

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

% *Date of Judgment:03.05.2012.*

+ RC.REV. 59/2012 &CM No. 2396-97/2012 & 8036/2012

SURESH KUMAR Petitioner
Through Mr. A.P. S. Ahluwalia, Sr.
Advocate with Mr.S.S.
Ahluwalia, Adv.

versus

YUDHVEER PRASAD & ORS Respondent
Through Respondent No. 1 in person.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The impugned order is dated 30.11.2011; the eviction petition filed by the landlord Yudhveer Prashad seeking eviction of his tenant Suresh Kumar from the suit premises i.e. shop No. 7781, Aarakashan Road, Gali No. 3, Ram Nagar, Paharganj, New Delhi under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been decreed; the application seeking leave to defend had been declined.

2 Today an application has been filed on record wherein it is alleged that certain subsequent events have occurred during the

pendency of the petition; it is imperative to bring these facts before this Court; the said facts being that the eviction petition filed by the co-brother/co-landlord qua the shop No.7783, Aarakashan Road, Gali No. 3, Ram Nagar, Paharganj, New Delhi has since been ordered to be vacated by the Apex Court in terms of the order of the Apex Court dated 04.07.2011. Contention of the petitioner is that this is a subsequent fact which has to be brought to the notice of the Court. This application has been opposed. Contention of the respondent is that this is only one more delaying tactic on the part of the petitioner and this submission of the respondent has forceful force. The fact that the eviction petition filed by the other brother Bal Mukund for shop No. 7783 and the fact that it had been decreed and the Apex Court had also on 04.07.2011 directed that the suit premises shall be vacated by the tenant within a period of nine months was a fact which had in fact found mention even in the application seeking leave to defend filed by the tenant before the Additional Rent Controller (ARC); this is clear from the averments made in para 7; this application seeking leave to defend had been filed in September, 2011 and dismissal of the SLP on 04.07.2011 did find mention in this application seeking leave to defend. As such no new fact

has been brought to the notice of the Court; this application has been filed malafide and primarily with a view to delay the proceedings; it is accordingly dismissed.

3 Record shows that the present eviction petition has been filed by the landlord Yudhveer Prasad seeking eviction of his tenant on the ground of bonafide requirement. It has been detailed in the eviction petition that the petitioner Yudhveer Prasad along with his brother Bal Mukund are the joint owners of the aforementioned property. This fact has specifically been disclosed in the eviction petition. The present eviction petition (as noted supra) has been filed by Yudhveer Prasad alone; there is also no dispute to the proposition that one co-owner can by himself maintain an eviction petition under Section 14 (1)(e) of the DRCA; this proposition has also not been disputed. Grounds of eviction are contained in para 18 (a); the premises are required by the landlord himself and members of his family who are dependent upon him and there is no other reasonable suitable accommodation available with them. Eviction petition had accordingly been filed.

4 Leave to defend had been filed by the tenant. Vehement arguments had been addressed by the learned counsel for the tenant. His

contention is that the triable issue has arisen as there are other alternate accommodations available with the landlord. Attention has been drawn to para 7 wherein it has been stated that the shop No. 7780 situated in the same locality is also an accommodation which is available with the landlord and so also shop No. 7783 where a masala chakki is being run. In para 8 it has been contended that shops are also lying vacant in katra No. 7784, Gali No. 3, Ram Nagar, Delhi; all these facts have not been disclosed deliberately; the need of the petitioner is not bonafide.

5 The corresponding paras of the reply of the application seeking leave to defend have also been perused. There is no dispute to the fact that a shop No. 7783, Aarakashan Road is co-jointly owned by the present petitioner namely Yudhveer Prasad along with his brother Bal Mukund. The other brother Bal Mukund has filed an eviction petition qua shop No. 7783 in which the application seeking leave to defend filed by the tenant had been dismissed and the eviction petition had been decreed in favour of the landlord i.e. Bal Mukund. This order had been endorsed by the High Court on 01.04.2011. The appeal filed against the said order was disposed of by the Apex Court on 04.07.2011 wherein nine months time had been granted to the tenant to vacate the suit

premises. These facts have also been noted supra. There is no quarrel on this accommodation; admittedly this shop has been vacated and has fallen to the share of Bal Mukund who had pursued the eviction petition qua this part of the premises.

