

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

% *Date of Judgment: 04.05.2012*

+ RC.REV. 179/2011 & CM Nos.9763/2011 & 13381/2011

RAM SAROOP GUPTA Petitioner
Through Mr. Sanjeev Narula, Adv.
versus

MAJOR SP MARWAH Respondent
Through Mr. Pritesh Kapur, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The impugned judgment is dated 17.02.2011; the eviction petition filed by the landlord Major S.P.Marwah seeking eviction of his tenant Ram Swarup Gupta from the suit premises i.e. shop bearing No. 56-B, Khan Market, New Delhi had been decreed. The application filed by the tenant seeking leave to defend had been declined.

2 Record shows that the present eviction petition has been filed by the landlord on the ground of bonafide requirement under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA). Premises had been

tenanted out to the tenant; relationship of landlord and tenant has not been disputed. Grounds of eviction are contained in para 18 (a) wherein it has specifically been contended that the petitioner is the owner of the suit shop; premises had been leased out to the tenant; wife of the petitioner namely Smt. Afsana Marwah is a jewellery designer; the petitioner and his wife started a jewellery business at 297, Forest Land, Neb Sarai, New Delhi which is their residential address; they have been running this business from their residence as they have no other commercial space available with them to carry out this business of jewellery; because of this handicap, they have not been able to increase the volume of their sale and are not able to attract more customers; only persons known to the petitioner and his wife come to purchase jewellery from them; the petitioner got a company incorporated in the name of 'A & T Jewels Pvt. Ltd.' on 13.08.2007 having a registered office at their residence. In this company, the petitioner, his wife and his son are the directors and shareholders; the petitioner and his wife are assessed to income tax in their jewellery business since the last ten years; premises are required bonafide by the petitioner to carry out their business in order to augment the sale of jewellery products; present business being

carried out from their residence is not lucrative; honest need to start the business from the aforementioned commercial premises is accordingly made out; further contention being that the petitioner and his family members do not own any other commercial space for running the aforementioned business.

3 An application seeking leave to defend had been filed by the tenant. Various contentions have been raised. The arguments urged before this Court have been confined to three-fold submissions. The first submission of the learned counsel for the petitioner/tenant is that a company is a separate legal entity and the plea of the petitioner in his eviction petition is the need of the aforementioned premises for the company; company being an independent juristic person, the need of the company cannot be equated with the need of a natural person; provisions of Section 14 (1)(e) of the DRCA are thus not applicable. To support this submissions, reliance has been placed upon (2003) 115 Comp. Cas 127 Kerala Basheer Vs. Lona Chackola; contention being that the company being an entity different from the individual, the need of the company in which the petitioner is a director cannot be said to be the need of the landlord for his 'own' occupation within the terminology of Section 14

(1)(e) of the DRCA.

4 Arguments have been countered. Submission is that this submission now pleaded does not even find mention in the application seeking leave to defend. This submission of the learned counsel for the respondent has force. There is no dispute to the proposition that triable issues have to be emanate from the pleadings of the parties which includes the application seeking leave to defend filed by the tenant. The application seeking leave to defend does not make any mention of this first argument which has now been urged to which the learned counsel for the petitioner has fairly conceded but his submission is that this is a legal proposition and can be taken up at any point. This submission of the petitioner is mis-directed; no objection having been raised by the tenant about the petition not being maintainable under Section 14 (1)(e) of the DRCA for the reason as aforementioned which is to the effect that the company being a legal person, the need of the company cannot be equated with the need of the landlord and in the absence of this objection having been taken up in the application seeking leave to defend, it is clear that the landlord did not get an opportunity to reply this in the trial Court and that is why, the impugned judgment has not

noted this submission now propounded before this Court.

5 That apart the legal submission that an eviction petition u/s 14 (1)(e) of the DRCA is not maintainable by a company is no longer res-integra and a bench of this Court in 158 (2009) DLT 62 Satnam Kaur & Others Vs. Ashlar Stores P. Ltd. has held that a private limited company can also file an eviction petition u/s 14 (1)(e) of the DRCA. Grounds pleaded in the eviction petition even otherwise show the bonafide need is the need of the petitioner who had initially started this business of jewellery with his wife Smt. Afsana Marwah which was on a small scale from their residence; this was about ten years ago i.e. ten years prior to the incorporation of their company which was incorporated only on 13.08.2007 and this has specifically been pleaded in the eviction petition to which there has been no dispute. It is not the case of the tenant that no such business was being run by the husband and wife from their residence; the company incorporated was a company of the husband, wife and their son. Memorandum of Articles of Association of the company filed by the landlord in the trial Court show that the shareholding of the company is of 10,000 shares which is distributed inter-se between the husband-wife and son and the son has 1,900 shares;

