

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

+ R.C. Rev. No 304/2012

Date of Decision:10.10.2012

JAWAHAR LAL Petitioner

Through: Mr.Rajat Taneja,
Mr.Vaibhav,Advocates.

Versus

RAVINDER KUMAR KHANNA AND ANR Respondent

Through: Mr.Manohar Lal, Adv. for R1.

**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, 1958 (for short the "Act") assails the order dated 14.03.2012 of Additional Rent Controller (ARC), North whereby the leave to defend application filed by the petitioner in the eviction petition filed against him by the respondents, was dismissed and an eviction order was passed.

2. The petitioner is a tenant under the respondents in respect of the two rooms in property bearing No. 96, First Floor, Khurshid Market,

Sadar Bazar, Delhi. His eviction is sought by the respondent No. 1 on the ground of bona fide requirement thereof by him for setting up his business of hosiery for his son, who had got a degree of Bachelor of Business Administration in 2006, alleging not to be having any other reasonably suitable commercial space for this purpose. It is averred by the respondent No.1/landlord in the eviction petition that since despite best efforts, his son has not been able to get a good job, he required the tenanted premises to get him established in the hosiery business.

3. The petitioner filed leave to defend application alleging the respondents to be in possession of various other properties, residential as also commercial and denying the respondent No. 1 to be not having any other reasonably suitable accommodation for establishing his son in the business. It is averred that the respondent No 1 has a thriving business in manufacturing of hosiery items and is running the same under the name of Golden Hosiery Manufacturing Company Pvt. Ltd with its registered office at 5038 and 5032, Rui Mandi, Sadar Bazar, Delhi, and that this establishment has a capital of more than 1 million U.S dollars. It is alleged that the respondent No. 1 is the Principal Director therein and has already settled his son in the said company. It is also alleged that the respondent No. 1 is having another property being A-94, Mayapuri Industrial Area, Part-II, Delhi wherein he has a state of the art facility and infrastructure, and that he had installed latest technology machines and is also having a Research Centre and Warehouse, where a large number of experts have been employed. It is

also his case in leave to defend that he has obtained information about the property of the respondent No.1 at Mayapuri and the capital of his establishment from the website (www.goldenhosierytradeindia.co.in) of his business being run under the name of Golden Hosiery Manufacturing Company Pvt. Ltd. The petitioner alleged that he is a senior citizen aged 72 years and having three married sons with their children, the business being run by him at the tenanted premises, under the name of Jawahar Leather Stores, is their only source of income as his family members are dependent on him.

4. In the reply to leave to defend application of the petitioner, the respondent No. 1 controverted the averments of the petitioner and reiterated that of his eviction petition and stated that even though he is a Director in the business of M/s. Golden Hosiery Manufacturing Pvt. Ltd., but it does not mean that his son could be settled in the said company.

5. Subsequently, the petitioner filed an application u/S 151 C.P.C for placing on record additional documents. He submitted documents of TDS payments made by the son of the respondent No. 1 and also documents showing the details of the Directors of Golden Hosiery Manufacturing Pvt. Ltd. In reply, the respondent No. 1 contended that as regards the TDS filed by the petitioner, it was only that of assessment year 2010-2011. The respondent No. 1 filed the TDS of the assessment years 2008-2009, 2010-2011 and 2011-2012 to assert that

his son had no regular source of income. He also submitted that the son has no say in the company so it cannot be said that he is well settled in the business.

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

7. I have heard learned 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 landlord 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. It is noted above that the case of the respondent No. 1 as set up for the bona fide requirement of the tenanted shop is that he required

the same for establishing his son in the business. It is settled law that in a leave to defend application, the tenant merely has to prima facie make out a case which would raise triable issue. It is also trite that mere assertion of the landlord that he requires the premises, occupied by the tenant, for setting up the business for his son, is not decisive and it is for the Controller to determine the truth of the claim and also to see as to whether the claim is bonafide. Further, in determining as to whether the claim is bonafide or not, the Controller is entitled and indeed bound to consider whether it is reasonable. A claim founded on abnormal predilections of the respondent/landlord may not be regarded as bonafide.

