

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **RCR NO. 241/2010**
+ **Date of Decision: 19th September, 2011**
LAXMI NARAIN **...Petitioner**
! **Through: Mr. P.D. Gupta, Advocate**

Versus

\$ **SHYAM MOHAN SHARMA** **...Respondent**
Through: Mr. S.D. Sharma & Mr. Gaurav
Bhardwaj, 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 revision petition under Section 25 B (8) of the Delhi Rent Control Act, 1958 (hereinafter 'the Act') has been filed by the petitioner-tenant against the order dated 27-07-2010 passed by the Additional Rent Controller whereby his application of leave to defend the eviction petition filed against him by the respondent-landlord under Section 14(1)(e) of the Delhi Rent Control Act, 1958('the Act' in short) in respect of one shop on

the ground floor of property bearing no. 970, Bhojpura, Maliwara, Delhi(hereinafter 'tenanted shop) has been dismissed and he has been ordered to vacate.

2. The brief facts leading the filing of this revision petition are that the respondent filed the eviction petition against the petitioner in respect of the tenanted shop on the ground of bonafide requirement. The respondent-landlord claimed in the eviction petition in para no. 18(a) as under:

“That the premises are required bona fide for use as a residence by the petitioner who is the owner/landlord for the use as accommodation for the petitioner for himself. The family of the petitioner comprise of himself and his wife. The two married sons of the Petitioner living are living in their own accommodation. The accommodation in possession of the petitioner has been shown in blue colour in the plan annexed herewith which is insufficient. The petitioner has six married sisters, namely (1) Sangita Sharma, (2) Subh Laxmi (3) Neelam Sharma (4) Sunita Sharma (5) Daya Sharam and (6) Vinod Sharma (deceased) leaving behind her children, therefore, petitioner requires one guest room and petitioner has no drawing-cum-dining room. The petitioner is 63 years old and requires accommodation at lower floors. The petitioner is an income tax payee. The petitioner has no other reasonable suitable residential accommodation.”

3. An application under Section 25-B(4) of the Act was filed by the petitioner for grant of leave to contest the eviction petition on the grounds that his landlord was not residing in the premises in question and in fact he was living with his wife and one son in his another newly built four storeyed house at Hudson Lines, Kingsway Camp. The petitioner-tenant also pleaded that the ground floor of the property in question was purely

commercial in nature and cannot be used for residential purposes. It was also claimed that the respondent-landlord is a builder by profession and was in fact having his office on the second floor of the premises in question and so he did not require the tenanted premises for his residence.

4. The respondent-landlord filed a reply to the leave to defend application denying the allegations made by the petitioner-tenant and submitted as under in para no. 4 of his reply:-

4. it is denied that the petitioner does not live in the property. It is denied that the petitioner lives in House No. 2274, Hudson Lines, Kingsway Camp, Delhi- 110009 as alleged. The said premises is owned by the wife and sons of the petitioner who are living with their families in the said property. There is no basement in the said property. The petitioner wants to live comfortably in his own house.

5. The petitioner-tenant then appears to have been permitted by the trial Court to file a rejoinder. That power the Rent Controller had as per the Full Bench decision of this Court in the case of “*Mohan Lal vs Tirath Ram Chopra & anr.*”, AIR 1982 Delhi 405. In that rejoinder the petitioner-tenant further clarified his stand in view of the aforesaid plea taken by his landlord in respect of the ownership and availability of the alternative accommodation with him at Hudson Lines in para no. 4 as under:-

“4. That para no. 4 of the reply is wrong and is denied. Para No. 4 of the application is reiterated. It is wrong and is denied that the petitioner live in the disputed property. It is wrong and is denied that the petitioner does not live at 2274, Hudson Lane, Delhi. The said property was purchased by the petitioner on the basis of General Power of Attorney and is residing there

with his family for several years. The documents submitted by the petitioner on record establish this fact that the petitioner has converted the said property in the name of his wife and son in the capacity of General Attorney after getting it free hold. It is wrong and is denied that the property bearing no. 2274, Hudson Lane, Delhi does not have basement. Rest of the para is wrong and is denied. It is submitted that the petitioner is a builder by profession and has been pressurizing and extending threats to vacate the disputed premises for some times after the purchase of the property to which the disputed premises form part.”

6. The availability of the house at Hudson Lines with the respondent-landlord was the main plea which appears to have been urged before the learned trial Court and that plea alone was urged before this Court as well. The trial Court dealt with this plea raised by the petitioner-tenant in his leave to defend application in paras no. 10-13 of the impugned order which are re-produced below:-

“10. In reply to the application for leave to defend, petitioner denied that he is living at House no. 2274, Hudson Lane, Delhi as alleged. It is stated that the said property is owned by his wife and sons and his sons are living in the said property with their families. There is no basement in the property and petitioner wants to live comfortably in his own house. Petitioner placed on record the copies of some documents viz. Income Tax Returns, Election I card and the notice issued from said property, to show that he is the resident of property bearing no. 970, Bhojpura, Maliwara, Delhi. On perusal of the said documents, it is apparent that petitioner is residing at the property bearing no. 970, Bhojpura, Maliwara, Delhi.

