

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

% RC.REV .287/2010

+ Date of Decision: 21st July, 2011

SATPAL KHURANA Petitioner
! Through: Mr. Rajni Kant, Advocate

Versus

\$ BEERWATI Respondent
Through: Mr. J.P. Mishra, 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:(ORAL)

The petitioner-tenant is aggrieved by an order passed by the learned Additional Rent Controller rejecting his application for leave to defend the eviction petition filed against him by his landlady, respondent herein, for his eviction from the tenanted premises, which is a shop in property no. 667, Jheel Khurenja, Delhi (hereinafter referred to be the tenanted shop) on the ground that she requires the same bona fide for one of her sons to start business to earn more money for her family has been dismissed and he has been ordered to vacate the tenanted premises.

2. The respondent-landlady had sought eviction of the petitioner-tenant alleging in para no. 18 (a) of her eviction petition as under:-

“That the petitioner is the owner of the disputed premises/shop as shown Red in the attached Site Plan forming the part of Property No. 667, Jheel Kuranja, Delhi-110031.

That the petitioner is a widow and her family consists of herself and two major and unmarried sons namely Rajesh aged about 22 years and Yogesh aged about 20 years who are fully dependent on her for financial as well as for residential purposes but the petitioner is unable to maintain them as she has no independent source of income. Moreover, income of Yogesh is not sufficient for maintenance of the whole family. The property in question measures about 25 Sq. Yds. And consists of only two shop on its Ground Floor out of which one is with the tenant/respondent and another is with her younger son namely sh. Yogesh who is running his business therein.”

3. Since the eviction petition was filed under Section 14 (1) (e) read with Section 25-B of the Delhi Rent Control Act, the petitioner-tenant was required to obtain leave of the Rent Controller to contest the eviction petition by filing an affidavit disclosing such facts which would disentitle the respondent-landlady from securing an order of eviction. The petitioner-tenant has sought leave to defend by taking the following pleas:-

“6. That the petitioner is not the owner of the suit premises as the ownership documents filed by the petitioner are not originals and the documents are incomplete and not genuine as the details of the back side of the title documents has not provided for the kind perusal of this Hon'ble Court. The petitioner has filed the forged and fabricated documents showing herself as the owner of the suit property and also showing herself as the wife of Sh. Rati Ram, wherein the name of the husband of the petitioner is described as Shri Ram Chauhan in the copy of Ration card filed by the petitioner.

7. That the petitioner has sufficient reasonable accommodation in her own properties for residential as well as for commercial purposes as mentioned by the petitioner and the petitioner has failed to disclose the actual accommodation of property bearing no. 357, Gali No. 8-A, New Lahore, Shastri Nagar, Delhi and also in her other properties. It is submitted that when the petitioner herself admitted that the petitioner

has another property bearing no. 357, Gali No. 8-A, New Lahore, Shastri Nagar, Delhi, it is necessary to give full details of both the properties alongwith site plans of both properties.

8. That the applicant was inducted as tenant by sh. Ratiram @ Rs. 200/- per month for the tenanted area measuring 12' X 10' claiming himself to be the owner of the tenanted shop wherein the petitioner has claimed that she has purchased the tenanted property from her mother-in-law. The applicant petitioner also gave Rs. 5000/- as security to Sh. Ratiram which was refundable at the time of vacation of the tenanted premises, a receipt was also executed by Sh. Rati Ram in favour of the applicant. That later Sh. Rati Ram was expired on 08-02-1990. The petitioner herein after the death of Sh. Rati Ram came to the applicant respondent and requested for some portion out of the tenanted premises for doing some small shop for earning livelihood for herself and her sons as she was uneducated and widow. The applicant considering the sympathetic situation of the petitioner allowed the petitioner to take half of the tenanted area of his shop. Hence the applicant/respondent has already surrendered a portion for doing business for her and her sons and that surrendered portion converted into a shop and the same shop is still lying locked since 1994 and now when the petitioner is in possession of reasonable suitable accommodation, the petitioner cannot demand eviction of the tenanted portion, which is in possession of the applicant/respondent.

9. That the petitioner does not require the tenanted portion bonafide, it is only a unreasonable and unjustified effort/pretext for the eviction of the tenanted accommodation from the applicant/respondent.

10. That to the knowledge of the applicant/petitioner, there are tenants in the properties of the petitioner and to the knowledge of the applicant the elder son of the petitioner named Rajesh is doing a job in some reputed company in the field of Shares Trading (Share Broker) in Delhi and has a very good income and the petitioner and her younger son have a very good rental income from her 3-4 properties. The area of one shop vacated by the applicant/respondent in the adjoining shop of the tenanted shop is lying locked since 1994 and if the petitioner wants that the tenanted premises required for her younger son, then the petitioner can offer the shop lying locked to her younger son or otherwise also the petitioner has other reasonable suitable accommodation for herself and for her both sons in other properties. The petitioner has given false statement on oath and liable to be prosecuted for the offence of perjury.”

