

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

% **RCR NO. 120/2011**

+ **Date of Decision: 11th July, 2011**

VIJAY NAYYAR **...Petitioner**
! **Through: Mr. Sushil Kumar, Advocate**

Versus

\$ **OM PRAKASH MALIK** **...Respondent**
Through: Mr. N.N Aggarwal & Mr. Rohit
Gandhi, 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 is a petition under Section 25-B (8) of the Delhi Rent Control Act, 1958 against impugned order dated 22.01.11 passed by the learned Additional Rent Controller whereby the petitioner-tenant's application for grant of leave to defend the eviction petition in respect of the premises under his tenancy filed against him by his landlord(respondent herein) has been dismissed and eviction order has been passed.

2. The respondent-landlord had filed an eviction petition u/s 14 (1) (e) of the Delhi Rent Control Act, 1958 in July, 2010 in respect of one shop

on the ground floor of property bearing no. B-202, Nehru Vihar, Timarpur, Delhi. It was claimed by the respondent in the eviction that he had three shops in the said property and out of those three shops one had been given to the petitioner and the other two shops he had sold sometime back in order to clear some financial liabilities as he was under heavy debts. Earlier the respondent was employed with NDPL from where he had taken voluntary retirement in the year 2004 and he was now surviving on meager amount of pension. His family comprised of his wife and two sons and elder son's wife. He himself as well as his younger were sitting idle and so to earn money for their livelihood he along with his younger son, who had completed a course in laptop/mobile technology, wanted to start their own business of repair of laptops and mobile phones and sale of their accessories in the shop under the tenancy of the petitioner for which purpose he had no other accommodation with him.

3. The petitioner-tenant had sought leave to contest the eviction petition on the grounds that the petitioner did not require the shop in question for starting business since he already had two other shops in his possession. It was also claimed by the petitioner-tenant in his affidavit filed in support of his leave application that the respondent was himself

getting handsome pension from NDPL and there was no need to start the business in the tenanted shop.

4. The learned trial Court in the impugned order rejected the plea of the petitioner-tenant that the requirement of the shop in dispute was not there since his landlord had the other two shops with him. Before this Court this was the only point which was urged with seriousness by the learned counsel for the petitioner. He submitted that the respondent-landlord had created some documents of transfer in favour of his relatives which have been referred to by the trial Court in the impugned order, only to create a ground for filing the petition for eviction on the ground of *bona fide* requirement and that the learned trial Court's decision on this aspect was not in accordance with law and was against the well settled guidelines laid by the Hon'ble Supreme Court in various judgments which the Courts have to follow while deciding applications of the tenants seeking leave to defend the eviction petitions filed by the landlords on the grounds of *bona fide* requirement of the tenanted premises. It was also argued that even otherwise the requirement of the respondent cannot be said to be *bona fide* considering the fact that the petitioner had sought voluntary retirement in the year 2004 he had not thought of starting any business for over six years thereafter and instead sold his two shops in the

year 2009. So, whether he actually intends starting any business or not will have to be decided after the petitioner is given an opportunity to cross-examine his landlord.

5. The said plea of the petitioner-tenant regarding availability of two shops with the respondent-landlord was dealt with and rejected by the learned trial Court in para no.11-C of the impugned order which is being re-produced below:-

“The next ground taken is that the petitioner is having possession of two shops on the ground floor in the suit premises and the said shops were never sold to discharge any liability. However, the petitioner has denied the possession of those shops and has placed reliance upon photocopy of the Registered G.P.A., in respect of one shop in favour of one Bimla Devi dated 21/04/2009 against the consideration amount of Rs. 1,45,000/- along with Agreement to Sale and the other G.P.A. duly registered dated 22/04/2009 in favour of Smt. Maya Devi in respect of shop bearing no. 2, situated in suit premises along with the Agreement to Sale for a sum of Rs. 1,34,000/- along with further relevant documents of title and has also placed reliance upon the copies of settlement letter with different banks and perusal of those documents makes it clear that the alleged two shops are no more in possession of the petitioner and those documents have been executed with a view to discharge the liability of the petitioner pertaining to dues of different banks pertaining loan amount/Credit Card facility and thus, it cannot be said that petitioner is in possession of those shops or is having any relation with those shops and thus, it appears that the said ground has been taken for sake of defence without any substance as except bare denial nothing has been placed on record on behalf of respondent that those documents are not genuine one or those two shops are in possession of the petitioner.”

6. Learned counsel for the respondent-landlord, on the other hand, while supporting the impugned order of eviction and particularly the above quoted findings in para no. 11-C submitted that when the respondent had fairly pleaded in the eviction petition itself that he was having two more shops but he had sold them before filing the eviction petition because of he was in dire need of money to liquidate his financial liabilities no *mala fides* could be inferred because of sale of those two shops by the landlord. It was also submitted that the petitioner-tenant cannot challenge the genuineness of the sales of the other two shops by the respondent-landlord as well as the claim of the respondent that he had to sell the shops because he was under heavy debts and had to liquidate his liabilities.

