

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

% **C.R.P. 1081/2001**

+

Date of Decision: 17th February, 2012

HANS RAJ TANEJA **....Petitioner**
! Through: Mr. K.R. Chawla, Mr. Sunil Verma &
Mr. Arvind Verma, Advs.

Versus

\$ **PUSHPA RANI** **.....Respondent**
Through: Mr. R.V. Naik & Mr. S.K.
Tandon, Advs.

CORAM:
* **HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

This petition under Section 25-B(8) of the Delhi Rent Control Act, 1958(in short 'the Rent Act') has been filed by the petitioner-tenant against the order dated 01.08.2001 passed by the learned Additional Rent Controller whereby his application for leave to contest the eviction petition filed against him by his landlady, respondent herein, under Section 14-D of the Rent Act to have the possession of one room on the ground floor of property bearing no. 8, Central Road, Bhogal, New Delhi in his occupation as a

tenant(hereinafter to be referred as the 'tenanted room') had been rejected and he had been ordered to be evicted.

2. The relevant facts pleaded by the respondent-landlady to secure an order of eviction against the petitioner-tenant are that the tenanted room measuring 19 ft. x 7.5 ft. was initially let out to the petitioner-tenant in the year 1950 by her husband who died in the year 1998. He had inherited the said property from his father along with his other three brothers out of whom two had relinquished their shares under a family settlement and the respondent's husband and his brother became owners in equal shares. After the death of the husband of the respondent the petitioner attorned in favour of the respondent as her tenant and started paying rent to her. The tenanted room was let out for residential purposes but in the year 1988 the petitioner-tenant had allegedly converted that room into a shop without written permission of the respondent on the oral condition that he would vacate the tenanted room upon the completion of the construction of a commercial complex which he was constructing those days in Bhogal itself but he did not vacate the room thereafter despite his having constructed his own commercial complex in the year 1989. The respondent claimed to be in possession of two rooms and a kitchen only on the ground floor and in that accommodation she along with her son, his wife and their son, her widowed daughter Renu and her two children were residing. So, she required the tenanted room, *bona fide*, for residential purposes since the existing accommodation in her possession was not sufficient for such a big family.

3. The petitioner-tenant had sought leave to contest the eviction petition from Additional Rent Controller by moving an appropriate application supported by his affidavit as required under Section 25-B(3 & 4) of the Rent Act. It was claimed by him that the respondent's son along with his uncle who according to her own case also was a co-owner along with her deceased husband had admitted in a suit filed by them against him (petitioner herein) that the tenanted room had been let out to him by Pt. Shish Ram, father-in-law of the respondent-landlady. So, the petition under Section 14-D of the Rent Act was not maintainable since the tenanted room was not let out to the petitioner-tenant either by the husband of the respondent or by respondent herself and this fact had been concealed by the respondent in her notice as well as in the eviction petition. It was further pleaded by the petitioner in his leave application that in the notice dated 19.02.2000 given to him by the respondent through her advocate before filing the eviction petition she herself had claimed that she was in possession of sufficient accommodation for residential purposes but in order to augment her income, since her only son was working as a peon only on a meagre salary, and she wanted the tenanted shop for running a grocery and general store to be managed by her daughter-in-law and also by her son and she had already arranged loan also for opening the shop. Therefore, the eviction petition on the ground of requirement of the tenanted room for residence was not *bona fide* and that aspect in any case required trial. Another point raised by the petitioner was that the tenanted room was being used as a shop right from the beginning and could not be used for residential purpose and so for that reason

also he was entitled to get leave to defend the eviction petition. Yet another plea raised was that in the eviction notice the respondent had not mentioned that besides her own family even her widowed daughter was also residing with her, as was being claimed in the eviction petition by her, and so introduction of additional family members in the eviction petition showed her *mala fide* intentions.