4. The respondent-landlady in her reply to the said application of the petitioner-tenant reiterated her case set up in the eviction petition by refuting the aforesaid pleas taken by the petitioner-tenant.

5. The learned Additional Rent Controller, however, vide impugned order dated 29th July, 2010 rejected the leave application of the petitioner-tenant. The relevant paras of the impugned order wherein the pleas taken by the petitioner-tenant were dealt with and rejected by the learned Additional Rent Controller are reproduced below:-

6. Objections/grounds so raised by the respondent-applicant are of such a nature that these objections/grounds; in the light of the material on record, appear to be insufficient for the purpose of granting leave to defend the petition. The following are the findings in this regard:-

i) the applicant has challenged the ownership of the petitioner over the premises in question. However he has entirely failed in disclosing the name of the person who was the alleged owner of the premises in question. Merely raising a question of ownership *ipso-facto* becomes a ground for granting leave to defend the petition. The applicant is supposed to substantiate the same with some cogent and material (documentary) evidence.

ii) though it is true that the petitioner herself has admitted having another property bearing no. 357 yet the respondent has not challenged the further averment made by the petitioner to the effect that the said property was a residential property and there was no shop etc. in that property i.e. property no. 357 so as to use the same for commercial purpose. Hence this ground is also not a valid ground for granting the leave.

iii) the respondent has contended that the other shop is lying locked since the year 1994. However, this allegation also appears false on the very face of it as the respondent-applicant has nowhere challenged the factual position in respect of the other shop which has been prima facie established by the petitioner by placing on record the photographs which show that the shop in question is being run by the younger son of the petitioner and is not lying vacant. Moreover it is an admitted fact that the petitioner is a widow having two sons. It is also an admitted fact that besides the two shops; including the shop in question, there is no other shop or commercial property available with the petitioner or the sons so as to use the same as such. It is also true that the respondent has not challenged the fact that the petitioner (who is a widow lady) is having no other source of income except the rent to the tune of

Rs. 200/- per month and the income/earnings from the adjacent shop. Thus the financial status of the petitioner cannot be said to be on a sound footing and in that sense the shop in question becomes their bona fide need so as to afford them an opportunity to earn to the extent of living a dignified life.

7. The allegation to the effect that the petitioner and her sons have other means to earn their livelihood has not at all been substantiated. The respondent has entirely failed to establish as to what sort of means the petitioner and the sons are/were having besides those means which have been disclosed by the petitioner itself.”

6. Since no appeal is provided under the Delhi Rent Control Act, 1958 for filing an appeal against an order passed for eviction of a tenant in a petition under Section 14 (1) (e), the petitioner-tenant has invoked the revisional jurisdiction of this Court as available to him under the proviso to Section 25-B (8).

7. Learned counsel for the petitioner argued that there were so many triable issues raised by him in his leave to defend application and the supporting affidavit which should not have been brushed aside, as has been done by the learned trial Court, without affording an opportunity to the petitioner to substantiate the same. It was further contended that the pleas raised by the petitioner would definitely disentitle his landlady from getting an order of eviction in case the petitioner is able to establish those pleas during the trial.

8. On the other hand, learned counsel for the respondent submitted that the learned Additional Rent Controller was fully justified in rejecting leave to the petitioner-tenant since none of the pleas taken by him raised

any triable issue.

9. During the course of hearing the counsel for the respondent had admitted that for some period prior to the filing of the present eviction petition the respondent had let out one shop adjoining to the tenanted shop to one Chanchal at a monthly rent of ₹ 200. However, after some months that shop had been got vacated. It was also admitted, that in her other house no. 357, Gali No. 8-A, New Lahore, Shastri Nagar, Delhi the respondent had recently let out two rooms to some rickshaw pullers at a monthly rent of ₹ 100/- each but it was also submitted that that house cannot be used for any non-residential purposes and that is why the shops had been let out to the rickshaw pullers to earn more money for her livelihood.

10. After having considered the submissions advanced by counsel for the parties and going through the averments made in the leave to defend application reply filed thereto by the respondent-landlady and the reasons given by the learned Additional Rent Controller, I am of the view that the impugned order cannot be said to be in accordance with the law which governs such like application for leave to defend filed on behalf of the tenants as laid down by the Supreme Court in various judgments which arose out of eviction petitions under Section 14 (1) (e) of the Delhi Rent Control, Act and in which leave to defend was declined to the tenants of

those premises. I am of the view that petitioner-tenant had raised trivial issues which disentitle the respondent-landlady from securing an order of eviction in case those issues are decided against her after trial.

11. This petition is accordingly allowed and the impugned order dated 29th July, 2010 passed by the Additional Rent Controller is set aside. The petitioner is granted leave to defend the eviction petition. The matter is remanded back to the trial Court for proceeding in accordance with the law. The parties shall now appear before the trial Court on 30th July, 2011 at 2 p.m. for receiving further direction from the Court.

P.K. BHASIN,J

JULY 21, 2011/pg