

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

% *Date of Judgment: 23.12.2011*

+ **RC.Rev. No. 536/2011**

SH. ABDUL MALIK & ANR Petitioner
Through: Mr. Sanjeev Sindhvani,
Advocate.

Versus

SHASHI BHALLA Respondent
Through: Mr. Sandeep Sethi, Sr.
Advocate with Ms. Prathiba M.
singh, Mr. Kirtiman singh and
Mr. Sumeet Bhatia, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

CM No. 23065/2011 (exemption)

Exemption allowed subject to just exceptions.

RC.Rev. No. 536/2011 and CM Nos. 23063-23064/2011

1. In the first instance, parties were exploring possibility of a settlement through negotiation and for this purpose, matter had been adjourned for short dates but it has been reported by the parties that no settlement is possible.

2. Arguments have been heard. Impugned order is the order dated 09.09.2011 vide which the application for leave to defend filed by the tenant in a pending eviction petition under Section

14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as 'DRCA') had been dismissed.

3. Record shows that the petitioner Smt. Shashi Bhalla has filed the present petition seeking eviction of the tenant from the ground floor shop in property bearing No. 1813, Chandni Chowk, Delhi-110006; the shop measures 6ft. x 18 ft; contention being that the premises were required bonafide for carrying on her business which she was doing under the name and style 'M/s. Union Traders' which is her proprietorship concern dealing with electrical goods and trading. In the eviction petition, it has been explained that the premises in question were originally owned by her father-in-law who pursuant to a Will dated 02.02.1993 had bequeathed this property to the petitioner and the respondent is also since attorning to her. Premises are bona fide required by her for aforementioned business.

4. In the application for leave to defend this position was disputed. It was denied that the petitioner requires these premises bona fide for her use. The main contention urged by the petitioner/tenant and it has been argued even today is that the petitioner is already doing her business under that name and style 'M/s Union Traders' from 1746, Dariba Kalan, Kucha Lattoo Shah,

Chandni Chowk, Delhi-6 and this is evident from the documents
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filed by the petitioner herself. Contention being that since 'M/s Union Traders' already has a place of business, it cannot be said that she has no other reasonable, suitable accommodation to carry on her business and it in no manner can be said that the premises are required by the landlord bona fide; this need is only malafide; application is liable to be dismissed.

5. Vehement contention of the petitioner is that in para 2 (iv) (b) of his application for leave to defend it has been stated that the husband of the landlord has a commercial premises at 1746, Dariba Kalan, Kucha Lattoo Shah, Chandni Chowk, Delhi-6 and from where the business of the petitioner i.e. of 'M/s Union Traders' is being transacted; it is a double storied building and as such the present premises are not required by her. Attention has also been drawn to the averments made by the tenant in para 2(iv)(c) wherein it has been contended that the petitioner and her husband are also owners of the property bearing No. 1812, Chandni Chowk, Delhi which has been sold out to A.C. Soni and if the requirement of the petitioner was bona fide this sale would not have been effected.

6. In the corresponding paras of the reply filed by the landlord it has been stated that the petitioner namely Shashi Bhalla has no legal right in this property at 1746, Dariba Kalan, Kucha Lattoo

Shah, Chandni Chowk, Delhi-6; 'M/s Standard Electric Trading Company' is a tenant there which is a partnership firm of Surinder Bhalla, Alok Bhalla and Amit Bhalla; all the aforementioned persons are the close relatives of the petitioner being her husband and two sons; contention being that 'M/s Standard Electric Trading Company' is a tenant in these premises. Qua property No. 1812, Chandni Chowk, Delhi it is stated that the property was earlier owned by the petitioner but has since been sold which was admittedly a sale prior to the filing of this eviction petition; this has been rightly noted in the impugned order. The landlady has averred that this property had been sold by her father-in-law in the year 1984 and was thus not owned by the landlord at the time of the filing of the present eviction petition; as such this point has no relevance for the decision of the present petition.

