

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

% *Date of Judgment: 09.12.2011*

+ **RCR No. 502/2011 and CM No. 22216-17/2011**

M/S. A.S. PATEL TRUST Petitioner
Through: Mr. R.K. Bachchan and
Mr. Tarun Kumar, Advocate.

Versus

SHRI SHIV SHANKAR GUPTA Respondent
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The order impugned before this court is the order dated 01.06.2011 vide which the application filed by the petitioner/tenant seeking leave to defend in a pending eviction proceedings under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed. This order is the subject matter of the present petition. Order had been passed on 01.06.2011 and the six months interregnum before the decree could be executed has since expired.

2. Arguments have been heard.

3. Submission of the learned counsel for the petitioner before this court is three-fold. His contention is that the premises were

not owed by the landlord and there was no proof of ownership
RCR No.502/2011

which is a mandatory requirement under Section 14(1)(e) of the DRCA. Second submission is that the identity of the suit premises had not been established. His contention in his application for leave to defend was that he was a tenant in respect of suit premises bearing No. 9062/7, Ram Bagh Road, Azad Market, Delhi-110006 and not 9062/13, Ram Bagh Road, Azad Market, Delhi-110006 as has been claimed by the landlord in his eviction petition. Third submission is that the bonafide need advanced by the landlord had not been established.

4. The petitioner has not disputed the fact that he was inducted as a tenant by the father of the respondent (petitioner in the trial Court) who had expired and thereafter in terms of his duly registered Will, the respondent had stepped into the shoes of his deceased father. It is also not in dispute that the petitioner thereafter continued to pay rent to the respondent. In these circumstances, the Trial Court had rightly noted that the question of the ownership does not raise a triable issue. An eviction petition is not a title suit; admittedly, the father of the respondent had inducted the present petitioner as a tenant and after his death vide a duly registered Will (undisputed) the respondent had stepped into the shoes of his father and the petitioner also recognized him as a landlord and continued to pay a rent to him.

Section 116 of the Evidence Act was also attracted. Even for the sake of argument if it is assumed that the present respondent was not the only legal heir of his deceased father, an eviction petition filed by a co-owner is also maintainable as has been held by a Bench of this court in Inder Pal Khanna vs. Commander Bhupinder Singh Rekhir reported in manu/de/1090/2008.

5. The second submission of the learned counsel for the petitioner is also without force. Eviction petition has been filed seeking eviction of the tenant from the suit premises described as property No. 9062/13, Ram Bagh Road, Azad Market, Delhi-110006 although in the application for leave to defend it has been stated that the number of the premises is 9062/7, Ram Bagh Road, Azad Market, Delhi-110006 for which an electricity bill has been attached to substantiate this submission. This document appears at page 73 of the paper book. A perusal of this electricity bill shows that it has been addressed to Patel Roadway (P) Ltd. and not to the present petitioner i.e. M/s. A.S. Patel Trust. The submission of the petitioner on this court that M/s. A.S. Patel Trust is a sister concern of Patel Roadways (P) Ltd. and they are both are the same is further negated by his own submissions in his application for leave to defend whereas in para 18 he has clearly and categorically stated that the respondent i.e. M/s. A.S. RCR No.502/2011

Patel Trust and Patel Roadways (P) Ltd. are separate and distinct entities. In this view of the matter it is clear that this argument advanced by the petitioner that he is a tenant of premises bearing No. 9062/7, Ram Bagh Road, Azad Market, Delhi-110006 which in his view is substantiated by the electricity bill which as noted supra has been addressed in the name of M/s. Patel Roadways (P) Ltd. and which is a separate and distinct entity does not help the case of the petitioner in any manner; it does not raise any triable issue.

6. The last submission of the learned counsel for the petitioner is that the bonafide need of the landlord has not been established and in fact in the reply filed by the landlord to his application for leave to defend he has in his preliminary submission admitted that the entire property bearing No. 9062 is owned by him where there are 59 shops/godowns in which there are 35 tenants; out of 59 shops and godowns, 17 shops have been sold already and this list has been filed as annexure 'D' alongwith the reply. Learned counsel for the petitioner has addressed vehement arguments; however, on a query by the court as to the details contained in annexure 'D' which as per the landlord are all tenant-occupied, he has admitted that document has not been filed. This appears to be a deliberate concealment of a valid document which would in fact

RCR No.502/2011 Page 4 of 7

throw light upon the submission of the landlord that this list of 59 shops and godowns shows that they are tenant-occupied. This has been specifically stated by the landlord in his preliminary submission of the reply.

7. All these contentions were noted in the correct perspective by the Trial Court. The submission of the petitioner that the landlord owns several other properties in Delhi at Daryaganj, Netaji Subhash Road, Gupta Market, Sadar Bazaar, Chawri Bazaar and Bhagirath Place and the present petitioner has been filed only to extract higher rate of rent also met with a rejected fate as no details of these properties had been filed; they were mere bald assertions which were specifically denied by the landlord in his reply affidavit.

8. The bonafide need explained by the landlord in his eviction petition is that he wants to run a business of paper stationery unit from the disputed premises and he has no other suitable or reasonable accommodation. Contention of the petitioner before this court is that the respondent has nowhere stated that he is qualified to run such kind of a business which destroys his bonafide need; in these circumstances, the need of the landlord cannot be qualified as a bonafide need is an argument which is worth of no merits.

9. The landlord alongwith the eviction petition had placed on record a project report got prepared by him in relation to aforenoted business which he intended to commence from the disputed premises which had been annexed alongwith the eviction petition as annexure 'P6'. This document was also correctly taken note of. Bonafide need of the landlord to run this stationery business and he having no other suitable or reasonable accommodation with him was well established.

10. The Apex Court has time and again reiterated that the landlord is the best judge of his requirement; it is not open to the tenant or to the court to dictate to the landlord the manner or the style in which he must live. In Labhu Lal s/o Jeevan Lal vs. Sandhya Gupta w/o Luxmi Dutt Gupta reported in 173(2010) DLT 310, a Bench of this court had noted that the landlord wishing to start his own business establishes his bona fide need. It had quoted with approval the observation of the Apex Court reported in Sait Nagjee Purushotham and Co. Ltd. vs. Vimalabai Prabhulal & Ors. reported in (2005)8 SCC 252. Relevant extract hereinbelow reads as under:-

"It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is

not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business."

11. Impugned order suffers from no infirmity; no triable issue has arisen; application for leave to defend had rightly been dismissed; order calls for no interference.
12. Petition is without any merit; it is dismissed.

INDERMEET KAUR, J

DECEMBER 09, 2011

rb