

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ **RC.REV.100/2010 and CMs 8110-11/2010**

Date of decision : 03.05.2010

IN THE MATTER OF :

ANAND PRAKASH ..... Petitioner  
Through: Mr. Pradeep Gupta, Mr. Suresh Bharti and  
Mr. Arvind Bansal, Advocates

versus

RAM MURTI DEVI ..... Respondent  
Through: Nemo.

**CORAM**

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

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|--------------------------------------------------------------------------|-----|
| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not?                                | Yes |
| 3. Whether the judgment should be reported in the Digest?                | Yes |

**HIMA KOHLI, J. (ORAL)**

1. The petitioner/tenant has assailed an order dated 03.03.2010 whereby the Additional Rent Controller, dismissed his leave to defend application filed in reply to the eviction petition preferred by the respondent/landlady under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as '**the Act**'), in respect of a shop situated on the ground floor of property bearing No.B-8, Shopping Centre II, Vivek Vihar, Delhi, and simultaneously passed an eviction order in favour of the respondent/landlady, with a condition that the same shall not be executed for a period of six months from the date of passing of the order.

2. In the eviction petition, the respondent/landlady has claimed

that she is the owner of the tenanted premises situated on the ground floor and that she and her husband live on the floor above. While the respondent/landlady is aged 67 years, her husband is 71 years old. It is averred that she is suffering from a number of ailments and is unable to take care of herself and her husband has undergone a heart surgery. It is further stated that the respondent/landlady and her husband have no male issue to look after them and their three daughters are married and well settled in their marital homes. The respondent/landlady states that she needs the constant presence of her husband to look after her and to provide her medical assistance in case of need. The husband of the respondent/landlady conducts his business from a tenanted premises situated in Naya Bazar, Delhi. It is stated that as Vivek Vihar, i.e., the place of residence of the respondent/landlady is far from Naya Bazar, her husband is unable to conduct his business from such a long distance on account of having to attend to the medical contingencies of his wife and as a result, his business suffers on account of his absence. Thus the respondent/landlady has sought the eviction of the petitioner/tenant from the tenanted shop situated on the ground floor of her residential premises, to enable her husband to shift there and conduct his business therefrom.

3. Summons were issued in the eviction petition under the Third Schedule whereafter, the leave to defend application was filed by the petitioner. In the leave to defend application, the petitioner/tenant stated that the respondent/landlady has filed the eviction petition only to harass him and that earlier also she had filed a petition against him under Section 14(1)(k) of the Act, which was dismissed. There are also certain FIRs stated

to have been lodged by both the parties against each other in respect of which, proceedings are pending in the concerned courts. The petitioner/tenant further averred in his leave to defend application that the husband of the respondent/landlady is settled in his business of selling rice and other commodities in a tenanted premises situated in Naya Bazar and that the tenanted shop at Vivek Vihar is not required by the respondent/landlady for *bonafide* purposes. The petitioner/tenant further submitted that the husband of the respondent/landlady is hale and hearty and regularly attending to his business at Naya Bazar and that the respondent/landlady has three shops in the suit premises, including the tenanted premises, which are let out by her and that sufficient accommodation is available to her on the upper floor of the suit premises.

4. After considering the respective submissions made by the counsels for the parties and perusing the leave to defend application, the Additional Rent Controller examined the stand of the petitioner/tenant and arrived at a conclusion that he had not been able to raise any triable issue in the leave to defend application and as a result, the said application was dismissed and the eviction petition was allowed.

5. Counsel for the petitioner/tenant has raised three-pronged arguments. He firstly submits that the learned Additional Rent Controller failed to take into consideration the submission of the petitioner that apart from the shop let out to him, there were two other shops, which were available to the respondent/landlady, and which could have been got vacated by her, but she concealed the said fact from the Court. He submits that while one of the shops is under the occupation of the son-in-law of the

respondent/landlady, the other shop is under the tenancy of another tenant. The said submission of the learned counsel is not borne out from the record. It is not a case of concealment of the extent of accommodation available with the respondent. Rather, a perusal of the site plan annexed with the eviction petition reveals that all three shops on the ground floor have been duly reflected by the respondent/landlady. She has further elaborated in the reply to the leave to defend application that apart from the shop under the occupation of the petitioner, one of the remaining two shops is under the tenancy of Sh.Ashok Kumar, her son-in-law who is running a provision store therefrom, and the other one is let out to one Sh.Ranjit Singh, a tailor. Therefore the alleged failure on the part of the respondent/landlady to reveal the existence of three shops on the ground floor, cannot be treated as a triable issue for the purposes of permitting the petitioner to contest the eviction petition by filing a written statement.

6. In any case, it is the discretion of the petitioner/landlady to determine her needs when asking for vacation of a tenanted premises, subject of course to the said need being *bonafide*. Similarly, it is the discretion of the respondent/landlady to select the tenant against whom she initiates proceedings for eviction. Mere availability of two other tenanted shops on the ground floor cannot be a ground on which the respondent can be ousted.

7. Counsel for the petitioner/tenant next contends that the respondent/landlady has not revealed the fact that the shop on the ground floor under the occupation of her son-in-law for running a provisional shop, is a camouflage and that in fact, the said shop is being run by the husband

of the respondent. A perusal of the leave to defend application shows that no such plea was raised by the petitioner/tenant before the learned Additional Rent Controller. Instead, in para 5(j) of the leave to defend application, on which reliance is placed by the counsel for the petitioner, the only allegation made was that the son-in-law and the daughter of the respondent/landlady are running a provisional store from the shop in question and taking care of the respondent/landlady. Taking care of the respondent/landlady cannot be equated with the contention sought to be raised now that the shop is actually being run by the husband of the respondent/landlady and not their son-in-law. The said ground having not been raised in the leave to defend application, cannot be permitted to be urged at this stage.

8. Lastly, it is alleged by the counsel for the petitioner that there is no *bonafide* need for the tenanted premises made out by the respondent/landlady inasmuch as her husband is running his business from Naya Bazar, which shop is available to him. It is however not denied by the petitioner/tenant that the shop at Naya Bazar is a tenanted shop. It is also not stated if there is any other commercial premises apart from the suit premises, which is available to the respondent/landlady for her husband to shift his business from the presently occupied tenanted premises at Naya Bazar to the other premises. It is an admitted position that the respondent/landlady and her husband are senior citizens, and that they have no male issue to take care of them. The state of health of the respondent/landlady and the necessity of her care and supervision by her husband is also not disputed. It is also undisputed that the sole earning

member of the family is the husband of the respondent/landlady, who has to travel from Vivek Vihar to Naya Bazar to conduct his business.

9. In these circumstances, it is not unreasonable for the Additional Rent Controller to have concluded that the shop in question being located right beneath the residential premises of the respondent/landlady, is bonafide required for being used by her husband to run his business therefrom. At the same time, he would be readily available to take adequate care of his wife in case of an emergency on account of her poor health. It has been correctly concluded in the impugned order that the husband of the respondent/landlady is well entitled to carry out his business from the tenanted premises which is the most suitable option available to them, given the age and the health condition of the respondent/landlady and her husband.

10. No other ground is urged by the counsel for the petitioner to assail the impugned order.

11. The impugned order is found to be in accordance with law and it is held that the same does not suffer from any irregularity, perversity or illegality, which deserves interference.

12. Accordingly, the present petition is dismissed alongwith the pending applications, as being devoid of merits.

MAY 03, 2010  
rkb

(HIMA KOHLI)  
JUDGE