

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

% RCR NO. 79/2011

+ Date of Decision: 15th September, 2011

VIJAY SINGH ...Petitioner

! Through: Mr. S.M. Chopra, Advocate

Versus

\$ RAM BHAJ VERMA Respondent

**Through: Mr. K.A.Diwan & Mr. I.R. Singh,
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 petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act') has been filed by the petitioner-tenant against the order dated 06.01.2011 passed by the Rent Controller whereby his application for leave to contest the eviction petition filed by his landlord against him under Section 14(1)(e) of the Act to have the possession of shop no.8 in house no. A-2/1, Ground Floor, Hastal Road,

Uttam Nagar, New Delhi-110059(hereinafter to be referred as the 'tenanted shop') has been dismissed and he has been ordered to vacate the tenanted shop.

2. The respondent-landlord had filed the eviction petition on the ground that he and his son were doing no work and so he, his son and his married daughter, who was having litigation with her husband and who was also living with him, had planned to start a joint business and to open a sweets shop in the tenanted shop. He was having no other space except the tenanted shop in occupation of the petitioner-tenant for starting the business.

3. An application under Section-25B of the Act was filed by the petitioner for grant of leave to contest the eviction petition on the grounds that his landlord did not require the tenanted premises *bona fide* since he already had many other properties. It was also claimed that the respondent along with his son were successful property dealers and the petitioner's son was not dependent upon him. The petitioner-tenant also pleaded that he had two unmarried daughters and the tenanted shop, where he was selling sweets for the last 20 years, was the only source of his livelihood. The details of other properties which the respondent was having were

given by the petitioner in para no. 4(N) of his application to leave to contest which is re-produced below:-

“N. Availability of Accommodation to the Petitioner

That the petitioner has in his possession the following premises which are reasonably suitable for himself and his family members, if any.

- i) Ground Floor, excluding the area under the shops, in number 10, in the premises bearing No. A-2/1, at Hastal Road, Uttam Nagar, New Delhi; and*
- ii) Total covered area of First Floor of the aforementioned premises No. A-2/1, the shape of Hall.*
- iii) One Room set on second floor of the abovementioned premises No. A-2/1 including the entire roof thereof, admeasuring about 200 sq. yds.*
- iv) Premises bearing No. E-95, Shiv Ram Park, Vikas nagar, New Delhi two shops whereof are being used as Office of Ramakrishna Properties under the name and style of which the petitioner and his son Shri Bijendra Verma carry on business of property dealership.*
- v) Premises bearing No. G-1/352, at Dal Mill Road, Uttam Nagar, New Delhi. It is a three storied building and more than sufficient accommodation is available therein for the petitioner and his family.*
- vi) That there is an additional premises bearing No. A-1/132-A, Hastal Road, Uttam Nagar, New Delhi in possession of the petitioner and the same is also reasonably suitable for accommodation of the petitioner and/or of the son of the petitioner and his daughter-in-law or the minor children of his son.”*

4. The respondent-landlord in his counter affidavit gave the following reply in respect of the aforesaid properties claimed by the petitioner to be available with him:-

“That the contents of the para No. N of the application are false and wrong and not admitted and denied in Toto. It is also false and wrong that the petitioner is the owners of the aforesaid properties of the petitioners. The respondent has not filed any documents of the ownership of the afore said properties. The respondent had mentioned the properties of the petitioner’s son, brothers sister and relatives and family members and neighbors and friends. Hence the contents of N (I to vi) are false and wrong and not admitted and denied in toto. The petitioner has the bonafide requirement of the suit property and the respondent should be eviction from the suit property.”

5. The learned trial Court rejected this plea of petitioner, which only was primarily put in the forefront before this Court, by observing as under in para nos. 5 & 6 of the impugned order:-

“5. As far as the unmarried son is concerned, it has been alleged by the respondent that he is a property dealer working for gain alongwith the petitioner under the name and style of property of Ramakrishna properties but no such document has been placed to support this plea. It is now a settled law that a tenant is required to support his plea raised in leave to contest application by documents.....

