

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

+ RC. REV. 116/2012

Date of Decision:06.08.2012

ABDUL QADIR

.... PETITIONER

Through: Mr. O.N. Sharma with Jahawar
Goyal, Advocates

Versus

SMT. PRAKASH RANI BHALLA

.....RESPONDENT

Through: Mr. Sudhir Nandrajog , Sr.Adv
with Siddhant Bambha , Advocate

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present rent revision petition has been filed under section 25B(8) of Delhi Rent Control Act (hereinafter referred as "Act") assailing the judgment/order dated 14.02.2012 passed by Ld. Additional Rent Controller (ARC) in eviction petition bearing no.E-112/2011, whereby the application filed by the petitioner seeking leave to defend, was dismissed.

2. The brief facts are that the respondent has filed the eviction petition dated 19.10.2011 under section 14(1) (e) read with Section 25-B of Act stating herself to be landlord and owner of the property bearing No. X-3829, Gali No. 12, Shanti Mohalla, Gandhi Nagar, Delhi-31 (hereinafter

referred to as 'the suit property'). The petitioner herein is the tenant in respect of one shop situated on the ground floor of the suit property (hereinafter referred to as 'tenanted shop'). It was stated by the respondent that her family comprises of her son, daughter-in-law and a grandson aged about 12 years. It was averred that the family of the respondent resides at the back portion of the suit property and there is no additional accommodation for their residence except the back portion of the suit property. The respondent averred that she is carrying her business of export under the name and style of M/s. Bhalla Overseas from the adjoining shop marked as point A in the site plan. It was further averred that her son is carrying on his business in the name and style of M/s. Prakash Traders from the shop marked at point B in the site plan. It was submitted that her daughter in law namely Ms Pooja Bhalla is carrying on her business from shop bearing No. X-3850, Street No. 13, Main Road, Shanti Mohalla, Gandhi Nagar, Delhi. The respondent submitted that she requires the tenanted shop to expand her business as the space available with her in shop 'A' is insufficient to stock her products. Hence the tenanted shop is stated to be required for meeting her bonafide requirement of commercial need, as she does not have any other reasonably suitable commercial property to stock her products near her present place of business.

3. Upon receiving the summons, an application for leave to contest was filed by the petitioner/tenant on the ground that requirement projected by the respondent was not bonafide. It was averred that the respondent and her son approached the petitioner to vacate the tenanted shop. It was further averred that one stone of the roof of tenanted shop

was broken by the respondent in collusion with her son, due to which the petitioner filed a suit for injunction as well as a petition under section 44 of the Act. It was averred that the respondent had filed the eviction petition with malafide intention and had not filed any document in regard to taking any measures to repair the tenanted shop. On all these grounds, the petitioner stated having established triable issues, and thus entitled to grant of leave to defend.

4. The respondent filed reply of leave to defend application reiterating that the pleas taken in leave to contest do not raise any triable issue.

5. The impugned order declining leave to contest and granting eviction decree to the respondent has been challenged in the present proceedings. The learned counsel for the petitioner submitted that the respondent herself has stated in her eviction petition that except the shop in question, the entire suit premises is in her actual possession. It was submitted that the need of the respondent was not bonafide, but she has malafide and dishonest intentions. It was submitted that the respondent had intentionally caused damage to the tenanted shop to pressurize the petitioner to vacate the same. It was also submitted that the respondent is the owner of three shops in property bearing No. X-3850 in Street No. 13, Main Road, Shanti Mohalla, Gandhi Nagar, Delhi. It was submitted that the respondent is a lady aged about 75 years, and therefore, not in a position to expand her business. Hence, the tenanted shop was alleged to be not required for the bonafide commercial requirement.

6. On the other hand, the learned counsel for the respondent has urged that learned ARC requires no interference which has been passed after taking into consideration the bonafide requirement of the respondent for

the tenanted shop in order to enable her to stock her products and expand her business. It was submitted that petitioner has not denied the site plan filed by the respondent. It was further submitted that petitioner has not denied that the respondent and her son are carrying businesses from the adjoining shops.

