

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

+ R.C.REV. 28/2012

Date of Decision: 04.09.2012

ARJUN UPPAL & ANR

.....Petitioners

Through: Mr. Jayant K. Mehta, Mr.
S.Vikram and Mr. Abhinav
Sharma, Advocate

Versus

SETH & SONS PVT. LTD.

.....Respondent

Through: Mr.Mohit Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition under Section 25B (8) of the Delhi Rent Control Act (for short 'the Act') is directed against the order dated 22.10.2011 of Additional Rent Controller (ARC), North, whereby leave to defend application of the respondent/tenant, in the eviction petition filed by the petitioners, was allowed.

2. The petitioners are the joint owners having their respective shares of 3/8th and 5/8th in property bearing No. 1635, 1635A, 1640 to 1648, Shyama Prasad Mukharjee Marg, Delhi-110006. The respondent is tenant in respect of one shop measuring 1208.4 sq.ft. (57'x21'.2") (the tenanted shop), in property bearing Municipal No.

1647, Shyama Prasad Mukharjee Marg, Delhi-6. The petitioner No. 2, who is the father of petitioner No. 1, is a hotelier and has been running his hotel on the first floor and upward floors of these properties. The eviction of the tenanted premises is sought for petitioner No. 1 for his independent business. The averments in this regard, as noted by the ARC from the record are like this:

“Petitioner No. 1 has quite recently completed his MBA Course from the University of LA Trobe Melbourne, Australia and has come to India on 27.03.2008 with the ambition to start his independent business and finally decided to open a plush restaurant on a magnified scale for which he has got prepared the project report. There are about 50 hotels without the facility of any posh restaurant in the area which will be an additional asset giving an added strength to the requirement of petitioner No. 1 and petitioner thus requires an area of approximately 5000 sq. ft. to open the restaurant for petitioner NO. 1 for which they require the entire ground floor portion to complete the project and now the petitioner No. 1 has acquired sufficient knowledge and experience by working at the family hotel business and since his return from Australia, he has been working for the launching of the project taking advantage of his experience in the trade. Since the portions of the ground floor of the property being under the occupancy of the tenants, petitioners have not been able to give it the practical shape. The suit property and the other adjoining shops under the tenancy of the tenants are most suitable for petitioner No. 1 to set up and run a restaurant as the property in question is located very near to the Old Delhi Railway Station at strategic location.

The opening of the Restaurant by petitioner No.1 on the ground floor of the property including the suit portion will also help petitioner No. 2 to cover this missing aspect of his requirement at the doorstep and conversely the business of petitioner No. 1 will also get a boost, thus, providing the project to be mutually inclusive and exclusive. Requirement of the petitioners is bonafide and they have no other reasonably suitable commercial property for running of the said business. Previously, another eviction petition was filed bearing No. 106/2009 which was withdrawn vide order dated 02.07.2010 as it was premature.”

3. The respondent filed leave to defend application raising various issues. The learned ARC taking note of the averments as set up in the petition, leave to defend application as also in reply thereto, recorded finding of facts that the respondent/tenant has been able to make out various triable issues. He, consequently, granted leave to defend vide the impugned order. The same is under challenge in this revision petition filed by the petitioners/landlords.

4. I have heard learned counsel for the petitioners as also for the respondent and perused the records.

5. Before advertng to the rival contentions of the learned counsel for the parties, I may like to reiterate the observations, regarding the revisional powers of this Court, as made by this Court in the case of **Navneet Lal Vs. Deepak Sawhney, 173 (2010) DLT 189**, which are these:-

“Present petition has been filed under Section 25B(8) of the Act. A Full Bench of this Court in **Mohan Lal Vs. Tirath Ram Chopra and Another**, 22 (1982) DLT 1 (FB) = 1982 (2) Rent Control Journal 161 exhaustively considered the provisions of Section 25B of the Act. On the scope of the proviso to Sub-section (8) of this Section, after examining the judgment of Supreme Court in **Hari Shanker and Ors Vs. Rao Girdhari Lal Chowdhury**, AIR 1963 S.C. 698 and **Bell and Co; Ltd. v. Waman Hemraj**, AIR 1938 Bombay (223) it was laid down as follows:

“In our opinion the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision under Section 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115, CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act.”

6. Having noted the limited powers of this Court under proviso to Section 25B(8) of the Act, I may proceed to deal with the submissions of the learned counsel for the parties.

