

IN THE HIGH COURT OF DELHI AT NEW DELHI

RC.REV. No. 21/2010

Date of Decision: 01.04.2011

Shri Surinder Mohan Singh ... Petitioner

Through: Mr. APS Ahluwalia, Sr.
Adv. with Mr. S.S. Ahluwalia, Adv.

Versus

Shri Balmukund ... Respondent

Through; Respondent in person.

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

S.L. BHAYANA, J.

This petition has been filed by the petitioner (respondent before learned trial Court) under Section 25-B (8) of Delhi Rent Control Act, 1958 challenging the eviction order dated 19.09.2009 passed by learned SCJ-cum-RC (Central) Delhi whereby the application of leave to defend the eviction petition filed by the petitioner was rejected by learned trial Court and eviction order was passed in favour of the respondent/landlord.

2. Brief facts of the case are that respondent (petitioner before learned trial Court) is the co-owner of the shop no. 7783, Ground Floor, Arakashan Road, Gali No.3, Ramnagar, Paharganj, New Delhi and his brother Yudhveer Prashad is the other co-owner. The said shop was given on rent to the petitioner in the year 1980 at a rent of Rs. 200/- per month. The respondent submits that the premises in question is required by him for his bonafide need as well as need of his family

members dependent upon him as he does not have any other reasonably suitable accommodation for his work. Respondent further submits that he and his brother have no shop for earning their livelihood and their only source of income is rent from their properties which is very meager and is not sufficient for their livelihood as rent received by them is not more than Rs. 1000/- per month and they are facing very difficult time. Respondent further submits that he and his brother are not able to maintain their health due to poor income and even their parents did not get proper medical treatment in time and they expired due to paucity of funds. Respondent further states that he and his brother are unmarried as they do not have any source of income and unless there is source of income they cannot afford to get married and if this shop is made available to them they will be able to earn their livelihood and enable them to get married and live a good married life. Respondent further submit that he requires the premises in question for his bonafide use.

3. The petitioner (respondent before learned trial Court) appeared before the trial Court and filed an application for leave to defend the eviction petition. Learned counsel for the petitioner submitted that the respondent and his brother Yudhvair Prasad are not the owners of the property in question and they have already having sufficient accommodation. They already have two shops in which they are running the business of grinding spices and are earning lucrative income from the said business. He further submitted that respondent and his brother are having another premises bearing municipal no. 4217, Tail Mandi Chowk, Paharganj from where also they are running the business of imparting coaching and are earning good income. Rate of rent is also disputed and it is stated the same is Rs. 50/- per month and not Rs. 200/- per month. It was mentioned in the leave to defend

petition that respondent has also filed various petitions u/s 14 (1) (b) and 14 (1) (c) of DRC Act against other tenants also. It is also submitted that the respondent wants to evict the petitioner from the shop and he wants to re-let the shop at a higher rate of rent. It is further submitted by the petitioner that the respondent is earning very good income from the business of grinding spices and imparting of coaching. It is also submitted that the respondent has no bonafide requirement of the tenanted property and has already got alternative accommodation available with him and prayed that instant petition be dismissed.

4. Reply to leave to defend was filed by the respondent in which contents of leave to defend were denied and those of the eviction petition were reiterated. It is submitted in the reply that the property bearing No. 4217, Mandi Chowk Pahar Ganj, New Delhi is for residential use where respondent and his brother are living. It is further submitted in the reply that property bearing No. 7780, 7781, 7782, 7783, 1/3rd of 7784 and 1/2 of 7786 situated at Arakashan Road, Gali No. 3, Ram Nagar, Pahar Ganj, are in joint ownership of the respondent and his brother which properties are in possession of tenants and they receive only Rs. 1000/- as rent for these properties which is insufficient for their livelihood. It is further denied in the reply that respondent was in possession of any shop and it is stated that respondent and his brother are only in possession of one store room which is not sufficient to run business and also denied other averments raised in the leave to defend petition filed by the petitioner. After hearing learned counsel for the parties, learned trial Court vide order dated 19.09.2009 dismissed the leave to defend application filed by the petitioner and passed eviction order against the petitioner.

5. Arguments heard.

6. Counsel for the petitioner has submitted that the respondent has alternate accommodation available to the respondent for which he has referred to the written statement of one Dr. Kartar Singh to the eviction petition filed by the respondent. I have gone through written statement filed on behalf of Dr. Kartar Singh in which it is mentioned that the shop was vacated by Dr. Kartar Singh way back in the year 1994 and since then he has no concern with the premises in question. This is refuted by the respondent who is present in person and he states that the averment made in the written statement by Dr. Kartar Singh that he has vacated the premises way back in the year 1994 is absolutely false as the proceedings against Dr. Kartar Singh are still pending before learned trial Court. Dr. Kartar Singh never handed over possession of the shop to them and eviction proceedings are still pending against him. Learned counsel for the petitioner has not filed any judgment passed by learned trial Court in this case. Learned counsel for the petitioner has also not placed on record copy of eviction petition filed by the respondent against Dr. Kartar Singh.

7. The respondent was asked to bring his counsel but he submits that he and his brother are very poor persons and they are not in a position to engage a counsel to argue the matter. He has further submitted that they are getting only Rs. 1000/- as rent in respect of other properties which have been let out to the various tenants and those shops were let out to them several years back. Rs. 1000/- is not sufficient to meet the day to day needs of both the brothers. He has further submitted that they are not even medically fit and if they fall sick Rs. 1000/- is not sufficient even to meet their medical expenses. He further submits that if the shop is given to them they will start some business and will be able to earn their livelihood. He further submits that both the brothers are unmarried. They could not get

married as they do not have any regular source of income as the shops are in possession of the tenants and if they get this shop they will be able to start some business and earn their livelihood and they will also get married. He further submits that due to poor income their parents did not get proper medical treatment in time and they expired as they had no source of income at all.

8. Arguments heard.

9 Learned counsel for the petitioner has relied upon the judgment titled **Rachpal Singh & Ors. Vs. Gurmit Kaur & Ors (V (2009) SLT 1420**. The facts of the above said case are not applicable to the facts of the present case.

10. I agree with the reasoning given by learned trial Court that the petitioner has not been able to raise any triable issue in the application for leave to defend filed by him. The respondent has been able to show that his need is bonafide and genuine. I agree with the findings given by learned trial Court wherein learned trial Court has passed the eviction order against the petitioner on account of bonafide requirement of the respondent.

11. I do not find any infirmity in the judgment passed by the learned trial Court.

12. The petition is without any merit, the same is therefore dismissed.

April 01, 2011
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S.L. BHAYANA, J.