

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

+ RCR NO. 306/2012

Date of Decision:06.08.2012

RATTAN STUDIO

.... PETITIONER

Through: Mr.Sanjeev Bansal, Advocate.

Versus

MS. RAJU RANI JAIN

.....RESPONDENT

Through: Counsel for the respondent.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present petition has been preferred under section 25B of Delhi Rent Control Act (hereinafter referred as 'Act') read with section 115 of Civil Procedure Code assailing the judgment and order dated 02.03.2012 passed by Ld A.R.C. whereby he dismissed leave to defend application, filed by the petitioner.

2. The respondent filed the eviction petition no. E-159/2011 u/s 14 (1) (e) r/w Section 25-B of the Act against the petitioner on the ground of bonafide requirement in respect of one shop and adjoining portion thereof, situated at ground floor in property bearing no. 79-80, Gali Khajanchi Wali, Kucha Sukha Nand Delhi-110006 (hereinafter referred as 'suit premises'). The respondent's case was that she along with her family members was using the first and second floor as also the terrace of the suit premises for residential purposes, whereas the entire ground floor, except one hall being used by her grand children for studies, was

occupied by the tenants. It was averred that she has three sons and seven grandsons. One of her sons was doing cycle business and the other two doing the work of commission agents, but they have experience in the business of clothes, cycles and electrical. Out of the seven grandsons, four are major, but unemployed and others are also grown up. It was averred by the respondent that due to unemployment, even the major grandchildren could not be married. It was her case that she wished to settle all her children and grandchildren during her life time, and as she does not have suitable space for enabling them to run independent businesses, she bonafidely required the tenanted premises.

3. The petitioner filed leave to defend application on various grounds. It was averred by the petitioner that the respondent is not the owner of the suit premises since as per municipal record, the owner of the suit premises was Mandir Digamber Jain Chetalya. The next plea was that the eviction petition against the petitioner's firm was not maintainable, inasmuch as Late Rattan Chand being one of the partners of the firm, the tenancy devolved upon his legal heirs and therefore, the petition was bad for non-joinder of all the legal heirs of partner Late Rattan Chand. The eviction petition was also alleged to be not properly verified and signed as per law. On merits, the petitioner's case was that the respondent was in possession of sufficient accommodation, and this being a case of 'additional accommodation', leave to defend ought to have been granted to him. In this regard, it was also averred that the respondent got possession of one shop in May, 2011 from where garments' business was being carried. It was alleged that the hall on the ground floor was falsely stated as being used for studies, whereas the

same was being used for business of assembling and sale of cycles. It was also alleged that the respondent was in possession of House No. 75 in the same locality which was not disclosed by her. It was also alleged that the respondent was having handsome income as one of her sons was running a cycle factory and another was gainfully employed at the salary of Rs. 30,000/- per month and two sons were working as commission agents. Lastly, the site plan filed by the respondent was also alleged to be incorrect, not showing the entire tenanted premises.

4. The learned ARC vide the impugned order declined to grant leave to contest observing the suit premises to be bonafidely required by the respondent for setting up businesses of her sons and grandsons.

5. I have heard learned counsel for the parties and perused the records.

6. With regard to the plea of the petitioner disputing the ownership of the suit premises, it is recorded by the ARC, and rightly so that undisputedly, the petitioner was paying rent to the respondent. In the civil suit filed by the respondent against the petitioner, the latter did not dispute the petitioner to be the owner of the suit premises. Further, the house tax records of various years have also been relied by the ARC to record the respondent to be the owner/landlord of the suit premises. It is settled law that in the case of eviction on the ground of bona fide requirement under Section 14 (1) (e) of the Act, the ownership that is contemplated is not absolute as it is understood in the suit of title. In the case of **Shanti Sharma & Ors. Vs. Ved Prabha & Ors.** 33 (1987) DLT 80 (SC) 2028, it was held as under:

“owner as used in clause (e) in Section 14(1) does not postulate absolute ownership in the sense that he has an absolutely unrestricted right to deal with the property as he likes. To describe some one as owner, and perhaps even as an absolute owner, of property is to say two things: it is to assert that his title to the property is indisputable and that he has all the rights of ownership allowed by the legal system in question. ”