balance 8100 shares are of the husband and wife. Eviction petition clearly discloses that the need of these premises is for the business of the petitioner and his family members who have no other alternate suitable accommodation; it is an admitted fact that this duo i.e. husband and wife had up to ten years carried out the business in their individuals names incorporating the company only on 13.08.2007 in which they had inducted their son also. This company is a private limited company; it is the family concern of the petitioner. The submission of the tenant that a company is a distinct legal entity and the need of the landlord who is a natural person cannot be equated with the need of the company is again a mis-conceived submission. Although there is no dispute to the legal proposition that a company is a distinct legal entity separate from its shareholders; however the principle of piercing the veil of the corporate personality in order to reveal the 'true identity of the company' is also recognized doctrine. The Apex Court in Kapila Hingorani Vs. State of Bihar III (2003) SLT 673 had noted that the principle behind the doctrine is a changing concept and it is expanding its horizon. In 128 (2006) DLT 24 Prem Lata Bhatia Vs. Union of India, a Division Bench of this Court while dealing with the rights of the parties where a

partnership had converted itself into a private limited company had inter-alia noted as under:-

“In such cases, the doctrine of piercing the veil of corporate personality should be utilized. For instance, when a partnership firm converts itself into a private limited company with the partners in the firm becoming the shareholders and directors in the company it will not be a case of transfer of the property of the firm to the company, otherwise a huge amount of stamp paper and registration charges for the transfer of the property of the firm to that of the company will have to be paid, capital gains tax will have to be paid,, etc. In fact, it is well settled there is no transfer in such cases because in substance the owner remains the same though technically it becomes a different legal entity.

In such cases, the principle of piercing the veil of corporate personality should be utilized not to prevent somebody from doing any wrong, but merely in order to recognize the reality of the situation.”

6 In the instant case, there is no dispute to the factum that ‘A & T Jewels Pvt. Ltd’ is a private limited company comprising of the petitioner, his wife and his son; contention of the petitioner that the business which was earlier being run by the petitioner and his wife on a small scale from their residence could not be expanded and outside and unknown customers could not come to purchase their jewellery as they were running it on a small scale from the residence and this was because of the compulsion that they did not have any other commercial

establishment to carry out this business; in these circumstance, it can, in no manner, be said that the need of the petitioner cannot be considered as his personal and bonafide need for the premises. Even assuming that the need of the company (which is a company of no other persons but the petitioner, his wife and his son), the doctrine of the lifting of corporate veil in relation to this company would be fully applicable to reveal the true identity of the company; by lifting the corporate veil, it is an undisputed factum that the company is no other person than the petitioner, his wife and his son; the registered office of the company is also the residence of the parties from where they had initially started this business i.e. 297, Forest Land, Neb Sarai, New Delhi; their bonafide need for requiring a working space i.e. commercial establishment to run the aforementioned business has been established.

7 The Supreme Court in (2002) 5 SCC 397 Joginder Pal Vs. Naval Kishore Bhel had an occasion to consider the expression ‘for his own use’ as occurring in Section (3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 had noted that this express cannot be narrowly construed; in this context, the following observations of the Apex Court are relevant:-

“We are of the opinion that the expression “for his own use” as occurring in Section 13(3)(a)(ii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove, we have found the para material provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependants and kith and kin in the requirement of landlord as “his” or “his own” requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in particular section of society or a particular region, to which the landlord particular section of society or a particular region, to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the above said tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord’s son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run

his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by the landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act”.

8 The expression ‘for occupation as a residence for himself or for any member of his family dependent upon him’ occurring in Section 14 (1)(e) of the DRCA are much more liberally worded.

9 Eviction petition has clearly specified in the grounds [para 18 (a)] that the premises are required bonafide for running the aforementioned business which is the business of the petitioner and his family members who do not own any commercial accommodation for running the aforementioned business. Thus on all counts, it can safely be said that the need of the petitioner for the aforementioned disputed premises is a need for himself, his wife and his son (who has now joined the business) and is a need for his own occupation within the terminology of Section 14 (1)(e) of the DRCA. Thus the first objection raised by the tenant has no merit. It is accordingly rejected.

