

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **RC.REV.No. 138/2010**
+ **Date of Decision: 9th September, 2011**

NARINDER KUMAR ANAND & ANR. ...Petitioners
! **Through: Mr. S.K Gupta & Mr. D.V. Nanda ,**
Advocates

Versus

\$ **ASHOK Respondent**
Through: Mr. S.C Arora, Advocate

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 has been filed against the order dated 12.03.10 passed by the

learned Additional Rent Controller whereby the petitioners' application for grant of leave to defend the eviction petition filed against them by their landlord, respondent herein, in respect of the shop under their tenancy has been dismissed and eviction order has been passed.

2. The respondent- landlord in his eviction petition had pleaded that he and his family comprising of his wife and five children were living in a temporary shed and that too without any kitchen, bath etc. on the second floor of property no. 10307, Tokri Walan, Azad Market, Delhi-110007 and one room on the first floor was occupied by his brother and so he required the shop of the size of 12'x17' in occupation of the petitioners on the ground floor, so that it could also be utilised by him and his family members, all of whom were dependent upon him, for living there .it was also pleaded that the petitioner and his family members were using common public lavatory on the ground floor while cooking was being done in the shed itself. The requirement of the shop in question was thus claimed to be *bona fide*.

3. The petitioners had sought leave from the trial Court to defend the eviction filed against them. In their application for leave to defend and the supporting affidavit they had sought to demolish the respondent's case of *bona fide* requirement of the shop in question primarily on the grounds that he had let out the adjoining portion of the tenanted shop about six months prior to the filing of the eviction petition against them to one M/s. Nikhil Telecom Centre at a rent of ₹ 3000 p.m. after getting it vacated from the earlier tenant. It was also pleaded that the premises in question was commercial and so its requirement for being used as residence could not be said to be *bona fide*.

4. The respondent in his reply to the petitioners' application for leave to defend had clarified that he had not let out any shop to any new tenant recently as was being claimed by the petitioners- tenants and, in fact, the tenants who were already in occupation of that area which was below the staircase and was of the size of 10' x 2'6" had sublet that portion to M/s. Nikhil Telecom Centre illegally about a year back and he was taking appropriate steps against the original tenant.

5. The said pleas only were urged before this Court with seriousness and it was submitted by the learned counsel for the petitioners these pleas were sufficient to entitle them to the leave sought for as it was a matter of trial whether or not the respondent-landlord had let out one shop on the ground floor to another tenant six months before the filing of the eviction case against the petitioners. This plea as also the respondent's case of bona fide requirement were dealt with and rejected by the learned trial Court in para no.5 of the impugned order which is being re-produced below:-

“(b) On the other hand, in the application for leave to defend, it is stated that petitioner does not require the said premises bonafidely as he has more than sufficient accommodation. It is alleged that the petitioner is occupying the remaining property i.e. first floor, second floor and third floor where he is residing along with his family members comfortably. Suit premises are only commercial shop on the ground floor situated in purely commercial area and requirement of the petitioner to use the suit premises on the ground floor for residential purpose is totally false. Since the petitioner does not need any property either for residence or for commercial purpose for himself or his alleged dependent family members, as after acquiring the said shop as vacated by the previous tenant who was running the general store, petitioner would not have re-let the same to M/s. Nikhil Telecom Centre. Besides, it is alleged that first and second floor of the suit property are with the tenants.

(c) On the other hand, petitioner denied that he has re-let another shop near the premises in question to anyone namely M/s. Nikhil Telecom Centre. In fact the said accommodation below the staircase measuring 4'6", the front shutter 10' in length and 2'6" which is the back wall below the staircase was let out to a tenant namely Sh. Rakesh Kumar who has sublet the same to M/s. Nikhil Telecom Centre about a year back and the petitioner is taking appropriate steps against the original tenant.

(d) It is further submitted that it is not in the knowledge of the petitioner about the rent being paid by M/s. Nikhil Telecom Centre to the original tenant. As per the petitioner, the said subletting is without the consent of the petitioner and there is no tenant either on the first floor or on the second floor. The first floor only consists of one room while the second floor consists of one Khaprail which are not worthwhile living. It is denied that the petitioner does not require the property in question for residential purposes for himself and for his family members dependent upon him. There is no question of re-letting aforesaid portion to M/s. Nikhil Telecom Centre.