10. 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 ***Precision Steel & Engg. Works***

vs. Prem Deva Niranjana Deva Tayal, (1982) 3 SCC 270, it was held as under:

“12.....The jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at that stage is the relevant document and one must confine to the averments in the affidavit. If the averments in the affidavit disclose such facts which, if ultimately proved to the satisfaction of the court, would disentitle the landlord from recovering possession, that by itself makes it obligatory upon the Controller to grant leave. It is immaterial that facts alleged and disclosed are controverted by the landlord because the stage of proof is yet to come. It is distinctly possible that a tenant may fail to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown.”

11. In the backdrop of the legal propositions as enunciated by various judicial pronouncements time and again, I have given my considered thought to the submissions made by the learned counsel for the parties as also perused the entire material available on record, and I find the impugned order suffering from material infirmity and perversity on certain observations made by the learned ARC.

12. In the instant petition, the petitioner has also filed an application under Order 41 Rule 27 CPC read with Section 151 CPC seeking production of some additional documents. In this application, the petitioner submitted that the son of respondent No. 1 was the sole proprietor in his firm i.e. Ambience Design Company. In support of this, the petitioner filed a copy of the website of the said firm along with documents pertaining to the said firm having a registered TIN number with the Department of Trade and Taxes. In addition to these,

the petitioner states that he has also been able to get hold of certain other vital documents like application for registration under the Delhi Value Added Tax Act, 2004 in which the son Sahil Khanna has shown himself as one of the partners along with his mother Smt. Kiran Khanna of the firm M/s. Ambience Design Co, as on 30.09.2005. The website of the firm filed by the petitioner showed the son of respondent No. 1 as the sole proprietor and the address given in the website as W-9 Greater Kailash Part-2, New Delhi-110048, which is also the residential address of the respondent No. 1. In reply to this, the respondent filed the ITR for the Assessment year 2010-2011 of the firm to show that the business income was only Rs. 68,400/-. The respondent No. 1 claimed that he being a rich and affluent businessman, cannot see his son earning only about Rs 5000/- - Rs 8000/- per month. It was submitted by the learned counsel for the respondent that as his son has been using his residential address for his commercial activities, it would testify that he does not have any commercial space for setting up business. With all these facts, the respondent No. 1 submitted that he is struggling to get his son settled.

13. It was the submission of the learned counsel for the petitioner that the documents filed by him along with the application under Order 41 Rule 27 CPC clearly establish the fact of the son of the respondent No. 1 having his own independent business and income and that, he was a partner in Ambience Design Company. He has submitted that the respondent No. 1 is also having other commercial

property at Mayapuri. This could not be controverted by the respondent No. 1. It was however, submitted that his son does not have any income worth enough and does not have any reasonably suitable accommodation to carry on the business and thus, the respondent No. 1 bona fide required the tenanted premises to get his son settled in the business of hosiery.

14. The petitioner in the present case, by submitting all the documents regarding the businesses run by the respondent No. 1 as also his son Sahil Khanna, was able to prima facie bring out certain triable issues. It is not as simple as is sought to be projected by the respondent that he requires the tenanted premises for carrying on business activity for his son and that, he does not have any other reasonably suitable space for running his business. The copy of TDS certificate filed as also the details of the firm Golden Hosiery Mfg. Co. Pvt. Ltd. with its list of Directors raise triable issue as to the bonafide requirement of the respondent No. 1 who claimed in his eviction petition that his son was unemployed. Further, the fact that the respondent No. 1 being such an affluent business man wants his son to start a business venture in Sadar Bazar also requires to be examined to assess his bona fide. It is also seen that the respondent No. 1 had concealed a relevant fact that his son was the sole proprietor in the firm Ambience Design Company. All these issues need to be further evaluated and adjudicated by the Controller by way of evidence.

15. 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.

16. 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 on affidavits, without the adjudication by way of evidence. 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 31.10.2012.

M.L. MEHTA, J.

OCTOBER 10, 2012

rmm