

* **HIGH COURT OF DELHI : NEW DELHI**

R.C.R. No. 205/2010 & CM No. 15626/2010 (stay)

% Judgment reserved on: 30th August, 2010

Judgment delivered on: 28th September, 2010

Sh. Labhu Lal
S/o Jeevan Lal
R/o 2/90,
Roop Nagar,
Delhi-110007

....Petitioner.

Through: Mr.K.Sunil, Advocate.

Versus

Smt. Sandhya Gupta
W/o Luxmi Dutt Gupta
R/o 8/6, Alipur Road,
Delhi 110054.

....Respondent

Through: None

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

Present revision petition under Section 25-B of Delhi Rent Control Act, 1958 (for short as 'Act') has been filed against impugned order dated 13th July, 2010 passed by Additional Rent Controller (for short as Controller) Delhi, vide which application for leave to defend of petitioner was dismissed and eviction order has been passed.

2. Brief facts are that, respondent filed an eviction petition under Section 14 (1) (e) read with section 25-B of the Act for recovery of possession of portion on the ground floor of property no. 81-A, Kamla Nagar, Delhi as shown in red in the site plan attached with the petition. It is stated that premises in suit are required bonafide by respondent (owner/landlady) for her own use and for the use of her family members for expanding their business of Diagnostic Clinic and/or starting new business. Respondent is not in use and occupation or even physical possession of any other reasonably suitable accommodation for meeting the needs of her aforesaid requirement. Respondent and her family members are residing currently at Alipur Road, which accommodation is not suitable at all for expansion of the existing clinic.

3. Family of respondent comprises of herself, her husband, her son Dr. Mohit Gupta, daughter-in-law Dr. Swaran Gupta and two granddaughters. Son and daughter-in-law of respondent are carrying on business/practice in the name and style of Samadhan Diagnostic Clinic at the corner room in rear portion of ground floor and they both are practicing Radiologists. The aforesaid business of Diagnostic Clinic is being run by them with all the necessary and prescribed permission. Son and daughter in law of respondent with extraordinary labour and effort put in the aforesaid professional activity business had generated a large quantum of goodwill for the professional practice of clinic, in as much as the same is doing well, but urgently requires creation of necessary amenities for patients in terms of better examination rooms, cosier reception area and spacious patients area space, separate space for pathological laboratory which is out sourced at present for paucity of space, installation of new equipment and creating of examination rooms and rest room for staff as the expansion will require more employees.

4. Petitioner in his affidavit has stated that respondent is not the owner of premises in question. The alleged requirement is not for any

of the member of the family dependent upon the respondent. The son and daughter in law are not dependent upon respondent and they are having independent sources of income.

5. It is further stated that respondent had allegedly sold the upper floor portion of the property in question to Smt. Swaran Lata Gupta and thereafter filed petition for eviction against the tenant who are occupying second floor portion of the property. Other portion of the property was sold by respondent to some other person on 2nd June, 2003, when respondent already knew that her son has already become a doctor in 2003.

6. It is also stated that daughter-in-law of respondent visits the said portion only on few occasions in a month and son of respondent never work from the clinic. In fact, he regularly visits Nodia, Gurgaon and Rohini, where he is working. The bona fide requirement is not genuine inasmuch, as the Diagnostic/Pathological Lab is at the corner and there is one more shop in between the shop of petitioner and clinic. Respondent is also having other places and shops where in the space under the tenants is more. Petitioner is using the premises for selling various items of automobiles and it is not being used as a

godown. This matter relates to additional accommodation and not for the bonafide requirement.

7. In her counter affidavit respondent has controverted the averments made by the petitioner.

8. It is contended by learned counsel for petitioner that leave to defend ought not to have been refused since respondent has sought additional accommodation. Sufficiency of such accommodation can only be proved by way of evidence.

9. Other contention is that respondent is in the habit of creating ground for getting the premises vacated since she sold upper floor of the suit property and also ground floor in 2003, with a view to create scarcity and then to seek eviction of the petitioner.

10. It is also contended that when son of respondent became Doctor in 2003, respondent should not have sold the front portion of property. Son and daughter-in-law of the respondent occasionally visit the pathological lab, since they are regularly working at different labs in Noida, Gurgaon & Rohini and as such present eviction petition is malafide. As petitioner has raised triable issues the trial court ought

not to have refused leave to contest. In support, learned counsel cited following judgments:-

a) Santosh Devi Soni vs. Chand Kiran, 2000 (2) RCJ 579 (SC) and

b) Inderjeet Kaur vs. Nirpal Singh, (2001) 1 SCC 706;

11. There is no dispute about relationship of landlord and tenant between the parties, since petitioner himself is tendering rent to the respondent.