7. The learned counsel for the petitioners sought to contend, and to which there was no dispute, that the landlord is sole and best Judge of his requirement and he has complete freedom in the matter and that tenant could not dictate the terms to him and advise as to what he should do and what not. It is also not disputed that it is the privilege of the landlord to choose the nature of business as also the place of business. The reliance that was placed by the learned counsel for the petitioner on the decisions of the Supreme Court in **Prativa Devi Vs. T.V. Krishnan, (1996) 5 SCC 353; Sait Nagjee Purushottam Vs. Vimalabai Prabhulal, (2005) 8 SCC 252** and some more judgments in this regard to substantiate these submission, to which there is no dispute. Similarly, the contention that a person can start a new business even if he has no experience, as held in **Ram Babu Agarwal Vs. Jay Kishan Das, (2010) 1 SCC 164**, is also not disputed.

8. The learned counsel for the petitioners sought to assail the impugned order alleging that much credence has been given by the learned ARC to the project report submitted by the petitioner and also on the requirement of taking permissions from the competent authority under Section 6A of the Slums Areas (Improvement and

Clearance) Act. Relying upon **D.L.Kamble Vs. ARM Kotkune, AIR 1999 SC 2226, Tarsem Lal Vs. Pritam Dass Khullar, 2005 (2) RCR 215, Dilip Kumar Ghose Vs. Amit Kumar Roy, 2004 (1) RCR 222**, it was contended that the landlords need not even indicate the nature of business which they intend to start in their premises and need not even establish that they are having the technical know-how necessary for doing the business and further that a tenant is not required to give project report of the business that he intends to start.

9. The learned counsel for the respondent, however, submitted that it was not an ordinary kind of business that was sought to be started by the petitioners, but, it was a case of not only additional accommodation being sought by them for the expansion of their hotel business, but, the proposed project was of a high magnitude, and could not be accomplished without a proper project report. It was also his submission that the premises being situated in Slum Area, mandatory permission was required to be taken before carrying out any alteration or addition therein under the Slum Areas (Improvement and Clearance) Act. It was also his submission that in addition, permission of other authorities will be required for running restaurant of this high scale. It was alleged that the eviction of the respondent and other tenants is being sought only for the purpose of re-letting on huge *pagri*. Based on these, it is submitted that there was no error in the order of the ARC warranting any interference by this Court.

10. The submission of learned counsel for the petitioners that there was no requirement of a project report for running a business is to some extent correct and also looks quite impressive. I am in agreement with him that there may not be necessity of a project report for starting a business by the landlord. But, that could not be a general proposition for all types of businesses. Whether a project report is required or not, would certainly depend upon the nature of the business. Though, neither tenant nor the Court have any right or competence to question the landlord in this regard, but, when the examination of bonafides of a landlord is within the domain of Rent Controller, various factors come in the way for consideration, depending upon the nature of business. It is not a thumb rule in every case that whatever the landlord wishes or desires or even intends has to be taken as a gospel truth, just on the ground that he is the best Judge of his affairs. If that was so, then in every case on the filing of eviction petitions, the tenants would lose statutory protection. That is not be the intention of the legislation or the ratio of the precedents.

11. Here is a case in which the petitioners earlier filed an eviction petition against the respondent, and had filed an application under Order 7 Rule 14 CPC to withdraw the same on the ground that the project report could not be placed on record due to pre-occupation of their Chartered Accountant. Based on this, they withdrew that petition with liberty to file afresh. The petitioners filed the instant

petition along with the project report. From this, it would be prima facie seen that according to the petitioners own case, the project report was necessary; that is why they withdrew the previous petition and filed the present one along with the project report. Now to say that the project report is not essentially required, is an attempt creating doubts in the bonafide of their intentions.

12. Referring back to the grounds as averred and reproduced above, it is seen that the petitioner No. 1 states having completed his MBA in March 2008 and had ambition to start an independent business, and finally decided to open a posh restaurant of a magnitude scale and for which he had got prepared a project report. It was also his plea that he requires an area of about 5000 square feet to open the restaurant of this scale, and for which he requires the entire ground floor to complete the project. The other portions of the ground floor are the adjoining shops which are in the tenancy of other tenants, and which are also sought to be required for the project. Taking note of all this, the learned ARC observed as under:

“otherwise also the filing of the project report becomes more relevant as in the previous petition though entire ground floor was sought to be vacated for opening the restaurant but without filing any project report and present petition has been filed along with the project report, thus, it becomes a triable issue as to whether the petitioner was having intention to open the restaurant in terms of the project report or said project report has been prepared only with a view to prepare the grounds of

eviction. Moreover perusal of the project report does not reveal that as to when the petitioner has assigned the project of preparing the report to the Chartered Accountant/Professional and when said project report was completed. Further there is no date mentioned upon the entire project report.

