

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

+ R.C. Rev. No.3/2011

Date of Decision: 10.12.2012

SH. RAVINDER SINGH

.....Petitioner

Through: Mr. Milan Malhotra, Adv.

Versus

SH. DEEPESH KHORANA

.....Respondent

Through: Mr. Rajat Malhotra & Mr.
Deepesh Khorana, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This petition is being filed under Sec. 25B(8) of the Delhi Rent Control Act against the impugned order dated 13.10.2010, whereby the Ld. ARC dismissed the leave to defend application in Eviction Petition No. 17/2009, filed by the petitioner herein. The brief facts giving rise to this petition are as follows.

2. The petitioner herein is the tenant in respect of a shop admeasuring 7ft X 10ft, in the ground floor of property bearing No. 89, Moti Nagar, New Delhi. In 2009, the landlord, who is the respondent herein, filed petition for eviction of the suit shop, claiming that it was required bona fide by the respondent for his 29 year old unmarried son

who wants to open a computer business in the shop, which at present is under the tenancy of the petitioner at a monthly rent of Rs. 832/-. In the eviction petition, it was also submitted by the respondent that there are three shops on the ground floor of the premises, out of which one shop is being used by his wife, who is running a beauty parlour, second shop is with another tenant Mr. Iftikhar Ahmed and the tenanted shop was in the possession of the respondent.

3. The respondent also submitted that there is a basement in the property, but it was inhabitable because of a big drain abutting the property and that whenever the drain overflows, the water comes into the basement. It is because of this reason; the wife of the respondent shifted her beauty parlour from the basement to the ground floor. The respondent also submitted that his son is unemployed, despite having a degree in computer application, and the respondent himself is a cancer patient and required sufficient funds for his post-operative treatments. Due to the very high costs attached to the treatment of cancer, the respondent had to sell out the upper floors of the building and therefore, his requirement for the suit shop is bona fide.

4. In the petitioner's application for leave to defend and the affidavit filed along with it before the Ld. ARC, the relationship between the parties, the rate of rent and the purpose of letting was not disputed. However, the petitioner contended that the respondent was earlier working in the Defence and is having good monthly pension and is running a beauty parlour in partnership with the alleged tenant

Mr. Iftikhar Ahmed, and is also having a STD/PCO in the two shops under the possession of his wife. It was also claimed that the respondent had other properties in Delhi as well as NCR and is the owner of a Maruti Car, hence having a well maintained life. He has also alleged that there are four shops in the ground floor of the premises as opposed to three as claimed by the respondent. He has submitted that two shops are in the possession of the respondent's wife and the third is in the respondent's possession and fraudulently, for the sake of evidence, a tenancy has been fabricated with Mr. Iftikhar Ahmed.

5. The petitioner also contended that there was no big drain as claimed by the respondent, but only a small drain in the front side of the property which never overflows, and this was a suitable location for the respondent's son to start his computer business. It was also contended that the son of the respondent was employed with a multinational company at Noida and was receiving a handsome salary and the shop was not required for the alleged business of the son. The petitioner has alleged that the only intention of the respondent is to let out the suit shop at a higher rent after getting an eviction order from the court.

6. In the counter affidavit filed by the respondent, all the allegations made by the petitioner were denied. Further, the respondent also submitted that due to his illness and the expenses incurred in the pilot training given to his son from Canada, he was required to spend

around Rs. 50,00,000/- (Rupees Fifty Lakhs) for which he was constrained to sell out the upper portions of this premises. Moreover, since his son's pilot degree from Canada is not recognized in India, he has remained unemployed and now intends to start a computer business.

7. Further, the allegation that the respondent was running a partnership business with Mr. Iftikhar Ahmed, was denied and the respondent placed on record the rent agreement which was executed between him and Mr. Iftikhar Ahmed. He also clarified that there were only three shops in the ground floor and since the shop in his wife's possession was a large one, it had two shutters, which the petitioner was misrepresenting as two shops. Furthermore, the respondent also submitted that user of basement for commercial purposes was prohibited, and unless there was sanction from the MCD, he could not use the basement for business purpose.

8. The Ld. ARC has examined the rival contentions and has dismissed the petitioner's leave to defend application on the following grounds. He has observed that though the tenant has made allegations regarding the landlord's son being gainfully employed in an MNC, he has failed to furnish any details, whatsoever. He has noted that as per the respondent, his son is not only unemployed at the age of 29, but is also unmarried because of his unemployment, and in such circumstances, the need for the suit shop cannot be said to be lacking bona fide. Further, the Ld. ARC has also noted that merely because the

landlord is receiving pension from his former employer, it doesn't mean that the respondent can afford the medical bills attached with the treatment of cancer. Moreover, even for the sake of argument, should one assume that the respondent is well off, it doesn't mean that his son must remain unemployed and not seek a source for livelihood.

9. Ld. ARC has also observed that even if it were presumed for the sake of argument that the basement was available to the respondent, once the bona fide requirement was established by the landlord, it was not upto the court or the tenant to ask him to run the business from the basement. Even otherwise, as per the DMC Act, running of commercial activity in a basement is against building bye laws and the respondent can be held liable under the Act for misuse. As far as the ground that false tenancy had been created in favour of Mr. Iftikhar Ahmed, the Ld, ARC rejected it on the basis of the rent agreement placed on record by the respondent.

10. Before proceeding to examine the submissions, it is vital to note that the powers of revision of this Court under Sec. 25B(8) are not as wide as that of an appellate Court. If found that the impugned order is according to law and does not suffer from a jurisdictional error, then this Court has no power to interfere. Keeping this in mind, I have perused through the impugned order and given my thoughtful consideration to the submissions advanced by the petitioners. I find that the Ld. ARC has rightly rejected the petitioner's application seeking leave to defend.

