

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

% **RC.REV. NO. 67/2011**

+ **Date of Decision: 18th October, 2011**

RAJESH KUMAR **...Petitioner**

! Through: Mr. C.L. Sahu, Mr. Rajendra
Sahu, Ms. Hema Sahu &
Mr. Rishabh Sahu, Advocates

Versus

\$ **NARESH KUMAR GOEL & ORS.** **....Respondents**

Through: Mr. Shri Krishan & Mr. Neeraj,
Advocates

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 16th December, 2010 passed by the Rent Controller whereby his application for leave to contest the eviction petition filed by his landlord, respondent herein, under Section 14(1)(e) of

the Act to have the possession from him of one shop bearing no. 82, Samman Bazar, Jangpura, Bhogal, New Delhi-110014 (hereinafter to be referred as the 'tenanted shop') has been dismissed and an eviction order has been passed .

2. The facts entitling the respondent-landlord 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:

“18 (a).

- (i) *The petitioners are the owners and also the landlords; and the “suit-premises” are required bona fide by the petitioners for commercial use for themselves and also for the family members of petitioner nos. 1, 2, 3 and 4 dependent upon petitioner Nos. 1, 2 , 3 and 4.....*
- (ii)
- (iii) *As is clear from the site plan, the ground floor portions of the petitioners' aforesaid building abutting the main-market/main-road, i.e. the Samman Bazar are being used as shops and the portions which are just behind the shops (and adjacent to shops) are being used as Godowns and the back-portions of the building are being used for residential purposes. It may kindly be appreciated that Samman Bazar is the main road and main market area where the people from Bhogal and nearby areas come for shopping. So, Samman Bazar is a good market place for all sorts of commodities. Therefore the ground floor portions of the aforesaid building which are abutting the Samman Bazar are being used for running shops; and there are only three shops in the petitioners' aforesaid building abutting the aforesaid Samman Bazar viz. Shop No. 82 (which is the “suit-premises”), Shop No. 84 (which is occupied and being used by son of the petitioner No. 1 for his business) and Shop No. 86, 88, which shop has to be used by three petitioners (i.e. petitioner Nos. 2,3 and 4) jointly, as there is no other accommodation suitable for running the shop/doing commercial activities. Out of the aforesaid three shops, Shop No. 82 is under the*

occupancy of the respondent and the present petition has been instituted for eviction of the respondent from the said Shop No. 82.

So, the petitioners are left with only two shops viz. Shop No. 84 and Shop Nos. 86 and 88. It is significant to state here that shops bearing Municipal Nos. 85 and 87 do not constitute the part of the petitioners' aforesaid building; and the same shop Nos. 85 and 87 lie across the road (Samman Bazar) opposite to the petitioners' aforesaid building. It is also significant/relevant to state here that the remaining portions of the aforesaid building of petitioners (i.e. the portions excluding the aforesaid shop Nos. 82, 84, 86, 88) bear the Municipal number 35 which is also popularly known in the area as No. 34A, having its approach from the Gali situated at the backside of the said building.

- (iv) *It may kindly be appreciated that the said two shops (viz. Shop No. 84 and Shop No. 86, 88) are highly insufficient to satisfy the business/commercial requirements of the petitioners; and the same two shops do not meet the commercial requirement of the petitioners Nos. 1,2,3 and 4 having regard to the number of persons capable of working and earning in the family of petitioner Nos. 1,2,3 and 5 (but unable to work/earn due to utter paucity of commercial accommodation), their social status, their working potential (which potential will increase in near future) and the size of their family (which size will further increase in near future by intending marriages and births in the family) required to be supported by them.*

Petitioners earnestly pray that this Hon'ble Court may kindly consider the plight of petitioners who are constrained to be huddled together in just two shops in the manner stated below and the plight of their family members who are capable of earning/working and living a better life but unable to work and earn due to paucity of commercial accommodation and who are compelled to depend upon the earnings of just two shops even though one more shop (i.e. the suit-premises) is their own shop but under the occupancy of the respondent. The aforesaid two shops (viz. Shop No. 84 and Shop No. 86, 88) are being used by the petitioners as mentioned below in para Nos. v & vi.

- (v) *Shop No. 84 is being used and occupied by the son of the petitioner No. 1 for his business. Petitioner No. 1, although bona fide requires a separate shop for himself, is constrained to work/assist his son in the same single shop. Petitioner No. 1 is himself capable of managing an entirely separate and different shop; and whatever assistance is being rendered by him to his son, the same assistance can be obtained by his son by employing a suitable worker/employee in his shop. But since petitioner No. 1 does not have a separate shop, he is compelled only to work/assist his son in aforesaid Shop No. 84.*

Petitioner No. 1 bona fide requires a separate shop for himself and he shall run a business of readymade garments therein. In other words petitioner No. 1 and his son bona fide require two separate shops (one shop separately for each of them).

