

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

% *Date of Judgment: 01.02.2012.*

+ **RC.REV. 242/2011 & CM No. 818/2012**

SUSHIL MITTAL Petitioner
Through Mr. Sameer Dewan, Adv.

versus

ARUN KUMAR Respondent
Through Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Siddharth
Bhambha, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned before this Court is the judgment and decree dated 23.05.2011 wherein in a pending eviction petition filed by the landlord Arun Kumar seeking eviction of his tenant under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) i.e premises comprising one shop in property No. 2855, Sirkiwala, Hauz Qazi, Delhi as depicted in the red colour in the site plan filed by the petitioner had been decreed. The triable issues sought to be raised in the application for leave to defend filed by the tenant had been declined.

2 Record shows that the averments of the petitioner in his eviction petition is that he is the owner of the premises; premises were earlier owned by his grandfather Nihal Chand who had become owner by virtue of a registered sale deed dated 08.01.1948; after his death on 21.10.1985 in terms of his Will dated 11.04.1980, the property in dispute was bequeathed to his son Ramesh Kumar and to his grandson i.e the present petitioner Arun Kumar. Further contention is that the tenant had also attorned to the landlord and the accepted hiM as the landlord and owner of the demised premises; further contention being that the petitioner is carrying on business of iron and hardware in the name of 'M/s Satyadev and Company' being the sole proprietor thereof in a shop on the ground floor of property No. 2855 at Sikriwalan, Delhi just beneath the premises in dispute i.e. in contiguity with the premises which have been tenanted out to the tenant. This factual position is not in dispute and is also borne out from the site plan. Further averment of the petitioner in his eviction petition is that he is using the said shop for storage of stocks as also for sale as also as an office of the said business; he has huge stocks which are kept in the shop which space is not sufficient to accommodate the stocks as also to provide an office for the business of

the petitioner; he has no other accommodation except this shop in his possession; he cannot conveniently run the aforementioned business as there is an insufficiency of space; tenanted premises on the first floor are accordingly bonafide required by him.

3 Application for leave to defend has been perused. The first contention of the tenant is that the bonafide requirement of the landlord is in fact malafide; he has concealed material facts and he has not come to the Court with clean hands; contention being that he has not disclosed the entire accommodation which is available with him; further contention being that on the ground floor although there are admittedly two shops, one with the present tenant and another with another tenant M/s Gobind Ram & Sons yet that apart there is availability of space even on the ground floor which space is adjoining the staircase; photographs have been affixed along with the eviction petition in the trial Court and the learned counsel for the petitioner has drawn attention of this Court to the said photographs depicting the ground floor; vehement contention being that there is a room measuring 16ft X 4.5 feet which is lying locked; there is another space which is below the staircase which is in 'L' shape and total space available is thus

approximately 100-120 square feet. In the corresponding para of the reply, the landlord has denied this submission; the site plan and the photographs placed on record have also been perused. Admittedly there are only two shops on the ground floor, one of which is in occupation of the landlord from where he carrying on his business; it measures 320 square yards; the other adjoining shop is tenanted out to M/s Gobind Ram & Sons who is a tenant in the said premises for last more than 50 years. The L shaped space as pointed out by the petitioner is only a passage which is accessing the staircase and is for the purpose of going to the upper floors and can in no manner be said to be a space available to the petitioner either for the purpose of running his business or for storage of stocks or as a office space which are the requirements of the landlord. The other space on the ground floor as per the contention of the petitioner measures 16 X 4.5 feet; perusal of the site plan shows this space to be a longitudinal passage which as per the submission of the landlord (present in Court) is the passage containing the sewerage pipe lines of the whole building which run through this space; this submission of the landlord has not been disputed by the petitioner (Sushil Mittal present in Court); thus in no manner can it be said that

this is an alternate space available to the landlord.

4 Further contention of the tenant is that there is a space measuring 6 feet X 8.5 feet which is locked and is part of the mezzanine floor. There is categorical denial by the landlord to this submission of the tenant; submission being that this is only a kolki measuring 4feet X 5feet having a height of 6 feet and before this Court both the parties do not dispute this factual position. This area even as per its dimensions also can in no manner be said to be an alternate place possible for the landlord to use it either as an office space or for any other business activity.

5 On the first floor, it is not in dispute that there are two shops, one of which is with the present petitioner and the other has been let out to another tenant; contention of the tenant is that on the first floor, there is one chajja measuring 4feet X 9feet which is also available with the petitioner; this has been vehemently denied in the corresponding para of the reply; moreover photographs as depicted and relied upon by the tenant nowhere shows that this chajja has an available space of 4feet X 9feet space available on which any activity of the petitioner (as has been averred in ground 18-A of the eviction petition) can be carried out. This

plea of alternate space available to the landlord on the first floor is thus clearly negated. There is no dispute that there is one bathroom on the first floor.

6 The second floor has depicted two rooms; it is not in dispute that both these rooms are tenanted out; they are admittedly with the tenants; contention of the petitioner is that the back portion is with the petitioner; this is contrary to his earlier stand as admittedly the second floor has not been divided and the entire second floor has been tenanted out to two different tenants; contention of the landlord that he has no portion on the second floor has to be accepted.