(e). On hearing the submissions, I am not in agreement with the contention of Ld. counsel for respondent as the petitioner specifically asserted in his reply that he had let out another shop to Sh. Rakesh kumar who sublet the same to M/s Nikhil Telecom Centre about a year back and he is taking appropriate steps against the original tenant. On this, respondents have failed to place any document or other material on record to substantiate their allegations that another shop has been let out to M/s Nikhil Telecom Centre directly by the petitioner. It is settled law that bald allegation without any material on record to substantiate the same could not be looked into as the same is not enough for grant of leave to defend. I take support by the case law of **Rajinder Kumar Sharma & Ors. v. Leelawati & Ors.** 155 (2008) DLT 383, wherein our own Hon'ble High Court held that

“Leave to defend not to be granted to tenant on the basis of false affidavit and false averments and assertions- only those averments in affidavit are to be considered by Rent Controller which have some substance in it and are supported by some material.”

(f). Further, composition of the family of petitioner has not been disputed by the respondent. Marriageable age of his children has also not been disputed. Besides, the respondent has not filed any counter Site Plan to controvert the statement of petitioner with regard to accommodation available in the property. Thus, in the absence of any counter Site Plan, allegations of the respondents are not worthy of serious consideration, hence rejected.

In the light of above discussion, I find that the petitioner has bonafide requirement of the premises for himself as well as for his family members dependent upon him.

4. That the petitioner has no other reasonably suitable accommodation.

(a). It is alleged that petitioner has not disclosed all his other properties as he has owns another property in trans-yamuna. On the other hand, as per the petitioner, he has absolutely no property in his name except the property in question and there is no question of the petitioner owning any property in trans-yamuna area. Having heard the contentions of Ld. counsel for the opposite parties, I find no cogency in the submissions of respondent as he has not disclosed the details of any of the alleged properties including trans-yamuna area. In the absence of details of any other property or any document/material in support of the allegations, this plea of the respondents is not tenable, hence rejected.

In the wake of above, it is established that petitioner has no other reasonably suitable accommodation.

(b). It is further alleged that the petitioner after getting the tenanted premises vacated, wants to build a

*multiple storeyed commercial complex. In reply, it is submitted that the dimension of the premises in question is too short to allow construction of multiple storeyed commercial complex. I find no force in the contention of Ld. counsel for respondents. Here, I am supported by a case law of case of **Bachan Singh v. Rajender Prasad 1984 RLR 706**, wherein our own Hon'ble High Court held that:*

“Controller cannot give leave to defend on the mere arising of triable issues. Leave can be given only if the affidavit of tenant discloses such facts as would prima facie disentitle landlord from obtaining eviction order. A small house owner cannot be blindly dubbed as a greedy landlord. Bare assertion (without facts) that landlord wants to enhance rent carries no credence.”

(6). In the wake of above, I observe that respondent has failed to raise any triable issue in the application for leave to defend which, if proved, might disentitle the petitioner from getting an order of eviction in his favour. Thus, the present application for seeking leave to contest the eviction petition, being devoid of merits, is dismissed.....”

6. From the averments made in the eviction petition and the application of the petitioners for leave to defend the undisputed position which emerges out is that the respondent's family comprises of seven members. The petitioners have not disputed the respondent's claim that he was living in a temporary shed on the second floor along with his six family members and that in the one room on the first floor his brother

was living. The petitioners have also not claimed that there was any more accommodation available with the respondent – landlord on the first and second floors. Therefore, the respondent's requirement for the shop in question in occupation of the petitioners by no stretch of imagination can be said to be not *bona fide*, as was the submission of learned counsel for the petitioners. The respondent – landlord had also claimed in his reply to the leave to defend application that the shop which petitioners were alleging to have been recently let out by him was not correct and, in fact, his tenant already in occupation thereof had sublet the same. The petitioners have admitted this fact that earlier there was a tenant in that portion. The learned Additional Rent Controller having accepted the said plea of the respondent – landlord this Court finds no reason to set it aside and give opportunity to the petitioners to adduce evidence on that aspect of the matter. It was also contended by learned counsel for the petitioners that since the respondent was requiring accommodation for residence of self and his family members the shop in their own possession could be of no use to him since it was a commercial property and that shop was surrounded by many other shops and,

therefore, the respondent's requirement of the same cannot be said to be *bona fide*. However, this argument is also rejected since there is no bar for a landlord to use his property for residential purposes even if the same had been let out for non-residential purpose. For this view, I find support from a judgment of the Supreme Court in "***Dr. T.S. Subramanian (Deceased) By LRs. Vs. Andhra Bank Ltd.***", 1989 Supp. (2) SCC 252 wherein also a similar plea was raised on behalf of the tenant but was rejected relying upon its earlier decision in the case of "***Shri Balaganesan Metals vs. M.N. Shanmugham Chetty And Ors.***", (1987) 2 SCC 707.

7. I, therefore, find no substance in this revision petition justifying interference in the impugned order in exercise of revisional jurisdiction and, therefore, the same is dismissed.

P.K. BHASIN,J

SEPTEMBER 9, 2011
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