

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

% *Date of Judgment: 07.03.2012*

+ **RC.REV. 289/2011 & CM No.14358-59/2011**

RAJIV SINDHWANI Petitioner
Through Mr. Deo Prakash Sharma, Adv.

versus

KISHAN CHAND SAINI Respondent
Through Mr. Rajeev Kumar, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The impugned judgment is dated 08.02.2011; the eviction petition filed by the landlord had been decreed; the application seeking leave to defend had been dismissed.

2. Record shows that the present eviction petition has been filed by the landlord Kishan Chand Saini against the tenant Sant Lal under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA); premises are

described as a shop forming part of property No. 1566, Tulla Nagar, Gurudwara Road, Kotla Mubarakpur, New Delhi as depicted in red colour in the site plan; rent was ₹80/- per month excluding other charges; grounds of bonafide requirement had been pleaded; contention of the landlord was that the petitioner has two sons and one daughter who are dependent upon him for their subsistence; the elder son Chander Shekhar is doing his own business and residing separately; the second Shashi Kant who is about 36 years old is out of job; the daughter of the petitioner is a divorcee and is residing with the petitioner. The petitioner has no other shop from where he can carry on his business for the purpose of livelihood; contention being that he has been compelled to run his own small work from a small pavement of about 2'X2' ft. Shashi Kant the second son of the petitioner also needs this shop from where he can run a business; he is unemployed; present premises are required to start a business for Shashi Kant as also for the petitioner himself as the petty work which is being carried out by him from the MCD payment is more than often removed by the MCD officials.

3. An application seeking leave to defend had been filed by the tenant. Averments made therein have been perused. The first contention

was that the premises are commercial premises and cannot be the subject matter of a petition under Section 14 (1)(e) of the DRCA. In view of the judgment of the Apex Court reported in 148(2008) DLT 705 (SC) Satyawati Sharma (Dead) by LRs. Vs. Union of India, this argument has not been pressed any further. The bone of contention and the only argument urged by learned counsel for the tenant before this Court is that the need of the landlord is not bonafide; he is a rich man; this property is located in 100 square yards of plot; the landlord is residing on the second floor; the first floor is also being used by the landlord for his business of motor repairing and rewinding under the name and style of 'Winder's India'. The landlord has also a shop on the ground floor from where the same business has been carried out by him. The size of the family of the landlord has not been disputed. It is stated that both the sons have separate business and they are well settled in life; it is not in dispute that the daughter is a divorcee but it is stated that she is employed; the petitioner is also more 68 years of age and cannot start a new business because of health conditions; present petition has been filed only to extract higher rate of rent from the petitioner.

4. The corresponding para in the reply filed by the landlord to the RCR No.289/2011

application seeking leave to defend have been perused. It is denied that the shop located in property No. 1566, Tulla Nagar, Gurudwara Road, Kotla Mubarakpur, New Delhi is built on 100 square yards. It is categorically averred that this plot is measuring 60 sq. yards and the tenanted shop is located on the ground floor; the first floor is used for residence of the landlord and a part of the second floor is being used by second son Shashi Kant who is living there along with his family. There is no denial by the tenant that the first floor of the property is being used as a residence by the landlord and the second floor is a residence for his two sons. It has categorically been stated that on the ground floor there is only one shop which is with the tenant; this has been reiterated and in fact not denied by the tenant that two children of the landlord i.e. Shashi Kant and his divorcee daughter are unemployed; in the reply the landlord has reiterated that Shashi Kant wants to start a business of his own from this shop; it has also been stated that his divorcee daughter also wishes to start a beauty parlour and the present premises would be suitable for the said purpose as well; the need of the landlord also to start his business from this shop has also been reiterated. It has also been reaffirmed that all the aforementioned persons i.e. his two sons and one

daughter are dependent upon the landlord for their need for accommodation.

5. In the present case, no such triable issue has arisen. It has come on record that the petitioner is carrying on his business from a small pavement the fact that there is only one shop on the ground floor is evident from the site plan. The second son of the landlord Shashi Kant is also unemployed and the divorcee daughter of the landlord also wishes to start her beauty parlour; in this background, the prima-facie need of the landlord of the aforementioned premises has been established as a bonafide need; no triable issue has arisen on this court.

6. In Prativa Devi (Smt.) Vs. T.V. Krishnan reported in (1996)5SCC353 it was held as under:-

“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 bona fide personal need is a question of fact and should not be normally interfered with. The bonafide need of the landlord has been established. He is in fact carrying out his business from a small

pavement; he has no other alternate suitable accommodation.

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 and a mechanical manner. If this is allowed, the very purpose and import of the summary procedure as contained in Section 25 B of the DRCA shall be defeated and this was not the intention of the legislature.

9. In this context the Supreme Court in 2009(2) RCR 455 titled as Ram Babu Agarwal vs. Jay kishan Das, had observed as under:-

“However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.”

10. Impugned order thus decreeing the eviction petition of the landlord and dismissing the application seeking leave to defend

filed by the tenant suffers from no infirmity. Petition is without any merit. Dismissed.

MARCH 07, 2012
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INDERMEET KAUR, J