12. As far as letting purpose is concerned, same is for non residential purpose. In ***Satyawati Sharma Vs. Union of India, 2008 (5) SCC 287*** it has been held,

“The premises let out either for residential or commercial purposes can be got vacated by the landlord for bonafide requirement”.

13. Present petition has been filed under Section 25B (8) of the Act. A Full Bench of this Court in ***Mohan Lal Vs. Ram Chopra and another, 1982 (2) Rent Control Journal 161*** exhaustively considered the provisions of Section 25B of the Act. On the scope of the proviso to sub-section (8) of this Section, after examining the judgment of Supreme Court in ***Hari Shanker and others. Vs. Rao Girdhari Lal***

Chowdhury*, A.I.R. 1963 S.C. 698 and *Bell and Co. Ltd. Vs. Waman

***Hemraj*, AIR 1938 Bombay (223)** it was laid down as follows:-

“In our opinion the jurisdiction of the High Court under proviso to section 25B (8) has to be interpreted, keeping in view the legislative intent. The revision under section 25B (8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B (8) of the Act.”

14. Upon examination of above judgment it may safely be held that this court in exercise of the powers vested by proviso to sub-section (8) of Section 25B of the Act may reappraise the evidence only for a limited purpose of ascertaining whether the conclusion arrived at by the Rent Controller were wholly unreasonable that no reasonable

person acting with objectivity could have reached on the material available to test the order of the Rent Controller on the touchstone of whether it is in accordance with law.

15. In *Praveen Jain & Ors (Shri.) Vs. Dr. Mrs. Vimla, 2009 IV AD (Delhi) 653*, this court observed;

“The powers of this Court under Section 25B(8) are not appellate powers and this Court has only to see that the Trial Court had acted in accordance with law and not transgressed the limits of its jurisdiction.”

16. In *Rajinder Kumar Sharma & Ors. Vs. Leela Wati & Ors., 155 (2008) Delhi Law Times 383* the court observed;

“Section 25B was inserted by the legislature in Delhi Rent Control Act as a special provision for eviction of the tenants in respect of specified category of cases as provided therein. Where a landlord seeks eviction on the basis of bonafide necessity, a summary procedure is provided and tenant has to seek leave to defend disclosing such facts which disentitled the landlord from seeking eviction.”

17. In *Nem Chand Daga Vs. Inder Mohan Singh Rana, 94 (2001) Delhi Law Times 683*; it was held;

“That before leave to defend is granted, the respondent must show that some triable issues which disentitled the applicant from getting the

order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.

18. In ***Frank Anthony Public School Vs. Smt. Amar Kaur, 1984***

(6) Delhi Reported Judgment 47, it was held;

“The legislature has devised a "special procedure for the disposal of the application for eviction on the ground of bonafide requirement". It is modelled on Order XXXVII of the Code of Civil Procedure. The object is to reduce delays in litigation. The object is to introduce a "summary trial" in place of full length trial.”

19. In ***Sarwan Dass Bange Vs. Ram Parkash, 2010 IV AD (Delhi)***

252, observations made by Supreme Court in ***Baldev Singh Bajwa Vs.***

Monish Saini, (2005) 12 SCC 778 have been quoted as under;

“It was held that the legislative intent is of expeditious disposal of the application for ejectment 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 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."

20. Trial court in impugned order held;

"The next ground raised on behalf of the respondent is that Mohit Gupta and Mrs. Swaran Lata Gupta are not dependent upon the petitioner. The said ground cannot be accepted. It is not disputed on behalf of the respondent that they are son and daughter-in-law of the applicant. The respondent has failed to explain how the son and daughter-in-law are not dependent

upon the applicant for the requirement of premises for expansion of clinic.

The next ground raised on behalf of the respondent is that the petitioner has sold the upper floor portion of the property in question to said Smt. Swaran Lata Gupta and thereafter have illegally filed a petition for seeking eviction against the tenant who are occupying the second floor portion of the property in question. The said ground is not sustainable as it is not a case of the respondent that Smt. Swaran Lata Gupta, daughter-in-law of applicant can run clinic from the upper floor portion of the property and more specifically on the face of the contention of the applicant that the said property is residential one.

