

\$~31

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RC.REV. 473/2011 & CM No. 21436/2011

NIRMAL SINGH & ANR Petitioners
Through Mr. Virender Mehta and Mr. Jagjit
Singh, Advs.

versus

VIJAY BHALLA Respondent
Through Mr. Gautam Gupta, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
28.11.2011

%

1 Order impugned is the order dated 12.07.2011 wherein the application for leave to defend filed by the petitioner in an eviction petition filed under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed.

2 Record shows that the landlord Vijay Bhalla had filed this eviction petition under Section 14 (1)(e) of the DRCA seeking eviction of the suit property which comprises of a shop on the ground floor of property No. 43, Bhalla Building, G.B. Road, Delhi rented out at a monthly rent of Rs.525/-. Contention of the petitioner is that he is doing the business of generators from a rented premises bearing No. 47, G.B. Road, Delhi where he is paying rent of Rs.18,000/- per month. This fact is not in dispute and the lease deed substantiating this submission is on record. His contention is that his two sons, the elder son is carrying on the

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.

business of cutting tools while the younger son is doing the business of generators; all three of them are carrying on their business from the aforementioned rented premises. These rented premises are not sufficient to accommodate their business need. His need for aforementioned accommodation is bonafide, genuine and germane. Eviction petition had accordingly been filed.

3 In the application for leave to defend, it was stated that there are several triable issues which have arisen. The most vehement argument urged before this Court is that the petitioner has not come to the Court with clean hands; he has sold other shops in this three storeyed building of which he is admittedly the owner to other persons and the last sale had in fact been effected in August, 2008; this eviction petition has been filed only one year later and as such reflects the malafides of the landlord who is actually seeking eviction only for the reason that he is able to sell this shop at an exalted rates. Further contention of the tenant is that the petitioner also has one big shop in the upper mezzanine floor; the petitioner has deliberately not filed the site plan. This is the second contention urged before this Court; no further argument has been raised.

4 These arguments have been refuted.

5 Record has been perused. Record shows that admittedly the landlord is the owner of three storeyed building bearing No. 43, G.B. Road, Delhi. It is also an admitted case that there are three shops on the ground floor; of which one shop had been sold by the landlord to the petitioner/tenant in the year, 2002; the second shop is the disputed shop on rent with the petitioner. In the eviction petition this has been detailed;

further contention of the landlord being that after the sale of this shop to the petitioner, the shop in between wall of the other shop has also been broken open to make it into one large shop; further the tenant has dismantled the mezzanine floor which has also created an extra space for him. The third shop on the ground floor of these premises is in possession of another tenant namely one Paramjit Kaur.

6 It is not in dispute that the landlord is himself carrying on his business from 47, G.B. Road, Delhi which is a rented premises; his need for the aforementioned premises which is a shop on the ground floor from where he can carry on the business of generators along with two sons thus is clearly a bonafide need. The second submission of learned counsel for the petitioner that in August, 2008, the landlord had sold one shop which in turn has diminished his bonafide need and in fact reflects his malafides is certainly an argument not worthy of merit. This eviction petition has been filed in October, 2009 which is more than 13 months of last sale effected of the shop which was on the first floor in favour of one Ashok Kumar Chitlagiya on 12.06.2008 who was an old tenant. It has also come on record that another shop of the building has been sold to Vinod Chopra who was also admittedly an old tenant; another shop on the first floor had also been sold to Ashok Sehgal who was also an old tenant. All these shops were admittedly not on the ground floor. Contention of the petitioner before this Court is that to avoid unnecessary litigation, he was in fact pressurized to sell these shops which he has done so, last of which was in June, 2008. This submission of learned counsel for the petitioner has force; it cannot be urged that merely because the landlord has

4

effected a sale in June, 2008 of a shop on the first floor where admittedly there was an old tenant living and in the circumstances explained hereinabove; 13 months later, the need of the landlord for the shop on the ground floor for running his business of generators which he is admittedly doing along with his two sons is not a bonafide need. This argument has no force.

7 The second contention of the tenant that the landlord has a big shop in the upper mezzanine floor has also not been borne out. Although this has been stated in para 'L' of the application for leave to defend; this has been vehemently denied; the site plan has been filed by the landlord in the trial Court but the learned counsel for the respondent has pointed out that this has deliberately not been filed in this Court. Be that as it may, the landlord in support of his case had filed photographs in the trial Court showing that the upper ground floor is in fact in possession of the petitioner and this has also been specifically averred by him in his eviction petition which finds mention in para 17 to which there is no answer in the application for leave to defend.

8 The bonafide need of the landlord and he having no other alternate accommodation and carrying on business from a rented accommodation where he is paying Rs.18,000/- per month i.e. 47, G.B. Road, Delhi has clearly been averred in the eviction petition. A wholesome reading of the eviction petition shows that there is no alternate accommodation with the landlord and that is why he is seeking eviction of the present shop from where he wishes to run his business of generators along with his two sons.

9 In this context, the Apex Court in the case of Prativa Devi (Smt) v. T.V. Krishnan, (1996) 5 SCC 353 has held as under:-

"The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. The High Court was in error in laying down that the test is availability of alternative accommodation and not the legal right to such occupation in adjudging the bonafides of the claim of the landlord u/sec. 14 (1) (e) of the Act. While considering availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her bona fide personal requirement of the demised premises under Section 14(1)(e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances.

10 The Apex Court in the case of Gaya Prasad v. Pradeep Srivastava, (2001) 2 SCC 604 has further held as under:-

"We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow-process system subsists. During 23 years, after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of

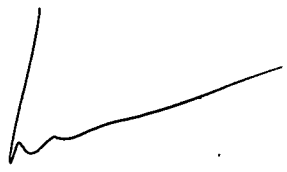
6

forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused."

11 No triable issue has arisen and this has been rightly recorded in the impugned order. Petition is without any merit.

12 Dismissed.



INDERMEET KAUR,J

NOVEMBER 28, 2011
A