4. The learned Additional Rent Controller declined leave to the petitioner-tenant vide impugned order dated 01-08-2001. The relevant parts from that order where the pleas of the parties were dealt with are being re-produced below:

“8. *In the present case landlord-tenant relationship is not disputed..... Petitioner as a widow is also not disputed. The only dispute revolves around the bonafide requirement of the petitioner.*

9..... *The essential facts to be stated in an eviction petition U/s 14-D are very limited and all that a widow has to prove that she is the landlady of the premises, which fact the petitioner has pleaded, and which fact has not been disputed. The application of the tenant for leave to contest does not disclose any such fact which shows that the tenanted premises are not required by the petitioner for her own use.....*

16. *In view of the above settled law and facts and circumstances of the present case, I am of the view that respondent has not raised any issue which can disentitle the petitioner for the relief. His plea that premises was let out for commercial purposes do not give any benefit to him. There is no bar in the provisions u/s 14-D of DRC Act to bring the commercial premises under the purview of provisions u/s 14(D) of DRC Act. I have carefully perused the site plan filed by the petitioner which is not disputed by the respondent. In the site plan on the front portion of the ground floor the premises in dispute is located and on the back of it there are two rooms, kitchen, bathroom hence the premises can be used as residence. The desire of the*

petitioner to use the commercial premises for her residence is not unreasonable. Specially when she is in paucity of accommodation. It has not been alleged or proved by the respondent that the area cannot be used as residence. His plea that earlier he received a notice from the petitioner showing her interest to run a grocery shop for herself also does not give much help as to the respondent. Because of the fact that even if it is assumed that one time she required the premises for running a business there is no bar to her for filing the petitioner u/d 14-D of DRC Act if the same is now required by her for residential purposes. Respondent does not become entitled for the leave only if once petitioner desires to use the premises for commercial purposes.....

17. So far as the bona fide requirement of petitioner and paucity of accommodation with the petitioner is concerned having seen the constitution of her family two rooms accommodation presently available with the petitioner does not appear to be sufficient. Her desire to have additional accommodation keeping in view the size of the family is not unreasonable. Admittedly, petitioner has only two rooms in her possession. Her married son and his wife required at least one room and one additional room is required for the children who are school going for the study and sleeping purposes. The desire of one guestroom is also not unreasonable. Admittedly, there is no other accommodation available with the petitioner. Keeping in view the size of the family of the petitioner and also the property in her possession the existing accommodation appears to be insufficient. The sufficiency and insufficiency of the accommodation cannot be dictated by the respondent. his apprehension of reletting the premises by the petitioner is without any force and basis.

18. In his entire application for leave to defend and in rejoinder he has not raised any issue worth triable, he has also not raised any issue which can, if proved, would disentitle the petitioner for the relief.....”

5. Feeling aggrieved with the direction of the Controller requiring him to vacate the tenanted shop the petitioner-tenant approached this Court by filing this revision petition since no remedy of appeal is

provided to an unsuccessful tenant against whom eviction order is passed by the Controller in an eviction petition which has been dealt with in accordance with the special procedure under Section 25-B of the Rent Act.

6. The learned counsel for the petitioner had pressed into service the pleas which had been taken in the leave to defend application and which I have already noticed. Additionally, the learned counsel argued that the respondent-landlady had concealed the fact from the trial Court that there is a first floor also consisting of two rooms, and a kitchen and in the eviction petition same had not been mentioned and so the eviction petition should be dismissed on this ground and in any event leave to contest should be granted to the petitioner-tenant.

7. On the other hand, learned counsel for the respondent – landlady, while supporting the impugned order submitted that there is no infirmity whatsoever in the order of the learned Additional Rent Controller justifying any interference by this Court in exercise of its limited revisional jurisdiction which has a very limited scope.

8. After having given thoughtful consideration to the rival submissions of the counsel for the parties I am of the view that this revision petition is liable to be dismissed.

