

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% RC.REV. NO. 30/2011

+ Date of Decision: 21st October, 2011

SARTAZ MALIK ...Petitioner
! Through: Mr. Darshan Paliwal, Advocate

Versus

\$ MITHLESH RANI Respondent
**Through: Mr. B.S. Chauhan, Advocate with
respondent in person**

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

- 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)**

ORDER

P.K BHASIN,J:

This revision petition is under Section 25-B(8) of the Delhi Rent Control Act, 1958(in short 'the Act') and has been filed by the petitioner-tenant against the order dated 25.10.2010 passed by the Additional Rent

Controller whereby his application for leave to contest the eviction petition filed by his landlady, respondent herein, under Section 14(1)(e) of the Act to have the possession from him of one shop on the ground floor of the property no.C-189, Gali no.2, Main Road, Brahmpuri, Delhi (hereinafter to be referred as the 'tenanted shop') has been dismissed and an eviction order has been passed.

2. The facts entitling the respondent-landlady to secure the eviction order were pleaded in detail in para no. 18 of the eviction petition and the relevant averments only are re-produced below:

“That the humble petitioner is a widow. She has three sons namely (i) Sh. Sumit @ Banty (ii) Sh. Sanjay and (iii) Sh. Manish.

Sh. Sumit @ Banty is married and employed in railways and is living separately in the sense that he has separate kitchen/mess. He has two sons.

That Sh.Sanjay @ Sappan was born on 03.04.1989. he is unemployed and failed in 10th class. He is unemployed and he is a member of the family of the petitioner and is dependent upon her. That similarly, Sh. Manish was born on 13.10.1982 and is unemployed . he is also dependent upon the petitioner.

That the petitioner does not own any other commercial property or shop within the territorial of India.

That the shop in question is bona fide required by the petitioner for the above mentioned two sons of the petitioner family, as the petitioner as well as the said two sons need the shop for running their own shop of general merchant/pansari.”

3. The petitioner-tenant had sought leave to contest the eviction petition primarily on the ground that the two sons of the respondent were not defendant in the petition. That plea has been noticed, dealt with and rejected by the learned Additional Rent Controller in the impugned order. The relevant parts from that impugned order where this plea, which only was urged before this Court, are re-produced below:-

“2. The petitioner's case is that she is widow with three sons. The eldest son Sh. Sumit is stated to be married, employed and separately settled. It is averred that the other son, that is, Sh. Sanjay @ Sappan is unemployed and had failed in matriculation. The third son Sh. Manish is also stated to be unemployed. It is submitted that the respondent is a tenant in respect of one room, that is, a shop on the ground floor of property no. C189, Gali no. 2, Main Road, Bhramपुरi, Delhi at a monthly rent of Rs. 3,000/. Her contention is that she requires the suit shop for the above said two sons who are dependent on her as well as for herself for running their own business of general merchandise (Pansari).

3. In his application for grant of leave to defend the petition, the respondent has submitted that the second son of the petitioner, namely, Sh. Manish is working with 'Pigmento Arts Crafts Stationers' at 1 Birbal Road, Shop No. 2, Jangpura Extn., New Delhi-110014 and is getting a handsome salary. It is further averred that the youngest son, namely, Sh. Sanjay is also doing a job with a famous company as a salesman and is getting a handsome salary.

4. In her reply the petitioner has denied the allegations of the respondent and has reiterated her stand in the petition.

6. The landlord-tenant relationship, ownership of the petitioner qua the tenanted premises and extent of the tenanted premises are not disputed. It is also not disputed that the petitioner has no other commercial property/shop from where a business can be run. The present petition has been filed u/S 14 (1) (e) of the

DRC Act and its scope is limited to the bonafied requirement of the owner. The contentions regarding the rate of rent, disconnection of essential supplies, payment of any security amount or any other amount and threat of forcible dispossession are not the subject matter of the present petition. Besides, no document has been brought on record to show that any security amount or any other amount was paid by the respondent to the petitioner.

7. It is not disputed that the eldest son, namely, Sh. Sumit is an employed man and is separately settled with his family. During the course of arguments, it has come out that petitioner receives pension of Rs. 4,000/- per month. However, this contention does not help the respondent as the petitioner has the right to augment her family or personal income. The respondent has failed to show as to in what capacity is the second son of the petitioner, namely, Sh. Manish working in Pigmento Arts Crafts Stationers and how much amount is he earning. The contention that the younger son of the petitioner, namely, Sh. Sanjay is employed with a famous company as a salesman and also getting a handsome salary is a vague contention. There is also nothing to support the allegation of the respondent that the petitioner wants to get the tenanted premises vacated so that she can let the same out at a higher rate of rent.

8. The application of the respondent for grant of leave to defend the eviction petition does not disclose such fact as would disentitle the landlord from obtaining the order for recovery of possession of the tenanted premises on the ground of bonafied requirement as specified in Section 14 (1) (e) of the DRC Act. The application of the respondent for grant of leave to defend is therefore, dismissed.....”

4. Feeling aggrieved by the rejection of his application for leave to contest the petitioner-tenant has invoked the revisional jurisdiction of this Court under Section 25-B(8) of the Act.

5. It was argued by the learned counsel for the petitioner – tenant that the plea raised by him that the two sons of the respondent – landlady were gainfully employed and so not dependent on her could not be decided in the manner which has been done by the learned Additional Rent Controller. Counsel contended that since the petitioner had pleaded that the two sons of the respondent were employed and the respondent had refuted that fact the only course open to the learned Additional Rent Controller was to give opportunity to the parties to adduce necessary evidence in support of their respective contentions which has not been done and, therefore, the learned Additional Rent Controller has exceeded the jurisdiction vested in him under Section 25-B(5) of the Act by rejecting the plea of the petitioner by observing that the petitioner has not placed on record any proof to substantiate his plea that the two sons of the respondent were gainfully employed and so were not dependent upon her.

6. On the other hand, learned counsel for the respondent – landlady fully supported the impugned order of the learned Additional Rent Controller and submitted that there was no irregularity or infirmity in the

impugned order justifying any interference by this Court in exercise of its limited jurisdiction under Section 25-B(8) of the Act.

7. After having gone through the impugned order and submissions made by counsel of both the parties I have come to the conclusion that the impugned order is in accordance with the law and does not suffer from any perversity. From the averments made in the leave to defend application, copy of which was produced at the time of hearing of the matter by counsel for the respondent, it is clear that the only plea raised by petitioner – tenant for seeking leave to contest the eviction petition was that the two sons of the respondent – landlady, for whom she was requiring the tenanted shop, were gainfully employed. Although in respect of one son of the respondent the name of his employer was mentioned and in respect of the other son though it was pleaded that he was employed with a famous Company but no details were given. In my view, even if it is accepted that the two sons were employed that fact would not disentitle the respondent from securing the order of eviction against the petitioner since it is not only financial dependency which matters but even the dependency of a child on his/her parents for having some premises, which belongs to the parents, to live or do business also can be pressed into service by a landlord. No *mala*

fides can be attributed to the respondent in initiating the eviction proceedings against the petitioner. The learned Additional Rent Controller was thus fully justified in declining leave to defend to the petitioner – tenant. There being no material irregularity committed by the learned Additional Rent controller in declining leave to defend to the petitioner, this Court is not inclined to give any relief to the petitioner.

8. This revision petition is dismissed.

P.K. BHASIN, J

October 21, 2011