11. The counsel for the petitioner herein has contended that the Ld. ARC has wrongfully rejected the leave to defend application and has produced the information regarding the deposit of conversion charges with the MCD in respect of the premises on which the suit shop is located. His contention is that the record shows that the conversion charges for three shops were being paid by the respondent. He also contends that the MCD has itself collected the conversion charges for the basement, therefore the Ld. ARC was incorrect in holding that as per DMC Act, running commercial activity is against the bye-laws. I do not find any merit in these contentions.

12. Firstly, it must be noted that the petitioner did not produce these records before the Ld. ARC and has placed it on record for the first time before this Court. The limited scope of revision under Sec. 25B(8) of the DRC Act mandates that this Court should not go into appreciating evidence and only ensure that the lower court did not commit any jurisdictional error in passing the order. In any case, it was explained by the learned counsel for the respondent that conversion charges are paid by the respondent with interest and penalty in respect of one big shop which is described as two, because of two shutters; and in respect of one shop which is in the tenancy of Iftikhar Ahmed. I also do not find any merit in the allegation that the tenancy in favour of Mr. Iftikhar Ahmed is a sham. The Ld. ARC rightly decided this issue in favour of the respondent who produced a valid rent agreement as opposed to the petitioner who has only made a bald assertion. The

payment of conversion charges by the landlord for the shop in occupation of a tenant is itself no ground to hold that the landlord himself is in possession and not the tenant.

13. I find no merit in the petitioner's contention that the Ld. ARC has blatantly disregarded the law laid down by the Hon'ble Supreme Court. The law is well settled with regards to the bona fide need of the landlord. Apex Court in the case of **Baldev Singh Bajwa v. Monish Saini**, (2005) 12 SCC 778 has held:

“The need of the landlord is to be presumed as genuine and bona fide and it is not for tenant to prove that the is not bona fide. Heavy burden lies on the tenant to prove that the need is not genuine.”

14. In the instant case, the petitioner herein has failed to substantiate his assertion that the need of the respondent is not genuine. He has contended that there is no necessity for the respondent's son to set up any business because he is gainfully employed in an MNC in Noida. However, he has not placed any details of such employment on record. Such unsubstantiated and bald assertions cannot be a ground to grant leave to defend.

15. In his next contention, he has claimed that the respondent's son can use the basement of the premises to start his computer business. The Apex Court, in the case of **Raghavendra Kumar v. Firm Prem Machinery & Co.**, (2001) 1 SCC 679 has held:

“Land lord is the best judge of his requirement. It is not open to the Court or the tenant to dictate him in what manner he should use his premises. He has got complete freedom in the matter.”

16. The Ld. ARC has rightly observed that his prerogative was to only determine if the need of the landlord was genuine or not. The respondent has shown enough reasons for requiring the suit shop bona fide to help his son set up a business for himself and find a source of livelihood at the age of 29 and, subsequently settle down in life. Once the bona fides of the respondent were established, it is not upto the Ld. ARC, or the tenant or even this Court to dictate which premises the respondent choose to run his business. Moreover, it is common knowledge that a ground floor shop is more preferred than a basement to carry out business activities.

17. The final contention of the petitioner is that the respondent is leading a comfortable life style because of his defense pension and does not need to start a new business. Firstly, it is not disputed that the respondent is suffering from cancer and was required to sell the upper floors to meet the expenses of the treatment, and also pay for his son's flying school in Canada. Besides, I am inclined towards the reasoning given by the Ld. ARC. Even if one should assume that the landlord is leading a comfortable life, it is not malafide for him to want his son to find a suitable source of livelihood and get settled in his life.

18. The Apex Court, in the case of **Joginder Pal v. Naval Kishore Behal**, (2002) 5 SCC 397 has observed:

“ Two decisions by Delhi High Court though dealing with requirement for residential purpose may yet be noted for their utility. Section 14(1)(e) of Delhi Rent Control Act, 1958 contemplates the landlord requiring the suit premises bona fide 'for himself' as a ground of eviction. In Smt. Krishna Devi vs. Smt. Parmeshwari Devi 1977 (2) RCJ 529, the landlady required the premises for the family of her married daughter to come and live with her as she was unable to look after herself and thus the requirement which she pleaded was for herself covered within the meaning of the word "himself". It was held that the relationship was immaterial so long as the requirement was a genuine one and was meant to serve the need of the landlady.

In J.L. Mehta vs. Smt. Hira Devi 1970 DLT 484, it was held that assigning a restricted meaning to the word 'himself' would lead to anomalous and unreasonable results. The requirement of the sons of the landlady who were married and earning for themselves was held to be included within the requirement of 'himself' for the landlady.”

19. The Apex Court in this case approved the requirement of a landlord to mean the requirement of his kith and kin as well. This approach has been consistently followed by this Court. In the case of **Labhu Lal v. Sandhya Gupta**, 173 (2010) DLT 318, this court has held:

“...[T]he requirement of the respondent's son and daughter-in-law for expanding their clinic being run in the premises in question, is most bona fide and genuine since they are dependant for accommodation on the respondent.”

20. Even in the instant case, the son of the respondent is unemployed and is dependent on respondent for his livelihood. It is nothing but bona fide for the respondent to require the suit shop to set up a computer business for his son and to help him find a source of income and subsequently settle down in life.

21. In light of my above discussion and the principle of law applicable to the facts of the case, I find that the impugned order dismissing the leave to defend application of the petitioners herein, does not suffer from any infirmity. The petition is hereby dismissed.

M.L. MEHTA, J.

DECEMBER 10, 2012

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