

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

% *Date of Judgment: 13.01.2012*

+ **R.C.REV. No.78/2011 & CM No.5585-86/2011**

MOHAN LAL GUPTA Petitioner
Through: Mr.Mukesh, Advocate.

Versus

SATISH CHAND SHARMA Respondent
Through: Dr.Anurag Kumar Aggarwal,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned before this Court is the order dated 08.2.2011 wherein the application seeking leave to defend filed by the petitioner in a pending eviction petition under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the 'DRCA') had been dismissed.

2. Record shows that the present eviction petition has been filed by the landlord Satish Chand Sharma seeking eviction of his tenant Mohan Lal Gupta from a shop measuring 9'.3" x12'.8" sq.

feet on the ground floor of the premises bearing No.F-2/7, Krishna Nagar, Delhi (hereinafter referred to as the 'tenanted property') which had been rented out on a monthly rental of ₹60/- per month; this was on the basis of a written document. The landlord-tenant relationship between the parties is not disputed. It is not in dispute that the landlord is also the owner of the suit property and is entitled to maintain the eviction petition. The only ground which has been urged and argued before this Court is that the bonafide need of the petitioner has not been established. Contention is that along with the eviction petition the petitioner has filed a project report to substantiate his submission that he wants to carry on a business of readymade garments from the proposed show room to be set up in the suit premises. Contention is that in this project report the area of the proposed show room has been described as 407 sq. feet whereas the shop in question with the petitioner is only measuring 112 sq. feet and as such this project report filed by the petitioner is liable to be thrown out; moreover the expertise of the petitioner to start a business of readymade garments at the fag end of his life when admittedly he proposes to start this business after his age of retirement which makes him a senior citizen has not been established is also a

submission which is worthy of little credit. Contention of the petitioner is that it is impossible to imagine that a service man who has spent all his life in government service would have the necessary training or skill to start or carry on such a business; this was a triable issue which has been declined by the trial court; as such the impugned order suffers from an illegality and it is liable to be set aside.

3. Reply filed by the landlord to the corresponding paras of this averments made in the application for leave to defend has also been perused. This reply read along with the eviction petition as also site plan clearly show that the shop which is the disputed premises is a shop opening out on to the main road of Krishna Nagar which is located in the area as aforesaid. There is another shop on its left side and in between there is an entrance gate which provides access to the back portion of the property which is the residence of the landlord and his family; this accommodation comprises of two bed rooms and a lobby with a kitchen and toilet. Admittedly this portion is being used for residence of the landlord and being in the service lane having no access to the main road, it cannot be used for any other purpose moreover this is also not the contention of the tenant. The

contention of the tenant as noted supra is that the landlord has

filed project report which is not substantiated in terms of its averments as it is difficult to imagine that a retired government personnel can start a business after his retirement. This is the main gist of the argument urged before this Court.

4. As noted supra the site plan has depicted the disputed premises in red colour and alongside there is an entrance which provides an access to the back side of property which is the residence of the landlord; alongside there is another shop which is also tenanted out for which also an eviction petition has been filed; learned counsel for the respondent submits that the proposal and the project report has been based on a show room to be set up after both the shops are vacated; this project report further clearly states that the items for sale proposed are ladies, garments and kids garments and the total cost of the project has been assessed at ₹16.73 lakhs for which the petitioner has taken a term loan of ₹10 lakhs from bank and ₹ 6.73 lakhs is the promoter's contribution; which is the finance available with him; he wishes to carry out this business with his daughter-in-law who has expertise in this area whereas the petitioner (in terms of the project report) has a rich expertise for starting, sustaining and growing a general business like the present. This document

i.e.the project report is also on record to substantiate this submission. The landlord is also present in person. He had retired approximately five years ago and appears to be physically fit to put this project into action; his submission is that he wishes to have an active life in his post retirement years with the assistance of his daughter-in-law which will not only occupy his hours of life but also provide him a steady income which would be a satisfying and fruitful experience. It was in these circumstances that the trial court had note that the landlord has been able to establish a bonafide need from himself. The argument that the project report filed by the landlord being a false document which in turn has raised triable issue is an argument without any merit.

5. In 2009(2) RCR 455 titled as Ram Babu Agarwal vs. Jay kishan Das, the Apex Court observed as under:-

“However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new

business, and sometimes they are successful in the new business also."

6. In Sait Nagjee Purushotham and Co. Ltd. v. Vimalabai Prabhulal and Ors. reported in 2005 8 SCC 252; the Apex Court observed:

"It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business."

7. Reliance by the learned counsel for the petitioner on the judgment of Jatinder Singh Nandra Vs. Sarita Rani reported in 2011 (124) DRJ 574 is misplaced. There is no dispute to the ratio that if a triable issue has been raised by a tenant leave to defend should be granted and at that stage if the tenant is able to establish a strong prima facie case which would non suit the landlord leave to defend should be granted. However, the converse is also true if that no triable issue is raised and the defence sought to be raised by the tenant is moonshine and sham the court should not in routine manner grant leave to defend; the very purpose and import of the summary procedure contained in Section 25B of the DRCA would be defeated.

8. Impugned order decreeing the eviction petition thus suffers from no infirmity.

9. Dismissed.

INDERMEET KAUR, J

JANUARY 13, 2012

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