7. The Supreme Court had in **“Inderjeet Kaur Vs.Nirpal Singh”, [2000]Supp 5 SCR 707**, laid down the following guidelines to be followed by the Courts while deciding the applications for leave to contest filed by the tenants under Section 25(4) of the Delhi Rent Control Act,1958:-

“11. As is evident from Section [25B](#)(4) & (5) of the Act, burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in Clause (e) of the proviso to Section [14\(1\)](#) of the Act, with which we are

concerned in this case, are good enough to grant leave to defend.

12.

13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord leave to defend should not be granted when it is not the requirement of Section [25B\(5\)](#). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act, Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under Clause (e) of the proviso to Sub-section (1) of Section [14](#), when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under Clause (e) of the proviso to Sub-section (1) of Section [14](#) enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when a leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noted that

even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section [25B\(6\)](#) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section [25B\(7\)](#) speaks of the procedure to be followed in such cases. Section [25B\(8\)](#) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Section [25B\(6\)](#), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.

14. This Court in *Charan Dass Duggal v. Brahma Nand* (1983)1SCC301 while dealing with the question in the matter of granting leave to defend to contest the eviction petition filed on the ground of personal requirement, in para 5 has stated thus:

“5. What should be the approach when leave to defend is sought for? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see *Santosh Kumar v. Bhai Mool Singh*). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought for on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.”

15. In the same judgment, in para 7 it is further observed:

“7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave: May be in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits.....”

8. In another judgment rendered by the Supreme Court in the case of ***“Liaq Ahmed vs Habeeb-Ur-Rehman”***, ***AIR 2000 SC 2470*** it was observed by the Court that:-

“2. Rent Control legislations have been acknowledged to be pieces of social legislation which seek to strike a just balance between the rights of the landlord and the requirements of the tenants. Such legislations prevent the landlords from taking the extreme step of evicting the tenants merely upon technicalities or carved grounds. This Court in Mangat Rai v. Kidar Nath. (1980) 4 SCC 276: (AIR 1980 SC 1709) held that where the Rent Acts afford a real and sanctified protection to the tenant, the same should not be nullified by giving a hypertechnical or liberal construction to the language of the statute which instead of advancing the object of the Act may result in its frustration. The Rent Acts have primarily been enacted to give protection to the tenants.

3.

4.

5. *From the scheme of the Act it is evident that if tenant discloses grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave to defend his case against the eviction sought by the landlord. The enquiry envisaged for the purpose is a summary enquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. If the tenant brings to the notice of the Controller, such facts as would disentitle the landlord from obtaining an order for recovery of possession, the Controller shall give him leave to contest. The law envisages the disclosure of facts and not the proof of the facts. In the instant case the Controller as well as the High Court appear to have completely ignored the object of the Rent Control legislation and the scheme of the Act while dealing with the case of the appellants."*

9. Same view has been reiterated by the Supreme Court in a recent judgment in [*"Rachpal Singh and Ors. Vs. Gurmit Kaur and Ors."*](#), [*\(2009\)15 SCC 88*](#), in para no.12 which is re-produced below:-

"12. If some triable issues are raised then the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits and other material documents. Burden is on the landlord to prove his requirements and his assertion is required....."

10. After giving my thoughtful consideration to the submissions made by the counsel for the parties and to the reasons given by the learned Additional Rent Controller for rejecting the petitioner's application for leave to contest the eviction petition I have come to the conclusion that the impugned order cannot be said to be in accordance with law laid down

by the Hon'ble Supreme Court in respect of the disposal of applications of the tenants under Section 25-B(4) of the Delhi Rent Control Act, relevant portions whereof have already been reproduced in the earlier paragraphs of this order. I find lot of force in the submissions of the learned counsel for the petitioner – tenant that the learned trial Court at the stage of consideration of his application for leave to contest could not have rejected the plea of the petitioner – tenant that his landlord was still in possession of the other two shops since that was a matter of trial and the plea in this regard cannot be said to be frivolous. It was also a triable issue as to whether, in fact, the alleged sale of those two shops by the respondent – landlord in the month of April, 2009 for making payment of credit card dues etc. was justified or not and whether the respondent had entered into the sale transactions only to create a ground for seeking eviction of the petitioner – tenant on the ground of *bona fide* requirement of the shop in his tenancy was also a triable issue. In the particular facts of the present case, it was also a triable issue raised by the petitioner – tenant whether his landlord actually intended to start a business in the shop in question when he had not done so for over six years after seeking voluntary retirement from his service from NDPL where he was employed. The genuineness of his requirement of the shop in question can be decided only when he is cross-examined during the trial by the petitioner – tenant. Therefore, in my view, learned trial Court should

have granted leave to contest the eviction petition to the petitioner – tenant and should not have straightaway ordered his eviction from the shop in question.

11. This petition is accordingly allowed. The impugned order of the learned Additional Rent Controller is set aside. The matter is remanded back to the trial Court for trial in accordance with law after giving an opportunity to the petitioner – tenant for filing his written statement. The case shall be taken up by the trial Court for further proceedings on 26th July, 2011 at 2 p.m. when both the parties shall appear there.

P.K. BHASIN,J

July 11, 2011
sh