

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

+ R.C.REV. 268/2012

Date of Decision: 25.07.2012

M/S. S.K.SETH & SONS

Through

.... PETITIONER

Mr. Ramdhir Jain with Mr. Dhananjani Jain
and Ms Ruchika Jain, Advocates.

Versus

VIJAY BHALLA

Through: Mr. Gautam Gupta, Adv.

.....RESPONDENT

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. Order impugned before this Court is the judgment of Additional Rent Controller (ARC) dated 11.01.2012 whereby the application for leave to defend to contest the eviction petition moved by the respondent was dismissed and an order of eviction was passed against the petitioner.
2. In the eviction petition filed by the respondent against the petitioner under Section 14(1) (e) of the Delhi Rent Control Act (herein after referred to as 'DRCA'), it was submitted that the respondent owns property no. 43(suit property), Bhalla Building, G.B. Road, Delhi. Admittedly, the basement of the said property is under the tenancy of the petitioner at a monthly rent of Rs. 1163.33. It was further submitted that the respondent carries on the business of generators from a different premises bearing no. 47 G.B. Road, Delhi , taken on a monthly rent of Rs. 18,000/-. It was averred that the respondent has two sons carrying on the business of generators and cutting

tools in the above mentioned rented premises and it was becoming increasingly difficult for the respondent and his sons to accommodate their ever growing customers in the tenanted shop. Hence, pleading bonafide requirement, the eviction petition was filed by the respondent.

3. The petitioner-tenant sought leave to contest the eviction petition by filing the application under Section 25-B (4 & 5) of DRCA contesting the claim of bonafide requirement made by the respondent. It was averred by the petitioner that the eviction petition cannot be tried by summary procedure as it was not in accordance with the provisions of Section 25-B because site plan of the suit premises was not filed by the respondent. It was further submitted that the lease deed of the tenanted shop in possession of the respondent was also not placed on record and no details were furnished by the respondent regarding the business carried on by the respondent and his sons and hence the requirement of the suit premises by the respondent was not established. It was further argued that the respondent did not mention in the eviction petition that his sons are in any way dependent on him for accommodation and, hence the petition lacked the necessary ingredients of Section 14 (1) (e) of DRCA. It was further averred by the petitioner that in the year 2002, the respondent sold one of his shopS on the ground floor of the building owned by him to M/s. Sardar Mill Store and in the year 2007, he sold the portion of first floor of the building to Ashoka Bearing Enterprises, which shows that there was no bonafide requirement of the respondent and the eviction petition was filed with the ulterior intent of selling the property at high prices. It was further contented that the respondent has concealed the fact that he filed an eviction petition against Sh. Nirmal Singh and Taranpreet Singh in respect of shop situated on the ground floor of the suit premises, wherein eviction order was passed on

12.07.2011 and hence the requirement of the respondent now stands fulfilled.

4. The averments made by the petitioner were refuted by the respondent in the reply to the application for leave to defend filed by him. The site plan of the suit premises and lease deed of the shop in possession of the landlord was placed before the Court. After consideration of the material on record, the ARC passed the impugned order, observing that no triable issue was made out by the petitioner and the respondent was able to establish the fact of bonafide requirement of the suit property for expanding the business with his sons and accordingly decreed the eviction order. The petitioner filed application for review of the order dated 11.01.2012 which ended with the same results.
5. The learned counsel for the petitioner has submitted before this Court that the petitioner had raised several triable issues in their leave to defend application but the ARC had exceeded his limited jurisdiction vested in him under Section 25-B of the DRCA by dismissing the application. It has been submitted that the Id. ARC erred by overlooking the fact that the respondent was in possession of a shop on the ground floor of the suit premises, essentially making it a case of requirement of additional accommodation. It has been urged that when the question is of additional accommodation required by the landlord, then it is settled legal position that leave to defend must ordinarily be granted. Reliance has been placed on ***Santosh Devi Soni vs. Chand Kiran JT 2000(3) SC 397***. It has been further averred that if a subsequent development which is likely to have a crucial impact on the eviction proceedings, is brought before the trial Court, then such a development must be duly noted by the Court while disposing the petition.

