

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

+ R.C. Rev. 309/2012 with CM 11918/2012

Date of Decision: 17.07.2012

SH. GHause MIAN Petitioner

Through: Mr. Moin Uddin, Adv.

Versus

SMT. SHAMIM KHATOON & ANR Respondents

Through: None.

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

M.L. MEHTA, J. (Oral)

1. The present petition has been preferred under section 25 B(8) of Delhi Rent Control Act (hereinafter referred as 'Act') assailing the judgment and order dated 24.03.2012 passed by Ld A.R.C. whereby the Ld. ARC dismissed the application for leave to defend filed by the petitioner to contest the eviction petition no. E-14/2011.

2. Respondents filed the said eviction petition u/s 14(1)(e) of the Act on the ground of bonafide requirement in respect of one shop at the ground floor of the property bearing no. 231 situated near Quresh Masjid, Basti Hazrat Nizamuddin, New Delhi-110013(hereinafter referred as 'tenanted shop') . Petitioner is an old tenant in the said shop under the respondents' mother Smt. Sugra Begum and after her death; respondents

have become the sole and absolute owner of tenanted shop. It was stated by the respondents that the tenanted shop is required bona fide by them and their dependant family members for commercial purposes. The family of respondents consists of 29 members excluding married daughters. Respondent no. 1 has four sons and respondent no.2 has two major sons. All the family members of respondents are dependent on them. It was stated in the eviction petition by the respondents that elder son of respondent no. 1 is running a 'thela' and other sons of the respondents are unemployed.

3. Upon receiving the summons, the petitioner herein filed leave to defend application along with affidavit contending that respondents are not the owners of the tenanted shop. It was contended that the respondents have concealed the material facts as they are the owners of many properties situated in different parts of Delhi. It was further contended that two sons of the respondents namely Mohd. Sakir and Alamgir are doing the business of selling eatables and other sons are employed in different jobs.

4. The trial Court while dismissing the leave to defend observed that there is no dispute so far the relationship of landlord and tenant between the parties is concerned as petitioner has admitted the fact that respondents are the absolute owners of the tenanted property. The plea of the petitioner that the respondents own other properties in Delhi was rejected as petitioner did not place any material on record to substantiate this claim. The factum of owning property no.D-81, Meer Vihar,

Nangloi, Delhi was admitted by the respondents in the counter affidavit filed by them. It was, however, stated by the respondents that the property at Nangloi is situated 27 kms. far from their residential premises and this is unsuitable for meeting their requirements. Keeping this fact in mind, the Ld. ARC concluded that the tenant cannot force landlord to travel about 55 km daily to run the business. The trial Court was also in agreement with the plea of bonafide requirement of the respondents and lack of sufficient accommodation with them. The Ld. ARC also discussed the other contentions raised by the petitioners and found no merit in them whatsoever. Upon consideration of the averments of petitioner and respondents, the Ld. ARC dismissed the leave to contest of the petitioner.

5. The impugned order has been challenged in the present proceedings by the petitioners on the ground that the Ld. ARC has wrongly accepted case of the respondents that they required the property for meeting bonafide requirement, whereas it was a case where additional accommodation was available to the respondents. It has been averred that the respondents obtained the eviction order qua ground floor in the same property which could easily meet their requirements. Reliance has been placed by the petitioner on *M/S Variety Emporium vs. R.M. Mohd. Ibrahim Naina(AIR 1985 SCC 207)* to aver that subsequent events must be taken into consideration by the Ld.ARC while determination of application of leave to defend. It has been further submitted that the onus of proving bonafide requirement was on respondents which was not discharged by them.

6. On the perusal of record, it is evident that Ld. ARC has opined that the petitioner has failed to raise any triable issue in leave to defend application as no material was brought on record to show that there is other suitable commercial property available to the respondents.

7. The plea of the petitioner that the respondents are in possession of several other properties had been dealt in detail by the Id.ARC. The petitioner had failed to bring on record any evidence to substantiate this claim and hence the stand taken by the respondents must be accepted. Regarding the ground floor of the suit property being in the possession of the respondents, it would suffice to say that the eviction order was passed qua the ground floor under Section 14 (1) (h) of DRCA which makes it essentially residential property. The present eviction petition has been filed by the respondents for meeting their requirement of commercial property and hence the factum of obtaining the possession of the said ground floor by the respondents has no bearing on the present eviction petition. Consequently, no triable issues have been raised by the petitioner.

8. In *M/S Variety Emporium vs. R.M. Mohd. Ibrahim Naina*(*supra*) , the landlord had filed seven eviction petitions against the tenants occupying a commercial building stating that he required the building to start a retail business and got eviction decrees against six of the tenants. This subsequent event was noted by the Apex Court while setting aside the order of eviction passed against the tenant by the lower Courts as the requirement of the landlord was met adequately by way of six eviction

decrees passed in his favor. However, in the present case the respondents require the suit property for commercial purpose and have obtained possession of a residential premises which cannot possibly meet their commercial requirements. Needless to say, the case relied upon by the petitioner is of no help to him.

9. The respondents had submitted that the suit property is required by them for setting up business for their dependent sons. In ***Labhu Lal Vs. Sandhya Gupta 2011(1) RCR,(Rent) 231 (Delhi)***, it has been held by this Court that the children are very much dependant on the landlord for the purpose of setting up their business and such a requirement is a bonafide one. Therefore, no malafide can be attached to the respondents if they have expressed the need for a commercial property in order to help their sons set up their independent businesses. In my opinion, the respondents have amply established their bonafide requirement and nothing adverse has been brought on record by the petitioner to refute this factual position.

10. It is settled legal principal that leave to defend is granted to the tenant in case of any triable issue raised before the trial Court, which would require adjudication by consideration of additional evidence. The whole purpose and import of summary procedure under Section 25-B of the DRCA would otherwise be defeated. In ***Precision Steel & Engineering Works & Anr. Vs. Prem Devi Niranjana Deva Tayal (1982) 3 SCC 270***, the Apex Court has held 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.

11. In the instant case, the petitioner has failed to raise any triable issues and consequently the impugned order dismissing the application for leave to defend suffers from no infirmity. The petition being without any merit, is dismissed leaving the parties to bear their own costs. The petitioner is granted six months time to vacate the tenanted shop.

M.L. MEHTA, J.

JULY 17 , 2012

awanish/rahul