

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

% *Date of Judgment: 18.04.2012*

+ RC.REV. 483/2011 & CM Nos.4903/2012 & 21618/2011

SHANKAR KUMAR MITTAL Petitioner
Through Mr. T.L. Aggarwal, Adv.

versus

MUKESH KUMAR Respondent
Through Mr. Pankaj Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The impugned judgment is dated 22.10.2011; the eviction petition filed by the landlord Mukesh Kumar seeking eviction of his tenant Shankar Kumar Mittal from shop bearing municipal No. 3649/3, Gali Rura Acharwali, Delhi situated on the ground floor of the suit property had been decreed. The application filed by the tenant seeking leave to defend had been declined.

2 Record shows that the present eviction petition has been filed by the landlord on the ground of bonafide requirement; he claims himself to be owner/landlord of the aforementioned premises; the respondent was

inducted as a tenant in respect of one shop i.e. shop No. 3649/3 situated on the ground floor of the aforementioned property vide rent receipt dated 04.01.1979. Rent of the premises had been enhanced under Section 6-A of the Delhi Rent Control Act (DRCA); the tenant had committed default in payment of rent. The eviction petition had been preferred under Section 14 (1)(e) of the DRCA on the ground of bonafide need. Contention of the landlord is that he is carrying on his business in hardware, rubber and iron goods, aluminum and brass doors and window fittings, industrial and other trolley wheels and castor wheels etc from shop No. 3663, Chawri Bazar. His goods are required to be stocked for business purposes; presently the stocks are being maintained at shop-cum-godown space No. 2 & 11, ground floor, first floor and in the tin shed built up on the roof of the third floor; in maintaining this stock at the aforementioned higher place i.e. on the first and third floors, the petitioner has to incur extra expenditure which is for cartage purposes; frequent visits are required to these places to fulfill the demands of the customers and it is inconvenient for the petitioner to make inroads on the first and third floor where the goods also become damaged; tin shed on the third floor is also exposed to rain and sunlight which again causes

damages to the goods. The rented premises are accordingly required by the petitioner for stocking his goods on the ground floor; this is a genuine and bonafide need.

3 It is not in dispute that there are other shops also which are owned by the petitioner and which are in line with the present disputed shop i.e. shop No. 3. Shops No. 1 & 2 which are adjacent to shop No. 3 and Shops No. 4, 5 & 6 which are contiguous to this demised premises are also in possession of the landlord; contention of the landlord being that this entire area is required by him for stocking his goods which are heavy in weight and required for his business purposes; eviction petition had accordingly been filed.

4 Application for leave to defend had been filed by the tenant. Averments made in the said application have been perused. There is no doubt to the proposition that only if a triable issue arises, leave to defend has to be granted. The converse is also true if no triable issue arises, leave to defend should not be granted. The triable issues have to be emanate from the pleadings of the parties which include the application seeking leave to defend.

5 The only ground largely urged in the application for leave to

defend and argued by the learned counsel for the petitioner is that non-applicant/respondent is not the owner of the suit premises; his contention is that the landlord is seeking eviction of his tenant for malafide reasons; his need is not bonafide. Further contention being that he has sufficient accommodation available with him and he has shops on all the floors including the entire third floor which would be sufficient to meet his needs.

6 The reply to the corresponding paras of the application for leave to defend have also been perused. There is no dispute to the factum that the landlord claims ownership of the disputed premises by virtue of a sale deed executed by the erstwhile owner Ramji Lal and Bhagwan Dutt Sharma dated 29.07.1978 which has been executed in favour of the present respondent. It is also not in dispute that the present petitioner has been inducted as a tenant by the first landlord i.e. by Mukesh Kumar vide a rent note dated 01.04.1979. It is also not in dispute that the rent is since being paid by the tenant to Mukesh Kumar all along and no such contention has ever been raised earlier. Thus, in these circumstance, the mere bald plea set up by the tenant that the non-applicant/Mukesh Kumar is not the owner/landlord of the premises is a submission wholly

devoid of any merit.

