

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

% *Date of Judgment: 25.04.2012*

+ RC.REV. 27/2010

S.HARBANT SINGH SAHNI AND ANR Petitioner
Through: Mr.Varun Goswami, Adv.
versus

SMT.VINOD SIKARI Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The impugned judgment is dated 16.01.2010. Vide the impugned order, the application filed by the tenant seeking leave to defend in a pending proceedings under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been granted and the defendant was permitted to defend his case. This is the grievance of the petitioner who is the landlord before this Court.

2 Record shows that the present eviction petition has been filed by

two petitioners of whom petitioner No. 1 has a son namely Harjot Singh for whose business establishment the present disputed premises is required; petitioner No. 2 is a bachelor. Contention in the eviction petition is that Harjot (son of petitioner No. 1) aged 30 years wishes to carry on a retail business; the disputed premises are shop located on the ground floor of property bearing No. 7-A/2, WEA, Channa Market, Karol Bagh, New Delhi; contention in the eviction petition is that the petitioners who are the owner of the said premises by virtue of succession after the death of their mother Smt. Jaswant Kaur require these premises for starting the business of Harjot (the son of petitioner No. 1) who is presently unemployed. Eviction petition was accordingly filed.

3 Leave to defend has been filed and the averments contained therein have been perused. By and large the contention raised is that the need of the petitioners is malafide for the reason that the petitioners are themselves doing their lodging business from the other floors of the property; there are other two shops besides the present shop; Harjot is also doing the business of lodging and is assisting his father in the business and earning a handsome amount by letting out rooms which are

situated on the other floors of the property; premises are thus not required bonafide by the petitioners.

4 In spite of the matter having been remained on the board (taken up in the category of 'senior citizens'), none has appeared for the respondent since morning; none had appeared on the earlier dates also.

5 The impugned order has noted that the triable issues have arisen for the reason that the petitioner/landlord had concealed facts; it has not been disclosed that petitioner No. 1 is doing the business of paying guests under a Bed and Breakfast Scheme; this amounts to a material concealment for which the landlord must be penalized; the moreover the Court had noted that the contention of the tenant that Harjot is earning handsome amount from the said business of paying guests and is also helping his father also raises a triable issue.

6 Record shows that the impugned order suffers from an illegality; the bonafide need of the petitioners for the aforementioned premises has prima-facie been established. There is no dispute to the fact that Harjot is the son of petitioner No. 1 and nephew of petitioner No. 2. Petitioner No. 1 admittedly in the original eviction petition has not disclosed that he is doing the business under a bed and breakfast scheme; the bonafide

need of the petitioners for the disputed premises which is for the purpose of running a business for his son Harjot who is an independent individual aged 30 years and is unemployed. The bald submission of the petitioner that Harjot is employed has been vehemently denied; where and with whom Harjot is employed has not in any manner been detailed by the tenant; this appears to be a bald submission; the second contention that even presuming that Harjot is assisting his father in the bed and breakfast programme would not dis-entitle him from running his own independent business. He is admittedly a major and has no disqualification preventing him from exercising his right to carry out a separate business.

7 Record shows that along with eviction petition certain documents had been filed which included the 'Bed and Breakfast Scheme' which has been propounded by the Delhi Government by promulgation of the "Bed and Breakfast Establishment (Registration and Regulation) Act, 2007". Record further shows that form D is the certificate issued in favour of the petitioners qua this property wherein petitioner No. 1 has been registered as having two rooms on the first floor under the Bed and Breakfast Scheme; contention of the tenant that five rooms are being run

under this scheme is negatived. Record also shows that the address of the two petitioners has been described as disputed premises i.e. premises No. 7-A/2, Channa Market, Karol Bagh. The rest of the portion i.e. other three rooms on the first floor is the residence of the petitioners.

8 The site plan has also been perused; the correctness of the site plan has also not been disputed. The site plan shows that there are two floors on this property. Eviction petition further discloses that separate eviction petitions have been filed for all the three shops on the ground floor which are tenanted out to different tenants. Shop No. 3 is in occupation of the present tenant and is the disputed premises. The trial Court has gone wrong to hold that the dispute premises is located on the first floor; site plan shows that it is located on the ground floor and would be viable proposal for the purpose of running a business by Harjot; the shops located on the ground floor are for commercial establishments. The first floor of the premises are residential and this is evident from Form D as also the Bed and Breakfast Scheme (at page 45 of the paper book) which has described an 'establishment' to be a residential premise where guests are provided bed and breakfast on payment. Thus it is clear that the bed and breakfast business which is

being carried out by petitioner No. 1 in his individual capacity is two rooms on the first floor; the three shops on the ground floor are all in occupation of the tenants. The disputed premises is in occupation of the present tenant namely Vinod Sikri.

9 Thus in this background, the averments made in the application seeking leave to defend in no manner raise any triable issue.

10 Until and unless, there is a concealment of fact which is so vital to the bearing of the petition in issue, it would not amount to a concealment.

11 A Bench of this Court in 1988 (2) RCJ 179 R.D. Aggarwal Vs. Smt. Arjan Kaur in this context has held as under:-

“In an eviction petition on the ground of bona fide requirement it is only where a particular landlord intentionally conceals the residential accommodation available to him from the court that he/she can be non-suited on this ground. Concealment of innocuous accommodation which cannot be used as a regular room should not result in dismissal of her/his claim for more accommodation.”

12 In this background, the submission of the tenant that petitioner No. 1 had concealed the fact that he was doing the business of paying guests/lodging does not in any manner amount to a concealment.

13 Courts have time and again noted that it is for the landlord to

show his need; he is the best judge of his requirements; it is not for the tenant or the Court to dictate terms to him. The Supreme in Prativa Devi (Smt.) Vs. T.V. Krishnan (1996) 5SCC 353 had in this context inter alia noted as:-

“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”

14 No triable issue has arisen on this count. Unless and until a triable issue arises leave to defend cannot be granted in a routine manner; the very purport and import of the Section 25-B of the DRCA would otherwise be defeated.

15 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.”

16 In this back ground the impugned judgment having granted leave

to defend to the tenant which has raised no triable issue thus suffers from an illegality; it is accordingly set aside. Eviction petition stands decreed.

INDERMEET KAUR, J

APRIL 25, 2012
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