

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

+ R.C.REV. 277/2011

Date of Decision: 10.10.2012

RAKESH KUMAR

..... Petitioner

Through: Mr. N.K.Kaul, Sr. Adv. with Mr.
Santosh Kumar and Mr. Rajiv Ranjan
Mishra, Advocates.

Versus

PAWAN KHANNA

..... Respondent

Through: Mr. Sanjeev Anand with Mr. Murari
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition under Section 25-B(8) of the Delhi Rent Control Act (for short the 'Act') is directed against the order dated 11.05.2011 of the Addl. Rent Controller (ARC), whereby the leave to defend application filed by the petitioner in the eviction petition filed against him by the respondent, was dismissed.

2. The petitioner is a tenant under the respondent in respect of one shop in property No. 13-UB, Jawahar Nagar, Sabzi Mandi, Delhi. His eviction is sought by the respondent/landlord on the ground of bona fide requirement thereof by him for setting up his business of property broker, alleging not to

be having any other reasonably suitable space for this purpose in Delhi. It is averred by the respondent/landlord in the eviction petition that he has been carrying his business of properties from an office of his friend Jatin Madani at 9-A, Eidgaha Road, New Delhi, and that since he has no space for his business, he has been calling his customers at this place or in public places or restaurants.

3. The petitioner/tenant filed leave to defend application denying the respondent/landlord to be having no space for carrying on his business of property broker or that he was carrying the same from the office of his friend at 9-A, Eidgaha Road, New Delhi. He alleged that the respondent had been carrying his business under the name and style of M/s. Pratham Apartments Pvt. Ltd. from C-161, Ashok Vihar, Phase-I and which address is duly mentioned in the record of the Registrar of Companies. It is also alleged that even in the search report of Sanjay Kumar and Associates dated 26.09.2010, the address of the respondent's company continues to be at C-161, Ashok Vihar, Phase-I, as per the record of Ministry of Corporate Affairs, Govt. of India. It is alleged that the respondent has let out the ground floor of the suit premises to M/s. Planet Fashion since 2008.

4. In the reply to leave to defend application of the petitioner/tenant, the respondent controverted the averments of the petitioner and reiterated that of his eviction petition, and stated that he has vacated the tenanted premises C-161, Ashok Vihar, Phase-I about seven years back and maintained that he has been running his business from the office of his friend Jatin Madani.

5. The learned ARC, vide the impugned order, declined leave to defend to the petitioner, observing that no triable issue was made and consequently, he passed the eviction order. The same is under challenge in the instant petition.

6. In the instant petition, the petitioner has also filed an application under Order 41 Rule 27 CPC seeking production of some additional documents. The said application was duly replied by the respondent.

7. I have heard learned senior counsel for the petitioner as also the respondent and gone through the entire record.

8. Being conscious of the nature and scope of the revisional power of this court under Section 25-B(8), it may be reiterated that when, from the averments as set up in the eviction petition as also the leave to defend application, and the reply filed by the landlord thereto, there appears something on record, requiring to see as to whether the Controller passed the order according to law and rightly examined, evaluated and adjudicated upon the projected need of the respondent of the tenanted premises, this court may peruse the records to ascertain whether any illegality has been committed by the Controller in passing the order under Section 25-B of the Act.

9. The learned senior counsel appearing for the petitioner contends that the order of the learned ARC declining leave to defend, suffers from serious

infirmities and illegalities inasmuch he has overlooked that at the stage of consideration of leave to defend, it was only for the tenant to establish prima facie triable issues, and not the conclusive proof of dislodging the claim of bona fide requirement of the suit premises by the respondent/landlord. The learned senior counsel seeks to rely upon the decision of the Supreme Court in the case of ***Inderjeet Kaur vs. Nirpal Singh (2001) 1 SCC 706*** wherein it was held that at the stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction.

10. The principles requiring considerations for grant of leave to defend application in the eviction petition have been laid down by the Hon'ble Supreme Court way-back in the year 1982 in the case of ***Charan Dass Duggal Vs. Brahma Nand, 21 (1982) DLT 378*** and which have been reiterated in various judicial pronouncements and can be noted thus:

“5. What should be the approach when leave to defend is sought for? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought for on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively”.

