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HIGH COURT OF DELHI : NEW DELHI

RCR No. 85/2009 & CM Nos. 13174/2009 & 14834/2010

% Judgment reserved on: 31st August, 2010

Judgment delivered on: 28th October, 2010

1. Mohd. Zafar.
2. Mohd. Muzaffar
Both sons of late Sh. Abdul Majeed.
3. Mr. Abdul Hakim,
S/o Late Abdul Hameed,
4. Ms. Nazma Parveen,
D/o Late Sh. Abdul Majeed.

All R/o 1521, First Floor,
Bazar Chitli Qabar, Delhi-6

....Petitioners.

Through: Mr. M. Mohsin Israili, Adv.

Versus

Mr. Abdul Arafin,
S/o late Sh. Azizuddin,
R/o 2466, Gali Kuen Wali,
Haveli Mahawat Khan,
Bazar Chitli Qabar, Delhi-6

....Respondent

Through: Mr. Vijay Tandon, Adv.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 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 25B of Delhi Rent Control Act, 1958 (for short as 'Act') has been filed by the petitioners challenging order dated 18th April, 2009, passed by Additional Rent Controller (for short as 'Controller') Delhi, vide which application for leave to defend filed by the petitioners was dismissed and eviction order was passed.

2. Brief facts of this case are that respondent is the owner/landlord of premises no. 1521, Bazar Chitli Qabar, Jama Masjid, Delhi. This property was purchased by respondent's father Sh. Aziz Uddin vide sale deed dated 17th April, 1995. Sh. Aziz Uddin expired on 19th October, 1999, leaving behind nine legal heirs. All the remaining eight

legal heirs of Sh. Aziz Uddin, relinquished their rights and interest of the property in question in favour of the respondent, vide relinquishment deed dated 1st February, 2008. Thus, respondent has become the absolute owner of the property. Petitioners are tenant in respect of three rooms situated on the first floor with open space on first floor and a tin-shed on barsati that is, on the second floor.

3. Property in question was let out to the petitioners for residential purposes and now the tenanted premises are required bonafidely by the respondent for his residence and for the residence of his dependent family members consisting of himself, his wife Mst. Nargis, his son Mohd. Talish and two unmarried sisters who are also dependent upon the respondent for their residence. Respondent at present is residing in property no. 2466, Second Floor, Gali Kuenwali, Haveil Mahawat Khan, Bazan Chitli Qabar, Jama Masjid, Delhi which belongs to his grandmother Mst. Shmasun Nisha and the said property is not owned by the respondent. Respondent is living in the same as licensee of his grandmother and now he wants to shift to his own premises and the tenanted property is only property which belongs to him.

4. In affidavit, in support of application for leave to defend filed by the petitioners, it is stated that respondent has not come with clean hands and has suppressed the material facts and has not disclosed the details of other accommodation owned by him and his family members. It is submitted that respondent is also owner of one property situated at Gali Gariya, Jama Masjid, Delhi and he is also having his property at Okhla, New Delhi. Further Smt. Shamsun Nisha, grandmother of respondent was owner of property no. 2466 to 2468, situated at Gali Kuen Wali, Haveli Mahawat Khan, Bazar Chitli Qabar, Jama Masjid, Delhi and after her death, respondent became the co-owner/co-sharer of the said properties. As such respondent and his family members are having sufficient accommodation of three rooms available with them in the said property and they can easily shift to other properties. It is further stated that need of respondent is not bonafide and he wants to let out the premises in question at higher rate of rent. It is stated that two unmarried sisters of respondent are of marriageable age and as and when their marriage is solemnized, the need of respondent shall automatically be finished. Further, site plan

filed by respondent is not correct and according to site. Thus, petitioners have raised triable issues which cannot be decided without allowing the parties to lead the evidence.

5. In reply to application for leave to defend, it is denied by the respondent that he is the owner in respect of any property in Gali Gariya, Jama Masjid, Delhi or in Okhla. It is stated that property no. 2466 to 2468, situated at Gali Kuen Wali, Haveli Mahawat Khan, Bazar Chitli Qabar, Jama Masjid, Delhi was owned by Mst. Shamshun Nisha who recently died on 21.9.2008, leaving behind her legal heirs i.e. two grandsons i.e respondent and Mohd. Imran and six grand-daughters. Grandmother of respondent was in possession of a portion, consisting of two rooms in which two unmarried sisters are residing and said accommodation is neither sufficient nor reasonably suitable for the respondent and his family members. Respondent bonafidely requires the tenanted premises for this reason.

