

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

% **RCR NO. 171/2011**

+ **Date of Decision: 8th September, 2011**

DOLLY CHANDRA & ANR. **...Petitioners**

! **Through: Mr. G.P. Thareja, Advocate**

Versus

\$ **RAMESHWAR PRASAD** **...Respondent**

**Through: Mr. Rameshwar Prasad & Mr.
K.K. Jha, 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 revision petition filed under Section 25-B (8) read with Section 115 of CPC by the petitioners-tenants for setting aside the order dated 19.04.2010 of the Additional Rent Controller whereby their application for grant of leave to defend the eviction petition in respect of the first floor portion of premises 7/841-A, Govindpuri, Kalkaji, New Delhi under their tenancy filed against them by their landlord (respondent herein) has been dismissed and eviction order has been passed.

Signature Not Verified
Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

2. The facts that have led to the filing of the present petition are that eviction petition was filed by the respondent seeking eviction of the petitioner no. 2, a proprietorship concern of petitioner no. 1, from the premises under their tenancy comprising of one hall of the size of 40'x16½", and one room of the size of 10'x9', lobby, veranadah, bathroom and latrine on the ground that he required the same *bona fide* for his two sons, who were dependent upon him, and wanted to start their business. The respondent-landlord had claimed in the eviction petition that his elder son was earlier carrying on the business of export of garments in the name and style of M/s Rama Krishna Exports but that business was closed due to some disputes between the partners and so he wanted to start his own business. The respondent had further pleaded that his second son had a Degree in Fashion Technology from International Institute of Fashion Technology (IIFT), New Delhi and though he was working as a Quality Inspector in a Government recognized Export House in Okhla but he also intended to start his own business (after leaving the job) and since both his sons had no other place to start their business the premises with the petitioners were required by him.

3. The petitioners filed an application with an affidavit of petitioner no. 1 before the trial Court seeking leave to contest the eviction petition but the learned trial Court declined to grant the leave and, as noticed

11

already, eviction of the petitioners from the premises under their tenancy has been ordered and feeling aggrieved by the order of the trial Court the petitioners have invoked the revisional jurisdiction of this Court.

4. The principal ground urged before this Court by Shri G.P.Thareja, learned counsel for the petitioners for getting reversal of the impugned order of the trial Court was that the respondent-landlord's requirement of the premises under their tenancy on the first floor is not at all bona fide and that was evident from the fact that he had not long before the filing of the eviction petition let out the ground floor of the main property to one Shri Ramesh Kumar Pehalwan. Counsel contended that if at all the respondent was in need of the premises in question for his sons he would have placed the ground floor accommodation, which was almost the same as on the first floor, at their disposal for starting their intended business though there was actually no likelihood of that.

5. Rejecting the aforesaid plea of the petitioners that the respondent had recently let out the ground floor to another tenant and that showed that his requirement of the premises in question was not bona fide the trial Court observed in the impugned as under:-

10. The respondent has next contended that the petitioner has let out the ground floor portion of the property about one year back to one Shri Ramesh Kumar Pehalwan. Hence the need of the petitioner is not bonafide. The following observations of Hon'ble Supreme Court in (2008) 8 Supreme Court Cases 497 in case Deep Chandra Juneja vs. Lajwanti Kathuria are relevant in this regard, "The landlord/landlady is the best judge of his requirement and the courts

have no concern to dictate the landlord/landlady as to how and in what manner he/she should live". Therefore, the court cannot find any fault with the judgment of the petitioner to let out the ground floor portion to some other tenant....."

6. Learned counsel for the respondent – landlord, on the other hand, supported the afore-said finding of the learned trial Court to the effect that even if before the filing of the eviction petition the respondent – landlord had inducted a new tenant on the ground floor portion his requirement for the first floor portion in occupation of the petitioners cannot be said to be not *bona fide*. Counsel further contended that it was for the landlord to decide as to which part of the property would be more suitable for his sons' business which they intend to start and in the present case the first floor portion was more suitable than the ground floor portion since the ground floor portion was residential in nature while the first floor was commercial and petitioners were also using it for their business.

7. After the case had been reserved for orders, the respondent – landlord submitted in the Registry brief submissions in which also he stated as to why the ground floor portion was not suitable for him and it was his submission that the ground floor was a residential floor and could not have been used for commercial purposes and before letting out the same to Shri Rakesh Pahalwan he himself was also using the same for his own residence while the first floor was totally a commercial floor having commercial electricity and water connections and the property tax was

also being paid in respect of that floor at the rates applicable for commercial properties. However, I am not at all convinced with the said explanation of the respondent – landlord. In fact, this submission of the respondent – landlord is counter to the stand taken by him in the eviction petition in which he had categorically pleaded that the entire property no. 7/841-A is residential in nature. Thus, this contradictory stand taken by the respondent – landlord introduces an element of doubt about the *bona fides* of his requirement of the premises in occupation of the petitioners as projected in the eviction petition.