7 The Apex Court in the case of (1987) 4 SCC 193 Smt. Shanti Sharma & Others Vs. Smt. Ved Prabha & Others had an occasion to examine the concept of ‘owner’ as envisaged under Section 14 (1)(e) of the DRCA. In this context, it had inter-alia noted as under :-

“The word ‘owner’ is not used in Section 14 (1) proviso (e) of Delhi Rent Control Act in the sense of absolute owner; where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction, the only thing necessary for him to prove being bona fide requirement and he is the owner thereof. In this context the meaning of ‘owner’ is vis-à-vis the tenant i.e. the owner should be something more than the tenant. In most of the modern townships in India the properties stand on plots of land leased out either by the Government or the Development Authorities and therefore it was not contemplated that for all such properties the landlord or the owner of all such properties the landlord or the owner of the property used in common parlance will not be entitled to eviction on the ground of bonafide requirement and it is in this context that we have to examine this contention. It could not be doubted that the term ‘owner’ has to be understood in the modern context and background of the scheme of the Act.”

8 In 1995 RLR 162 Jiwan Lal Vs. Gurdial Kaur & Ors. a Bench of this Court while dealing with the concept of ownership in a pending eviction petition under Section 14(1)(e) of the DRCA had noted as follows:

“There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises.”

9 Contention of the petitioner is that an application under Order 1 Rule 10 of the Code of Civil Procedure (hereinafter referred to as the ‘Code’) has been filed by legal heirs of the erstwhile owner Bhagwan Dutt Sharma namely Suman B. Sharma seeking impleadment in the present eviction petition which would throw light on the veracity of this case. It is not in dispute that this application under Order 1 Rule 10 of the Code has since been dismissed; Mukesh Kumar has a registered sale deed in his favour; he himself had inducted the present tenant in the premises vide the aforementioned rent note dated 01.04.1979; all along, the tenant has also attorned in favour of the landlord and has been paying rent to him; in this background, the question of ownership and title of Mukesh Kumar is not in any doubt. This argument of the learned counsel for the petitioner raises no triable issue.

10 No other argument has been urged. However, in the body of the application seeking leave to defend it has been baldly canvassed that the landlord has other alternate accommodation.

11 The landlord has come clean to the Court. He has himself detailed the accommodation which is available with him as also the nature of his business (which as noted supra and not disputed by the tenant is a large business of iron goods, aluminum and brass doors and window fittings); some of the goods are required to be stored as stock by the landlord. Business of the petitioner is being carried out from Shop No. 6336/3, Chawri Bazar which is on the main road; present premises are located in property No. 3649 which is situated in the interior and the specific averment of the landlord is that the only place presently available with him for the purpose of storage is on the first floor and tin shed on the third floor; tin shed on the third floor is without a pucca roof which because of rain and sunlight causes damage to the goods; moreover procuring of the goods from first and third floor causes great difficulty as these goods have often to be carted down to the shop because of the need of the customers which are required to be shown to the prospective customer before they are actually purchased. The need of the landlord

for storage of the goods on the ground floor has thus been substantiated.

12 Site plan filed along with the eviction petition shows that the present shop (No. 3) is in between shops No. 1 & 2 which fall to the left site and shops No. 4, 5 & 6 fall to the right side; although the aforementioned shops (except shop No. 3) are already in possession of the landlord but after eviction of the tenant from shop No. 3 there will be one continuous long hall available to the landlord on the ground floor for the purpose of storage which goods as noted supra are of a heavy variety which comprises of trolley wheels and castor wheels, castor wheels, iron goods, aluminum and brass doors and window fittings.

13 The landlord is also the best Judge of his requirement and it is not open for any person i.e. neither the tenant and not even the Court to dictate terms to him as to how and in what manner he seeks to set up his business or residence. The landlord in order to obtain an eviction decree must however show that his need is genuine and bonafide; it should not be malafide. The tenant on the other hand unless and until sets up a prima facie defence cannot in a routine or a mechanical manner be granted leave to defend; otherwise the very purport of Section 25-B of the DRCA which is a summary procedure engrafted for a special class

of landlords would be defeated and this was not the intent of the legislature. If the defence raised by the tenant is merely bald, whimsical or fanciful having no basis or foundation, leave to defend may not be granted.

14 In 111 (2004) DLT 534 Shri Hari Shanker Vs. Shri Madan Mohan Gupta and 155 (2008) DLT 383 Rajender Kumar Sharma & Others Vs. Smt. Leela Wati and Others the Courts have time and again reiterated:-

“The Courts cannot and should not in a mechanical or in a routine manner grant leave to defend.”

15 In this scenario, the eviction petition which has been decreed suffers from no infirmity; no triable issue having arisen, application seeking leave to defend was rightly dismissed. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

APRIL 18, 2012
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