11. Though, I am conscious of the fact that it is settled law and to which, there is no dispute that the landlord is the best judge of his affairs and also choices, and the tenant cannot dictate as to how the landlord has to live and utilize his premises; but, at the same time, it is also settled principles of law in such cases that the mere wish or desire of the landlord or his decision to get the tenanted premises vacated is not the decisive factor. It is not that whatever he would say, in every case, would be taken to be as gospel truth. If that was so, then, on the mere asking of every landlord that he needs the premises for doing his business and he is the judge and master of his decisions and choices, the statutory protection afforded to the tenant, would become meaningless. That is not the intent of the legislation. The applicability of above proposition is only after the landlord is able to demonstrate that his assertion of requirement of the tenanted premises is authentic and genuine. If he is able to show and demonstrate so, then certainly neither the tenant nor this Court could dictate terms upon him as to how and in what manner he should utilize his premises. The projected requirement of the tenanted premises, based on his subjective decision, is required to be tested by the Court.

12. In this backdrop of the legal propositions, I have noticed that the respondent's plea was that he has no place to run his property business, and that he has been doing his business from the office of his friend Jatin Madani at 9-A, Eidgaha Road. In this regard, the plea of the petitioner was that the respondent had been doing his business of properties from C-161, Ashok Vihar, Phase-I and that, this was so reflected in the record of the

Registrar of Companies' office as also Ministry of Corporate Affairs, Govt. of India and in the sale deeds and rent deeds, which were executed by the respondent.

13. According to the respondent, his business of property has been growing and he does not have any space of his own and thus required the tenanted premises. In view of the specific assertion by the petitioner that the respondent is not carrying his business from the office of his friend at 9-A, Eidgaha Road, there is nothing on record produced by the respondent to show that at any point of time he had done any business from this place of his friend.

14. The petitioner had stated and maintained that the respondent had been carrying his business of M/s. Pratham Apartments Pvt. Ltd. from C-161, Ashok Vihar, Phase-I. According to the respondent, this was the tenanted premises, which he had vacated about seven years back i.e. sometimes in December, 2003. The petitioner has placed on record copies of various sale deeds and lease deeds to demonstrate that as back as on 10.04.2006, when a part of the portion of the suit premises 13-UB was purchased by the respondent, his address in the sale deed was mentioned as of C-161, Ashok Vihar, Phase-I. The petitioner has relied upon the copies of nine such documents of different periods from June, 2005 to 10.04.2006, wherein the address of the respondent has been shown as that of C-161, Ashok Vihar, Phase-I. The submission of the learned counsel for the respondent in this regard was that this was by mistake that the address of C-161, Ashok Vihar,

Phase-I continued to be mentioned in the sale deeds as also the record of the Registrar and Ministry of Corporate Affairs, Govt. of India. The submission of the learned counsel for the respondent may be correct that the respondent continued to mention this address, and also did not get changed the address on the record of Registrar's office or that of the Ministry of Corporate Affairs, but the fact remains that nothing has been placed on record by the respondent to show that the said premises was tenanted premises or that he has vacated the same sometimes in 2003-04. This aspect is relevant since this is the address, which was shown as registered office of the company at the time of incorporation in 2004 as also till the survey report of Sanjay Kumar and Associates dated 26.09.2010. In this context, it is also noticed that as per Form 32 submitted at the time of the incorporation, the address of the respondent's business was shown as F-14/50, Shop No.-II, Model Town-II, New Delhi, and that of another Director Shail David as F-2/5, Model Town-I, New Delhi. This is a triable issue that when the registered office of the company at the time of incorporation was C-161, Ashok Vihar, Phase-I, and continued to be so till 26.09.2010, as to whether the respondent was in possession thereof as a tenant, and if so, when it was vacated. This is also a triable issue that this premises, if available, is not suitable alternative accommodation for the business of the company of the respondent, though he had been having his office there since the time of its incorporation in 2004.