7. Vehement contention of the petitioner is that in the application for leave to defend he has specifically averred that the petitioner has alternate accommodation at 1746, Dariba Kalan, Kucha Lattoo Shah, Chandni Chowk, Delhi-6, which is owned by her and there is no specific denial to this averment. This submission of the petitioner is falsified from the record. Record shows that in para 2 (iv) (b) the tenant has only stated that the

petitioner and her husband are running a business of 'M/s. Union
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Traders' from 1746, Dariba Kalan, Kucha Lattoo Shah, Chandni Chowk, Delhi-6 which is a double storied building; the upper portion of the property is also being used by the landlady and her family. This has been vehemently denied; there is no denial of ownership as there has been no corresponding averment in the application for leave to defend; the landlady in her reply has clearly stated that she has no legal right in this property and 'M/s Standard Electric Trading Company' (partnership firm of her husband and two sons) is a tenant in these premises. It has been specified that the partnership of her husband 'M/s standard Electrical Trading Company' is only a tenant in the said premises and as such the vehement submission of the petitioner that there is no specific denial of ownership is a submission without any force; there being no plea of ownership having been set up by the tenant in the application for leave to defend there was no rebuttal of the same; the reply has otherwise specifically explained that these premises are under the tenancy of the partnership firm of her husband; question of ownership thus does not arise.

8. Admittedly, apart from the shop in question there is no other property in the name of the petitioner. The documents filed by the petitioner alongwith her eviction petition show that she is an

income tax assessee and the proprietor of 'M/s Union Traders'. In
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her reply she has stated that since she has no business place in the market, she has put up a table in the premises at 1746, Dariba Kalan, Kucha Lattoo Shah, Chandni Chowk, Delhi-6 (which is also a tenanted premises) for running her business and that too occasionally. There is no denial to this submission.

9. From the record it is thus clear that the premises at 1746, Dariba Kalan, Kucha Lattoo Shah, Chandni Chowk, Delhi-6 are not owned by the landlady. She is admittedly carrying on business under the name of 'M/s Union Traders' which is evident from her income tax record; her address has been shown as 1746, Dariba Kalan, Kucha Lattoo Shah, Chandni Chowk, Delhi-6 therein because admittedly being a resident of E-18, Jangpura Extension, New Delhi 110014 which being a residential locality she cannot give her business address from the said place as this would amount to a misuser of the property which could attract a penalty and on this ground this submission made by the petitioner has force. The address of 1746, Dariba Kalan, Kucha Lattoo Shah, Chandni Chowk, Delhi-6 mentioned in her statement of accounts was only for this reason. Admittedly, her proprietorship concern has no other reasonable, viable or suitable commercial accommodation from where she can carry on her business.

10. A landlord is the best judge of his needs and it is not open

for the court or for the tenant to dictate him the terms.

11. In a judgment of this Court reported as John Impex (pvt.) Ltd. v. Dr. Surinder Singh and Ors 135(2006) DLT 265, it was held as under:

"The conspectus of the aforesaid judgments shows that the broad principles have been set down of the requirement of a landlord not being a mere whim or fanciful but that it should be a genuine need of the landlord. It is only then that the requirement can be said to be bona fide within the meaning of under Section 14(1)(e) of the said Act. This would naturally require all the necessary matrix in terms of the factual averments and the evidence to be adduced in that behalf. Simultaneously it has to be kept in mind that the landlord is the best judge of his requirement and a tenant cannot dictate the terms on which the landlord should live. The bona fide requirement of the landlord would also depend on his financial status and his standard of living. The ARC found in favor of the landlord/owner and thus what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate court though the scope of scrutiny in a rent revision would be more than a revision petition under Section 115 of the Code of Civil Procedure, 1908."

12. Reliance by the counsel for the petitioner on the judgments of Mohd. Illyas vs. Nooruddin & Ors reported in 184 (2011) DLT 590 and of Satto Devi vs. Om Prakash Saini reported in 1997 IV AD (Delhi) 534 as also another judgment of and S.S. Puri (lt. Col.) vs. Mr. S.P. Malhotra reported in 2002 III (Delhi) 271 are all

misplaced. Facts of each case are distinct. Unless and until, a triable issue arises, leave to contest should not be granted in routine.

13. Impugned judgment in no manners suffers from any infirmity; petition is dismissed.

INDERMEET KAUR, J

DECEMBER 23, 2011
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