

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

+ **R.C.REV. 289/2012**

Date of Decision: 25 .07.2012

SHRI SURINDER GERA

.... PETITIONER

Through: Mr. Neeraj Kishan Kaul, Sr.
Advocate with Mr. N.K.
Sachdeva and Mr. Kapil Rustagi,
Advocates.

Versus

COL. RAJESH RATAN SETH

.....RESPONDENT

Through: Mr. Rajiv Nayar, Sr. Advocate,
Mr. Ravi Gupta, Sr. Advocate
with Ms Reema Kalra, Adv.
/Caveator

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present revision petition has been preferred under section 25 (B) (8) of Delhi Rent Control Act (for short the 'Act') assailing the order dated 24.02.2012 of Id.ARC whereby he dismissed the application of the petitioner seeking leave to defend the eviction petition filed against him.
2. The respondent filed the present eviction petition u/s 14 (B) and 14 (1) (e) r/w Section 25-B of the Act against the petitioner on the ground of bonafide requirement in respect of a room on the barsati floor, measuring 12' x10'-10 ½ along with one attached toilet (5'4"x6'9") and kitchen (15'5"x8'4 1/2") in premises bearing No. C-36, Defence Colony, New Delhi. The case of the respondent was

that the property in question was owned by his father late Col. R.S. Sethi who left behind a Will dated 01.10.1976 wherein he had bequeathed the entire property to the respondent. It was stated that respondent was working as Colonel in the Indian Army and retired on 04.01.2011. The family of the Respondent consists of his wife aged 46 years, a son aged 22 years and a daughter aged 16 years. The respondent along with his family is presently residing in his in-laws house at Chandigarh.

3. It was further stated that the respondent along with his family intends to shift to his own house at Delhi and the accommodation available with the respondent at present in the suit property is not sufficient for their requirement. It was further stated that the respondent has got two married and one unmarried sister, who are residing outside Delhi and keep on visiting the respondent along with their families and, therefore, a proper guest room with a toilet is required to accommodate the guests. Further, it was averred that the respondent having retired from the Indian Army, now plans to set up his own consultancy in security and management service and as he has no other accommodation in Delhi, he needs ground floor for his consultancy services. It was further stated that son of respondent Karan Seth after completing his internship also plans to set up his dental clinic from the suit premises, for which also the respondent requires a clinical room with reception and a toilet. It was further averred that respondent also intends to get his son married and settle him. It was stated that the minimum requirement of the respondent is one drawing room with dining room, one bed

room with bath room for himself and his wife, one bed room with a toilet for his son, one bed room with a toilet for his daughter, one bed room with a toilet for the guests, one office space with a toilet for himself, one clinic/office space with a toilet for his son, whereas the present accommodation available with the respondent in the suit property is not sufficient for his aforesaid requirements and, therefore, he bona fide requires the suit premises.

4. Upon receiving summons, the petitioner herein filed leave to defend application along with affidavit contending that respondent is not the owner of the property as the respondent was not on good terms with his parents; that the respondent has concealed the material facts that earlier the father of the respondent had also filed eviction petitions against the petitioner, which were dismissed; that the site plan filed by the respondent was not true and correct; that the respondent has concealed the existence of one bed room set on the ground floor and by showing the same as Garage; that the respondent has sufficient accommodation available at his disposal in the suit premises, except the tenanted premises for which the present petition has been filed; that the sisters of the respondent are well settled outside Delhi and they do not visit the respondent at all; that the respondent is well settled and is residing at Chandigarh, where he owns a big bungalow and has no intention, whatsoever, to come to Delhi; that as the rents in the vicinity are soaring high, the respondent wants to enter into collaboration agreement with the builder and, therefore, has filed the present petition against the petitioner with malafide intentions; that the son of the respondent is

not likely to get married unless he is settled in profession and as per the information the son of the respondent has no intention or desire to set up his clinic at Delhi; that the daughter of the respondent is pursuing her 12th standard studies at Chandigarh and therefore, there is no possibility of her coming to Delhi.

