

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

% *Date of Judgment:01.05.2012*

+ RC.REV. 167/2010

SHASHI KANT JAIN Petitioner
Through Mr. Sudhir Nandrajog, Sr.
Advocate with Mr.Anupam
Gupta, Adv.
Versus

TILAK RAJ SALOOJA & ANR Respondents
Through Mr.Shiv Charan Garg, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned judgment is dated 03.04.2010; eviction petition filed by the landlord Tilak Raj Salooja and another against his tenant Shashi Kant Jain seeking his eviction under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) from the disputed premises i.e. the shop located on the ground floor of property bearing No. E-175, Kamla Nagar, Delhi-110007 had been decreed; the application filed by the tenant seeking RCR No.167/2010

leave to defend had been declined.

2 Record shows that the present eviction petition has been filed by the landlord on the ground of bonafide requirement; premises comprising of a shop had been let out to the tenant from where he is running a readymade garment store under the name and style of 'M/s Sheetal Readymade'; monthly rent was Rs.293/- exclusive of electricity charges. Contention in the eviction petition is that the premises are required bonafide by the petitioners for running a business by petitioner No. 1; petitioner No. 1 has a medical problem and because of blood pressure and a prostate problem, he is unable to travel; in these circumstance, he was forced to resign as a director of 'M/s Saluja Brothers Pvt. Ltd' where he was earlier working as a director. Both the petitioners wish to open a readymade garment outlet and the aforementioned disputed shop is accordingly required by them for the aforementioned purpose; contention being that this shop is located at the main front side of the property and is a commercially viable venture for running the aforementioned business. Further contention is that the petitioners are the owners of this property; they have no other reasonable suitable accommodation from where they can carry out this business; details of

the other tenants who are occupying the front portion of the ground have been given in para 5 of the eviction petition. It is contended that this property comprises of three floors; the mezzanine floor consists of two rooms one of which has been let out to Salooja Brothers Pvt. Ltd. and other has been rented out to Dr. Neha Bhargava who is running a dental clinic. The first floor has also been rented out to a Chartered accountant and the back portion of the first floor is under the tenancy of 'M/s Study Overseas India Pvt. Ltd.' i.e. a centre who helps students to be suitably selected for higher education. The second and third floors are being used for residential purpose and are presently in occupation of the present petitioners. Eviction petition has accordingly been filed.

3 Leave to defend has been filed wherein the main bone of contention which has been raised and urged by the petitioner is that the petition has been malafide; petitioner No. 1 is 78 years of age and has himself admitted that he is suffering from blood pressure and a prostate problem; petitioner No. 2 is also 70 years of age and they both are not in a medical state to carry out any business; further contention being that the submission of the petitioner that he has resigned as director from

M/s Salooja Brothers was in June, 2009; this is a company of the petitioners themselves where petitioner No. 1 takes active part in the business and this resignation has been effected only as an ulterior purpose in order that a ground of eviction can be made out for filing the present petition. Further contention is that petitioner No. 1 is doing surgical business for the last several years and he has no intention to start any readymade garment business. Petition has been filed malafide.

4 Corresponding paras of the reply to the application seeking leave to defend have been perused. There has been a categorical denial; it is denied that the petitioner has ever carried out the business of surgical instruments; it was a business of scientific instruments; it was denied that petitioner No. 1 has deliberately resigned from Salooja Brothers Pvt. Ltd. in order to create a malafide ground for eviction; averments made in the application seeking leave to defend have been reiterated.

5 The first argument urged before this Court is that during the pendency of this petition, certain additional facts have come to the knowledge of the tenant which are material and if these facts are taken on record, leave to defend would automatically be granted in favour of the tenant. This additional information has been incorporated by way of

an application filed by the present petitioner in the proceeding before this Court under Section 151 of the Code of Civil Procedure (hereinafter referred to as the 'Code'). Averments made in this application have been perused. Contention of the petitioner is that on 11.03.2008, the sole Arbitrator had passed an Award inter-se proceedings between the landlord and Rakesh Gulati (another tenant on the ground floor) whereby the two shops which are in occupation of Rakesh Gulati have been handed back to the landlord; this Award was passed on 11.03.2008; meaning thereby that on the date of filing the eviction petition i.e. on 29.01.2009, this fact was well known to the landlord but for reasons best known to him, he has deliberately concealed this material fact; contention being that a person must come to the Court with honesty and he has concealed the fact which has a material bearing on the issue in controversy, such a litigant deserves no sympathy and in such an eventuality the Court should not mechanically and in a routine manner grant leave to defend in favour of the tenant.

