

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

% *Date of Judgment: 28.05.2012*

+ **RCR 271/2011**

NAMDEV

..... Petitioner
Through Mr. Kirti Uppal, Sr. Adv. with
Mr. R.S. Sahni, Adv.

versus

SANJAY GUPTA

..... Respondent
Through Mr. Ravi Gupta, Sr. Adv. with
Mr. Lalit Gupta and Mr. Deepak
Agarwal, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Impugned order is dated 19.04.2011 vide which the eviction petition filed by the landlord under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) had been decreed; application filed by the tenant seeking leave to defend had been dismissed.

2. Record shows that the present eviction petition has been filed by the landlord on the ground of bonafide requirement. Suit premises had been let out to the tenant for a non-residential purpose i.e. for running a business of trading of Aggarbatti and Dhoopbatti; disputed premises are

described as shop No. 6118-19, Gali Batashan, Bazar Khari Baoli, Delhi-110006. The bona fide need has been disclosed in para 18 of the eviction petition. Contention of the petitioner is that he is the owner and landlord of the disputed premises; this factum is not in dispute. Further contention is that the petitioner is carrying on business of trading of various botanical, medicinal herbs and crude drugs, dry fruits; this business is being run for the last more than 70 years and his forefathers had started this business; the total sale in the year 2007-08 was 2.70 cores and the closing stocks on the said date were Rs. 1.61 crores. In the financial year 2008-09 the petitioner had made sales of 3.20 cores till the closing of January 2009; the trade of the petitioner and his family has acquired a name in itself; at present, the petitioner is running his business from shop No. 8, Gopinath building Gali batshan, Kari Baoli, Delhi which is a shop measuring 13'.10" x 8'; this is a small shop and it is very difficult for the petitioner to accommodate all kinds of articles which the landlord is selling i.e. herbs , crude drugs and dry fruits; there are more than 100 items which are always available and on display at the shop; the landlord is actually dealing with more than 500 items; herbs are available in various grades and depending upon their quality

and specifications they are packed in different bags as per retail requirements; there are hundreds of species of herbs, crude drugs and dry fruits and the customer of such like goods wants to inspect not only the quality of the goods but also wish to make a comparison of the prices which are prevailing in the outlet; samples for the aforementioned purpose have to be kept at the site; the customers also want to ensure that the bag which he has inspected is the same bag which is sold to him; because of paucity of space and accommodation the petitioner is unable to display all his goods to the customers. Suit premises which are under use and occupation of the tenant is about 900 sq. ft. (100 sq. yards); this is on the ground floor and is ideal for the expansion of the business of the petitioner as presently the petitioner has no outlet from where he can carry out his retail business. The petitioner is in fact in need of 1000 sq. feet on the ground floor in order that he can display all his articles of various ranges which (as noted supra) include not only herbs, crude drugs but also dry fruits and the aforementioned premises would be an ideal commercial viable business venture for the petitioner. Eviction petition was accordingly filed. Leave to defend had been filed.

The main bone of contention which is urged and argued before this court

is that there are other alternate accommodations which are available with the landlord and on the ground of concealment of material facts alone the petitioner-tenant is entitled to leave to defend. To support his submission learned counsel for the petitioner has placed reliance upon the judgment of Kishan Chand vs. Jagdish Pershad & Ors. reported in (2003) 9 SCC 151. Contention being that the entire accommodation available with the landlord in the aforementioned premises had not been disclosed and the landlord in fact has sufficient place to satisfy his needs which sufficient space is available on the first, second and third floor of the premises. The site plan which has been filed by the landlord and is a part of the court record has been perused; this site plan clearly shows that at the ground floor the disputed premises is a shop measuring 900 sq. ft. (in red colour) which is in occupation of the petitioner-tenant; on first floor eastern portion is an office space of the landlord and rest of the portion is tenanted out; so also is the position on the second floor; one room is with the landlord which is used as storage place and other area is with the tenant; two rooms available on the third floor are also being for the purpose of storage. That apart, the accommodation as noted above on the first second and third floor is not an accommodation

which is a reasonably suitable alternate accommodation for the landlord keeping in view the nature of his need; the need of the landlord as noted (supra) is to display the various varieties of herbs, crude drugs, dry fruits and spices which he is selling; such like customers cannot be expected to visit the first or the second floor to examine the goods; in fact a wary and watchful customer would definitely not compromise on his stand to visit the first, second and third floor; he would rather go to another shop where he can purchase the same goods at the ground floor level. Thus the accommodations available on the first, second and third floor can in no manner be said to be reasonably suitable alternate accommodation.

3. The second submission of the learned counsel for the petitioner on this count is that another 900 sq. ft. godown is available with the landlord which is located at Katra Peran bearing No. 284, Tilak bazaar. This has been disclosed by the tenant in his application for leave to defend; corresponding para of the reply filed by the landlord has been perused. It has been stated that this property is not owned by the landlord; he is a tenant in this godown; a site plan of this godown placed on record and which is not in dispute shows that the area of the godown is only 300 sq. ft.; it is being used as a godown and is admittedly not

owned by the landlord. This accommodation also does not fall in the category of a reasonably suitable alternate accommodation. Vehement argument of the petitioner is that this fact has been elucidated only in the reply filed by the landlord and had not been disclosed by him in his eviction petition and this amounts to a concealment. What is concealment, has not been defined in the Delhi Rent Control Act but concealment of a fact would be a fact which is vital and bearing to the matter in issue; this eviction petition has been filed under Section 14(1)(e) of the DRCA; necessary ingredients for contesting a petition under Section 4(1) (e) of the DRCA is as under:-

- (a) The applicant has to be a landlord;*
- (b) He has also to be an owner;*
- (c) The premises in question should have been let out for residential or commercial purpose or both;*
- (d) The said premises are required bon fide by the landlord for occupation as a residence for himself or his family dependent upon him and;*
- (e) That the landlord or such person dependent upon him has no other reasonably suitable residential accommodation.*”

4. The accommodations as aforementioned do not in any manner fall in the category of a reasonably suitable accommodation which cannot be treated as an alternate accommodation. The second accommodation at

Katra Peran, Tilak Bazar, Delhi is not even owned by the landlord; it is a tenanted property; the first accommodation (as depicted in the site plan) is an accommodation on the first, second and third floor; there is one room on the first floor and stores on second floor and third floor; need of the landlord as depicted and averred in the eviction petition is the need to display 500 varieties of articles which he is selling which include various varieties of herbs, different crude drugs, dry fruits and spices; further submission being that these delicate items have to be packed in individual packets and depending upon their quality their packing has to be different. Such like customers examine not only the quality but also the price range for which they make a comparative study in the open market; that is why the goods of the petitioner have to be openly displayed in order to enable the customer to satisfy his requirement before he makes the final purchase. The further submission of the landlord on this count is that depending upon the quality of the product the packaging is customized and the proposed customer in most cases insists on taking the same package which he has earlier approved after inspecting and assessing its quality; for such purposes there has to be wide range of display. In this background, the non-disclosure of the

accommodation available on the first and second floor (of the same premises) is not a concealment on the part of the landlord; the judgment of Kishan Chand (Supra) relied upon by the learned counsel for the petitioner is not applicable.

5. The eviction petition thus having been decreed and application seeking leave to defend having been dismissed suffers from no infirmity. Petition is without any merit; it is dismissed.

INDERMEET KAUR, J

MAY 28, 2012
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