- (vi) *Shop No. 86, 88 is occupied by the three petitioners (viz. petitioner No. 2,3 and 4) and the business is being run therein under the partnership of petitioner Nos. 2,3 and 4, although each of them separately needs one separate shop. It is relevant to mention here that Shop No. 86, 88 is the combination of two small shops(viz. Shop No. 86 and Shop No. 88), which two shops were combined into one shop. The two shops were combined into one shop in order to effectively and properly manage the business of paints and hardware involving the sale of big sized paint buckets(5 litres and 10 litres), and even the large drums of 25 liters and 10liters), and even the large drums of 25 liters containing paints. Cartons containing Samosam powder of weight even up to 50 Kg are also sold in the same shop. Hence the business of Paints and Hardware requires good space for smooth functioning and also for properly storing and displaying the iron/metallic goods, cartons and paint bucket/drums containing paints in various shades and colours.*

Hence, the two small shops were combined up to one shop for providing better space for better display of goods, proper storage of goods, better and efficient functioning and working space and for impressing and attracting the customer. Since Shop No. 86,88 is comparatively bigger than Shop No. 84, therefore three petitioners are working in the same shop in partnership with each other; and petitioner No. 1 is providing assistance to his son in Shop No. 84; although all of them require separate shops.

- (vii) *It is most respectfully submitted that petitioners' requirement for commercial accommodation consists of four additional shops in addition to the already existing two shops (viz. Shop NO. 84 and Shop No. 86, 88). The manner in which the six shops (i.e. the existing two shops and the four additionally required shops) shall be used is explained below:-*

FOUR SHOPS – are required for petitioners Nos. 1, 2 3 and 4(i.e. one shop separately for each of the four petitioners Nos. 1, 2 3 and 4). It is most respectfully submitted that petitioner Nos. 5,6 and 7 are the married females living in their respective matrimonial homes and do not need any commercial accommodation in the aforesaid building (of which the suit-premises is a part). However, the petitioner Nos. 5,6 and 7 being the co-owners (along with other petitioners) need the residential accommodation in the aforesaid

building as they keep on visiting and staying in the aforesaid building alongwith the children and husbands as mentioned in aforesaid sub para (i) of para 18(a).

ONE SHOP – *is required for the married son (Shri Rajesh) of the petitioner No. 1 who, at present, is using and occupying Shop No. 84 and running the business of Hardware in the same shop.*

ONE SHOP – *is required for the wife (Smt. Manisha) of the son of the petitioner No. 1 for running a boutique shop involving the trading/sale of women's clothes and cosmetics. Although the said Smt. Manisha has a capacity to run a boutique shop, but she is unable to do any business due to paucity of commercial accommodation. So, in all six shps are required by petitioner Nos. 1,2,3 and 4 within the meaning of Sec. 14(1)(e); and against the requirement of six shops, petitioners are already having two shops (viz. Shop No. 84 and Shop No. 86, 88)*

So, petitioners' requirement consists of four additional shops in addition to the aforesaid already existing two shops.

(viii) *But having regard to the fact that the son of the petitioner No. 1 is already engaged in a business in Shop No. 84 and that petitioner Nos. 2,3 and 4 are also already engaged in the business at Shop No. 86, 88 (although huddled together in one Shop only) and that consequently petitioner No. 1 and his aforesaid daughter-in-law (Smt. Manisha) are the only persons who are left without any business, petitioners need at least two additional shops as the minimum need based bonafide requirement for petitioner no. 1 and his daughter- in-law as follows:*

A. *As explained above in sub para No. (v) of Para 18(a) (contents whereof may kindly be read here as part of this para also), one shop is required separately for petitioner No.1. Petitioner No.1 shall run the business of readymade garments in the same shop. Petitioner No.1 can serve as an additional earning member of the family but he is unable to do so due to paucity of commercial accommodation; and he is constrained to simply assist his son in the said Shop No. 84 which assistance can be obtained by employing a suitable worker/employee' as explained in above para No. (v).*

B. *One shop is separately needed for the wife (Smt. Manisha) of the son of petitioner No. 1 who shall run a boutique shop involving the trading/sale of women's clothes and cosmetics. The said Smt. Manisha is well capable of becoming an earning hand in the family by running a boutique shop but*

she is unable to do any business due to non-availability of commercial accommodation. One shop is bonafide needed for the said Smt. Manisha, daughter-in-law of petitioner No.1.

- C. *Since after the eviction of respondent from the suit premises, only one shop will become available to the petitioners, both petitioner No.1 and his daughter-in-law will work together in one shop and run the business of readymade garments including women's clothes in the same shop, in which shop, both petitioner No.1 and his daughter-in-law (Smt. Manisha) shall carry on business (of trading in readymade garments including women's clothes) together will they get a suitable opportunity in future to make separate arrangements for both of them. It may also kindly be appreciated that opening of above business shall, besides enabling the non-earning members to earn, also amount to expansion of existing businesses of the petitioners; and the petitioners have the right to expand their business within the meaning of bonafide need/requirement. It is significant to mention here that upon the eviction of respondent from the suit premises, one additional shop shall become available to the petitioners which shall satisfy at least half of the minimum need based bonafide requirement of two shops as detailed above.*

No other accommodation at all (what to talk of any other reasonably suitable accommodation) for commercial use, is available excepting the 'suit premises' in the aforesaid building as shown in the site plan. All the contents of Para No. 19 including all the contents of all the sub paras (a) to (q) of the same Para No. 19 may kindly be read here as part of this para also".

