

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

% *Date of Judgment: 13.02.2012.*

+ RC.REV. 302/2011

NARINDER PAL SINGH Petitioner
Through Mr. J.P. Sengh, Sr. Advocate with
Mr. Praveen Aggarwal, Adv.

versus

SUDESH SHARMA Respondent
Through Mr. Arjun Mitra, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

CM No. 2691/2012

1 Notice. Counsel for the respondent accepts notice.

2 This is an application filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as the 'Code') seeking certain amendments in his revision petition.

3 After some arguments, it has been agreed that those amendments which are consistent with the pleadings of the petitioner in his RCR No.302/2011

application for leave to defend shall be permitted to be argued and those which are inconsistent are not been pressed.

4 Application disposed of in the above terms.

RC.REV. 302/2011 & CM No. 14696/2011

1 Arguments have been heard.

2 At this stage, learned counsel for the petitioner submits that the bank balance of the landlady had evidenced that she was transacted sums of more than ₹2 crores which in fact reflects the averments made by the petitioner that she is a rich lady; he seeks permission of this Court to place on record the said document. Admittedly this bank statement which the petitioner now proposes to be produced was not a part of the trial court record; this prayer is also not accompanied by any application making any prayer to the said effect. It cannot be gone into. This oral prayer is accordingly rejected. Reliance by learned counsel for the petitioner on the judgment of a Bench of this Court in R.C.Rev. No. 12/2011 *Rajnish Kumar & Others VS. Mohan Singh* in this scenario is misplaced; as noted supra, there is no application filed before this Court seeking permission to file any document.

3 Learned counsel for the petitioner is aggrieved by the impugned

judgment whereby his application seeking leave to defend had been dismissed in pending eviction proceedings filed by the landlady under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA)\

4 Record shows that the landlady is Smt. Sudesh Sharma; she is the widow of Suraj Prakash Sharma; her husband had expired on 18.02.1977 on account of kidney failure; he was 42 years at that time; he had left behind his widow, two daughters and one son. Eviction petition contends that because of progression of his disease, her husband wanted to secure the safety and security of his family; he had purchased the present property i.e. shop No. 2, A Block, Community Centre Market, Vasant Vihar, New Delhi which was constructed and a doctor's clinic with a wooden cabin having a small reception area was tenanted out to the respondent namely Narinder Pal Singh. Admittedly Narinder Pal Singh was an employee with Suraj Prakash Sharma at his pharmacist store at South Extension; his pleas that he had small children to look after and because of the difficult circumstances that he was facing, he be permitted to run a chemist shop from the aforementioned premises which has been purchased by Suraj Prakash Sharma was acceded to by Suraj Prakash. Accordingly a partnership was entered into between Suraj

Prakash Sharma and Narinder Pal Singh agreeing to run a chemist shop from the demised premises under the name and style of 'Link' which was the drug store being run by Suraj Prakash Sharma at South Extension. Unfortunately Suraj Prakash Sharma died on 18.02.1977. Later on slow and steady saving the landlady was able to accumulate money from her efforts and was finally able to purchase the rented premises at South Extension which was done vide a registered sale deed dated 25.12.1977. Further contention of the landlady is that her eldest daughter Anupama Sharma who is a qualified pharmacist was working with PSRI Drug Store from where she was earning about ₹26,000/- per month; her last contract which was a two years contract was to expire in June, 2010; certificate from the said Drug Store dated 20.07.2009 substantiating this submission has been filed along with eviction petition. Further contention being that Anupama Sharma had got married but because of compelling circumstances, on the grounds of cruelty and desertion she was divorced from her husband on 03.03.2008; even during the period of her marriage because of a strain in her marital status, she started living with her mother at the landlady's residence; two children were also borne from the wedlock of Anupama Sharma with

her husband. After the divorce, Anupama Sharma has become completely dependent upon her mother both financially and emotionally; the decree of divorce dated 03.03.2008 has in fact spelt out the cruelties which had been meted out to Anupama Sharma and same had also been filed on record. It is also an admitted position that Anupama Sharma has two children who are also living with her. In October, 2004, Anupama Sharma had been diagnosed with a polycystic kidney disease and the diagnosis of her disease suggested that her medical condition would worsen day by day which would ultimately even require a renal transplant. The medical certificate of Dr. D.S. Rana and Dr. H. Jauhari, Senior Consultants (Nephrology Department), Sir Ganga Ram Hospital evidencing this diagnosis of Anupama Sharma as also the treatment to be meted out to her substantiating the submission of the landlady that her daughter is in fact suffering from a chronic kidney disease which is renal impairment which may in the future even require a renal transplant had been placed on the record of the ARC. Today this Court has been informed that Anupama Sharma has in fact undergone a kidney transplant; there is no dispute to these factual submissions.