9. It was submitted by the learned counsel for the petitioner – tenant that since the respondent's son and his uncle had in some civil suit for injunction, which they had filed against him, had claimed that

the tenanted room had been let out to the petitioner – tenant by late Pt. Shish Ram, who was the father-in-law of the respondent – landlady, the eviction petition under Section 14-D was not maintainable at the instance of the respondent – landlady. I, however, do not find any merit in this plea. The respondent – landlady had categorically pleaded in the eviction petition that the tenanted room had been let out to the petitioner – tenant by her deceased husband. That claim of the respondent – landlady was not disputed by the petitioner – tenant in his leave to defend application. He had simply relied upon what respondent's son had claimed in a suit which he had allegedly filed against him for getting the relief of permanent injunction. In case, the petitioner – tenant had not been let out the tenanted room by the husband of the respondent – landlady he could have very well claimed so in his leave to defend application instead of relying upon the plaint of the suit which the respondent's son had allegedly filed. So, this plea is rejected.

10. The petitioner – tenant's other point was that when before filing the eviction petition the respondent – landlady had served upon him a notice requiring him to vacate the tenanted room she herself had admitted in that notice that residential accommodation in her possession was sufficient but she required the tenanted room to run a grocery shop there to augment her income but when the eviction petition was filed she changed her stand and took the plea that she required the tenanted room for her residential purpose since the accommodation already in her possession was insufficient considering

the number of her family members and that she, according to the counsel for the petitioner, had done that because under Section 14-D of the Rent Act, which had been invoked by her, a petition for eviction on the ground of requirement of the tenanted premises for commercial use would not have been maintainable. The learned Additional Rent Controller had dealt with this submission on behalf of the tenant and his finding on this aspect I fully endorse. The petitioner – tenant has not disputed the number of family members of the respondent – landlady as well as the accommodation which she claimed in the eviction petition to be in her possession on the ground floor and so just because sometime before the filing of the eviction petition she had claimed that that much accommodation was sufficient for her it would not mean that she could not have filed an application for eviction of the petitioner – tenant claiming that accommodation in her possession was insufficient for accommodating her family. She had pleaded all relevant facts which constituted her *bona fide* requirement and the petitioner was not able to make out a case for rejecting the same.

11. The other point which was taken by the petitioner – tenant was that the tenanted room having been occupied by him for non-residential purposes right from the creation of the tenancy in his favour the same could not be used for residential purpose and, therefore, the landlady's requirement of the same for residential purpose could not be said to be *bona fide*. This point raised by the petitioner – tenant for seeking leave to defend is also without any merit as it is not the case of the petitioner that the room under his

tenancy cannot be used as a residence by virtue of any prohibitory orders issued by any Government department.

12. Leave to defend was also sought by the petitioner – tenant on the ground that when notice for eviction was served upon him by the respondent – landlady she had not claimed in that notice that besides her son, daughter-in-law and one grandson her widow daughter along with her two children were also staying in the same premises with her as was being claimed by her in the eviction petition and that also showed her *mala fide* intentions of securing the possession of the tenanted room even by resorting to falsehood. In my view, even on this ground the petitioner – tenant was not entitled to get leave to defend the eviction petition because in his leave to defend application he had not disputed that, in fact, respondent's widow daughter and her children were not living with her. As noticed already, the respondent – landlady had initially claimed possession of the tenanted room from the petitioner – tenant on the ground that she required the same for running a shop there and, therefore, at that time there was even otherwise no necessity for her to have disclosed her family members in the notice which she had got served through her counsel on the petitioner – tenant.

13. Learned counsel for the petitioner – tenant had also submitted that the respondent – landlady had not disclosed the accommodation with her on the first floor also which comprised of two rooms and a kitchen and because of concealment of that fact from the Court she

was not entitled to any relief and in any case petitioner – tenant was entitled to get leave to defend her eviction petition from this Court. I find from the leave to defend application that leave was not sought by the petitioner – tenant on this ground and it is for the first time in this revision petition that this point has been raised and, therefore, I am not inclined to entertain it. Even otherwise, considering the strength of the family of the respondent – landlady even four rooms, out of which two are on the ground floor and two on the first floor as claimed by the petitioner cannot be said to be sufficient to accommodate a family of seven persons out of whom the children also would have grown up and so requirement of the tenanted room in possession of the petitioner – tenant cannot be said to be not *bona fide*.

14. No other point was urged by the learned counsel for the petitioner.

15. This revision petition is, therefore, dismissed.

P.K. BHASIN,J

February 17, 2012