5. The learned ARC while dismissing the leave to defend, has observed that there is no dispute so far the relationship of landlord and tenant between the parties is concerned. The plea of the petitioner that the respondent owned a bungalow at Chandigarh was rejected by the ARC having reliance upon the copy of the sale deed in respect of the said premises, which showed Harminster Kaur Brar, (the mother-in-law) to be the owner thereof. The learned ARC was also in agreement with the plea of bonafide requirement of the respondent and lack of alternative accommodation with him. The ld. ARC also discussed the site plan in detail and found no material discrepancy. Upon consideration of the averments of petitioner and respondent, the Ld. ARC dismissed the leave to contest of the petitioner.
6. The impugned order has been challenged by the petitioner in the instant petition. The learned senior counsel appearing for the petitioner submitted that the ld. ARC erred in recording the respondent to be the owner of the suit premises and also that he required the same for his requirements. It was submitted that the respondent is well settled at Chandigarh in his own property and neither he nor his son or any other family member have any intention to come to Delhi and settle here. It was submitted that

there is nothing on record to substantiate the intentions of the petitioner to start his consultancy business or that of his son to set up a clinic in the suit premises. Based on all these, it was submitted by learned senior counsel that the petitioner has established triable issues and thus, was entitled to grant of leave to contest. Reliance was placed in the case of *Charan Dass Duggal Vs. Brahma Nand, (1983) 1 SCC 301* to contend that the petitioner having raised triable issue, the leave to defend ought to be granted to him. Reliance was also placed on the case of *Nanalal Goverdhandhas and Co. Vs. Samratbai Lilachand Shah, AIR 1981 Bom 1* to contend that the bona fide requirements would not only rest with the state of mind of the landlord, but something more is required to be proved by the landlord by legal evidence of his bona fide requirement.

7. On the other hand, the learned senior counsel for the respondent submitted that the power of this court under Section 25 (B) (8) of the Act is limited and supervisory in nature and unless the order of the Rent Controller amounts to miscarriage of justice, this Court must be hesitant to upset such order. It was further submitted that it does not lie in the mouth of the petitioner to question the ownership of the respondent after all these years and moreover the Id. trial Court had taken note of the fact that the respondent has become the owner of the suit premises by virtue of will dated 01.10.1976 executed by his father and subsequently accepted by other legal heirs in a compromise recorded vide order dated 23.3.1995. It was further averred that the respondent sincerely intends to shift to

Delhi with his family in the suit premises, where he does not have sufficient accommodation for himself and other family members particularly for his consultancy business and that of his son's dental clinic. It was further submitted that the premises at Chandigarh, where the respondent is presently living with family, is that of his in-laws and he does not intend to continue to stay with them any longer. He placed reliance on **Bantam Enterprises Pvt. Ltd. Vs. Jaspal Singh Kapoor**, 2012 (189) DLT 59 to contend that landlord is the best judge of his requirement and has complete freedom in the matter and he cannot be deprived of the beneficial enjoyment of his property.

8. Heard the rival submissions and perused the record.
9. Before advertng to the submissions made by the learned Senior Counsel for the parties, this Court must reiterate that the power of this Court under Section 25 –B (8) Act are not as wide as those of Appellate Court, and in case it is found that the impugned order is according to law and does not suffer from any jurisdictional error, the High Court must refrain from interfering with the same. The power under this provision is limited and supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion which was not possible, based on the material produced, should this Court interfere in the orders passed by the Rent Controller. In **Sarla Ahuja vs. United India Insurance Co. Ltd. AIR 1999 SC 100** the Apex Court has held as under:

“The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller

is "according to the law." In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available."

10. Now, let me examine the facts and circumstances of the case in order to arrive at the conclusion that whether the impugned order confirms to the settled parameters of law or it requires interference by this Court. I am in agreement with the observation of the learned Rent Controller regarding the issue of ownership of the suit property. There can be no dispute that by the virtue of will dated 01.10.1976 executed by his father and subsequently accepted by other legal heirs in a compromise recorded vide order dated 23.3.1995, the title of the property now rests with the respondent and hence the contention of the petitioner that the respondent is not the owner of the property, is untenable. In ***Praladh Singh Rekhi Vs. Smt. Bhawani Devi & Anr. 113 (2004) DLT 137***, a bench of this Court while dealing with a similar objection and on the concept of ownership in proceedings under Section 14 (1)(e) of the DRCA had noted as follows:-

".....The proceedings under the said Act cannot be converted and utilized by a tenant to prevent eviction merely on the ground that he seeks to cast doubt on the title of the property which has been inherited when there is really no one else claiming right to the property."

