

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

% *Date of Judgment: 05.3.2012*

+ **RC. REV. No.258/2011**

MOBIN Petitioner
Through: Mr.S.D.Ansari, Advocate.

versus

KAUSAR Respondent
Through: Mr.Salim Malik, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Impugned judgment dated 17.01.2011 has decreed the eviction petition filed by the landlord. The application seeking leave to defend filed by the tenant had been dismissed.

2. Record shows that the present eviction petition has been filed by the landlord Kausar against her tenant Mobin; premises is a shop being a part of house No.410, Gali no.19, Main Jafrabad, Delhi; it was an oral tenancy; rate of rent was ₹500/- per month excluding other charges.

Petitioner claims herself to be the absolute owner of the suit property;

her contention is that she has three sons and two daughters; elder son Faimuddin aged about 38 years, having two children is doing the sale of jackets and coolers at Nala, Main Road, Jafrabad, Delhi; this is a THIYA and the MCD officials at any time come to his working place and remove his THIYA; this is only the business space available with the elder son of the petitioner and the entire family is surviving on this business; her second son Suhaib is also working with his elder brother; he is also married and has one child; her third son Salman is studying; husband of the petitioner is a heart patient. The entire family expenses are being borne out by Faimuddin; there is no other source of income available with the family of the petitioner except the present business which is being carried out by the two sons of the petitioner and which at a temporary place. The present premises i.e the tenanted shop is required bonafide by the petitioner for the use of the business purpose of her two sons. Eviction petition was accordingly filed.

3. In the application seeking leave to defend the ownership of the landlady was disputed; it was denied that there was a relationship of landlord and tenant between the parties; contention being that there was a sufficient commercial accommodation available with the landlady;

there are six shops in property No.410, Main Road, Jafrabad, Delhi of which five shops are in possession of other tenants and one shop is with Faimmuddin (elder son of the petitioner) from where he is carrying out the aforementioned seasoned business; family of the petitioner is also doing a business of rickshaws; they have 150 rickshaws and they are running their business from Gali No.4, Near Shamshan Ghat, Kabir Nagar, Delhi; they also have commercial properties in Delhi, Loni and Bho Pura, Ghaziabad. The present eviction petition has in fact been filed malafidely; it is liable to be dismissed.

4. Reply filed by the landlady to the corresponding averments made in the application for leave to defend have been noted. The averments qua the family status have been reiterated. It is reiterated that the petitioner is the owner and landlord of the aforementioned suit premises which form a part of property bearing No.410, Gali no.19, Main Jafrabad, Delhi. Contention was that earlier the suit property was measuring 50 sq. yards; 15 sq. yards of the property was demolished by the MCD and only 35 sq. yards now remains with the plaintiff; it was denied that the petitioner's family is doing business of rickshaws from Gali no.4, Shamshan Ghat; it was explained that the devar (brother-in-

law) of the petitioner namely Fakhruddin has a rickshaw garage and he runs the same from the aforementioned address; thus has nothing to do with the petitioner and her family; they have no other commercial accommodation as has been alleged.

5. Record has been perused. The documents placed on record i.e. the sale deed dated 16.7.1969 in favour of father-in-law of the petitioner Maqbool Khan shows that a piece of land measuring 100 sq. yards in Khasra No.92, Village Jazafrabad, Illaqa Shahdara, Delhi-63 had been purchased by Maqbool Khan. He had died intestate; vide relinquishment deed dated 25.9.1991 the legal heirs of late Maqbool Khan had relinquished their shares in favour of Fakhruddin who is the younger son of Maqbool Khan. A GPA dated 30.8.2000 has been executed by Fakhruddin qua the property measuring 50 sq. yards (out of 100 sq. yards) of the aforementioned property; 15 sq.yards of land has since been demolished by the MCD and the present land which is now owned by the petitioner is only 35 sq. yards. This has been explained in the aforementioned documentary evidence. The suit shop with the tenant is measuring approximately 48 sq. feet which is clear from the site plan; the identity of the suit shop is also not in dispute; two rent receipts

issued by Samsuddin (husband of the present petitioner) in favour of the landlady shows that the petitioner has in fact attorned to the landlady; he is paying rent to her; thus in the aforementioned factual scenario the trial court had rightly drawn the conclusion that the status of the landlord/owner is prima facie established. A petition under Section 14(1)(e) of the DRCA is even otherwise not a title suit; a prima facie right/title of the landlord has to be shown; a mere bald denial by the landlord denying the relationship of landlord and tenant and questioning the ownership of the landlord is meaningless.

6. Landlord is also the best judge of his need and how and in what manner he should live or earn his livelihood is his prerogative alone. In Prativa Devi (Smt.) Vs. T.V. Krishnan reported in (1996)5SCC353 it was noted:-

“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”

7. The need of the landlady for the present shop is to enable her two sons i.e. the elder son Faimuddin and the second son Suhaib to carry on

the business of coolers and jackets which is being run from a THIYA; MCD officials come and disturb this business at any odd time has not been disputed. There is also no specific denial to the submission made by the landlady that this business is the only business which is being carried out by her son Faimuddin. The landlady has clearly explained that the five shops mentioned in the application for leave to defend do not belong to her; she is the owner of only 50 sq. yards out of which 15 sq. yards already stand demolished. This submission has also been substantiated by documentary evidence; she thus having only 35 sq. yards of land in which the tenanted shop (measuring 48 sq. feet) is located. The landlady has also explained that the business of rickshaw is being run by her brother-in-law from Kabir Nagar, Delhi; she has categorically denied that she owns any property in Delhi or Ghaziabad. Mere bald allegation made by the tenant that the landlady is the owner of these aforementioned properties or business would not in any manner raise any triable issue.

8. The Courts time and again have held that unless and until a triable issue arises leave to defend should not be granted in a routine or in a mechanical manner.

9. 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.”

10. 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.

11. The family members of the landlady are not in dispute; the fact that the family of the petitioner is dependent upon the income being generated from the business of Faimuddin, who is the elder son of the petitioner, who is carrying on the business of sale of jackets and coolers along with the assistance of his younger brother is also not disputed. The premises in question are thus required by the two brothers for

carrying out their business activity which they are carrying on presently from a temporary place; they need a permanent business place. Bonafide need of the landlady has been established.

12. In these circumstances the impugned order by way of which the eviction petition has been decreed in favour of the landlord and leave to defend having been dismissed suffers from no infirmity. Petition being without any merit is dismissed.

INDERMEET KAUR, J

MARCH 05, 2012
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