3. The petitioner-tenant had sought leave to contest the eviction petition on various pleas which have been noticed, dealt with and rejected by the learned Additional Rent Controller in the impugned order. The relevant parts from that impugned order where the pleas which only were urged before this Court also re-produced below:-

by the petitioner no. 2 for his business and the petitioner are in occupation of the accommodation more than sufficient to fulfill their requirements.

17. It is to be noted here that the petitioners have categorically stated in the petition itself that Shop No. 86, 88 is the combination of two small shops i.e. Shop No. 86 and Shop No. 88 which two shops were combined into one shop in order to manage the business of paints and hardware effectively and properly, involving the sale of big sized paint buckets (5 litres and 10 litres) and even large drums of 25 litres containing paints and further Cartoons containing Samosam powder of weight even upto 50 Kg. are also sold in the same shop.

18. It is a common knowledge that for the business of paints and hardware, big space is required for keeping paint buckets, cartoons and also for displaying the same. Therefore, if the aforesaid two shops bearing No. 86 and 88 have been combined by the petitioners for smooth functioning of business of hardware and paint, it cannot be said that the petitioners have combined the said two shops into one shop just to show artificial paucity of accommodation.

19. So far the contention of the respondent that there are six godowns on the ground floor and two big godowns in the basement are lying vacant and locked by the petitioners is concerned, the petitioners have categorically stated in reply to leave to defend application that the said godowns are being used for storing the paint and hardware materials.....

20. Moreover, the petitioners require the suit shop for running the business of boutique by the wife of the son of the petitioner no. 1 and petitioner no. 1 also requires the same for doing some ready-made garments business. Therefore, even if some space is available in the basement, the same cannot be said to be suitable for running the business of boutique and clothing.....”

4. Feeling aggrieved, the petitioner-tenant has come to this Court.

5. It was agued by learned counsel for the petitioner-tenant that the impugned order cannot be sustained at all since the learned Additional

Rent Controller has given categorical findings which in the facts and circumstances of the case could not have been given without recording evidence of the parties and, therefore, the limited jurisdiction vested in the Rent Controller under Section 25-B(5) of the Act has been exceeded and consequently the impugned order cannot be said to have been passed in accordance with law. It was further contended that so many triable issues arise in this case and the petitioner-tenant should have been given leave to contest the eviction petition.

6. On the other hand, learned counsel for the respondent-landlord while supporting the impugned order of the learned Additional Rent Controller contended that each of the pleas raised by the petitioner-tenant in his leave to contest application has been dealt with and rightly rejected and there is no scope for any interference by this Court in exercise of its limited revisional jurisdiction.

7. From the narration of the facts pleaded by the respondent-landlord in the eviction petition for seeking eviction of the petitioner-tenant it becomes quite clear that this is a case where the respondent – landlord has suddenly felt the need for having additional accommodation for starting new businesses. This, thus, being a case of requirement of additional

accommodation by the landlords who already are well settled in business, leave to contest should have been granted to the petitioner in view of judgment of the Supreme Court in the case of ***“Santosh Devi Soni vs. Chand Kiran”, CA No. 412 of 2000, decided on January 17, 2000*** wherein it has been held that when it is a case of additional accommodation for the landlord leave to defend should normally be not refused to the tenant. While rendering that judgment and granting leave to the appellant – tenant of that case, who had lost in the trial Court as well as the High Court, the Supreme Court had also referred to its earlier decision in ***“S.M. Mehra vs. D.D. Malik”, CA No. 120 of 1990 decided on January 11, 1990*** wherein the landlord already in occupation of some accommodation sought eviction of a tenant from other portion of his property and the Supreme Court had held that where the landlord actually required additional accommodation or not could be properly determined only by granting leave to contest the eviction petition to the tenant and there was no need to take a summary procedure.

8. In view of the afore-said decision of the Supreme Court the petitioner - tenant in the present case deserves to be granted leave to contest the eviction petition filed against him by the respondents – landlords. I am also of the view that the trial Court even otherwise could

not have returned categorical findings regarding the sustainability etc. of the tenanted shop at the stage of consideration of leave to contest application.

9. This revision petition is accordingly allowed. The impugned order passed by the learned Additional Rent Controller is set aside and the petitioner gets leave to contest eviction petition of the respondent. The case is remanded back to the trial Court for regular trial in accordance with law. The parties shall appear before the trial Court now on 2nd November, 2011 at 2 p.m.

P.K. BHASIN,J

October 18, 2011/nk