs.8,000/-. There is not a whisper in the application with regard to such a mutual understanding between the petitioner/tenant and the deceased father-in-law of the respondent/landlady, as claimed in the present petition. The said ground cannot be permitted to be taken at this stage by the petitioner/tenant.

7. As for the second contention of the petitioner/tenant that the respondent/landlord has let out 155 sq.yards on the ground floor of the tenanted premises to a tenant about two years, a perusal of the paper book shows that while the aforesaid plea was specifically taken by the petitioner/tenant in para 11 of the leave to defend application, the same has not been dealt with in the impugned order.

8. In these circumstances, it would be appropriate if the matter is remanded back for a finding to be returned by the learned Additional Rent Controller, limited to the aforesaid aspect alone. The parties shall appear before the learned Additional Rent Controller to address arguments in respect of the issue raised by the petitioner/tenant in para 11 of the leave to defend application. After arguments are heard, the learned Additional Rent Controller shall pass an order on the aforesaid aspect.

9. The parties shall appear before the learned Additional Rent Controller on 12.7.2010, when a date shall be fixed for addressing arguments by the parties. Neither of the parties shall seek an adjournment before the learned Additional Rent Controller, for addressing arguments. In case either of the parties are aggrieved by the order that may be passed by the learned Additional Rent Controller, they shall be entitled to seek their remedies in accordance with law.

10. As the period of six months granted to the petitioner/tenant under the impugned order expires on 4.6.2010, and now that the matter is being remanded back to the learned Additional Rent Controller for 12.7.2010, for arguments to be addressed on the limited ground mentioned in para 7 hereinabove, counsel for the respondent/landlady fairly states that his client shall not take any coercive steps against the petitioner/tenant, till a decision is rendered by the learned Additional Rent Controller on the aforesaid aspect.

11. It is further directed that in the event the learned Additional Rent Controller decides the issue against the petitioner/tenant, the said order shall not be acted upon for a period of four weeks from the date it is passed.

12. The petition is disposed of, along with the pending application.

13. The Registry is directed to forward a copy of this order forthwith, to the learned Additional Rent Controller, for perusal and compliance.

MAY 24, 2010
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(HIMA KOHLI)
JUDGE