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THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 05.12.2012

- + RC.REV. 282/2012
JAGDISH LAL KHORANA Petitioner
Through: Mr.Tanuj Khurana, Adv.
versus
HEMANT ARORA Respondent
Through: Mr.Bharat Deepak, Adv. with
Mr.Lalan Sinha, Adv.
- + RC.REV. 283/2012
JAGDISH LAL KHORANA Petitioner
Through: Mr.Tanuj Khurana, Adv.
versus
GOPAL DASS Respondent
Through: Mr.Bharat Deepak, Adv. with
Mr.Lalan Sinha, Adv.
- + RC.REV. 284/2012
JAGDISH LAL KHORANA Petitioner
Through: Mr.Tanuj Khurana, Adv.
versus
RAM AVTAR Respondent
Through: Mr.Bharat Deepak, Adv. with
Mr.Lalan Sinha, Adv.
- + RC.REV. 286/2012
JAGDISH LAL KHORANA Petitioner
Through: Mr.Tanuj Khurana, Adv.
versus
DEVI CHAND Respondent
Through: Mr.Bharat Deepak, Adv. with
Mr.Lalan Sinha, Adv.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. By this common judgment, all the aforesaid revision petitions under Section 25-B(8) of the Delhi Rent Control Act (for short the 'Act') are being disposed of as all these arise out of the identical orders dated 24.04.2012 of Commercial Civil Judge-cum-Addl. Rent Controller (ARC) passed in the eviction petitions filed by the petitioner against the respondents, whereby the leave to defend applications filed by them, were allowed.

2. The respondents are tenants in their respective shops in the suit premises under the petitioner. Their eviction is sought on the ground of bona fide requirement of the tenanted shops by the petitioner for setting up the regional sales and marketing office for his sons Narender Kumar and Suresh Kumar and also for setting up the career of his grandsons Ashish and Rahul, who intended to open a retail and display outlet showrooms of electrical goods in the two shops. The premises is also stated to be required for his daughter-in-law Suman for expanding of boutique business, which she is running in the mezzanine floor of the suit premises. It was his case that he is aged about 83 years and is leading a retired life and as such, he keeps visiting his two sons Narender and Suresh in Delhi and third son Ajay Kumar in Calcutta. His sons Narender and Suresh are engaged in the business of electrical appliances in the industrial area where they do not have any suitable commercial space for opening regional sales and marketing offices and

thus, the petitioner required the tenanted shops for them. His grandsons Ashish and Rahul also wanted to open a retail and display outlet for electrical goods and for that also, two shops are required. His daughter-in-law Suman is running a business of boutique from the mezzanine floor of the premises, which has small entrance of four feet from the front side, and thus, the front shop is required for expansion of her business. It was averred that the petitioner does not have any other reasonably suitable commercial accommodation available for the requirements of two sons, grandsons and the daughter-in-law.

3. The leave to defend applications were filed by the respondents, which came to be allowed by the learned ARC vide separate impugned orders dated 24.4.2012. The same are under challenge in the instant petitions.

4. At the outset, I must reiterate that the powers of this Court under Section 25 –B (8) of the Act are not as wide as those of Appellate Court, and in case it is found that the impugned orders are according to law and do not suffer from any jurisdictional error, this Court must refrain from interfering with the same. The power under this provision is limited and supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion which was not possible, based on the material produced, should this Court interfere in the order passed by the Rent Controller. In ***Sarla Ahuja vs. United India Insurance Co. Ltd. AIR 1999 SC 100*** the Apex Court has held as under:

“The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is "according to the law." In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

5. The law governing consideration of leave to defend application is well settled that at this stage, it is only the averments of the affidavit of the leave to defend application and reply thereto, if any, which are to be considered. If the averments in the affidavit disclose such facts which would ultimately disentitle the landlord from recovering possession, that by itself, makes obligatory upon the Controller to grant leave to defend to the tenant. It is also trite that at the stage of consideration of leave to defend application, the tenant is only required to make a prima facie case and not to make out a strong case. The leave to defend application cannot be refused where the eviction petition is filed without bona fide requirement. If the tenant is able to raise the triable issue, he would be entitled to grant of leave to defend by the Controller. This is primarily because the rival contentions, cannot be decided by way of affidavits only and requires reliable material for proof.

6. Though it is settled law that the landlord is the best judge of his preferences and choices as also how he would utilize his premises, and

that neither the tenant nor this court can dictate him terms, but at the same time, it is also settled principle of law that it is not on the mere asking of the landlord that the tenant will be thrown out of the premises at the threshold. It is not the subjective decision of the landlord alone, which would entitle him straight eviction order against the tenant, but the objective assessment by the Controller of the bona fide requirement of the landlord.

7. With the above principles governing the leave to defend application, I have examined the submissions made by the learned counsel for the petitioner and gone through the record including the impugned orders.

8. The need that is projected by the petitioner/landlord for requirement of the tenanted shops is for his two sons, two grandsons and his daughter-in-law. His two sons are stated to be engaged in businesses of manufacturing electrical goods in the two industrial premises located in Shalimar Bagh and Bawana. It was his case that they do not have any convenient place for opening their regional sales and marketing offices in the industrial premises or at any other place and two shops were required for them for this purpose. On the other hand, the plea that was taken by the respondents in this regard was that both the sons of the petitioner are independently settled, having their independent lives and are neither financially nor otherwise dependent upon the petitioner, much less for accommodation. The learned ARC has taken note of these facts and observed that dependency or otherwise of the sons as

also of the grandsons is an issue which was a triable one and could not be decided without evidence.

9. I am aware of the fact that there is no dispute with regard to the proposition that a landlord is entitled and also under an obligation to help his sons to set up their businesses and make them available accommodation and could seek eviction of the tenant on this ground, but, at the same time, this requirement of the landlord is required to be assessed objectively by the Controller. It is not just the fanciful desire of the landlord that in every case, the projected requirement for such purposes would be taken to be as genuine and authentic. In view of the fact that both the sons of the petitioner are independently settled in their businesses and undisputedly, not living with the petitioner, but away from him alongwith their families, this aspect would be required to be tested as to whether they are dependent upon him for accommodation or not. Further, it was also required to be tested as to whether they really and genuinely intended to have their regional and marketing offices, and further, as to whether the suit shops were suitable for the same or not. All these aspects would be required to be evaluated, examined and adjudicated by the Controller. Similarly, for the same reasons, the projected requirement of the grandsons for opening retail outlets, would also be required to be objectively tested by the Controller. Except the mere asking of the petitioner/landlord, there is nothing on record to substantiate his projected requirement of the suit shops for his sons and grandsons.

10. The petitioner's daughter-in-law Suman is stated to be having her boutique in the mezzanine floor in the suit premises and one shop is also stated to be required by her for expansion of her business. The plea in this regard was that the entrance of the premises in her possession was four feet wide and thus, the front space shop was required for expansion of her business. In this regard as well, there is nothing on record to substantiate the plea of the petitioner/landlord as to whether his daughter-in-law really required the additional space for expansion of boutique business, and further, as to how the suit shop would be suitable for the same. It is not that the landlord is not entitled to seek eviction of the tenanted shop, which may be required by his daughter-in-law for the expansion of her business, but, at the same time, the projected need in this regard, would also be required to be tested, there being nothing on record to substantiate the same.

11. In view of my above discussion, I do not see any infirmity or illegality in the impugned orders of ARC granting leave to defend to the respondents. Consequently, the petitions being without any merit are hereby dismissed.

M.L.MEHTA, J

DECEMBER 05, 2012/akb