

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

% *Date of Judgment: 13.03.2012*

+ **RC.REV. 111/2012, CAV No. 255/2012 & CM Nos.4474-75/2012**

RAMESH CHAND GULATI & ANR Petitioners

Through Mr. J.P. Sengh, Sr. Adv. with
Mr.Rakesh Mahajan, Mr. Abhay
Mani Tripathi, Mr. Sumeet Batra
and
Ms. Ankita Gupta, Adv.

versus

LALIT KUMAR & ORS Respondents

Through Mr. Sudhir Nandrajog and Mr.
Ravi Gupta, Sr. Adv. with Mr.
Lalit Gupta and Mr. Deepak
Aggarwal, Adv. for R-1.
Mr. P.P. Ahuja, Adv. for R-2.

AND

RC.REV. 112/2012, CAV No. 260/2012 & CM Nos.4499-4502/2012

RAJINDER KUMAR GULATI & ANR Petitioners

Through Mr. J.P. Sengh, Sr. Adv. with
Mr.Rakesh Mahajan, Mr. Abhay
Mani Tripathi, Mr. Sumeet Batra
and
Ms. Ankita Gupta, Adv.

versus

LALIT KUMAR & ORS Respondents

Through Mr. Sudhir Nandrajog and Mr.
Ravi Gupta, Sr. Adv. with Mr.
Lalit Gupta and Mr. Deepak

Aggarwal, Adv. for R-1.
Mr. P.P. Ahuja, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Vide the impugned judgment dated 14.10.2011, the eviction petition filed by the landlord under Section 14 (1)(a) of the Delhi Rent Control Act (DRCA) had been decreed. The disputed premises comprise of a shop on the ground floor measuring 550 square feet, an area of 775 square feet on the first floor and also an area of the same configuration (775 square feet) on the second floor of a part of property bearing No. 2435-2438, Gali Nos. 10 & 11, Beadon Pura, Karol Bagh, New Delhi. The application filed by the tenant seeking leave to defend had been dismissed. The tenant is aggrieved by this finding.

2 Record shows that the present eviction petition has been filed by the landlord Lalit Kumar on the ground of a bonafide need; the petition under Section 14 (1)(e) of the DRCA discloses that the premises had been let out to the respondent by the erstwhile owner; the petitioner along with his brother Anil Kumar and mother Kamla Devi had purchased the entire aforementioned built up property from the earlier owner

vide a registered sale deed dated 04.03.1993. The respondent had attorned in favour of the petitioner. Further contention is that the tenant is in arrears of rent. Further submission being that the mother of the petitioner Kamla Devi had died on 18.01.2004 bequeathing her 1/3rd share in the aforementioned entire property vide a registered Will dated 19.12.2003 in favour of her two sons i.e. the present petitioner Lalit Kumar and his brother Anil Kumar in equal shares; suit premises had been let out for non-residential purpose; they are bonafide required by the petitioner for carrying on the business for himself as he has no other place to carry on his business. Further contention in the eviction petition discloses that the petitioner and his brother along with their mother were earlier carrying on a business of clothes under a partnership dated 12.08.1996 under the name and style of 'M/s Dalchand Gupta and Company'; this was from a portion/shop situated on the ground floor of the same larger property (as depicted in blue colour in the site plan). On 18.01.2004 after the death of his mother, the brothers entered into a fresh partnership dated 20.01.2004. In August, 2007, the wife of his brother started interfering in the business and so much so that the matter had to be reported to the police. Since July, 2009, there have been

contumacious litigations raging between the two brothers in various forums. To support this submission, the petitioner along with the eviction petition has placed on record the record of the litigations pending inter-se between the parties which included a petition filed by the present petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act') which was on 15.07.2009. In the course of these proceedings, the seal of the Karol Bagh shop was broken by his brother Anil Kumar and a complaint was lodged with the police against which an appeal was filed. Thereafter a second petition under Section 9 of the said Act was also filed on 08.05.2010 which litigation also travelled up to the appellate forum. Further contention of the petitioner is that the pursuant to these litigations, the petitioner has been denied access to this shop where the brothers were carrying on business and which is now in exclusive control of his brother Anil Kumar. Further contention is that the brothers had also been carrying on a trade business under the name and style of 'M/s Dalchand Gupta and Sons' from a neighbouring shop which is a shop bearing No. 2774/1, Gali Nos. 20 & 21, Beadon Pura, Karol Bagh which premises were taken on tenancy from one Smt. Saroj Gaur; the

