

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 01.03.2012.*

+ RC.REV. 227/2011 & CM No. 11467/2011

BATA INDIA LTD		 Petitioner
	Through	Mr.Raman Kapur, Sr. Advocate with Mr.Dhirja Sachdeva, Adv.
	versus	
ANIL KUMAR BAHL		 Respondent
	Through	Mr. Dinkar Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The impugned judgment is dated 04.01.2011; the eviction petition filed by the landlord Anil Kumar Bahl against his tenant Bata India Ltd seeking eviction of the tenant on the ground of bonafide requirement as contained in Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been decreed; the application seeking leave to defend filed by the tenant had been dismissed.

2 Record shows that the present eviction petition has been filed by the landlord who is a resident of B-127/2, DDA Flat, East of Kailash, New Delhi. The premises in dispute is a shop bearing municipal No. XV/4745, abadi of main bazaar, Paharganj Masjid, New Delhi. The

tenant is in occupation of these premises for commercial purpose at the monthly rent of Rs.1,200/- per month. The petitioner is stated to be an employee of a bank; he has three daughters of whom two are professionally qualified and have qualified entrepreneur skills; the second daughter although professionally qualified is yet unemployed; the premises are required bonafide by the petitioner to provide infrastructure to his daughter to start her own business; further contention being that there is no other premises available with the plaintiff from where his daughter can start her business; further contention being that the petitioner shall retire in 2012; he has spent almost 32 years in the banking sector and has sound knowledge of nitty-gritty of business activity; he would also help in the business which is proposed to be started by his daughter.

3 Leave to defend was filed by the tenant; two objections were raised; the first was on the ownership/status of Anil Kumar Bahl as the landlord; the second objection related to the bonafide requirement of the landlord. In para 3 of the application seeking leave to defend, it has been specifically averred that the professional qualification of his unemployed daughter has not been disclosed by the landlord; this is only

a means to get the property vacated in order that higher rent can be extracted; the intention of the landlord is not bonafide; in fact all his daughters are employed.

4 The corresponding para of the reply to the leave to defend has also been perused. It has been specifically stated that the daughter of the landlord who wishes to start this business is a professionally qualified statistician; the property being in the hub of the commercial area of Delhi would be most suitable for her professional needs; the submission was reiterated that the petitioner is the owner of the suit premises.

5 Record shows that a lot of correspondences had been exchanged between the parties which the petitioner for reasons best known to him had not been filed along with the eviction petition; certified copies of the said documents have been placed on record by the respondent. These documents show that the petitioner by virtue of a registered gift deed dated 16.11.1968 had become the owner of this suit property; this gift deed was executed by donor in favour of the present petitioner. It is also not in dispute that the rent is since been paid by the tenant to the landlord; 24 letters exchanged inter-se between the parties right from 21.02.1981 up to 30.10.2007 show that the parties admittedly share a

landlord-tenant relationship and the tenant/petitioner has all along recognized Anil Kumar Bahl as his owner and landlord. In fact on a specific query put to the learned counsel for the petitioner as to why these documents were not filed along with the eviction petition, he has no answer. It is an admitted position that all these documents were a part of the trial Court record and on the basis of the aforementioned documentary evidence as also the pleadings between the parties, the ARC had rightly concluded that Anil Kumar Bahl was the owner and landlord of the disputed premises. This contention has even otherwise not being pressed any further.