5 Contention of the petitioner in the eviction petition which was filed in 2009 is that because of the progress of the disease of her daughter as also the fact that she has been divorced from her husband, she having two children to look after, she also being dependent upon her mother for all her needs, both financial as also emotional, the bonafide need of the landlady Sudesh Sharma had arisen and she requires the present shop at Vasant Vihar in order that her daughter can set up an independent chemist and drug store to build up her independent financial status. This need of the landlady which has been defined in the eviction petition is a bonafide need.

6 The application for leave to defend has been perused. The vehement contention of the petitioner is that the respondent is a very rich landlady and she has a huge property in South Extension which is enough to accommodate herself and her daughter for their business needs; no separate accommodation is required for the daughter. It is further submitted that Anupama Sharma is already working in a drug store i.e. the PSRI Drug Store and she is earning a handsome figure from the said firm; she does not require any independent business status.

These are the only two grounds which have been urged in the
RCR No.302/2011

application for leave to defend and which are the only two grounds urged and argued before this Court as well. In the corresponding paras of the reply filed by the landlady it is vehemently denied that the need of the landlady and daughter Anupama Sharma can be looked after from the same premises i.e. the drug store at South Extension. The documentary evidence which includes the certificate from PSRI Drug Store also shows that Anupama Sharma who is admittedly a qualified pharmacist was working on contract basis with the said institute which contract is valid up to June, 2010. Even assuming or presuming that this contract is renewable, it does not take away the bonafide need of the landlady which in the circumstances of the present case, is an acute need i.e. the desire and wish of the mother to set up an independent earning via-media for her divorced daughter who has two children and is living with her; and more so as she has been diagnosed with a chronic kidney ailment (which was also probably the reason for the death of her father); the fact also not being disputed that this divorced daughter is dependent upon her mother for all her needs i.e. for accommodation, financial need, emotional need and even her psychological needs. In this scenario, the submission of the tenant being that need of the daughter is

not bonafide and the fact that she is already working with PSRI has sufficiently answered her need is an argument without any force.

7. Anupama Sharma is admittedly a qualified professional; she is a pharmacist; she has two children to look after; her contract with PSRI is last renewable only up to June, 2010; even it is renewed again, it will not take away the need of the landlady to provide for her daughter a medium for her daughter to independently stand on her feet in order that she can earn a livelihood for herself and also for her two children; Anupama Sharma is admittedly a single parent and the amount of ₹26,000/- per month being presently earned by her may not be sufficient to support a family. It was in these circumstances that the landlady had set up the bonafide need of the requirement of this tenanted shop which being located in highly viable commercial area of Delhi i.e. in the heart of Vasant Vihar Market would enable her daughter to earn handsomely; admittedly a drug store is being run from this premises by the present tenant who had entered into a partnership with the husband of the landlady and was being run under the name of 'Link Store'; Anupama Sharma also proposes to carry on the same business from the said shop and she has both the professional qualification as also the experience to

do so. In these circumstances, the need of the landlady for these premises is a genuine and a bonafide need which stands established.

8 The contention of the petitioner that this need of the landlady amounts to an expansion of an earlier business and the leave to defend in these circumstances be automatically granted is also an argument worthy of no merit; the landlady is running her chemist shop from South Extension; premises are required for the need of her daughter who is an independent individual and would thus in no manner amount to an expansion of the business of the landlady.

9 In 111 (2004) DLT 534 Shri Hari Shanker Vs. Shri Madan Mohan Gupta and 155 (2008) DLT 383 Rajender Kumar Sharma & Others Vs. Smt. Leela Wati and Others the Courts have time and again reiterated herein as under:-

“The Courts cannot and should not in a mechanical or in a routine manner grant leave to defend.”

10 In Prativa Devi (Smt.) Vs. T.V. Krishnan (1996) 5 SCC 353 it was held herein as under:-

“The landlord is the best Judge of his requirement and Courts have no concern to dictate to the landlord as to how and in what manner he should live. The

bona fide personal need is a question of fact and should not be normally be interfered with.”

11 In (2001) 2 SCC 604 Gaya Prasad Vs. Pradeep Srivastava it was held herein as under:-

“The need of the landlord is to be examined on the date of the institution of the eviction petition.”

12 In the instant case, it is clear that on the date when the eviction petition had been filed which was in the year 2009, the bonafide need of the landlady is made out; her daughter was divorced on 03.03.2008; she had two children from this estranged relationship; the children as also their mother i.e. Anupama Sharma were dependent upon their grandmother for accommodation. In this scenario, ARC decreeing the eviction petition and dismissing the application for leave to defend suffers from no infirmity. Petition is without any merit: dismissed.

INDERMEET KAUR, J

FEBRUARY 13, 2012

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