7. Heard the Counsel for both the parties and perused the material available on record.

8. On the perusal of record, it is evident that Ld. ARC has opined that the petitioner has failed to raise any triable issue in leave to defend application as no material was brought on record to show that the requirement projected by the respondent was not bonafide. Ld. ARC is seen to have dealt with all the ingredients of section 14(1)(e) of the Act.

9. While dismissing the application, the Ld. ARC observed that petitioner had raised only bald pleas with respect to the other reasonably suitable commercial accommodation; that the tenanted shop is situated adjacent to the present shop of the respondent; that the size of present shop is not enough to stock the products. He observed that the tenanted shop being adjacent to the present shop of the respondent, is most suitable to stock the products. He also observed that the respondent being aged 75 years cannot travel to oversee the warehouse. In ***Viran Wali vs. Kuldeep Rai Kochhar, 2010(2)RCR (Rent)571*** it was held that landlord has all the rights and choices to start his business in premises more suitable and convenient to him. Tenant cannot dictate landlord as to how and in what

manner he should use his property. Moreover, it is well settled law that it is the landlord's prerogative as to in which location he prefers to run and expand the business and law should not and cannot prevent such preference by a landlord in order to meet his bonafide requirement.

10. The plea of the petitioner that the respondent is in possession of property bearing no. X-3850 , Street no. 13, Main Road, Shanti Mohalla, Gandhi Nagar, Delhi-31, is without any basis as petitioner had failed to bring on record any evidence to substantiate this claim. This fact was neither averred in the leave to contest application nor urged before ARC. In any case, it is submitted by the respondent that this premises is used by her daughter-in-law for her businesses and being away from the suit premises, is not suitable for her. The plea of petitioner that the respondent is above the age of 75 years and cannot continue her business for long period, is untenable. In the present day life, there is no age of retirement. It is not disputed that the respondent is successfully carrying her business independently. In ***Sat Prakash Chaudhary vs. Kewal Kishan Malhotra 2011(1) RCR 340***, it was held by Punjab and Haryana High Court that landlord in the evening of his life can express a desire to settle down in demised premises. Apart, from this no Court can stop an individual to start or expand his business. Therefore, the above contention of the petitioner, is without any basis, and thus, liable to be rejected.

11. Here, it must be kept in mind that the powers of this Court under Section 25-B(8) are not as wide as those of Appellate Court, and in case

it is found that the impugned order is according to law and does not suffer from any jurisdictional error, this court must refrain from interfering with the same. The power under this provision is limited and supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion which was not possible, based on the material produced, should this Court interfere in the orders passed by the Rent Controller. In ***Sarla Ahuja vs. United India Insurance Co. Ltd. AIR 1999 SC 100*** the Apex Court has held as under:

“The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is "according to the law." In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

12. It is well settled legal principal that leave to defend is granted to the tenant in case of any triable issue raised before the trial court, which can be adjudicated by consideration of additional evidence. The whole purpose and import of summary procedure under Section 25B of the Act would otherwise be defeated. In ***Precision Steel & Engineering Works & Anr. Vs. Prem Devi Niranjana Deva Tayal (1982) 3 SCC 2870***, 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. In the present case, the petitioner has failed to raise any triable issue that would merit grant of leave to defend the eviction petition. Having no iota of doubt regarding the bonafide requirement of the respondent, it would be suffice to say that the order passed by the Ld. ARC, cannot be faulted with.

13. In the light of the facts and circumstances of the case, I am of the considered opinion that the order of the ld. ARC is based on sound reasoning and correct appreciation of material available on record, and deserves no interference.

14. Consequently, the petition stands dismissed. The parties to bear their own costs.

M.L. MEHTA, J

AUGUST 06, 2012

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