

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

% *Date of Judgment: 15.02.2012*

+ RC.REV. 29/2011 and CM No. 1967/2011

SUBHASH CHAND GUPTA Petitioner
Through Mr. Rajesh Bhatia and
Mr. Abhishek Gupta, Adv.

versus

YOGINDER KUMAR RAJ KUMAR Respondent
Through Mr. S.K. Kalia and Mr. K. K.
Bhalla, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The order impugned before this court is the order dated 16.12.2010 whereby the two applications seeking leave to defend filed by the tenants in pending eviction proceedings under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) had been allowed and leave to defend had been granted in favour of the tenant. Petitioner/landlord is aggrieved by this order.

2. The facts emanating are that the petitioner-Subhash Chand Gupta has filed an eviction petition seeking recovery of tenanted shop

measuring 98.83 sq. ft. in premises bearing No. 581, Kucha Pati Ram, Bazar Sita Ram, Delhi-110006. The tenant has been described as Yoginder Kumar Raj Kumar. The bonafide requirement of the landlord has been pleaded in para 18(a); contention being that the premises is required bonafide by the landlord for his son Anupam Gupta who is an advocate and dependent upon his father for the purpose of opening his office; landlord is the owner of the disputed premises; he has no other reasonable accommodation for opening the office for his son-Anupam Gupta and as such his need is bonafide. Present eviction petition was accordingly filed.

3. Two separate applications seeking leave to defend had been filed by the tenants raising various contentions; it was contented that the petitioner is not the owner of the premises; his need is not bonafide; there is also an alternate accommodation available with the landlord; all these are triable issues and leave to defend should be granted.

4. Impugned order has dealt with these contentions raised by the tenants. After detailed arguments and a consideration of the pleadings of the parties, the ARC had returned a finding that the landlord is the owner of the suit premises; original owner was Raunak Mal; petitioner-

Subhash Chand Gupta is admittedly one of his legal representatives; mutation of the property had been effected in his name; rent receipts showing that he is the landlord have also been placed on record. These facts are not disputed. In fact the tenants in their individual applications seeking leave to defend had stated that the rent receipts were in their joint name i.e. Yogender Kumar Raj Kumar; the ARC in this scenario had returned a clear finding that the petitioner Subhash Chand Gupta was the owner and the landlord of the suit premises; the purpose of letting out was also held to be commercial; in view of the judgment of 2008 (3) SLT 553 titled as Satyawati Sharma vs. Union of India an eviction petition on the ground of bonafide requirement was held maintainable even for commercial purpose. On the aspect of alternate and a suitable accommodation being available with the landlord a clear finding was returned by the ARC that the need of the landlord was bonafide which was the need for setting up an office premises for his advocate son who had no alternate accommodation available. Court had noted that it is not for the tenant to dictate terms to the landlord about his need and requirement; since the son of the petitioner is practicing in Delhi, he needs to open an office in Delhi and even if an alternate place

was available at Noida i.e. property No. C-23, Sector 44, Noida, it would not substantiate the request of the landlord to set up a business office which was required to set up in the precincts of Delhi. There was also no other accommodation available with the landlord; property at B-90, Pandara Road which was a government accommodation and after the retirement of the petitioner he had surrendered this accommodation. Clear finding was returned in favour of the landlord that the need of the landlord was bonafide and he had no alternate accommodation available with him to set up business office for his son who was a practicing advocate in Delhi .

5. The Trial Court had however granted leave to defend. This was on an illegal finding returned by it that Yoginder Kumar Raj Kumar is a partnership firm and since a partner does not have any entity apart from its partners, the partners not having been impleaded in their separate capacity, it has a raised triable issue which would entitle the tenant for leave to defend. This is clearly an erroneous finding and is outside the parameters and scope of Section 14(1) (e) of the DRCA.

6. Before adverting to the requirement of Section 14(1)(e) of the DRCA it would be necessary at this stage to advert to the pleadings of

the tenants in the two applications seeking leave to defend filed by both Yoginder Kumar and Raj Kumar separately. Both of them in their separate applications for leave to defend have contended that they are individual tenants in the suit premises; they have admitted that rent receipts have jointly been issued in their name i.e. Yoginder Kumar Raj Kumar. They have nowhere raised any dispute or even whispered a word that the eviction petition has arrayed Yoginder Kumar Raj Kumar as a partnership firm and in the absence of the partners having been impleaded, this petition is bad. In fact in the body of the applications for leave to defend, a ground of mis-joinder of the parties has been averred but the mis-joinder is to the effect that the other legal representatives of the deceased tenant have not been arrayed as parties; there is no objection raised in these applications seeking leave to defend that the partnership firm could not have been sued as a tenant. In fact in the applications seeking leave to defend it has been categorically contended that there is no firm running the business from the disputed premises; both Yoginder Kumar and Raj Kumar are individual tenants.

7. In these circumstances, this court is at a loss to understand how the ARC has returned a finding that a triable issue has occurred on this

count. Triable issues have to emanate necessarily from the pleadings of the parties which in the summary procedure as contained under Section 25B of the DCRA has to be read from the application filed by the tenant seeking leave to defend, the reply of the landlord and the eviction petition. No objection has been raised by the tenant in his application seeking leave to defend qua this finding returned by the Trial Court, Trial Court thus holding that a triable issue has arisen because Yoginder Kumar Raj Kumar is a firm and in the absence of the partners of the firm having been impleaded, leave to defend had been granted is clearly a manifest illegality committed by the Trial Court which is accordingly set aside.

8. In an eviction petition under Section 14(1)(e) of the DRCA the following are the essential requirements:-

- (a) The applicant has to be a landlord/owner;
- (b) The premises in question should have been let out for residential or commercial purpose or both;
- (c) The said premises are required bona fide by the landlord for occupation as a residence for himself or his family dependent upon him and;

(d) That the landlord or such person dependent upon him has no the reasonably suitable accommodation.

9. All these stand fulfilled and in fact have been noted in the order by the ARC. The tenant is not in appeal before this court and as such any arguments advanced by the tenant on this count cannot be adverted to.

10. In these circumstances, impugned order is set aside. Petition is allowed; eviction petition is decreed.

INDERMEET KAUR, J

February 15, 2012
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