6. On the other hand, the learned counsel for the respondent has submitted that the eviction decree was rightly passed by the ARC as the pleas taken up by the petitioner were without any merit and there was no triable issue established by the petitioner, which would permit the grant of leave to defend application filed by the petitioner. It has been further submitted that the shop in possession of the respondent does not meet his requirement as it is situated on the ground floor of the suit premises, whereas the respondent's requirement is of the shop in the basement and hence the plea of the petitioner regarding alternate property being available with the respondent, ought to be rejected .
7. I have heard the rival submissions and perused the record.
8. At the stage of granting leave to defend the real test should be whether the facts disclosed in the affidavit filed seeking leave to defend prima facie shows that the landlord would be disentitled from obtaining an eviction order, and not whether at the end the defence may fail. If the application filed under Section 25-B discloses some substantial triable issues, then it would be grave injustice to brush them outrightly without testing the veracity of the claims made by the tenant/applicant.
9. In ***Inderjeeet Kaur vs. Nirpal Singh*** (2001) 1 SCC 706 the Apex Court has held that

“13. We are of the considered view that at a 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. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act. Leave to defend cannot be

refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend parties rely on affidavits in support of the rival contentions. Assertions and counter assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave.....”

10. 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. Leave to defend must not be granted on mere asking, but it is equally improper to refuse to grant leave when triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits.

11. In the present case, the petitioner has urged that the respondent has concealed the fact of being in possession of a shop on the ground floor of the suit premises. From the perusal of record, it is evident that this fact bears no mention either in the eviction petition or reply to the leave to defend application filed by the respondent. This fact was admitted by the respondent only when he was confronted by the petitioner in this regard before the trial Court. While recognizing the right of landlord with respect to choosing the best suitable accommodation for meeting his requirement, it is certainly a triable issue that whether the shop available with the landlord is sufficient to meet his requirement or not. Clearly, the Id. trial Court erred in summarily rejecting a substantial triable issue. Mere averment that the accommodation which is available is not suitable for the landlord, is not sufficient to establish his bonafide. This is a question which needs to be properly looked into by the trial Court. In ***Nanalal Goverdhandhas and Co. vs. Samratbhai Lilachand Shah (AIR 1981 Bom 1)***, it has been observed thus :

“22.....The bona fide requirement is in the first place a state of mind though it may be something more. It must, therefore, be deposed to by the person who is requiring the premises under Section 13(1)(g) namely, the landlord. If the landlord does not step into the witness-box to bring before the Court legal evidence for proving his requirement, then it cannot be said that he reasonably and bona fide requires the premises as mentioned in Section 13(1)(g)”

12. Thus, the petitioner was entitled to leave to contest as an important triable issue was established by the petitioner. Furthermore, the factum of the respondent being in possession of an alternate shop in a commercial area essentially makes it a case of requirement of additional accommodation. It is settled legal position that in such cases leave to defend must ordinarily be granted to the tenant. In ***Santosh Devi vs Chand Kiran 2001(8) Scale***

346, it has been held by the Hon'ble Apex Court that it is a case for additional accommodation and looking to the facts and circumstances, especially in the light of the additional accommodation which is subsequently made available to the respondent as mentioned by the appellant, the question of the respondent's need was required to be thrashed on merits by a full fledged trial. In ***S.M. Mehra vs D.D. Mallik 2001 (1) SCC 255***, the Hon'ble Apex Court has held that there is no need to take a summary procedure since it is a case of additional accommodation.

13. Since it was not disclosed by the respondent that he has filed an eviction petition in respect of a shop on the ground floor of the suit premises and had eventually succeeded, the petitioner was constrained to bring this fact to the notice of the trial Court. However, this issue was unceremoniously rejected by the Id. trial Court by noting that the said shop was not suited for meeting the respondent's requirements. To my mind, such an approach was uncalled for and contrary to the settled law on this aspect. In ***Hasmat Rai and Anr. Vs. Raghunath Prasad AIR 1981 SC 1711***, it has been held as under:

“When an action is brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit, but must exist on the date of the appellate decree, or the date when a higher court deals with the matter. During the progress and passage of proceeding from court to court if subsequent events occur which if noticed would non suit the plaintiff, the court has to examine and evaluate the same and mould the decree accordingly.”

14. In view of the foregoing discussion, it is evident that jurisdictional error has been committed by the Id. ARC, which calls for interference. The petitioner raised an important triable issue and the ARC could not be

satisfied about its veracity at that stage of the lis, without calling for additional evidence.

15. Consequently, the impugned order is set aside and leave to defend is granted to the petitioner. The parties are directed to appear before the ARC on 7.8.2012. The petition stands disposed off in these terms.

M.L. MEHTA, J.

JULY 25, 2012

ss/akb