7 Same is the position with the mumty/third floor. This is a mumty area. There is no construction on the third floor. The photographs show that there is an asbestos sheet covering on either side of the mumty but again the submission of the landlord that this mumty area which is on the third floor is neither feasible and nor suitable to the landlord for the purpose for which he has filed the present eviction petition is substantiated. The landlord cannot be expected to extend his business activity (admittedly being carried out from the ground floor) to the tin shed on the mumty floor.

8 These are by and large the contentions which have been raised by the petitioner qua the alternate accommodation which is available with the petitioner. The vehement contention of the tenant being that there has been concealment of material facts there which by itself entitles the petitioner for grant of leave to defend thus becomes a triable issue; for this proposition he has placed reliance upon a judgment reported as 184 (2011) DLT 590 Mohd. Illyas Vs. Nooruddin & Others.

9 Perusal of the record of this case shows that there has been no concealment of facts by the landlord. The landlord is admittedly carrying out his business of sale of hardware material; he is using the premises available with him which is a 320 square yards area on the ground floor for the purpose of sale as also for the storage of his business as also for an office space. His contention is that this accommodation which is available with him is falling short; to support his submission he has placed on record certain documents which include the balance-sheet of the company (M/s Satyadev & Company) for the year ending 31.03.2008, income tax records and the Statement of Account. The assets of the company as per schedule is worth ₹ 5,14,028.25 with evidence of cash in hand of ₹1,49,390.65 and cash

in the Canara Bank is ₹29,876.30; contention of the petitioner being that he has more than ₹2 lacs of cash in hand but he is not able to buy the stocks as the business space available with him is insufficient for stocking these stocks; although he has the means to expand his business yet he cannot do so because of insufficiency of space. This submission of learned counsel for the petitioner is prima-face borne out from these documents placed on record. The profit & loss account for the year 31.03.2008 also shows that opening stock of the company is to the tune of ₹5,56,285/- and purchases of ₹35,44,004.44 have been made; gross profit for the year ending 31.03.2008 is ₹47,24,964.61. Area presently available with the petitioner is 320 square yards; tenanted portion with the present petitioner is contiguous and in line with the office space from the petitioner is presently functioning; by making an opening in the roof in between present space in occupation of the landlord and that in occupation with the tenant, an area of 640 square yards can be made available to the landlord which will serve his business need for his tripartite purpose i.e. for storage of stocks as also for sale of his goods and for office of the said business which requirement as detailed by him in his is eviction petition. His bonafide need has been established.

Merely because he has a kolki measuring 20 square feet on the mezzanine floor and even presuming a small space on the ground floor (denied by the landlord) this would not be sufficient to serve his needs and requirements; moreover learned counsel for the landlord has pointed out that this 'L' shape passage on the ground floor is the space from where the sewerage line of the entire building passes to which submission there has been no dispute.

10 No concealment of any material fact by the landlord as has been vehemently contended by the tenant is made out. An accommodation which is useless or which is of no consequence is not specifically required to be averred in the eviction petition; kolki forming a part of the mezzanine floor or the inadequate space on the ground floor are accommodations which can in no manner be said to be accommodations which are alternate availabilities which can serve the purpose of the landlord i.e. either for storage or sale or for office space. Admittedly in this case, this business is already being carried out in an area of 320 square yards; the portion with the tenant is also 320 square yards; by joining it with the accommodation available with the landlord it will become a spacious space i.e. 640 square yards which would serve the

need of the landlord. In these circumstances, the landlord cannot be held guilty of any concealment. The judgment of Mohd. Illyas (Supra) is inapplicable.

11 A Bench of this Court in 1988 (2) RCJ 179 R.D. Aggarwal Vs. Smt. Arjan Kaur in this context has held as under:-

“In an eviction petition on the ground of bona fide requirement it is only where a particular landlord intentionally conceals the residential accommodation available to him from the court that he/she can be non-suited on this ground. Concealment of innocuous accommodation which cannot be used as a regular room should not result in dismissal of her/his claim for more accommodation.”

12 Thus the submission of the petitioner that the space presently available with the petitioner is sufficient for his need is an argument clearly without any merit.

13 A bald plea has also been taken by the tenant that the petitioner is not the landlord; tenant has however not disputed the fact that the grandfather of the petitioner was the owner of these premises and after his death by virtue of a Will the present premises have fallen to the share of the present petitioner and to his father. It is also not in dispute that the present petitioner has attorned to the landlord and he has been paying rent to him. In this view of the matter, this submission of the tenant is

clearly without any force. Provisions of Section 116 of the Evidence Act are also attracted; tenant is estopped from questioning the ownership or title of the landlord.

14 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.”

15 The last submission of learned counsel for the petitioner is qua his averments in para 7-A of his application for leave to defend; submission being that in terms of the Will of the grandfather, the petitioner has inherited one fourth share in shop No. 2883-84, Teliwara, Bahadurgarh Road, Delhi. In the corresponding para of the reply, it has been stated that this shop had been sold by the grandfather Nihal Chand during his

lifetime itself and as such the question of the petitioner having a share in the aforementioned shop does not arise.

16 No other argument has been urged. Triable issues as sought to be raised cannot be and should not in a routine manner be granted.

17 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.

18 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.”

19 In these circumstances, 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.

INDERMEET KAUR, J

FEBRUARY 01, 2012
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