fact that these premises are tenanted premises is not disputed. The submission of the petitioner is that because of the acrimony between the brothers, the petitioner was denied access to these premises also and litigation qua these premises i.e. shop No. 2774/1 is also pending. A suit for injunction filed by the petitioner against his brother seeking a prayer injuncting his brother from parting with possession of the aforementioned premises (shop No. 2774/1 admittedly a tenanted premises) is also pending between the parties; record of that suit is also a part of the trial court record. Further submission of the petitioner is that the wife of the petitioner namely Reeta and their elder son Pulkit are carrying on a separate business of ladies suits and sarees from the ground floor, City Square Marg, Rajouri Garden; this is under the name of 'M/s DCG Fabs Pvt. Ltd.'; the petitioner has no right or interest in this business which is being conducted exclusively by his wife and his elder son. These premises is owned by his wife and his son; documents of title of this property as also the Memorandum and Articles of Association of the company 'M/s DCG Fabs Pvt. Ltd' is also a part of the trial Court record to substantiate the submission that the present petitioner Lalit Kumar has no right or interest in this business. Further submission of the petitioner

(as borne out from the eviction petition) is that two other premises have also been taken on rent by his wife Reeta and his elder son Pulkit which are premises bearing No. J-109, main market, Rajouri Garden and property bearing No. 18, Kapil Vihar, Pitam Pura which had been taken at a monthly rent of Rs.2,80,000/- and Rs.2,25,000/-; from these aforementioned tenanted premises, the business of 'M/s DCG Fabs Pvt.' (business of his wife and son) is also being run. Contention of the petitioner is that he alone does not have any business place from where he can carry out his business; the aforementioned business houses are of his wife and his son who are independent individuals. The business which the petitioner was running along with his brother from the portion (depicted in blue colour in the site plant) and property bearing No. 2774/1, Beadon Pura are no longer accessible to him; the petitioner to support the submission has placed on record the list of the aforementioned litigations pending inter-se between the two brothers as also the fact that even qua the tenanted premises at 2774/1, Beadon Pura (tenanted property), litigation is pending between the two brothers. In fact the whole crux of the eviction petition and the arguments urged by the learned counsel for the landlord being to the effect that the brothers

being in inter-se litigations, there is no business place from where the petitioner can run his business. The aforementioned premises which are on the ground, first and second floors are accordingly required by the petitioner for running his business.

3 It is not in dispute that in the course of proceedings before the trial Court, an application under Order 1 Rule 10 of Civil Procedure (hereinafter referred to as the 'Code') had been filed by the brother Anil Kumar seeking impleadment in the aforementioned proceedings; this application was allowed; contention of the brother of the petitioner was to the effect that he is also a co-owner in the suit property and as such be permitted to be impleaded as a necessary/property party.

4 Leave to defend had been filed. The averments made in the said application have been perused. The landlord-tenant relationship has not been disputed; the only dispute raised by the tenant is that the petitioner has a joint business house with his brother which he is running it under the name and style of 'M/s Dalchand Gupta and Company'; further submission being that the particulars of litigations pending inter-se between the two brothers has not been placed on record; the supplementary submission is also to the effect that these litigations

between the two brother appears to be collusive. In this application for leave to defend, it had also been stated that another partnership business in the name of 'M/s Dalchand Gupta & Sons' is being run by the two brother from the adjoining shop bearing No. 2774/1, Beadon Pura; the present premises are thus not required by the petitioner. The submission that 'M/s DCG Fabs Pvt. Ltd.' is carrying on business from two places at Rajouri Garden as also from another premises at Kapil Vihar, Pitam Pura has also been contended; contention being that the petitioner is the husband of Reeta and father of Pulkit and cannot make a disclaimer qua this business; he is actively involved in this business. Premises are thus not required by the petitioner for any purpose.

5 Relevant would it be to state that all these submissions which have been made in the application seeking leave to defend were in fact the facts which have been disclosed by the landlord in his eviction petition himself. In fact along with the eviction petition, the record of the litigations pending inter-se between the two brothers has been filed; this list of the battle raging between the two brothers substantiating the submission of the petitioner that access to the business house where the brothers were carrying on the business under the name and style of 'M/s

Dalchand Gupta and Co.’ and M/s Dal Chand and Sons’ is no longer available to him; this is evident from the fact that a petition under Section 9 of the said Act had been filed by the present petitioner as way back as on 15.07.2009 seeking reliefs in terms of the arbitration clause contained in their partnership agreement; this was followed by a second petition under Section 9 of the said Act which was filed in May, 2010. The acrimony brewing between the two brothers is also borne out from the fact that pursuant to the appointment of a Local Commissioner in the aforementioned proceedings, the brother Anil Kumar had also broken the seal of shop at Karol Bagh on 03.10.2009 against which an appeal being RCA No.79/2009 was filed. This is the litigation qua the premises who are housed in the aforementioned building i.e. property bearing No. 2435-2438. Qua the other property (shop No. 2774/1, Beadon Pura) again a litigation is pending between the two brothers; this is admittedly a tenanted premises and a suit for injunction has been filed by the petitioner seeking a restraint upon his brother (Anil Kumar) from alienating the aforementioned premises. This is also a part of the record.