6 In this context, the Apex Court in the case of (1987) 4 SCC 193 Smt.Shanti Sharma & Others Vs. Smt. Ved Prabha & Others had an occasion to examine the concept of ‘owner’ as envisaged under Section 14 (1)(e) of the DRCA. The Apex Court has noted that the word ‘owner’ has not been defined anywhere in the DRCA; the following extract of the judgment of the Apex Court is relevant:-

“The word ‘owner’ is not used in Section 14 (1) proviso (e) of Delhi Rent Control Act in the sense of absolute owner; where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction, the only thing necessary for him to prove being bona

bonafide requirement and he is the owner thereof. In this context the meaning of 'owner' is vis-à-vis the tenant i.e. the owner should be something more than the tenant. In most of the modern townships in India the properties stand on plots of land leased out either by the Government or the Development Authorities and therefore it was not contemplated that for all such properties the landlord or the owner of all such properties the landlord or the owner of the property used in common parlance will not be entitled to eviction on the ground of bonafide requirement and it is in this context that we have to examine this contention. It could not be doubted that the term 'owner' has to be understood in the modern context and background of the scheme of the Act."

7 No triable issue has arisen on this count.

8 The only argument which has to be addressed by this Court relates to the need of the landlord and whether in the absence of any business details which the daughter of the petitioner proposes to start; the need of the petitioner is not bonafide but in fact a malafide need.

9 The landlord has specifically contended that he has three daughters; there is no dispute to this; his further contention is that two of his daughters are professionally qualified and the second daughter is unemployed; this has been specifically so stated by the landlord in his reply to the leave to defend to which there has been no denial. It has also come on record that this second daughter of the landlord is a

professionally qualified statistician; she can do the business in a professional manner having the requisite professional qualification; merely because, the nature of the business which the daughter proposes to carry out has not been specified will not, in the view of this Court, convert the need of the landlord from a bonafide need to a malafide need. The landlord has in fact been honest and truthful; he has explained in the eviction petition that he has been an employee in the banking sector since the last 32 years and his retirement is to take effect in the year 2012; his daughter who is currently unemployed and having a professional qualification as a statistician intends to start an entrepreneurship (which could be any business activity depending upon the time of its initiation) and after his retirement, the landlord himself wants to join his daughter as he has also gained enough experience in the banking sector about the nitty-gritties of business. There is also no dispute to the fact that apart from the DDA accommodation where the family of the landlord with his three daughters is residing, there is no other commercial space available with the landlord. The need of the landlord, in these circumstances, to enable his daughter to start a business in the shop at Pahar Ganj which is admittedly owned by the

landlord and being in a viable commercial area, in the hub of the city, would be a profitable commercial venture.

10 In Prativa Devi (Smt.) Vs. T.V. Krishnan reported in (1996)5SCC353 it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally be interfered with.

11 In G.C. Kapoor Vs. Nand Kumar Bhasin reported in AIR2002SC200 it was noted as follows:

“It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Anr. : [1999]2SCR912 this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.”

12 Unless and until, a triable issue arises, leave to defend should not be granted in a routine or a mechanical manner.

13 In Nem Chand Daga Vs. Inder Mohan Singh Rana 94 (2001) DLT 683, a Bench of this Court had noted as under:-

“That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.”

14 In the context of the need of the landlord to start a business venture in the disputed premises, the Apex Court in (2000) 1 SCR 77 Ragavendra Kumar Vs. Firm Prem Machinery and Co. has noted that the landlord has to choose the place of business which is most suitable to him.

15 In Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and Others, (2005) 8 Supreme Court Cases 252; the Court had observed as under:

“It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business.”

16 The application seeking leave to defend had clearly raised no

triable issue.

17 Reliance by learned counsel for the petitioner upon the judgment reported in 2001 (1) RCR 33 Inderjeet Kaur Vs. Nirpal Singh is misplaced; the ratio of this judgment in fact clearly enunciates that at the stage of granting leave, the real test should be whether the facts disclosed in the affidavit seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction; however, if no triable issue arises, leave to defend cannot be granted in a routine manner; this was a case whether the landlord was a resident of United Kingdom; there was nothing to suggest that he had any intention to shift to India; it was in this factual scenario that leave to defend had been granted; facts of the said case are wholly inapplicable.

18 In this factual scenario, the eviction petition having decreed and the application seeking leave to defend having been declined by the impugned order suffers from no infirmity.

Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 01, 2012

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