In the project report, area shown lying vacant with petitioner were not disclosed either in the previous petition or in the present petition thus, the intention to prepare the project report also becomes a triable issue. Moreover if the project report is perused carefully, same appears to have been prepared by the petitioner No. 1 himself, thus, issue of the preparation of the report by Chartered Accountant/Professional also becomes a triable issue keeping in view of the allegation in petition.”

13. In view of my brief discussion above, I do not find any infirmity in the above observations of the learned ARC.

14. In addition to above, it has also been noted by the ARC, and rightly so, that undisputedly the area where the suit premises is situated is highly congested and is slum area and permissions were required in view of Section 6A of Slum Area (Improvement and Clearance) Act, 1956. In this regard, the learned counsel for the petitioner submitted that since no structural changes were to be done in the tenanted premises and the other adjoining shops, no permission as envisaged under Section 6A of the Act, was required. He referred to Building Bye Laws 16.4.1 to bring home the point in this regard. In the absence of there being any plan or the project report showing as to what was sought to be intended, it was futile to

say that no permission was required. According to the petitioners' own showing they require 5000 square feet of area, which means they require the entire ground floor for running the restaurant. Even in the written submissions, it is submitted by the petitioners that they plan to remove few of the internal partitions and to make opening to others to inter-connect the entire space on the ground floor.

15. Having gone through the bye laws, I do not agree with the learned counsel for the petitioners, since for the removal of few internal partitions also permission would be required to be taken from the concerned authority, as these would come within the purview of the bye laws. Further, certain other aspects like fire safety, structural stability, parking, etc. are also required to be addressed for a project of this magnitude in the congested slum area of walled city. It is not that simple as is sought to be projected by the learned counsel for the petitioners that the petitioner intend to start a restaurant and he is the master of his mind and desires. It was held in the case of **Navneet Lal** (supra) that :

“45. The conspectus of the aforesaid judgments shows that the broad principles have been set down of the requirement of a landlord not being a mere whim or fanciful but that it should be a genuine need of the landlord. It is only then that the requirement can be said to be bona fide within the meaning of under Section 14(1)(e) of the said Act. This would naturally require all the necessary matrix in terms of the factual averments

and the evidence to be adduced in that behalf. Simultaneously it has to be kept in mind that the landlord is the best Judge of his requirement and a tenant cannot dictate the terms on which the landlord should live. The bona fide requirement of the landlord would also depend on his financial status and his standard of living. The ARC found in favour of the landlord/owner and thus what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate Court though the scope of scrutiny in a rent revision would be more than a revision petition under Section 115 of the Code of Civil Procedure, 1908.”

16. The petitioners ought to have demonstrated their intentions to be genuine and authentic and not only as their wish and desire. On their own they have chosen to decide that neither any permission is required for doing the alterations, nor the tenant or Court can question their subjective wishes to oust the tenants. It is settled that the Rent Controller has the power and jurisdiction to examine, evaluate and adjudicate the bonafide of the landlord and make objective assessment.

17. Moving further, it is noted that petitioner No. 1 who intends to set up a restaurant has 3/8th share in the entire property from base to the top, and the rest of 5/8th share is owned by his father, the petitioner No. 2. The petitioner No. 2 is already running a hotel on the first floor and above of the entire property. On the plea taken by

the respondent, the learned ARC has observed, and rightly so, that the present case was for requirement of additional accommodation by the petitioners. It was noted that, in the petition, they have not disclosed that they are in possession of any vacant portion. However, during the course of arguments before the ARC as also before this Court, it was conceded that they are in possession of 750 square feet of space on the ground floor of the premises, and which is lying vacant. This was stated to have been shown in the project report. In addition, it is also noted that it was also their case that opening of the restaurant on the ground floor will also help petitioner No. 2 to cover up certain missing aspects of his requirement of restaurant at the doorstep and conversely the business of both the petitioners will get a boost. These averments *prima facie* show the case to be the requirement of additional accommodation by both the petitioners. Since petitioner No. 2 was looking for some missing aspects in his hotel business which he intended to cover up from the restaurant which was sought to be opened on the ground floor, this was also *prima facie* a case of requirement of additional accommodation for expansion of business by the petitioner No. 2, who is the major share holder in the premises. Though there was no bar in expansion of business or for additional accommodation, but all this needs to be tested to see the bonafides of the petitioners, and which is not possible at the threshold. The respondent, who has raised all these triable issues,

cannot be ousted from the tenanted premises without being afforded an opportunity of testing the bonafides of the petitioners.

18. In view of my above discussion, I do not see any infirmity or illegality in the impugned order warranting any interference by this Court. The petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

SEPTEMBER 04, 2012

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