The next ground raised on behalf of the respondent is that other portion of the property has been sold by the petitioner to some other person on 02.06.2003 and the said portion is the front, prime and best located portion. The contention raised on behalf of the applicant is that the said property was sold out due to financial constraints. Admittedly, the property was sold in the year 2003 which is long back and not it is 2010 and this ground cannot be accepted.

The next ground raised on behalf of the respondent is that it has not been stated by the petitioner that the petitioner does not have any reasonably suitable residential or non-residential accommodation. This ground is also baseless because in paragraph no. 18a and 19 (xx) of the petition it is stated that the petitioner (or her family) is not in actual possession of any other reasonable suitable accommodation for carrying on her aforesaid family business of Diagnostic Clinic.

The next ground raised on behalf of the respondent is that the said daughter in law of the petitioner visits the said portion only on few occasions in a month. This ground cannot be accepted. It is not disputed on behalf of the respondent that son and daughter-in-law of the applicant are running a clinic in the shop adjoining to the premises.”

21. Family members of respondent as stated in eviction petition, have not been disputed by petitioner in its leave application. Petitioner has also not disputed this fact that respondent's son and daughter-in-law are carrying on business/practice under the name and style of Samadhan Diagnostic Clinic, at the corner room in rear portion of ground floor and both are practicing Radiologist duly registered with Delhi Medical Council. Petitioner himself admits that daughter in law of respondent visit the clinic only on few occasions.

22. Only plea taken by petitioner is that the alleged bonafide requirement is not bonafide in as much as the Diagnostic/Pathological lab are in the corner and there is other shop in between the shop of petitioner and that of Diagnostic center and thus there cannot be a genuine ground for expanding space between them.

23. It is well settled that it for the landlord to see as to which premise is more suitable to him/her and in what manner. Petitioner

nowhere dispute that son and daughter-in-law of respondent are living with her. They are very much dependent upon the respondent for requirement of premises for the purpose of expansion of their clinic. Petitioner also has not disputed this fact that clinic as stated by respondent, is being run in the corner shop in premises no. 81-A Kamla Nagar, Delhi.

24. In *M/s John Impex (Pvt.) Ltd. Vs. Dr. Surinder Singh & Ors.*

135 (2006) Delhi Law Times 265 this Court held;

“The conspectus of the aforesaid judgments shows that the broad principles have been set down of the requirement of a landlord not being a mere whim or fanciful but that it should be a genuine need of the landlord. It is only then that the requirement can be said to be bona fide within the meaning of under Section 14(1) (e) of the said Act. This would naturally require all the necessary matrix in terms of the factual averments and the evidence to be adduced in that behalf. Simultaneously it has to be kept in mind that the landlord is the best judge of his requirement and a tenant cannot dictate the terms on which the landlord should live. The bona fide requirement of the landlord would also depend on his financial status and his standard of living. The ARC found in favor of the landlord/owner and thus what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate court though the scope of scrutiny in a rent revision would be more than a revision

petition under Section 115 of the Code of Civil Procedure, 1908.”

25. In *Ram Babu Aggarwal Vs. Jay Kishan Das*, 2009 (2) RCR

455, Supreme Court observed;

“However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.”

26. In *Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and Others*, (2005) 8 Supreme Court Cases 252; it was observed;

“It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can

dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business.”

27. In *Shri Natha Singh v. Sh. H.V.Nayar, 1983 (1) RCJ 158*, the Court held;

“It is correct that the petitioner’s son and his daughter-in-law are working, but they are dependent upon the petitioner for the purpose of residence.”

28. Thus, looking from any angle, the requirement of respondent’s son and daughter-in-law for expanding the clinic being run in the premises in question, is most bonafide and genuine. Since they are dependent for accommodation on the respondent, the Judgments cited by learned counsel are not applicable to the facts of the present case.

29. Petitioner has failed to raise any triable issue in this case, which if proved might disentitle the respondent from getting an order of eviction in her favour. The trial court has given a detailed and reasoned order which does not call for any interference nor the same suffer from any infirmity or erroneous exercise of jurisdiction.

30. Present petition is hereby dismissed with costs of Rs.20,000/- (Rupees Twenty Thousand only).

31. Petitioner is directed to deposit the costs by way of cross cheque with Registrar General of this court, within four weeks from today.

CM No.15626/2010

32. Dismissed.

33. List for compliance on 29th October, 2010.

September 28, 2010
mw/ab

V.B.GUPTA, J.