10 The whole thrust of the arguments of the learned counsel for the tenant is in fact the forceful submission made on the first objection

which as noted supra does not in any manner raise a triable issue.

11 The second submission of the learned counsel for the tenant is that the documentary evidence filed by the landlord is in two sets which evidence that the company is not doing any business. These documents are part of the trial court record; apart from the certificate of incorporation and Memorandum of Articles of Association, other documents have also been filed to show the worth of the company. Documents filed on record in fact show that this company 'A & T Jewels Pvt. Ltd.' was incorporated on 13.08.2007; this is a private limited company comprising of three directors i.e. the petitioner, his wife and his son; registered office of the company is the residence of the parties. The income tax returns of Ms. Afsana for the year 2008-2009 show that retail business of jewellery and ladies suits was made to the tune of Rs.7,58,820/- upon which a profit of 30% has been gained; the income tax return of the petitioner S.P. Marwah for the year 2008-2009 had assessed the total income of the petitioner as Rs.1,72,684/-; income tax returns for the previous years i.e. from the period 2004-2008 substantiating the submission of the petitioner that the business of jewellery was in fact being carried out by the petitioner and his wife

much prior to the incorporation of the company have also been filed on record to advance this submission. This documentary evidence in fact shows that the business of jewellery was started by the petitioner and his wife from their residence which was earlier a small time affair; this has grown and expanded; eviction petition has been filed in October, 2008 which was just after one year after the incorporation which is probably the reason why the income tax returns of the company have not been filed but of the individual directors. Submission on this count also in no manner raises any triable issue.

12 The last submission of the learned counsel for the petitioner/tenant is that a self-deprivation of the property has been created by the landlord himself as admittedly even as per the case of the landlord he had sold the adjoining property i.e. shop No. 59-B to another old tenant; this was on 27.08.2007 and the eviction petition has been filed in October, 2008 only to build up a ground of bonafide need, actually it is malafide. This submission of the tenant is also bereft of all force. Admittedly an agreement to sell had been entered into by the landlord for the aforementioned property i.e. 59-B Khan Market, New Delhi with its earlier tenant and this was on 08.03.2006 which sale had finally

culminated in 27.08.2007. The contention of the landlord is that by this period of time, judgment of Satyawati Sharma Vs. Union of India AIR 2008 SC 3148 had not been delivered which was delivered on 16.04.2008 and as such the landlord had no ground to get his tenant evicted from commercial premises up to 16.04.2008 when finally the legislation of Section 14 (1)(e) of the DRCA was made applicable to commercial tenancies as well. His submission is that the shop No. 59-B had been sold to the old tenant in terms of an agreement to sell in 2006 for the aforementioned reason is a submission which carries force. That apart this agreement to sell had been entered into two years prior to the date of filing of this eviction petition which was filed in October, 2008. Bonafide need is also a changing need; it is not a static. This submission is also without any force.

13 The landlord has been able to establish that his need for the aforementioned premises was his genuine requirement to start his business from the commercial establishment located in a highly viable commercial area of Khan Market which is probably one of the highest rated markets not only in India but in entire Asia establishing his submission that his business venture would be much more profitable

from the aforementioned location.

14 Legislative intent of the incorporating the summary procedure contained under Section 25-B of the DRCA is for the expeditious disposal for a special class of landlords requiring the premises for their own use; it is a summary procedure. In (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal 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.

15 The landlord is the best judge of her requirement; it is not for the tenant or the court to dictate terms as to how and in what manner he has to meet his needs for an accommodation. In Prativa Devi (Smt.) Vs. T.V. Krishnan reported in (1996)5SCC353 it was noted:-

“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”

16 The landlord thus requires this shop for the purpose of running his business as he has no other alternate suitable accommodation; shop No. 7783 has been vacated in favour of his brother and co-owner Bal Mukund; godown in shop No. 7780 is even as per the case of the tenant under the tenancy of Nitin Goel.

17 There being no other reasonable suitable accommodation and all the ingredients of Section 14 (1)(e) of the DRCA having been complied with, the impugned order dismissing the application seeking leave to defend and decreeing the eviction petition in favour of the landlord suffers from no infirmity.

18 Petition is without any merit; it is dismissed.

INDERMEET KAUR, J

MAY 04, 2012
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