6. It is argued by learned counsel for the petitioners that there is no relationship of landlord and tenant between the parties. There has been no attornment in favour of the respondent by the petitioners and

in the absence of the same, no eviction petition under the Act, could be filed in the Court of Rent controller.

7. Another contention is that the previous counsel of petitioners colluded with respondent and that counsel deliberately and intentionally betrayed the petitioners. He did not defend the case of petitioners and as such proper defence of the petitioners were not put. Consequently, leave to defend was declined.

8. Lastly, it is contended that where a decree is obtained by fraud, that decree is a nullity and liable to be set aside. As such impugned order is also liable to be set aside.

9. In support of its contention learned counsel, cited following judgments;

- i) ***Kailash Kumar and another Vs. Banarsi Das Gupta, AIR 1961 Jammu and Kashmir 34;***
- ii) ***Bhaboot Mal Vs. Sens Mal, AIR 1973 Rajasthan 56;***
- iii) ***Rameshwar Lal Sharma Vs. Sardar Amrik Singh, AIR 1974 Patna 195;***

- iv) *Shri Ujagar Singh Kakkar Vs. Shri Chander Mohan & others,*
All India Rent Control Journal, 1987 (1) Delhi 85;
- v) *P. N. Chopra & Anr. Vs. Smt. Sharda Devi 2 Ors,*
60 (1995) DLT 857;
- vi) *Behari Lal Vs. Smt. Pushpa Devi and another,*
All India Rent Control Journal, 1985 (2) Delhi 153;
- vii) *Magiti Sasamal Vs. Pandab Bissoi,*
1962 (3) SCR 673;
- viii) *Mrs. D. David Vs. Miss R. Mukha,*
1972 RCR 253;
- ix) *Budhu Mal Vs. Mahabir Prasad & ors and Ram Phal*
Vs. Mahabir Prasad & ors,
1988 (2) All India Rent Control Journal 354;
- x) *Hindustan Everest Tools Ltd. Vs. Shakti Kumar;*
1986 (1) All India Rent Control Journal, 216;
- xi) *S. P. Chengalvaraya Naidu (dead) by LR.s Vs.*
Jagannath (dead) by LR.s & Ors.,
JT 1993 (6) SC 331;
- xii) *Indian Bank Vs. M/s Satyam Fibres (India) Pvt. Ltd.,*
JT 1996 (7) SC 135;
- xiv) *United India Insurance Co. Ltd. Vs. Rajendra Singh*
and Ors.
JT 2000 (3) SC 151and
- xv) *Ram Chandra Singh Vs. Savitri Devi and Others;*
(2003) 8 Supreme Court Cases 319.

10. On the other hand, it is contended by learned counsel for the respondent that respondent is the owner of premises in question. Admittedly, there is a relationship of landlord and tenant between the parties.

11. This, contention made by learned counsel for the petitioners that their earlier counsel has colluded with respondent, is absolutely false and mischievous one. Leave application filed by petitioners remained pending for more than six months and if petitioners had any apprehension about the conduct of their counsel they could have very well changed that counsel but they did not so. So, this plea is without any basis.

12. 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.”

13. 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.

14. 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.”

15. 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.”

16. 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.

17. 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.”

18. 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 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 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."

19. As far as relationship of landlord and tenant between the parties and the ownership of landlord is concerned, trial court in this regard held;

“In the present case, the petitioner has claimed the ownership over the suit premises on the ground that the suit premises were owned by his father Sh. Aziz Uddin and he expired leaving behind the petitioner and other legal heirs and the other legal heirs relinquished their share in favour of the petitioner vide Relinquishment Deed by virtue of which the petitioner became the owner of the suit premises. The petitioner has placed on record the Sale Deed by which the petitioner became the owner of the suit premises. Moreover, there is no dispute regarding the relationship of landlord and tenant between the petitioner and respondents. There is also no dispute that suit premises was let out to the respondents for residential purpose.”