8. Even otherwise the view of the learned Additional Rent Controller that a landlord has a right to decide as to which of the premises available to him is to be occupied cannot be sustained in view of the decision of the Supreme Court in ***“Shiv Sarup Gupta versus Dr. Mahesh Chand Gupta”***, (1999)6 SCC 222 wherein it has been held that if landlord wants to get a property vacated from a tenant despite his having in possession another property then the Court can justifiably require the landlord to justify his decision as to why he wants to do his business only from the property from which the tenant is sought to be evicted and not from the other property already available with him. This is what the Court had observed in para 14 of this judgment:

“14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the

tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. **Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need.** The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come." (emphasis laid)

9. In **"M.M. Quasim v. Manohar Lal Sharma and Others, (1981)3SCC36"** also the Supreme Court had taken the same view. The relevant observations of the Supreme Court in para no. 19 of its judgment are reproduced below:

"19.....The time honoured notion that the right of re-entry is unfettered and that the owner landlord is the sole judge of his requirement has been made to yield to the needs of the society which had to enact the Rent Acts specifically devised to curb and fetter the unrestricted right of re-entry and to provide that only on proving some enabling grounds set out in the Rent Act the landlord can re-enter. One such ground is of personal requirement of landlord. When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very raison de'etre of the Rent Act.

Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court. It would, however, be a bald statement unsupported by the Rent Act to say that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant. This approach would put a premium on the landlord's greed to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate....." (emphasis supplied)

10. There is no doubt that the Supreme Court had in ***“Deep Chandra Juneja vs. Lajwanti Kathuria”***, (2008) VIII SCC 497, which judgment has been relied upon by the learned trial Court, held that the landlord is the best judge of his requirement and the Courts have no concern to dictate the landlord as to how and in what manner he should live but in my view this judgment had no application for deciding the plea taken by the petitioners in the leave to defend application as to the effect of respondent – landlord letting out the ground floor portion to a new tenant before the filing of the eviction petition against the petitioners and it was not held in that case by the Supreme Court that a landlord has an unfettered right to claim eviction of a tenant on the ground of *bona fide* requirement even when there is some other alternative accommodation available with him, while in the two judgments referred to by me are squarely dealing with this point only. Here, a useful reference can also

be made to an order dated 23rd October, 2009 passed by a Single Judge Bench of this Court in *CM(M) 1164 of 2009, "Nitin Garg vs. Naresh Kumar Arora and Another"* wherein it was held that whether a particular floor of a house of the landlord can be used for commercial purposes or not cannot be decided at the stage of disposal of leave to defend application of the tenant and that controversy between the parties was a triable issue and a matter of trial. Therefore, in the present case also the question whether the respondent – landlord was justified in letting out the ground floor portion, which he was not claiming to be less than the first floor accommodation, to a new tenant before the filing of the present eviction petition is a triable issue and by itself is sufficient to grant leave to defend to the petitioners to contest the eviction petition.

11. I am, therefore, of the view that this revision petition is entitled to succeed. The impugned order of the learned Additional Rent Controller is accordingly set aside and the matter is remanded back to the trial Court for initiating regular trial. The matter shall now be taken up by the trial Court on 16th September, 2011 at 2 p.m. for passing of appropriate directions.


P.K. BHASIN, J

SEPTEMBER 8, 2011 → Listed on office note.
sh

16

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

RC.REV. 171/2010

DOLLY CHANDRA & ANR

..... Petitioners

Through: None

versus

RAMESHWAR PRASAD

..... Respondent

Through: Mr. G.P. Thareja, Advocate

CORAM:**HON'BLE MR. JUSTICE P.K. BHASIN****ORDER**
23.09.2011

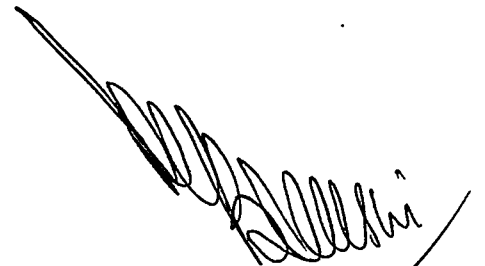
%

This disposed of revision petition has been placed before the Court pursuant to the Registry's note pointing out that the revision petition no. mentioned in the order dated 8th September, 2011, whereby the revision petition was allowed, was mentioned as RCR number 171/2011 while in fact the correct number of the petition is RCR 171/2010.

It appears that due to some clerical mistake wrong RCR number has been mentioned on the first page of the order dated 8th September, 2011. The same, therefore, requires to be corrected.

It is accordingly ordered that the RCR No. 171/2011 mentioned in the order dated 8th September, 2011 shall stand substituted by RCR No. 171/2010.

Necessary endorsement to this effect can be made in the original order also.


P.K. BHASIN, J