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THE HIGH COURT OF DELHI AT NEW DELHI

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R.C.REV. 113/2011

Date of Decision: 23.07.2012

PARMANAND

..... Petitioner

Through: Mr.Praveen Kr.Singh, Mr.N.Kumar, Advs.

Versus

..... Respondents

SMT.SUMAN SHARMA & ORS.

Through: Mr.Manish Kohli, Mr. Manjit Pathak, Advs.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present rent revision petition has been filed under Section 25-B(8) of the Delhi Rent Control Act (herein after referred to as DRCA) challenging the order dated 22.12.2010 passed by the Id. Additional Rent Controller (ARC) whereby the application filed by the petitioner seeking leave to defend eviction petition no. E-196/08 was dismissed.
2. The brief facts of the case are that the respondents being the owners and landlord of property bearing no. K-13, Navin Shahdra, Delhi-110032(suit premises) filed an eviction petition dated 19.08.2008 against the petitioner(tenant) on the ground of bona fide requirement of the two shops situated at the ground floor of the suit premises. Respondent no.1 Suman Sharma along with her family which comprises of two sons, a daughter in law and a grandson resides at the ground floor of the suit premises. In the eviction petition, it was stated by respondent no. 1 that her elder son is working as an Accounts Executive and intends to open up his own business

in the shops in possession of the petitioner. It was further stated that there is no other suitable commercial accommodation available with the respondent that could meet these requirements. An affidavit dated 10.07.2012 has been filed by respondent no. 2 before this Court submitting that her elder son who was employed at the time of filing the eviction petition, lost his job around January 2009 and since then is unemployed.

3. The application for leave to contest the eviction petition was filed by the petitioner on the ground that the requirement as projected by the respondents was not bonafide and the eviction petition had been filed in order to let out the suit shops at a higher rent. It was also averred by the petitioner that a godown situated on the rear side of the suit shops, let out by the respondents to another tenant, was lying vacant from past four years, but the respondents did not made any effort to gain its possession to meet their alleged requirement. The ownership of the respondents qua the suit shops was also disputed by the petitioner. Rejecting the contentions, the Id. ARC opined that the petitioner failed to raise any triable issue that would non-suit the respondents and he passed the eviction order dated 04.02.2010. In the meantime, the respondents also got an eviction decree in respect of the abovementioned godown which was in possession of another tenant. By the virtue of a compromise affected between the respondents and the tenant, it was agreed that the vacant and peaceful possession of the godown would be handed over to the respondents on or before 30th June 2011. Taking note of the said eviction decree, the petitioner filed revision against the order dated 04.02.2010. Vide order dated 05.05.2010, this Court remanded the matter back to the Id. ARC for consideration and to give its finding on the issue. The Id. ARC considered the application for leave to defend filed by the petitioner in the light of the fact that the respondents had obtained the possession of a godown in the suit premises. The ARC arrived at the same conclusion. Hence, the present petition.

4. The order granting eviction decree to the respondents has been challenged in the present proceedings by the learned counsel for the petitioner on the ground that Id. ARC has committed grave illegality by not considering the fact of the availability of godown to the respondents on the ground floor of the premises. Reliance has been placed on *Seshambal (dead) through LR's vs. Chelur Corporation JT2010 (2) SC260*. It has been further averred that the respondents have not shown any bona fide requirement of the suit shops and the area of the godown is more than the area of the suit shops. It has been submitted that the respondents have no business background and do not have any source of income and hence cannot start up a business in the suit shop.
5. On the other hand, the learned counsel for the respondents has urged that the order of the Id. ARC requires no interference which has been passed after taking into consideration the bonafide requirement of the respondents for the suit shops in order to enable her son to start a business who is currently unemployed. It has been further submitted that it was specifically urged in the eviction petition filed with respect to the suit shops that the two shops are required for commercial purpose by the elder son of respondent no. 1, whereas in the separate eviction petition filed with respect to the godown, it was submitted that the said godown is required by the younger son of respondent no. 1. Hence, the fact that the possession of the godown now rests with the respondents does not adversely impact their case as the godown as well as the suit shops were required by the respondents all along. It has been further argued that the power of this Court under Section 25-B (8) of DRCA is supervisory in nature and unless the order of the Rent Controller amounts to miscarriage of justice, this Court must be hesitant to upset such order. Reliance has been placed on *Sarla Ahuja vs. United India Insurance Co. Ltd. AIR 1999 SC 100*. Lastly, it has been urged that no triable issues were raised by the petitioner that would merit the grant of leave to defend the eviction petition to the petitioner.