6. As far as the other allegations of the respondent that petitioner has many other properties at his disposal, the same is also not supported by any documentary proof and merely by alleging that petitioner has a number of properties at his disposal does not give a ground to contest to the respondent. Otherwise also a perusal of the leave to contest application reveals that out of these properties alleged to be available to the petitioner two are residential properties and therefore, of no use to the petitioner who wants to start his business in the suit property. The other alleged shops in property No. E-95 even as per the case of respondent is being used for running an office of property dealer by the son of petitioner and, therefore, cannot be said to be available to the petitioner for starting his new business. In facts, I do not find any ground made out in the leave to contest application and an eviction order is passed in

respect of Shop No.8 in property No. A-2/1, Ground Floor, Hastal Road, Uttam Nagar, New Delhi – 110059 more specifically shown red in the site plan now Ex.C-1. It has further specified that this order shall not be executable for a period of six months from today. File be consigned to Record Room.”

6. It was argued by the learned counsel for the petitioner – tenant that this was a fit case for grant of leave to contest to the petitioner – tenant since he had been able to raise a very strong triable issue regarding the availability of other properties also with the respondent – landlord from where he could start his business if at all he had any intentions of doing so and further that the respondent – landlord had not even claimed as to why the other properties available with him, as mentioned by the petitioner – tenant in his application for leave to defend, were not suitable for opening a sweet shop there. It was further argued that the respondent – landlord had taken a very vague plea in reply that those properties belonged to his son, family members and relatives without mentioning as to which relative of his was owning which one out of those properties and this shows that, in fact, all those properties mentioned in para No. 4 (N) of the leave application belonged to him and were available also with him for starting his business.

7. Learned counsel for the respondent – landlord, on the other hand, submitted that no fault can be found with the decision of the learned trial Court in declining leave to contest to the petitioner - tenant and it had been rightly observed in the impugned order that the petitioner – tenant had failed to place on record any proof regarding the ownership of the respondent – landlord in respect of any other property, other than the property in question, which he was claiming to be available with the respondent – landlord and, therefore, no triable issue had arisen justifying grant of leave to contest to the petitioner – tenant.

8. After having considered the submissions of the learned counsel for the parties and the already quoted findings of the learned trial Court I am of the view that this is a fit case where petitioner – tenant should have been granted leave to contest the eviction petition filed against him by his landlord. The petitioner – tenant had given details of many properties in para no. 4(N) of his leave to defend application. The respondent – landlord had in his reply claimed that those properties belonged to his son, family and relatives as well as friends and neighbours without clearly stating as to which friend or neighbour of his was the owner of any of those properties. And if his son was the owner of those properties or anyone of them then, *prima facie*, the respondent's requirement of the

tenanted shop for opening a sweet shop there for his son does not appear to be *bona fide*. He has also claimed that those properties belonged to his family. If that be so, he should have come out with some justification for not starting his business from those properties. The petitioner – tenant had also claimed that the respondent and his son were successful property dealers and were carrying on that business from two shops in property no. E-95, Shiv Ram Park, Vikas Nagar, New Delhi. The learned trial Court has, however, rejected that plea by observing that the petitioner – tenant had failed to place on record any document to show that they were actually working for gain as property dealers in those shops. If learned trial Court was of the view that the petitioner and his son were not doing any business from those two shops then, in fact, the petitioner's case for grant of leave to him became more stronger since those two shops would also become available to them for starting their business. The petitioner – tenant had also claimed that the respondent – landlord had one property at Dal Mill Road, Uttam Nagar and another one at Hastal Road, Uttam Nagar. The learned trial Court has, however, not said anything about the petitioner's plea regarding availability of those two properties also with the petitioner. The petitioner had definitely raised triable issues which in the event of

being established would disentitle the landlord for getting an eviction order against the petitioner.

9. This petition accordingly succeeds. The impugned order of the trial Court is set aside and the petitioner – tenant is granted leave to contest the eviction petition filed against him by the respondent. The matter is remanded back to the trial Court where parties shall appear on 30th September, 2011 at 2 p.m. for receiving appropriate directions from the trial Court.

P.K. BHASIN, J

September 15, 2011
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