20. Petitioners in their affidavit filed along with the the leave application have nowhere stated as to who is their landlord or owner in respect of the premises in question. Nor petitioners have stated under whom they are tenant and to whom they are paying the rent. The affidavit filed by the petitioners is absolutely silent with regard to the relationship between the parties. As such averments made in the petition that respondent is the owner/landlord of the premises in question are deemed to be admitted as correct.

21. With regard to the accommodation and bonafide requirement of respondent, trial court in the impugned order has observed;

“However, in leave to defend application, the respondents have taken a plea that the petitioner has failed to disclose the details of other accommodation owned by him and it is stated that the petitioner is the owner of one property situated at Gali Gariya, Jama Masjid, Delhi and petitioner is also having his property at Okhla, New Delhi. The petitioner has denied that he owns these properties. The plea raised by the respondent that the petitioner is the owner of one property situated at Gali Gariya, Jama Masjid, Delhi and Okhla, New Delhi is vague plea and even the number of the premises have not been disclosed and no documentary evidence has been placed on record to show that the petitioner is the owner of the aforesaid properties. Therefore, no triable issue has been raised by the respondents on the aspect that petitioner owns other properties.

Another contention of the respondents is that the grandmother of the petitioner was owner of Property No. 2466 to 2468, situated at Gali Kuen Wali, haveli Mahawat Khan, Bazar Chitli Qabar, Jama Masjid, Delhi and she expired and after her death the petitioner became the co-owner/co-sharer of the said property and in case the need of the petitioner and his family members is bonafide, then they can easily shift to other properties but since the petitioner and his family members are having sufficient accommodation of 3 rooms in the said property they are residing there without any difficulty. In reply to this contention, the petitioner has admitted that the aforesaid property belonged to Mst. Shasmshun Nisha, grandmother of the petitioner who has expired leaving behind her legal heirs i.e. two grandsons (petitioner and Mohd. Imran) and six grand daughters and it has

been stated that she was in possession of a portion consisting of two rooms in which two unmarried sisters are also residing and the said accommodation is neither sufficient nor reasonably suitable to the petitioner and his family members. As such, the petitioner has not denied that Property No. 2466 to 2468, situated at Gali Kuen Wali, Haveli Mahawat Khan, Bazar Chitli Qabar, Jama Masjid, Delhi belongs to Mst. Shamshun Nisha who is his grandmother and she has already expired. Admittedly, there are other legal heirs of Mst. Shamshun Nisha apart from the petitioner i.e. one grandson, six granddaughters and this fact has not been disputed by the respondents. The petitioner has categorically stated that the portion in possession of Mst. Shamshun Nisha was only of two rooms which has not been controverted by the respondents by filing any rejoinder. Even if after the death of Mst. Shamshun Nisha petitioner has become the co-owner of the aforesaid property, it cannot be said that the said property is sufficient for the bonafide need of the petitioner as admittedly there are other co-owner/co-shares of the said property apart from the petitioner. Moreover, as stated by the petitioner in the counter affidavit that only two rooms were in possession of Mst. Shamshun Nisha and his requirement is more than that which has not been denied by the respondents. Therefore, it cannot be said that the requirement of the petitioner to shift in the suit premises which is owned by the petitioner is not bonafide. Moreover, it is a settled law that a tenant cannot dictate the terms to the landlord how he has to live. It has been held by the Hon'ble Supreme Court in ***Prativa Davi Vs. T. V. Krishnan*** that it is well settled law that the landlord is the

best judge of his residential requirement and has a complete freedom in the matter. It is no concern of the courts to indicate to the standard of their own.

Further, the petitioner wants to shift to his own house and tenant cannot ask the landlord to restrict his requirement in a lesser accommodation in order to accommodate him. It has been held in ***Sudesh Kumar Soni & Ano. Vs. Smt. Prabha Khanna & Ano. 2008 IX, AD (Delhi) 657*** that *if the landlady wish to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenants occupancy.*

As in the present case, the family of the petitioner consists of himself, his wife, one child and his two unmarried sisters who are dependent upon the petitioner for their residence, the petitioner requires one room for himself and his wife and child, one room each for his two unmarried sisters, one room for guests and one room for drawing cum dining apart from kitchen, latrine and bathroom. Since, the premises which is owned by Mst. Shamshun Nisha, grandmother of the petitioner in which petitioner is residing is only two rooms and therefore accommodation available with the petitioner is highly insufficient and the requirement of the petitioner of the suit premises which consists of three rooms at the first floor with open space and a tin-shed on barsati i.e. second floor is bonafide.