11. I observe that requirement of the petitioner to live at the ground floor in the property is justified on account of the fact that he is 63 years of age and as per settled law, tenant cannot dictate the terms to landlord as to his convenience and the suitability of accommodation. I am of the considered view that petitioner has bona fide requirement of the premises in dispute for use and occupation as his residence. Petitioner has every right to shift in the better situated and improved structured rooms as per settled law. Even otherwise, need of the old aged men/women to live on the ground floor cannot be said to be mala fide.....”

12. Thus, requirement of the petitioner for a guest room is also found bonafide.....

13. In the light of above discussions, I observe that petitioner has bonafide requirement for the premises in dispute for the use and occupation of himself and his family members and that has no other reasonably suitable accommodation.”

7. Feeling aggrieved, the petitioner filed the present revision and alongwith the petition he had also moved one application for taking on record some document for consideration of this Court. Those documents are as follows:

- (i) Electricity Bill dated 16.8.2010 pertaining to the month of June, 2010 in respect of property bearing No. 2274, Hudson Lines, Kingsway Camp, Delhi- 110009 in the name of the Respondent.
- (ii) Telephone Bill dated 9.7.2010 pertaining to the month of June, 2010 installed in property bearing No. 2274, Hudson Lines, Kingsway Camp, Delhi- 110009 in the name of the Respondent.
- (iii) Telephone Bill dated 9.8.2010 pertaining to the month of July, 2010 installed in property bearing No. 2274, Hudson Lines, Kingsway Camp, Delhi- 110009 in the name of the Respondent.”

Notice of that application was also given to the respondent but he chose not to file any reply to that application.

8. I have heard the learned counsel for the parties and perused the record.

9. It is common case of the parties that the petitioner was let out the shop in question on the ground floor and the first floor was also let out to the petitioner’s wife who is using the same for commercial purposes.

Against her also the respondent-landlord had filed the eviction petition under Section 14(1)(e) of the Act and she has also been denied the leave to contest the eviction petition and eviction order stands passed against her also. She has also filed a separate revision petition challenging the order of the Rent Controller. Both the revision petitions were heard together and are being decided today, but by separate orders.

10. The controversy whether the respondent is living in a house at Civil Lines as is the case of the petitioner-tenant, or is living in a part of the property in question at Nai Sadak as is the case of the respondent-landlord, cannot be answered without recording evidence of the parties. The petitioner-tenant has placed on record documents, referred to already, which show that the respondent is living in a house at Civil Lines, a prime residential colony of Delhi. The respondent has not disputed the genuineness of those documents before this Court and has also not explained as to how those documents have come into existence if he was not living at Civil lines. In case the petitioner is able to establish that the respondent is actually not living in the property in question but at Civil Lines then the respondent would be disentitled from getting an order of eviction against the petitioner. In any event, he shall have to justify as to why he wants to shift from a prime residential area to a commercial area of

Nai Sarak. That can be done only if evidence is adduced during the trial and the petitioner is given an opportunity to cross-examine him on this aspect.

11. There is no doubt that a tenant cannot dictate terms to the landlord as to where and how he should live, as has been observed by the trial Court, but it is also now well settled that a landlord has no unfettered right to evict a tenant even when he is shown to have alternative accommodation available with him and if the landlord has alternative accommodation but chooses not to occupy the same and instead insists upon the eviction of the tenant then the Court will ask from the tenant to justify that decision.

12. The Supreme Court in ***“Shiv Sarup Gupta versus Dr. Mahesh Chand Gupta”***, (1999)6 SCC 222 had 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. 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)

13. Similarly, 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)

14. There is no doubt that the respondent-landlord here claims that the property at Civil Lines is in the name of his wife and sons but in view of the documents placed on record by the petitioner this aspect would also need trial and cannot be decided on the basis of affidavits of the tenant and landlord. In this regard useful reference can be made to a judgment of the Supreme Court in the case of “**Charan Dass Duggal vs Brahma Nand**”, **1983(1)SCC301**, which was cited by the learned counsel for the petitioner, wherein also the landlord was having another property in the name of his children and sale deed to that effect was produced before this Court by the tenant who had been denied leave to contest by the Rent Controller but this Court had also not granted leave to the tenant. However, that property was considered by the Supreme Court to be alternative accommodation with the landlord at least for the purpose of consideration of the tenant’s

application for leave to contest the eviction petition and leave was granted.

This is what the Supreme Court had observed in paras no. 5&7:-

“5. What should be the approach when leave to defend is sought? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and prove his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave. May be in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit

standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise. We are, therefore, satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant the leave.”(emphasis supplied)

15. I am, therefore, of the view that the defence raised by the petitioner – tenant in the present case cannot be said to be frivolous or untenable. The facts pleaded by him in his affidavit in support of the leave application do raise triable issues which if decided in favour of the petitioner – tenant would disentitle the respondent – landlord to get an order of eviction.

16. This revision petition accordingly is allowed. The impugned order is set aside and consequently the petitioner – tenant gets leave to contest the eviction petition. The matter is remanded back to the trial Court for disposal of the eviction petition according to law. The case shall be taken by the trial Court now on 30/09/2011 at 2:00 pm.

P.K. BHASIN, J

September 19, 2011
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