15. In the same context, it is also a triable issue that as to whether the suit premises could be got evicted by the respondent for the purpose of a

company of which, another Director is Shail David, who had his office space, as per Form 32, at F-2/5, Model Town-I, New Delhi. This is certainly a triable issue as to whether the respondent, as one of the Directors of the company, was entitled to evict the petitioner for the business of the company. In the same context, it is also a triable issue as to whether this company at all is functioning or carrying any business or not. The submission of the learned senior counsel for the petitioner is that this company is dormant and is not carrying any business. He has drawn my attention to the information from the office of the Registrar of Companies as regard to the status of the company, wherein, as on 7.12.2011, the status of the company is shown to be as dormant, and not having filed any annual returns and balance sheet. This could not be controverted by the learned counsel for the respondent, except by saying that the petitioner is no-one to dictate as to how the respondent must do his business. Nothing has been placed on record by the respondent in this regard as well to show that the company M/s. Pratham Apartments Pvt. Ltd. for which he intends to get the tenanted premises evicted, is carrying any business activity.

16. It was also the submission of the learned senior counsel for the petitioner that the respondent had let out the entire ground floor except the tenanted portion to M/s. Planet Fashion in 2008 and that would suffice to doubt his bona fide requirement of the tenanted shop. The plea of the respondent in reply to leave to defend application was that this tenant M/s. Planet Fashion was not evicting the portion in its possession. It is interesting to note that in the counter-affidavit that was filed in the present petition, his

plea was that this portion was let out to M/s. Planet Fashion for nine years w.e.f. 25.01.2008, but, now the respondent has no concern with the said property and is not getting any rent. When and how, the respondent divested of his interest from this portion of the suit premises, which is adjoining the tenanted shop on the ground floor, has not been disclosed.

17. With regard to the additional plea of the petitioner that the respondent is in possession of another property bearing No. E-169, Kamla Nagar in the same locality, the plea of the respondent is that this property was in possession of the tenants. It is submitted by the petitioner in the instant petition that the entire ground floor and mezzanine floor of this property was let out by the respondent to Bombay Selections on 14.12.2009, and that first and second floors thereof, are still lying vacant. This was not controverted by the learned counsel for the respondent. This aspect that the respondent had let out this property for commercial purpose only sometimes before the filing of the eviction petition, also cannot be ignored from the consideration of the bona fide requirement of the tenanted premises by the respondent.

18. The Supreme Court in the case of **Liaq Ahmed & Other Vs. Habeeb-Ur-Rehman, (2000) 5 SCC 708** held that “from the scheme of the Act, it is evident that if the tenant discloses the grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave to defend his case against the eviction sought by the landlord. The inquiry envisaged for the purpose is a summary inquiry to prima facie find out the existence of reasonable grounds in favour of the

tenant. If the tenant brings to the notice of the Controller, such facts as would disentitle the landlord from obtaining an order for recovery of possession, the Controller shall give him leave to contest. The law envisages the disclosure of facts and not the proof of the facts”. Further, in determining as to whether the claim is bona fide or not, the Court is under an obligation to examine, evaluate and adjudicate the bona fide of the landlord. A claim founded on abnormal predilections of the landlord cannot be regarded as bona fide. In this regard the observations of the Supreme Court in **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222** can be noted as under:

“Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing

out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one, but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

19. It is necessary to bear in mind that when leave to defend is refused, the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not as simple as is sought to be projected by the respondent that he requires the tenanted premises for carrying on his business activity of property broker, and that, does not have any other reasonably suitable space for running his business of property.

20. In view of my above discussion, and in the backdrop of legal propositions as noted above, it could be seen that the petitioner has been able to raise prima facie, triable issues, which seem to have been overlooked by the learned ARC, and which could not be prematurely decided, without the adjudication by way of evidence and not merely on the affidavits of the parties. As such, the petitioner cannot be thrown out of the tenanted premises at the threshold at least till the time, the respondent is able to make out his case of bona fide requirement of the tenanted premises, after opportunity is afforded to the tenant to test the same. I strongly feel the

impugned order suffering from infirmity which has resulted in miscarriage of justice to the petitioner. Thus, the impugned order is liable to be set aside. The petition is allowed and the leave to contest is granted to the petitioner. The parties are advised to appear before the learned ARC on 30.10.2012.

M.L. MEHTA, J.

OCTOBER 10, 2012

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