Another contention of the respondents is that the unmarried sisters of the petitioner are of marriageable age and as and when their marriage is solemnized the need of the petitioner shall be

finished. In the counter affidavit the petitioner has stated that till date they are unmarried and there is no marriage proposal. Moreover, the need and requirement of the petitioner is to be seen at the time of filing the petition and as on date the unmarried sisters are residing with the petitioner and they are dependent upon the petitioner for the purpose of resident which is not disputed by the respondents. Therefore, there is no merit in the plea of the respondents that the sisters of the petitioner are of marriageable age and if they get married the need of the petitioner shall be finished.”

22. In *S. N.Kapoor v. Basant Lal Khatri AIR 2002 SC 171*, the Court observed;

“No material has been brought on record and no proof has been made by the tenant by any positive material that it is neither genuine nor bona fide or reasonable but a mere excuse to get rid of the tenant. Though the choice or proclaimed need cannot be whimsical or merely fanciful yet certain amount of discretion has to be allowed in favour of the landlady too and Courts should not also impose its own wisdom forcible upon the landlady to arrange her own affairs, according to their own perception carried away only by the interests or hardship of the tenant and inconvenience that may result to him in passing an order of eviction. In adjudging the claim under Section 14-D what is required to be substantiated is that the landlady is a widow and that she wants the premises for her own residence and that the claim by her is bona fide and not a feigned one. So far as a claim under Section 14 (1) (e) is concerned, the very requirement has to be shown not only to be bona fide but the move of the

landlord/landlady to seek the eviction of the tenant must be genuine.”

23. In *Sarla Ahuja Vs. United India Insurance Company Limited*;

AIR 1999, SC 100, Apex court observed;

“The crux of the ground envisaged in Clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

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 *Mukesh Kumar Vs. Rishi Prakash, 2009 (2) RCR 485*, this court observed;

“ A landlord, while seeking the eviction of a tenant on the ground of bona fide requirement for himself or his family members dependant upon him, is not expected to disclose the manner in which he is utilizing the accommodation available with him, if the accommodation with the tenant in respect of which he files the eviction petition is required by him for a purpose different from the purpose he is occupying and using the accommodation already available with him. For instance the extent of residential accommodation available with the landlord who seeks the eviction of the tenant from a purely commercial or industrial premises, is wholly irrelevant. Similarly, when in the present case, the requirement of the petitioner was for the purpose of setting up of the professional office of his son on the second floor of property no. 3649, it was not necessary for him to have disclosed in the eviction petition the fact that the ground floor, first floor, third floor and terrace floor portions of property no. 3649 were being utilized by him for the purpose of storing and stocking the goods in which he trades. The failure of the petitioner to disclose in the eviction petition itself, the manner in which the other portions of property no. 3649

were being occupied and used cannot ipso facto lead to the conclusion that the requirement of the landlord is not bona fide or that it raises a triable issue.”

27. Since, in the affidavit filed along with the leave application petitioners have nowhere taken this plea that there is no relationship of landlord and tenant between the parties nor any plea to this effect has been taken that respondent is not the owner of tenanted premises or a fraud has been committed by their previous counsel, the various judgments cited by learned counsel for the petitioners, are not applicable at all to the facts of the present case.

28. Thus, petitioners have failed to raise any triable issue in this case, which if proved might disentitle the respondent from getting an order of eviction in their 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.

29. Present petition is hereby dismissed with costs of Rs.25,000/- (Twenty Five Thousand only).

30. Petitioners are directed to deposit the costs with Registrar General of this court by way of cross cheque, within four weeks from today.

CM Nos. 13174/2009 & 14834/2010

31. Dismissed.

32. List for compliance on 29th November, 2010.

October 28, 2010

V.B.GUPTA, J.

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