6. Heard the rival submissions and perused the record.
7. The thrust of the arguments advanced by the learned counsel for the petitioner was that the possession of the godown in the suit premises has effectively nullified the case set up by the respondents as their projected requirement could now be easily met and hence the eviction order must be set aside. It would be pertinent to note here that this was essentially the issue which was taken up by the Id.ARC after the directions given by this Court. In the well reasoned order it was pointed out by the Id. ARC that in clause (v) para 19 of the eviction petition, it was made clear by the respondents that in view of the requirement of commercial property of two sons of the respondents, another eviction petition in respect of the godown would be filed by them. This shows that it was never concealed by the respondents that they would be seeking the possession of the godown as well to meet their requirements. I cannot fathom as to how gaining possession of the said godown, can in any way prevent the respondents from obtaining possession of the suit shops. It is quite natural that in order to help her two sons, who are currently unemployed, respondent no. 1 wants to utilize the commercial property which she owns. The tenant has no right to dictate the terms and conditions to the landlord as to how she must use the commercial property under her ownership. It is essentially in trying times like the one being faced by the respondents, that a person falls back upon the resources that he possesses; in this case the resource being commercial property. It is the landlord's prerogative as to in which manner he wants to use his 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 landlord, it is futile and irrelevant to make an inquiry as to how else the landlord could have adjusted himself. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. ***In Ragavendra Kumar v. Firm Prem Machinery & Co***

[2000]1SCR77, it was held that it is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter." In *Labhu Lal Vs. Sandhya Gupta 2011(1) RCR,(Rent) 231 (Delhi)*, it has been held by this Court that the children are very much dependant on the landlord for the purpose of setting up their business and such a requirement is a bonafide one. The right of the landlord for possession of his property for setting up a business for his son has been also recognized by the Apex Court in *Ram Babu Aggarwal Vs. Jay Kishan Das 2009(2) RCR 455*. The respondents have amply proved their bonafide requirement of the suit shops as well as the godown and the petitioner cannot derive any benefit by taking the plea that the godown alone is sufficient to meet the requirement of the respondents.

8. The petitioner has further taken up the hollow plea that the respondents have no business background and do not have any source of income and hence cannot start up a business in the suit shops. Firstly, this plea strengthens the case of respondents as opposed to the petitioner. Lack of income is precisely the reason why the respondents are in need of the suit shops. The petitioner has himself admitted the financial hardships faced by the family of respondent no. 1 by way of this contention. Secondly, lack of business experience is not a valid reason for brushing aside the plea of bonafide requirements of the respondents. There is no bar on starting up a business by people with no prior experience. The respondents are not bound to disclose the source of investment or any other details of their proposed business endeavors. In *Ram Babu Aggarwal v. Jay Kishan Das (supra)*, the Supreme Court observed thus:

"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.”

9. In ***Seshambal (dead) through LR's vs. Chelur Corporation (supra)***, the facts were entirely distinguishable from the present case. In this case, the eviction petition was filed by the owners for meeting their residential requirements. The Apex Court had observed that on the death of the petitioners in the original eviction petition, the sole legal heirs were married daughters, settled at their matrimonial homes. Due to this subsequent event, the eviction order was set aside. There being no similarity in the facts of both the cases, the case relied upon by the petitioner is not applicable in the current proceedings.
10. It is settled legal principle that leave to defend is granted to the tenant in case of any triable issue raised before the trial Court, which needs to be adjudicated by consideration of additional evidence. The whole purpose and import of summary procedure under Section 25-B of the DRCA would otherwise be defeated. In ***Precision Steel & Engineering Works & Anr. Vs. Prem Devi Niranjana Deva Tayal (1982) 3 SCC 270***, 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 respondents and the futility of the pleas taken up for the second time by the petitioner, it would suffice to say that the order passed by the Id.ARC cannot be faulted with. The power of this Court under Section 25 –B (8) DRCA 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.(supra)***, the Apex Court has held

“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.”

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

12. It is crucial to note here that the petitioner has engaged in delaying tactics and attempted to rake up the issue which was considered in detail vide the impugned order after the specific directions passed by this Court. Such circumvention of the legal procedure is one of the reasons behind rising backlog of cases and denial of opportunity to be heard to the righteous and needy litigants. This has led to wasting of the precious time of the Court and prevented the respondents from utilizing the suit properties for meeting their genuine and urgent

needs. In view of this fact, I am of the opinion that ends of justice would be met by imposing a cost of Rs. 5000/- on the petitioner. The petitioner is directed to hand over the vacant and peaceful possession to the respondents within one month from the date of passing of this order. Petition is accordingly disposed off.

M.L. MEHTA, J.

JULY 23, 2012/ss