6 Reply to this application has been perused. The contention of the landlord is that the premises which were two shops at the backside of the disputed property were admittedly in occupation of Rakesh Gulati;

the Award passed by the sole Arbitrator dated 11.03.2008 has not been disputed; contention is that even as per the submission of the tenant these premises were handed over to the landlord only in May, 2010 and this is clear from the averments made in para 6 of the application.

7 This submission of the learned counsel for the petitioner has force. Para 6 of the application (filed by the tenant) shows that the vacant physical possession of the two shops were handed over to the landlord in May, 2010 from which date the said premises are allegedly lying vacant; admittedly the eviction petition was filed on 29.01.2009; as such the submission of the landlord that this was a material fact which was concealed by the petitioner at the time of filing the present eviction petition has no force as the possession of the aforementioned two shops was given to the landlord only in May, 2010 and as such rightly could not form a part of the pleadings in the eviction petition filed in January, 2009; the submission of the tenant that there has been concealment of fact by the landlord thus has no force.

8 Learned counsel for the petitioner/tenant has relied upon the judgment reported in 22 (1982) DLT 1 Mohan Lal Vs. Tirath Ram Chopra; contention being that the subsequent events which take place

during the pendency of the eviction petition and which have a material bearing on the facts of the case can be taken on record even in proceedings under Section 14 (1)(e) of the DRCA. There is no dispute to this proposition; there is a classification of subsequent events; the events which have happened prior to filing of the eviction petition and events which take place during the pendency of the eviction petition. This is an event which is dated 11.03.2008 (which is the date of passing of the Award by the sole Arbitrator); this event thus clearly is not an event which had taken place during the pendency of the eviction petition; it was an event prior in time. The judgment relied upon by the learned counsel for the tenant in this factual scenario would not come to his aid as the ratio of this judgment is that as the so called subsequent events which have happened during the pendency of the eviction petition may in the facts of each case be considered. The Award of 11.03.2008 is admittedly prior in time to the eviction petition and cannot be permitted to be taken on record.

9 Section 25-B of the DRCA is a summary procedure which has been engrafted for a special class of landlords which includes landlords who have filed a petition under Section 14 (1)(e) of the DRCA; it

specifically postulates that after the defendant/tenant has been served, he has to file his application seeking leave to defend within a span of 15 days; this is a mandatory requirement; in the absence of leave to defend, the eviction petition is liable to be decreed in favour of the landlord.

10 The alternate submission of the learned counsel for the petitioner is predicated on the merits of the case; contention being that the bonafide requirement of the petitioner has not been established. This submission of the petitioner is also without any force. Petitioner No. 1 has averred that he is 78 years of age; his wife petitioner No. 2 is 70 years of age; they both wish to start a readymade garment store; the present premises from where a readymade garment store is already being run is in a highly commercially viable area; it is a front shop in Kamla Nagar market; the petitioners have admittedly no other commercial space from where they can carry out the aforementioned business; the submission of the tenant that petitioner No. 1 is aged 78 years and petitioner No. 2 is aged 70 years and cannot run an active business is contradicted by his own submission wherein in one part of his application seeking leave to defend averment is that petitioner No. 1 is an active director and takes active part in the business of the company

‘M/s Salooja Brothers Pvt. Ltd’; whereas in the later part of his application his averment is that both the petitioners being of an old age and suffering from blood pressure and other related ailments cannot do an active business.

11 Be that as it may, the submission of the learned counsel for the petitioners that petitioner No. 1 had resigned from the directorship of Salooja Brothers Pvt. Ltd. which requires a lot of travel is a factum which remains undisputed and the mere bald submission of the tenant on this count would have no weight against the statement made by the director on affidavit that he is no longer a director of the aforementioned company. The fact that the petitioners have no other reasonable suitable accommodation is also not in dispute; this is a front side shop and at the cost of repetition, the present shop would be a profitable business proposal to start a retail garment store as is the contention and the ground made out in the eviction petition.

12 The Supreme Court in Prativa Devi (Smt.) Vs. T.V. Krishnan (1996) 5SCC 353 had held in this context inter alia noted as:-

“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.”

13 In (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal the Apex Court had noted 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.

14 Unless and until a triable issue has arisen leave to defend cannot be granted; if this is done the very purpose and import of the Section 25-B of the DRCA will be given a go by; which was not the intent of the legislature.

15 No other argument has been urged.

16 Record shows that the trial Court has also answered the argument propounded before it on the concept of ownership which has not been disputed before this Court. On no count, does any triable issue arise.

17 In this background impugned order decreeing the petition and

dismissing the leave to defend application filed by the tenant suffers from no infirmity. Petition is without any merit. Dismissed.

MAY 01, 2012
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INDERMEET KAUR, J