

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

+ R.C.REV. 251/2011

Date of Decision: 13.09.2012

HARSH SABHARWAL

.....Petitioner

Through: Mr. S.N. Choudhary, Adv.

Versus

SHEETAL PRASAD JAIN

.....Respondent

Through: Mr. S.S. Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition under Section 25B(8) of Delhi Rent Control Act (for short 'the Act') impugns order dated 21.01.2011 whereby leave to defend application filed by the petitioner herein in the eviction petition, was dismissed by the Additional Rent Controller (ARC), Central.

2. The respondent had filed a petition for eviction against the petitioner and his mother and sisters for seeking eviction from the tenanted premises comprising of a shop on the ground floor of premises No. 7/33, Ansari Road, Darya Ganj.

3. The tenancy was initially created in favour of petitioner predecessor Virender Kumar, the sole proprietor M/s Narang Scientific Electronic Equipments. Their eviction was sought on the

ground of bonafide requirement of the tenanted shop for the office of Sushil Kumar Jain S/o of the respondent/landlord. The case that was set up by the respondent/ landlord is that he has three sons, and his son Sushil Kumar did not have any office space in the suit premises or anywhere else, but is sharing with his younger brother Sunil in a rented premises of Yogesh Kumar Jain. Sushil is carrying on the business under the name and style of M/s. Arihant Udyog and Sunil under the name and style of M/s. Paper Conductors. They both have their separate businesses. A site plan of the ground floor of the suit premises was annexed with the eviction petition, showing different portions of the ground floor of the premises as A, B, C, D and E and two rooms as commercial rooms. It is averred that Sushil is having his godown in portion E, which is adjoining the tenanted shop. Room shown by Mark A is stated to be in possession of his granddaughter-in-law Bani, who is doing her business in the name and style of Vikalp Events. The shops marked as B, C and E are stated to be in occupation of other tenants. It is also averred that all the members of the family of the respondent are having their offices within the compound of suit premises 7/33, Ansari Road, Darya Ganj, Delhi which solves their problems. It is averred that Sushil would establish his independent office in the tenanted shop, which is within the compound of the main premises. Predicated on all these averments, the respondent sought eviction of the tenanted shop, alleging the same to be bonafide required by him for the office of his son Sushil. The petitioner sought leave to defend which was

declined by the learned ARC vide the impugned order. The order of ARC is assailed by the petitioners on various grounds.

4. I have heard the learned counsel for the petitioner and respondent and perused the records, including the impugned judgment.

5. Since it was the contention of learned counsel for the respondent that this Court would not interfere in the finding of fact recorded by the ARC dismissing the leave to defend application of the petitioner, I would like to reiterate the law on the point which has been laid down by various judicial pronouncements and has been reiterated by the Supreme Court in **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222** as under:

“The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law". For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the

material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion from the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to Sub-section (8) of Section 25B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law. [See; Sarla Ahuja v. [United India Insurance Co. Ltd.](#) [MANU/SC/0665/1998](#) : AIR1999SC100 and Ram Narain Arora v. [Asha Rani and Ors.](#)”

6. Learned counsel for the petitioner has assailed the impugned order on the grounds that the petitioner has made triable issues, but the learned ARC has over-looked them and not dealt with them. The submissions of the leaned counsel are that both Sushil Kumar and Sunil have their independent manufacturing industries at Tunda Nagar and Bawana Industrial Area, which the respondent has concealed to disclose in the petition. They both have their respective offices there and do not have any office or business activity in any portion of the suit premises. The accommodation, where they are alleged to be having their offices, does not belong to Yogesh Kumar Jain, who is none else but, the brother of the respondent. Referring to the leave to defend application, he also submits that Sushil is not having any godown in room mark E, but the same is lying vacant. Similarly, with regard to room mark A, he submits that this is also lying vacant and no business activity is being carried by the respondent's daughter in law Bani. He,

however, admits that shops mark C and D are in occupation of the tenants. He submits that the respondent and his sons are using the suit premises only for the purpose of sitting occasionally, and not running any office therein, no employee or visitor or customer ever seen there. It is also submitted that the respondent has six rooms accommodation on the first floor, above the shops A to E, which is a declared commercial space and is lying vacant and can be used by respondent, if needed by them, for office purposes. It is next submitted that the respondent and his sons have separate independent houses at B.M. Rohatgi Apartments, Civil Lines, Delhi, where he is residing with all family members, including his sons and their families and, this also has been concealed by him in the petition.

7. The respondent chose to file reply to the leave to defend application and stated that all the family members of his three sons are living on the first floor of the suit premises, and not in their flats at B.M. Rohatgi Apartments. With regard to the space at Tunda Nagar and Bawana Industrial, it is alleged that these are manufacturing units or industries and there exists no office, nor any can be set up there in those premises. The first floor of the suit premises is alleged to be meant for residential purpose only.