6 There is also no dispute that both these shops i.e. shops No. 7781 & 7783 are jointly owned by Bal Mukund and Yudhveer Prasad; Bal Mukund had filed the eviction petition for shop No. 7783; present shop is shop No. 7781 for which Yudhveer Prasad is pursuing eviction. Both the brothers are independent entities and the submission of the petitioner on this count that since shop No. 7783 has been got vacated in favour of Bal Mukund, the need of Yudhveer Prasad also stands satisfied is a mis-directed and mis-conceived submission. Both the brothers are having an independent status; both want to run their independent business from the aforementioned two shops and it has come on record that there is no other reasonable suitable accommodation available with them.

7 The site plan has also been perused. The contention of the petitioner that shop No. 7783 also has a store room behind it which can be used by the present petitioner namely Yudhveer Prasad is again a mis-conceived submission. The site plan filed on record by the landlord

has depicted the blue colour portions as the tenanted portions; the green colour portion is a store room behind shop No. 7783 and is in the service lane and is the only accommodation presently available with the present landlord. Shop No. 7781 is the suit premises which has been depicted in red colour and is in the tenancy of the present tenant namely Suresh Kumar. The green coloured store room which is behind shop No. 7783 is admittedly in the service lane and has been described as a 'store room'; there is no dispute to this. In the application seeking leave to defend, the contention of the tenant is that a masala chakki is being run from shop No. 7783; it is not his contention that shop No. 7783 which is shown as a 'store room' is in fact a shop. This submission cannot be raised now. This back portion of shop No. 7783 has clearly been depicted as a 'store' and at the cost of repetition, is in the service lane and not on the main road which cannot serve the purpose which a shop on the main road can do. It is needless to point out that the comparative potentiality of having a shop room on the main road of the market is certainly more than the shop situated in a lane.

8 The godown i.e. shop No. 7780 is also under a tenancy and this has in fact been admitted by the tenant before this Court himself; his

argument on this count is that admittedly eviction petition proceedings are pending against Kartar Singh (the tenant in premises No. 7780); his categorical submission is that he has since vacated the premises and attention has been drawn to the written statement filed by Kartar Singh in those proceedings (page 130 of the paper book). Admittedly this is an eviction petition filed by Bal Mukund against Kartar Singh which is yet pending; contention in the written statement (filed by Kartar Singh) is that he has vacated the suit premises; this is a matter which is yet to be adverted to and decided by a competent Court of law. This submission also does not find mention in the application filed by the tenant seeking leave to defend. In fact in the application for leave to defend contention is that the premises have been let out to one Nitin Goel; this submission is in fact contrary to the arguments now urged; the argument now urged is that this property has been vacated by Kartar Singh; the submission in the application seeking leave to defend is to the effect that after the vacation of the suit premises by Kartar Singh, it has been re-let to Nitin Goel; meaning thereby that these premises are admittedly not in the occupation of the landlord. As such the next submission on this score that an alternate reasonable suitable accommodation is available with

the landlord is clearly an incorrect submission.

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

10 The landlord is the best judge of her requirement; it is not for the tenant or the court to dictate terms as to how and in what manner he has to meet his needs for an accommodation. In Prativa Devi (Smt.) Vs. T.V. Krishnan reported in (1996)5SCC353 it was noted:-

“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.”

11 The landlord Yudhveer Prasad requires this shop for the purpose of running a business as he has no other alternate suitable accommodation; shop No. 7783 has been vacated in favour of his

brother and co-owner Bal Mukund; godown in shop No. 7780 is even as per the case of the tenant is in the tenancy of Nitin Goel.

12 There being no other reasonable suitable accommodation and all the ingredients of Section 14 (10(e) of the DRCA having been complied with, the impugned order dismissing the application seeking leave to defend and decreeing the eviction petition in favour of the landlord suffers from no infirmity.

13 Petition is without any merit; it is dismissed.

MAY 03, 2012
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INDERMEET KAUR, J