11. Moving on, the next contention of the petitioner was that the respondent has no plan of actually shifting to Delhi along with his family and his bonafide requirement has not been established, hence he is not entitled to an eviction order. According to the respondent, he is currently staying with his family at Chandigarh in his mother-in-law's house. The petitioner has tried to refute this claim, by alleging the respondent to be the owner of the said Chandigarh house. This was only a futile attempt to dislodge the respondent's claim without having any evidence in this regard. The sale deed of the said house would no longer enable the petitioner to raise any such plea. So, it must be accepted as the correct factual position that the said Chandigarh house is not owned by the respondent, but by his in-laws. In my considerate opinion, nobody would find it comfortable to live in his in-laws' house for very long period. The respondent intends to shift to his house at Delhi and set up his business as he has retired from the service. It is also not disputed that his son has completed his BDS and is currently pursuing internship. In ***Labhu Lal Vs. Sandhya Gupta 2011(1) RCR,(Rent) 231 (Delhi)***, it has been held by this Court that the children are very much dependant on the landlord for the purpose of setting up their business and such a requirement is a bonafide one. The right of the landlord for possession of his property for setting up a business for his son has been also recognized by the Apex Court in ***Ram Babu Aggarwal Vs. Jay Kishan Das 2009(2) RCR 455***. On the whole, the requirements as projected by the respondent, keeping in mind his current and future needs are quite plausible and natural.

12. The plea of the petitioner that the rooms available in the suit premises are sufficient for meeting the respondent's requirements, is nothing but based on surmises. The plea that the garage or the servant quarter portion of the suit premises could be used for the requirements of office and dental clinic, are all extraneous and untenable. Likewise, the plea that the sisters of the respondent are married and do not visit him, is just imaginary and can be rejected outrightly. Further the plea that the daughter of the respondent, who is studying in Chandigarh is unlikely to shift to Delhi, is equally devoid of any merit. The landlord is the best judge of his requirements and cannot be deprived of this right. It is not open for the Court or the tenant to dictate in what manner he should live or where he should not live, nor the Court can impose its own standard on the landlord. In ***Pratibha Devi vs. T.V. Krishnan 2001 AIR SCW 4661***, the Hon'ble Supreme Court held that it is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. In ***Siddalingamma & Anr. Vs. Mamtha Shenoy (2001) 8 SCC 431***, the Hon'ble Supreme Court while considering the reasonable and bona fide requirement of landlord, held that the question to be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by the material on record, the need to occupy the premises can be said to be natural, real, sincere and honest. If the answer be in the positive, the need is bona fide. The intention of the respondent to start his security consultancy and that of his doctor son to set up his dental

clinic, in their own premises, can hardly be called fanciful. It cannot be doubted that prospects of both these professions in Delhi are far better. It is not that every requirement of the landlord has to be looked with suspicion and the matter proved beyond reasonable doubt applying the test of criminal law.

13. It has also been submitted by the Id. Senior Counsel for the petitioner that the respondent only visits Delhi on temporary basis and does not require the suit premises. This proposition is contrary to settled law on this aspect. In ***S.P.Kapoor Vs. Kamal Mahavir Prasad Murarka and Ors., 97 (2002) DLT 997***, this Court had observed that even the requirement of the landlord to have his premises vacated for his frequent visits to Delhi and for temporary stay in his own premises has to be viewed as bonafide requirement.
14. The ratio laid down in ***Charan Dass Duggal Vs. Brahma Nand and Nanalal Goverdhandhas and Co. Vs. Samratbai Lilachand Shah***, is not disputed, but the present case falls in the ambit of cases where the landlord has successfully proved his bonafide requirements which must be honoured and recognized by this Court. The cases relied upon by the Id. Counsel for the petitioner and the one before this Court being different on facts, cannot have identical outcome, and are hence of no assistance to the petitioner.
15. It is settled legal principal that leave to defend is granted to the tenant in case of any triable issue raised before the trial Court, which can be adjudicated by consideration of additional evidence. In ***Precision Steel & Engineering Works & Anr. Vs. Prem Devi***

Niranjan Deva Tayal (1982) 3 SCC 270, 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. In *Nem Chand Daga Vs. Inder Mohan Singh Rana, 94 (2001) DLT 683*, a Bench of this Court had noted as under:

“That before the 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.”

16. In the instant case, the petitioner has miserably failed to raise any important triable issues that could merit grant of leave to defend. Consequently, the impugned order dismissing the application for leave to defend is based on sound reasoning and correct appreciation of evidence on record and deserves no interference. Petition is without any merit. It stands dismissed leaving the parties to bear their own costs. The petitioner is granted six months time to vacate the tenanted premises.

M.L. MEHTA, J.

JULY 25, 2012

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