8. The learned ARC declined leave to defend to the petitioner, observing that shops shown as Mark A, B and E are in use and occupation and the same are not lying vacant as alleged by the

petitioner. With regard to the six room accommodation on the first floor alleged to be lying vacant and usable for commercial activities, he believed the version of the respondent that he along with his family was residing therein. With regard to the plea of the availability of the offices in the factory premises of the sons of the respondent, the ARC observed that these are located in industrial areas and are not fit for running offices. Believing the version of the respondent that his sons Sunil and Sushil are having their offices in accommodation under the tenancy of Yogesh Kumar Jain, he recorded the said accommodation to be insufficient for their office needs. He also accepted the version of the respondent that his granddaughter in law Bani was running her business in the name and style of Vikalp Events in shop mark A and his son Sushil was having his godown in shop mark E.

9. As is noted above, ordinarily this Court under revisional power does not interfere with the findings recorded by the ARC, but, having gone through the entire material available on record, I am outrightly of the view that the learned ARC has erred in disallowing the leave to defend application to the petitioner. The law with regard to considerations of leave to defend application has been reiterated by the Supreme Court in the case of **Inderjeet Kaur Vs. Nirpal Singh, JT 2001 (1) SC 308** and which can be reproduced as under for better understanding:

“A landlord, who bona fiddly requires a premises for his residence and occupation should not suffer for long waiting for eviction of a tenant. At the same time, a tenant cannot be thrown out from a premises summarily even though prima facie he is able to say that the claim of the landlord is not bona fide or untenable and as such not entitled to obtain an order of eviction. Hence the approach has to be cautious and judicious in granting or refusing leave to defend to a tenant to contest an eviction petition within the broad scheme of Chapter IIIA and in particular having regard to the clear terms and language of Section 25B(5).

With this background, we now turn to the facts of the case in hand. It is clear from the reading of the order of the Addl. Rent Controller that he has taken pains to write an elaborate order as if he was writing an order after a full-dressed trial of eviction petition he has considered merits of the respective contentions at the stage of granting leave to defend under Section 25B(5) without keeping in mind the scope of the provisions and statutory duty cast on him. He exceeded the jurisdiction vested in him in refusing leave to defend to the appellant. It appears to us that he did not focus his attention to the scope and content of Section 25B(5). Having regard to the facts stated and grounds raised in the affidavit filed by the appellant seeking leave to defend which we have already narrated above, it is not possible to take a view that no triable issue arose for consideration. The facts stated in the affidavit of the appellant in support of his application seeking leave to defend prima facie do disclose that the respondent would be

disentitled to obtain an order for the recovery of possession of the premises from the appellant particularly when other cases are pending between the parties and defence does not appear to be frivolous or untenable on the face of it. The Addl. Rent Controller has acted with material irregularity and committed a manifest error in accepting the case of the respondent-landlord when the facts were seriously disputed and the correctness or otherwise of the documents required to be examined. Whether the suit premises was used for residential-cum-commercial purposes from the inception and whether the respondent and his son and other members of the family are permanently and comfortably settled in U.K. and whether the requirement of the premises by the respondent was bona fide, are the matters which could not be adjudicated as has been done by the Addl. Rent Controller at the stage of dealing with the application to grant leave to defend. In this view of the matter, we have no hesitation to say that the order passed by the Addl. Rent Controller refusing leave to defend to the appellant cannot be sustained. Unfortunately, the High Court also has affirmed it without taking into consideration the correct legal position indicated above having regard to the facts of the case. We are of the view that the Addl. Rent Controller and the High Court both were in error in refusing to grant leave to the appellant to contest the eviction petition.”

10. In the instant case it could be noticed that eviction was sought primarily for the need of office for the son Sushil, who according to the respondent is sharing his office with his younger brother Sunil,

in a tenanted premises owned by Yogesh Kumar Jain. Though, a receipt issued by Yogesh Kumar Jain in the name of respondent is placed on record, but much reliance cannot be placed on this at this stage as it is shown to be issued on 01.03.2008 and is for the period starting from April 2007 to March 2010 and, also in view of the fact of the same being issued in his name by none else, but his brother Yogesh Jain. The petitioner has categorically alleged this to be a forged, fabricated and manipulated document to show paucity of accommodation. In any case, the petitioner has raised a triable issue whether the respondent or his sons are having any commercial or office activities in any portion of the suit premises. Undisputedly, both the sons of the respondent are having their manufacturing units at Tunda Nagar and Bawan Industrial Area. It is not that in all cases, the offices office cannot be set up within the factory premises. It all depends upon the nature of manufacturing units/activities. It is a common knowledge that some of the manufacturing activities do essentially require to have office set ups within the factory premises. This is nowhere the case of the respondent that the nature of the activities being carried by his sons cannot permit to have offices there. Determination of this fact is essential in the backdrop of the assertion of the petitioner that there is no commercial or official activity being carried out by the respondent or his sons in any portion of the suit premises and that they are visiting there for sitting only.

