

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

% *Date of Judgment: 29.05.2012*

+ RC.REV. 246/2012 and CM Nos.10089-90 & CAV 571/2012

LAJPAT RAI Petitioner
Through Mr. Rono Mohanty, Adv.

versus

RAMAN JAIN Respondent
Through Respondent with his counsel
Mr. Lalit Gupta, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned order is dated 24.01.2012; eviction petition filed by the landlord under Section 14(1) (e) of the Delhi Rent Control Act (DRCA) had been decreed.

2 Record shows that the present eviction petition has been filed by the landlord-Raman Jain (hereinafter referred to as the 'landlord') seeking eviction of his tenant-Lajpat Rai (hereinafter referred to as the

‘tenant’) from godown No. 2720, 2721 & 2722 on the ground floor of plot No. 5, ward No. XIV, Sadar Thana Road, Delhi -110006; the petitioner claims himself to be the owner of the disputed premises having inherited the said property by virtue of a Will dated 13.4.1984 of his grandmother Susheela Wanti; ground of bonafide requirement has been pleaded. Contention is that the premises had been let out for a commercial purpose i.e. for running a shop; the petitioner is a graduate from the Shri Ram College of Commerce, Delhi; he is presently engaged in wholesale trade of natural rubber and latex; this business is being run by the family since the last several years; local and outstation buyers from distant places require this material which has to kept in a godown as the material is packed in huge iron drums; natural rubber is received from the manufacturers/suppliers from Kerala and thereafter stored here in the godown before it is supplied to the purchasers. The petitioner has no space from where he can carry out this business. The petitioner is presently working with his father under the name and style of ‘M/s Khazanchi Mal Jain and Company’ from shop No. 2666, plot No. 31, Sadar Thana Road, Delhi which is a 6’x 8’ feet wide shop; premises are required bonafide by the petitioner in order that he can carry out an

independent business of his own from the disputed premises. Shop bearing No. 2723, Sadar Thana Road, Delhi is owned by respondent No. 2 Reena Jain (other co-sharer in the property) and is in exclusive occupation and use of her husband Rajiv Jain who is also carrying on the same business under the name and style of M/s J.K. Enterprises; this shop/godown is not available for use to the present petitioner. Present petitioner has no other alternate accommodation from where he can carry out his business which he wishes to start independently. Eviction petition has accordingly been filed.

3 The averments made in the application seeking leave to defend have been perused. The first and foremost contention raised by the petitioner is that the status of the landlord as owner/landlord is not confirmed and in the absence of which, an eviction petition under Section 14 (1)(e) of the DRCA would not be maintainable; submission on this count being that the Will upon which reliance has been placed upon by the petitioner does not match with the averments contained in the subsequent document created by the co-sharers i.e. the memorandum of understanding; the title of the landlord being under a cloud, eviction petition is liable to be dismissed on this ground alone. The second

submission of the petitioner is that the accommodation of which the landlord is seeking eviction is only 3 feet high and cannot be used for storage of iron drums which are huge in size; further submission on this count being that this is a chemical industry and such chemical works being a pollutant industry cannot be carried out in said premises; on this ground, a triable issue has arisen; the eviction petition being decreed without affording an opportunity of trial to the petitioner thus suffers from an infirmity. Attention has been drawn to a public notice dated 04.11.2009 issued by the MCD, Delhi showing that the godowns which are doing the business of chemical have to shut their business by 31.12.2009.

4 Corresponding paras to this reply have been perused.

5 The petitioner has derived title in the premises by virtue of a Will of his grandmother Susheela Wanti; this Will is dated 13.04.1984; by virtue of this Will, certain properties have devolved upon the present petitioner namely Raman Jain and 50% shareholding has been bequeathed to Reena Jain (arrayed as respondent No. 2). Raman Jain is the grandson of Shusheela Wanti and Reena Jain is the wife of the grandson of Shusheela Wanti i.e. her grand daughter-in-law. The

aforenoted co-shares Reena Jain and Raman Jain had entered on 16.7.2008 into a memorandum of understanding whereby 50% of the certain properties had fallen to the share of Reena Jain and balance had fallen into the hands of Raman Jain; the disputed premises (which is the subject matter of the present eviction petition) have fallen to the share of Raman Jain. This memorandum of settlement has been duly notarized and in fact has been acted upon by the parties. It is even otherwise not for the tenant to challenge either the Will or this memorandum of understanding. Even presuming there is an imperfectness in the title of the landlord it would not affect the rights of the landlord in his capacity as owner to recover the suit premises and it is thus clear that no issue had arisen on this count.

6 A Bench of this Court in AIRCJ 1971 2 Arjan Dass Vs. Madan Lal, in the context of a landlord-tenant relationship has in fact held, as follows:

“a tenant has no locus standi to challenge the validity of the Will made by the landlord as he is not an heir of the landlord.”

7 In 1995 RLR 162 Jiwan Lal Vs. Gurdial Kaur & Ors. a Bench of this Court while dealing with the concept of ownership in a pending

eviction petition under Section 14(1)(e) of the DRCA had noted as follows:

“There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises.”

8 This objection on the part of the tenant is thus without any merit.

9 The site plan has been perused. The tenanted property has been depicted in red colour in the site plan. These are two shops measuring 16’X 40’ feet i.e. 640 feet with passage which is about 4 feet wide leading from the back side of the shop. There is no partition between the said shops; they have been tenanted out as a single unit. Submission of the petitioner that it cannot be used for storage purpose appears to be prima-facie incorrect. Further submission of the tenant that storage of rubber and latex is a chemical industry is also an incorrect submission; eviction petition has clearly disclosed that natural rubber and latex

(product of rubber) is imported from the state of Kerala and thereafter is
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proposed to be stored in the godown/spaces to be provided by the landlord which in turn is then sold to the purchasers who come not only from the state of Delhi but also from other parts of the country to purchase this raw material. It is in the same natural form in which it is purchased. Apart from the fact that this is not a chemical industry, submission as disclosed in the eviction petition clearly show that it is not polluting industry; thus this submission of the petitioner that this business which the landlord proposes to run from the aforementioned premises cannot be carried out is falsified. The need of the landlord for the aforementioned shop appears to be a genuine and a bonafide need. His father had been in fact carrying out the same business from the shop No. 2666, Sadar Thana Road under the name and style of M/s Khazanchi Mal Jain and Company; his cousin Rajiv is also doing this business under the name and style of M/s J.K. Enterprises from Shop No.2723; this is clearly a family business of the petitioner. The facts have been disclosed by the petitioner himself in the eviction petition; the petitioner also being a commerce graduate from the Shri Ram College of Commerce seeks an independent business of his own; thus this need to set up a business of his own cannot be in any manner be said to be

imaginative or a need which is moonshine; it is a genuine need; the present petitioner having inherited this shop from his grandmother by virtue of the aforementioned Will wishes to set up his own business of rubber and latex which he was earlier carrying on with his father and in which he has gained expertise and knowledge. Thus in no manner can it be said that this need of the landlord is not a bonafide need.

10 The landlord is the best judge of his requirement; it is not for the tenant to dictate terms to him; neither the Court tell him the manner he wishes to set up his business.

11 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.”

12 In this background, impugned order decreeing the petition of the landlord and dismissing the application of the tenant seeking leave to defend does not suffer from any infirmity. Petition is without any merit. Dismissed.

MAY 29, 2012
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INDERMEET KAUR, J