

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

+ **RC.REV.135/2011 and CM No. 8402/2011**

Date of Decision: 23.07.2012

BANSI LAL

..... Petitioner

Through: Mr. Vinod Malhotra with Mr.
Nikhil Malhotra, Advocates.

Versus

ASHOK BHARDWAJ

..... Respondents

Through: Ms. Kusum Sanhi, Proxy
Counsel.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

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 10.12.2010 passed by Ld. Additional Rent Controller (ARC) in eviction petition bearing no.E-118/09, whereby the application filed by the petitioner seeking leave to defend, was dismissed.

2. The brief facts of the case are that the respondent being the owner of a shop measuring 7'x9' in property bearing no. F-9, Sudershan Park, Tyagi Market, New Delhi (hereinafter referred as 'tenanted premises') filed an eviction petition dated 4.03.2009 on the ground of his bonafide requirement. Respondent stated that his family consists of a married daughter, son-in-law and two grandsons. It was stated by the respondent that his daughter with her family lives 3-4 days with him. It was stated

in the eviction petition that accommodation available with the respondent is one drawing cum dining, one bed room, bathroom, kitchen, one store at the ground floor and one room with attached bath and another room at the first floor of the property.

3. It was stated by the respondent that he is a practicing lawyer at all the Courts, and prepares his cases / briefs at his residence as he does not have chamber in any Court and he has no office, library and consultation room at his residence. Respondent stated that he is a religious man and performs pooja in his bedroom and does not have a separate pooja room at his residence. It was further stated that he also needs a separate guestroom and garage. Hence, the property is stated to be required for meeting his bonafide residential and professional needs and for residence of his family members as he does not have any other reasonably suitable residential accommodation.

4. Upon receiving summons, the application for leave to contest was filed by the petitioner/tenant on the ground that the requirement projected by the respondent was not bonafide as respondent has numerous properties, both commercial and residential in Delhi. It was averred by the petitioner that he has only one small business and has no other source of income, except the business carried out from the tenanted premises. It was averred that petitioner was having fear psychosis of ejectment as respondent deliberately refused to accept the rent from last eight years. It was alleged that respondent has a chamber in Tis Hazari Courts and getting benefit of being an advocate as the petitioner is illiterate, earning his livelihood from tenanted premises. It was further averred that respondent has recently raised the construction

for additional accommodation. It was contented by the petitioner that the daughter of respondent after her marriage has settled in Switzerland and the wife of the respondent has also expired. On all these grounds the petitioner stated having established triable issues and thus, entitled to grant of leave to defend.

5. The respondent filed reply to leave to defend application stating that he has no other property in Delhi as well as outside Delhi except the present suit property. It was contented by the respondent that petitioner is a wealthy businessman, who runs a factory and boutique. It was averred that petitioner also has his residence bearing no. F-34, Sudershan Park, Near Tyagi Market, Delhi near the tenanted premises, surrounded by commercial shops. It was stated that respondent was sharing chamber of Sh. Kuldeep Sherawat , advocate as his contact place. Thereafter, petitioner filed rejoinder denying almost all the averments of the respondent, and prayed for leave to contest.

6. The order of granting eviction decree to the respondent has been challenged in the present proceedings by the learned counsel for the petitioner on the ground that Ld. ARC has committed grave illegality by not considering the material on record as the respondent himself has stated in eviction petition that except the shop in question, the entire property is in his exclusive possession. It was also challenged on ground that the need of respondent was not bonafide as respondent is the only member of family and his daughter with her family visit him very often, being as she is well settled in Switzerland. It was also submitted that respondent cannot run his office from the tenanted premises of small in

size and situated in a very congested commercial market. Hence, suit premises is alleged to be not suitable for setting an office.

7. On the other hand, the learned counsel for the respondent has urged that the order of Ld. ARC requires no interference which has been passed after taking into consideration the bonafide requirement of the respondent for the tenanted premises in order to enable him to run his office. It has been further submitted that it was specifically urged in the eviction petition filed that shop is required for running the office. Hence, the fact that the possession of entire property is with the respondent does not adversely impact his case as other portion of property is meant for his residential purpose. It has been further pointed out by the learned counsel for the respondent that it has been admitted by the petitioner himself before this Court also that the tenanted premises is commercial in nature.

8. In support of his contentions Ld. Counsel for respondent has cited a decision of this Court ***ADARSH ELECTRICALS & ORS. vs. DINESH DAYAL , 173 (2010) DLT 518.***

9. Heard the rival submissions and perused the material on record.

10. Ld. ARC is seen to have very minutely dealt with issues raised by the petitioner. While dismissing the application Ld. ARC has observed that petitioner has admitted himself as tenant. The ownership of the respondent was also not denied. Moreover, on perusal it is evident that it was stated by the petitioner that he was tendering the rent to the respondent. The petitioner had only raised bald pleas with respect to the other reasonably suitable accommodation, but nothing was brought on

record to substantiate his claims that respondent is the owner of any other property in Delhi or outside Delhi.

11. The thrust of the arguments advanced by the learned counsel for the petitioner was that the respondent cannot run his office from the tenanted premises as the space is very small to run the advocate's office which needs a library, clients waiting area etc. It is well settled law that neither the Court nor tenant can dictate the landlord on the utilization of the tenanted premises. It is the landlord's prerogative as to in which manner he wants to utilize his own property and law should not and cannot prevent such utilization by a landlord in order to meet his bonafide requirement. While deciding the question of bonafide requirement of the respondent, it is futile and irrelevant to make an inquiry as to how else the respondent could have adjusted himself. The concept of bonafide necessity should be meaningfully construed so as to make the relief granted to respondent/landlord real and practical.

12. The petitioner has further taken up the hollow plea that the respondent's daughter is settled in Switzerland and visits him oftenly and so the respondent can start his office from the first floor of the property. Firstly, this plea strengthens the case of the respondent as it is admitted by the petitioner that daughter visits oftenly with her family. The contention of the petitioner stating that daughter of the respondent is settled in Switzerland, is unsustainable as it is evident from the material available on record that she is very much settled in Delhi and her husband is working at Gurgaon. Therefore, the above contention of petitioner is without any basis as respondent has to spare one guest room for her daughter and her family members.

13. Upon examination of judgment **ADARSH ELECTRICALS & ORS. VS. DINESH DAYAL(supra)** ,it may be said that it is not the 'mere desire' of the respondent to get the premises vacated, but he needs the same for his professional office. The fact of his being a practicing advocate was also not denied by the petitioner. Therefore, the need of the respondent for meeting his professional requirement is bonafide.

14. 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 suffice to say that the order passed by the Ld. ARC cannot be faulted with. The power of this Court under Section 25-B (8) of the Act is limited and supervisory in nature.

15. 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.

16. The petition stands dismissed. The parties to bear their own cost. The petitioner is directed to vacate the tenanted premises within six months from today.

M.L. MEHTA, J.

JULY 23, 2012

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