

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **RC.REV.No. 127/2011**
+ **Date of Decision: 5th September, 2011**

ANAND KUMAR JAIN **...Petitioner**
! **Through: Ms. Arundati Katju & Mr. Satender**
Pratap Singh, Advocates

Versus

\$ **SUBHASH CHAND AGGARWAL** **....Respondent**
Through: Mr. Deepak Khosla & Mr. Kamal
Garg, 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 the order dated 25.01.10 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 shop no. 1569-A Chandrawal

Road, Subzi Mandi, Delhi, filed against him by his landlord (respondent herein) has been dismissed and eviction order has been passed.

2. The respondent instituted the eviction petition, wherein it was contended that the owner of the shop in dispute was the tenancy of the petitioner. The respondent further contended that he required the shop for his son sh. Nikhil Aggarwal who had attained the age 24 years, and was unemployed and completely dependent on him and he wanted to open a shop for his son so that he could earn his livelihood and since he had no other reasonable and suitable commercial accommodation in Delhi. The shop occupied by the petitioner was required bonafide.

3. The petitioner-tenant had sought leave to defend the eviction petition as required under section 25B(4) of the Delhi Rent Control Act, 1958 on the grounds which have not been found by the trial Court to be good enough to give him leave to contest the eviction petition. The main plea which only was urged before this Court was regarding the availability of sufficient alternative accommodation with his landlord is contained para no. 4 of the leave application is reproduced as below:-

“That the said property left by the deceased Shri Ram Kishan Aggarwal bearing No. 1568-1573 Chandrawal Road, Subzimandi, Delhi-110007 are having seven shops on the ground floor, Five with the tenants, out of which 1569A is with the respondent. Two of the shops bearing No. 1572 and 1573 are with

the petitioner himself. The shop No. 1573 with the petitioner is having an area of about 15' x 20' and besides that there is a store on the back side and some open area wherein the petitioner is doing the business of Paper. This shop is more than sufficient for the requirement of the petitioner and his son Mr. Nikhil Aggarwal who is also working with his father Sh. Subhash Chand in the same shop and rather most of the area of the said shop from the back side remain always empty and vacant and unused by the petitioner and besides this the petitioner has got another shop bearing No. 1572 Chandrawal Road, Subzimandi, Delhi in the same building having almost the same size of 15' x 20' in the occupation of the Petitioner and is lying completely vacant under the lock of the Petitioner since long and besides that on the first floor there are two rooms, one kitchen, bath and one Miani and half Balcony and also has the construction of one room on the second floor also in the possession of the petitioner Shri Subhash chand wherein i.e. on the second floor the petitioner and his brother Sh. Ved Parkash are running a factory of Planet Chap. The accommodation on the first floor comprising of two rooms, kitchen, bath and latrine and Miani are lying vacant in the possession of the petitioner and that can also be used for the purpose of business but the petitioner has kept the same under lock. The petitioner himself is residing in Rohini and not in the suit property. The alleged plea that the suit premises is for the bonafide need of his son namely Mr. Nikhil Aggarwal who is stated to be unemployed is a set up plea but the said son of the petitioner is working along with his father in paper business in the said shop No. 1573 since long and so far as the respondent understand the said son of the petitioner is a partner with his father in the said paper business. The suit premises are not required bonafide by the petitioner for his said son and moreover the accommodation already in the occupation of the petitioner as mentioned above is more than sufficient for the requirement of the petitioner and his said son and rather major part of the accommodation in the occupation of the petitioner is lying vacant and not in use. Thus the requirement of the petitioner is not bonafide and the petitioner has got more than sufficient accommodation with him and for his said son."

4. The said plea of the petitioner-tenant regarding availability of the shop with the respondent-landlord was dealt with and rejected by the learned trial

Court in para no.10 (B-C) of the impugned order which is being re-produced

below:-

“(10) I have given my thoughtful consideration to the submissions advanced on behalf of the parties and have perused the record carefully.

B. The next ground taken is that the petitioner is having two shops bearing no. 1572 and 1573 in his possession and said fact of possession of both the shops have not been denied on behalf of the petitioner and it is deposed that those shops are not sufficient even for running the business of the petitioner and, therefore, petitioner has to take another shop for storage purpose and rent receipts of those have already been filed and there is also dispute regarding the measurement of the second shop bearing no. 1572 and none of the parties have filed any site plan in respect of the said shop nor has disclosed the exact measurement and the photographs filed on record on behalf of the petitioner clearly shows that one shop smaller than other shop and petitioner has shown that he has taken other premises on rent by filing rent receipts and thereby it is shown that the petitioner was in space crunch, therefore, he was to take the other property on rent and thus, it has been shown on record that petitioner is having no other accommodation and vacant possession with him so as to adjust his son for his independent business as it is settled law that petitioner is best judge of his requirement and neither the tenant nor the court can dictate its terms to compel the petitioner to adjust himself.