6 The company ‘M/s DCG Fabs Pvt. Ltd.’ is admittedly a company run by the wife of the petitioner namely Reeta and her elder son Pulkit;

the Memorandum and Articles of Association of the said company have been filed on record to substantiate the submission of the petitioner that he is in no manner connected with the said business which is being run by the aforementioned two individuals in their capacity as directors of the said company. Moreover it is also an admitted fact that his company was incorporated in October, 2006 which was much prior in time to the filing of this eviction petition which was in July 2011.

7 In this background, the assertions made by the respondent in the application seeking leave to defend do not in any manner raise any triable issue. In fact as noted supra, all the averments which have been asserted in the application seeking leave to defend were in fact the details which had been disclosed by the landlord himself in his eviction petition. It has also come on record that the petitioner who was originally carrying on the business along with his brother Anil Kumar from the disputed premises (portion shown in blue colour in the site plan) is a premises no longer accessible to him as inter-se litigations qua this partnership (which are petitions filed under Section 9 of the said Act had been filed); in the course of these proceedings, the seal of this shop had also been broken for which a police complaint had been filed and

pursuant thereto, an appeal had been filed against the said order. This is a long drawn history of litigations pending between the two brothers; the access of the petitioner to this business premises has thus been curtailed. The second business house of the petitioner at property bearing No. 2774/1, Beadon Pura is admittedly a tenanted property; this is also under litigation; the petitioner had been constrained to file a suit for injunction against his brother restraining him from parting with the possession of the suit premises; this also discloses nothing but the writ-large fact that the brothers are at daggers end with one another. This has been prima-facie established by the documentary evidence filed by the petitioner in the trial Court.

8 The premises of 'M/s DCG Fabs Pvt. Ltd.' which is running three business houses, two from its tenanted premises and one from the owned premises is being run by a company which is wholly owned by the wife and son of the petitioner. There is no dispute to the fact that they are both individuals and doing the business in their said capacity. This company (M/s DCG Fabs Pvt. Ltd.) has in fact been incorporated in October, 2006; the documentary evidence filed on record relating to the said company clearly shows that the petitioner has no concern with

the business of this company. Although admittedly this business house is the business house of the wife and son of the petitioner yet the admitted fact is that the interest in this business house is not the interest of the petitioner. In fact the record shows that the family of the petitioner is in the business of wholesale cloth merchants; 'M/s DCG Fabs Pvt. Ltd'. is carrying on the business of readymade suits and sarees whereas the two brothers were carrying on the business of dress material; under the name and style of 'M/s Dalchand Gupta Ltd' and M/s Dalchand & Sons'; the former is a business of readymade garments and the latter appears to be a business of retail of dress material. Every individual has a fundamental right of trade and merely because the parties are closely related, the business interest of one cannot be imputed to the business interest of the other.

9 The petitioner has clearly been able to establish that he has no other alternate suitable accommodation from where he can run his business; his bonafide need has been established.

10 The Apex Court in a judgment reported in 2003 AIR (SC) 532 Akhileshwar Kumar Vs. Mustaqim had held as follows:

"Once it has been proved by a landlord that the suit accommodation is required bona

fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subject choice of the needy. The Court cannot thrust upon its own choice on the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodation which have prevailed with the High Court are either not available to the plaintiff No.1 or not suitable in all respects as the suit accommodation is. The approach of the High Court that an accommodation got vacated to satisfy the need of plaintiff No.2, who too is an educated unemployed, should be diverted or can be considered as relevant alternative accommodation to satisfy the requirement of plaintiff No.1 another educated unemployed brother, cannot be countenanced.”

11 No triable issue appears to have arisen. The Court cannot thus grant leave to defend in a routine or in a mechanical manner.

12 In Nem Chand Daga Vs. Inder Mohan Singh Rana 94 (2001) DLT 683, a Bench of this Court had noted as under:-

“That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.”

13 In (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal the Apex Court has held:-

“Prayer for leave to contest should be granted to the tenant only where a prima-facie case has been disclosed by him. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend.”

13 In this background the eviction petition having been decreed and the application seeking leave to defend having been dismissed as no triable issue has arisen, suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 13, 2012
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