7. There is no dispute so far as the family members of the respondent are concerned. The respondent has three grown up sons and seven grandsons. The case of the respondent is that her only one son was doing the regular business of cycles and other two sons were doing the business of commission agents, but they are also capable of setting up businesses of cloth, cycle and electricals. This was also her case that her three grandsons are also grown up and unemployed. Though the plea of the petitioner that her second son Rajesh Kumar was gainfully employed and earning Rs. 30,000/- per month, was denied by the respondent, but assuming for the sake of argument that he was so employed, that itself will be no ground to doubt the bona fide requirement of the respondent. The respondent has undisputedly three grown up grandsons, who need to be settled as they are unemployed. It is not disputed that the first and second floor as also the terrace of the suit premises, are being used for residential purpose and it is only the ground floor which can be used for commercial purpose. According to the respondent, the entire ground floor except one room, was occupied by the tenants, whereas the petitioner stated that the ground floor room in the possession of the respondent was being used for assembling and sale of cycles and the possession of one more room was taken by the respondent in May, 2011. With regard to the room on the ground floor which was already in possession of the respondent, her case was that

this room was being used for the studies by her grandsons. Undisputedly, the petitioner was already in possession of one room on the ground floor and the possession of one room was taken in May, 2011. In this way, the respondent can be said to be in possession of two rooms on the ground floor. The learned ARC recorded and rightly so that the said accommodation of two rooms on the ground floor could not be said to be sufficient to meet the requirement of two sons and three major grandsons to run their business independently. With regard to the plea that the respondent also had property bearing No. 75 in the same locality, the respondent's case was that this property was in the tenancy of Padam Singh and this was also so shown in the site plan. This part of the case of the respondent, remained uncontroverted.

8. The respondent in her old age is looking for settling her sons and grandsons and has expressed this to be as her "last wish". The 'wish' she has expressed is not to be taken in the context of a mere desire lacking honesty and genuineness. This has been used in the context of her last wish to settle her sons and grandsons in her old age. It is natural to have such a wish by the old persons in our society. Such a wish cannot be said to be unreasonable or unnatural. 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. If the respondent wished to settle her sons and grandsons, and she required accommodation for the same, it could not be said to be mala fide on her part. The right of the landlord for possession of his/her property for setting up a business for son has been also recognized by

the Apex Court in ***Ram Babu Aggarwal Vs. Jay Kishan Das 2009(2) RCR 455***. The moral duty of a parent to help, establish his/her son was also recognized by the Apex Court in ***Joginder Pal Singh Vs. Naval Kishore Behal AIR 2002 SC 2256*** in the following words:

“24.....Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identify nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the overlaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent.”

9. In view of the above, I do not see any infirmity in the findings recorded by the ARC that the need of the suit premises by the respondent was not as of additional accommodation, but was for the bona fide requirement of her sons and grandsons.

10. The plea regarding the site plan filed by the respondent, being incomplete as allegedly not showing the entire tenanted premises, the learned ARC has referred to the civil suit, wherein the site plan as filed by the respondent and which was not disputed by the petitioner, was similar to the one filed in the present petition. Thus, there is no merit in the submission made in this regard.

11. The plea regarding the petition being bad for non-joinder of the LR of the deceased Rattan Chand has been rightly rejected by the learned ARC observing that there was nothing on record to show that partnership firm of M/s. Rattan Studio, which was the tenant in the suit premises, was dissolved. Undisputedly, Rattan Studio, a partnership firm, was a tenant in the suit premises and Ashwani Ahluwalia through whom the same has been sued in the present petition, was its partner. I failed to understand the basis of such a plea of the petitioner. When the tenancy was in the name of the firm and which was existing, it could only be sued in its name through a partner, and not through the LRs of one of the deceased partners.

12. From my above discussion, I could not see the petitioner having raised any triable issue requiring any adjudication by consideration of some evidence. It is settled proposition of law that before granting leave to defend, there must be shown some triable issue required to be determined, which may disentitle the landlord from getting order of eviction and at the same time, entitling the defendant to leave to contest. The petitioner has not been able to prima facie establish any triable issue. Thus, I do not see any infirmity or illegality in the impugned order. The petition is hereby dismissed.

M.L. MEHTA, J.

AUGUST 06, 2012

Rm/akb