11. With regard to the accommodation that is available with the respondent in the suit premises, also, the petitioner has raised triable issues by asserting that the entire first floor is lying vacant and if need be, can be used by the respondent and his sons for office purposes. In this regard, the case of the respondent is that he and the families of his three sons are residing on the first floor of this premises. This has been outrightly believed by the ARC, based on the electricity bills and also photocopy of election identity cards of the respondent, his sons Sushil and Sunil and wife of Sushil. A look at these election identify cards would show these having issued in October 2008. Though, it was pointed out by learned counsel for the respondent that the electricity bills, copies of which are placed on record, would show consumptions to be too less to dislodge the claim of the respondent that he with three sons and their families is residing there. During the course of arguments, it was submitted by learned counsel for the respondent that the respondent with his wife and three sons and their wives is residing on the first floor, whereas his grand children are residing in the Civil Lines Apartments. These oral submissions, cannot, brush aside the pleas of the petitioner. The petitioner has also raised the plea that as per Government's notification the first floor could be used for commercial and official activities. This was not controverted by the respondent. This all, *prima facie*, looks improbable that the respondent would squeeze his entire family on the first floor of the suit premises, and let the grand

children live alone in the apartments at Civil Lines. This certainly requires to be tested.

12. The plea that shop A was being used by his grand daughter Bani for doing her business, also needs to be tested. A look at the photograph, which is placed on record and relied upon by the respondent, showing her to be sitting in the shop, cannot make any one to, outrightly, believe her to be using this accommodation for her business. This also requires to be proved by the respondent. To prove that room mark E was being used by respondent's son Sushil for his godown, reference was made to a form purporting to have been submitted in the name of his firm Arihant Udyog to VAT department on 11.04.2007, showing addition of godown. From this alone, it cannot be ascertained that in fact this portion was being used by his son as godown. In any case, this also requires to be proved by the respondent that in fact this portion was being used as a godown and could not be used for office purposes, if at all some office space was required for Sushil. Assuming the room E to be in possession of Sushil, as averred by respondent, then the projected requirement of space for his office, would be that of additional accommodation, and in which case the leave is necessarily to be granted to the tenant.

13. I am well aware and conscious of the fact that the landlord is the best judge to decide about his requirement and the choice of the place, and neither the tenant nor this Court can dictate to him as to

how else he can adjust himself without getting possession of the tenanted premises. But, at the same time, it is also settled law that mere assertion that landlord requires the premises, occupied by the tenant, for his personal occupation, is not decisive and it is for the Court to determine the truth of the claim and also to see as to whether the claim is bonafide. Further, in determining as to whether the claim is bonafide or not, the Court is under an obligation to examine, evaluate and adjudicate the bonafide of the landlord. A claim founded on abnormal predilections of the landlord cannot be regarded as bonafide. In this regard the observations of the Supreme Court in **Shiv Sarup Gupta** (supra) can be noted as under:

“Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of

objective determination by the Court. The Judge of facts should place himself .in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited .for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one. but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too

conservative or pedantic must be guarded against.”

14. Referring to various decisions of the Supreme Court and our High Court, Justice Sanjay Kishan Kaul in the case of **M/s. John Impex (Pvt.) Ltd. Vs. Dr. Surinder Singh & Ors., 2007 (1) RCR 509**, observed as under:

“21.The conspectus of the aforesaid judgments shows that the broad principles have been set down of the requirement of a landlord not being a mere whim or fanciful but that it should be a genuine need of the landlord. It is only then that the requirement can be said to be bona fide within the meaning of under Section 14(1) (e) of the said Act. This would naturally require all the necessary matrix in terms of the factual averments and the evidence to be adduced in that behalf. Simultaneously it has to be kept in mind that the landlord is the best judge of his requirement and a tenant cannot dictate the terms on which the landlord should live. The *bona fide* requirement of the landlord would also depend on his financial status and his standard of living. The ARC found in favour of the landlord/owner and thus what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate court though the scope of scrutiny in a rent revision would be more than a revision petition under Section 115 of the Code of Civil Procedure, 1908.”

15. In view of my above discussion, I am of the considered view that the petitioner has raised several triable issues, which could not have been outrightly brushed aside by the learned ARC at the threshold. The respondent ought to have been called upon to prove his bonafide requirement of the suit premises, and the petitioner/tenant be afforded opportunity to test his claims. Consequently, the petition is allowed; the impugned order is set aside and leave to defend is granted to the petitioner. The parties shall appear before ARC on 18.09.2012 for further proceedings.

M.L. MEHTA, J.

SEPTEMBER 13, 2012

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