C. The next ground taken is that two rooms, one kitchen, bath and one miani is available on the first floor which are lying vacant and half balcony and one room on the second floors is in possession of the petitioner which is being used by the petitioner along with his brother for running the factory and on the other hand, petitioner has denied the availability of the room at first floor and petitioner has submitted that the said portion has been relinquished in favour of his brother Mr. Ved Prakash out of love and affection. Even if for the sake of arguments it is assumed that first floor portion is available with the petitioner, it cannot be said that the said first floor portion is more suitable than the ground floor shop for the purpose of business and as a matter of fact copy of registered Relinquishment Deed dated 28/03/2008 has already been filed and, therefore, it can be safely held that the said portion is not available with the petitioner and thus, it appears that the said ground has

been taken for the sake of defence without having any substance and so is the case in respect of second floor.

5. Challenging the afore-said findings of the learned Additional Rent Controller learned counsel for the petitioner – tenant had contended that the plea raised by him was to the effect that the respondent – landlord had two rooms on the ground floor, entire first floor and one room on the second floor and that he himself was living in Rohini and so that much accommodation was more than sufficient for himself as well as for the alleged need of his son and these pleas which were not categorically refuted were sufficient to grant him leave to contest the eviction petition.

6. Learned counsel for the respondent – landlord, on the other hand, while supporting the impugned eviction order passed by the learned Additional Rent Controller submitted that there was no perversity in the findings of the learned trial Court nor any material irregularity committed was committed by it while declining leave to defend to the petitioner – tenant since none of the pleas raised by him gave rise to any triable issue.

7. I am however of the view that, the question whether shop no. 1572 on the ground floor was as big as shop no. 1573, which was of the size of 15' x 20' and admittedly available with the respondent – landlord, could be established by the tenant after evidence since respondent – landlord had taken the plea

that shop no. 1572 was a very small shop as compared to shop no. 1573 and so could not be of any use for his son. This controversy could not be set at rest in the manner done by the learned Additional Rent Controller by simply accepting the version of the respondent – landlord. Similarly the fact whether first floor portion had been genuinely relinquished by the respondent – landlord in favour of his brother or the document of relinquishment had been brought into existence only to show the scarcity of accommodation with the respondent – landlord was also a question which could be decided only after giving an opportunity to the petitioner – tenant to establish that the so called relinquishment deed had been brought into existence only to create a ground for the eviction of the tenant. Here, reference can be usefully made to a judgment of the Supreme Court in **“Devi Dass Versus Mohan Lal”**, **AIR 1982 SC 1213** wherein the tenant had sought to challenge the genuineness of a sale deed relied upon by his landlord but was not allowed to do so by the Courts below and the ground that the tenant cannot challenge the title of landlord. The Supreme Court held that the tenant had a right to contend that the sale deed was executed only to evict him and was not a genuine document. So, here also the petitioner –tenant can contend and prove that the relinquishment deed was executed to evict him. In case the

petitioner – tenant is able to establish that plea ,the respondent – landlord would be disentitled to get an order of his eviction as his son can use first floor portion also. The petitioner – tenant had also taken the plea that the respondent's son was already in the business of his father and, therefore, there was no requirement of any additional accommodation for him to start an independent business. This was also a triable issue and the plea of the petitioner – tenant in that regard is very much probable considering the fact that generally unemployed children of a businessman prefer to join the father's running business which respondent was doing. At the stage of disposal of leave application of the tenant he was not expected to bring on record evidence to establish the fact, which even otherwise would be within the special knowledge of the respondent, that respondent's son was already doing the paper business with him.

8. I am, therefore, of the view that the petitioner – tenant has raised triable issues which in the event of being established by him would disentitle the respondent – landlord from getting an eviction order against him in respect of the shop in question. Therefore, the learned Additional Rent Controller was not justified in rejecting the petitioner's prayer for leave to defend the eviction petition. This revision petition is accordingly allowed.

The impugned order passed by the learned Additional Rent Controller is set aside and consequently the petitioner – tenant gets leave to defend the eviction petition filed by his landlord. The matter is now remanded back to the trial Court where it shall be taken up for filing of written statement by the petitioner – tenant and further appropriate directions in the matter on 17th September, 2011 at 2 p.m.

P.K. BHASIN, J

September 05, 2011
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