

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

+ R.C. REV 347/2011

Date of Decision: 15.10.2012

SHANTI DEVI

..... Petitioner

Through: Mr. C.S.Bhandari, Advocate.

Versus

RAJESH KUMAR JAIN AND ANR

..... Respondent

Through: Mr. Paramjit Singh, with
Mr.Sanjay Kathuria, Advocates.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This is a revision petition u/S 25 B (8) of the Delhi Rent Control Act (hereinafter referred to as "the Act"), assailing the order dated 05.05.2011, passed by the Additional Rent Controller (for short "ARC"), Karkardooma Court, Delhi, whereby the leave to defend application was dismissed and an eviction order was passed.

2. The petitioner is a tenant in respect of a shop premises situated on the ground floor of property no. 6157, Partap Street, behind Kothi Bhagwan Dass, Gandhi Marg, Delhi-110031 (hereinafter referred to as the "suit premises"), wherein she has been carrying on business in the name and style of "Disco Hair Dresser". The respondents filed an

eviction petition in the month of February 2011 u/S 14(1) (e) of the Act. The respondents are running a cosmetic unit by the name of M/s Ravon (India) Cosmetics towards the backside of the suit premises. As per the site plan, it can be seen that the suit property is open on three sides. In the east, there is a small street/service lane of about 6 ft. wide and towards the north there is a street of about 15 ft. wide. On the west there is a 20 ft wide main road, which is the front portion of the suit property and on which there is one small shop and four other shops of almost equal dimensions, including the shop in possession of the petitioner/tenant. The respondents intend to open an office-cum-display counter on the side facing the main road i.e. the front side, in order to expand their business as the space available with them currently has become insufficient. The respondents also submit that the petitioner and her husband own a property No. 2488, Gali No. 8, Raghubar Pura No.2, Gandhi Nagar, Delhi-110031 which is in the same locality as the suit premises and where the petitioner has ample space to run her business.

3. In her leave to defend application, the petitioner raised the issue that the respondent was in possession of alternative accommodation. In furtherance of this contention, she submitted that the respondent has been allotted an industrial plot at Bawana. In addition to this the petitioner lists out certain other properties in possession of the respondent namely; industrial plot in Tronica City; property bearing no 1006, Patel Gali, Gali No. 4, behind Laxmi Cinema, Gandhi Nagar, Delhi-31; property no B-233, Derawal Nagar, Delhi-09. It was also

contended by the petitioner that the respondents were also running a whole sale shop in the name and style of M/s Ravon Traders situated at 5044/2, First Floor, Shri Ram Market, Sadar Bazar, Delhi-06. The petitioner also submitted that one of the shops in the front portion of the suit premises, which was previously occupied by a tenant Nand Lal, is now in possession of the respondent. In reply to the alleged additional property owned by her husband and herself, the petitioner submitted that the said property was being used by her husband for ironing/pressing clothes and the remaining portion is being used as for her residential purpose.

4. The respondents have denied the issues raised by the petitioner. They have stated that a commercial plot has been allotted to them at Bawana, but they are yet to take possession of the same. In respect to the other alternative accommodations as alleged by the petitioner, the respondents were able to specifically deny each and every one of them. As regards the plot at Tronica City, it was allotted to respondent No. 2 for residence and has no concern with the business run by the respondents at the suit premises. Further, the property at Gandhi Nagar is used as a godown. The property at Derawal Nagar is used for residential purposes. The shop at Sadar Bazar is being exclusively run by Tarun Jain, the brother of the respondent and the respondent has no concern with same. In the rejoinder, the petitioner further denied the assertions of the respondent, except with regard to one of the shops in the suit premises, wherein the petitioner has later admitted that after getting the premises vacated by Nand Lal, the same has been let out

again. All the issues raised by the petitioner have been dismissed by the Ld. ARC vide the impugned order. This order is under challenge in the present petition.

5. Before proceeding to examine the submissions made by the counsel, it is vital to note that the powers of revision of this court u/S 25B (8) are not as wide as that of an appellate court. If it is found that the impugned order is according to law and does not suffer from a jurisdictional error, then this court has no power to interfere. Only when there is a gross miscarriage of justice caused or where the conclusion arrived at by the ARC, based on the material provided, is not possible, that this Court interferes. Also, while deciding an eviction petition u/S 14 (1) (e), the court has to see the bonafide requirement from the perspective of the landlord. The judge has to place himself in the landlord's position. In the case of ***“Adil Jamshed Frenchman (Dead) by LRs vs. Sardar Dastur Schools Trust and Ors, (2005) 2 SCC 476”***, the Supreme Court advanced a proposition that:

“The question to be asked by a Judge of facts by placing himself in the place of the landlord is whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life.”

Keeping the above principles of law in mind, I have heard the counsel for the parties and perused the records.

6. The main contention of the petitioner is that the respondent has been allotted an industrial plot at Bawana and, so is in occupation of alternative accommodation, suitable for the running of his business. The respondent stated that he requires the tenanted premises not for manufacturing the cosmetics, but for setting up an office-cum display counter in the front portion of the suit premises. Setting up a factory for manufacturing and opening an office are two different aspects of running a business and the respondent has the liberty to decide as to how and from where his business ought to be run and the petitioner tenant cannot dictate terms to the respondent. In the case of ***“Sait Nagjee Purushotham & Co. Ltd vs. Vimalbhai Prabhulal and Ors, (2005) 8 SCC 252”***, the Supreme court observed:

“It is always the prerogative of the landlord that if he requires the premises in question for his bonafide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and place of business.”

7. While running a business, it would be reasonable to assume that a practical and convenient approach would be applied. In the present case, to deny the respondent the suit premises on the basis of the fact that he has been allotted an industrial plot at Bawana does not appeal to reason as the distance between Gandhi Nagar and Bawana is roughly around 30 km. In addition, the possession of the said plot has not been taken by the respondent. The settled principle of law is that bonafide

requirement should be seen as on the date of the petition. On the date of the petition, the premises available with the respondent are only the suit premises. The respondent cannot be made to wait till the possession of the industrial plot at Bawana is got. In any case, the said industrial plot cannot serve the requirement of premises for office and display of products. Thus, this plot at Bawana cannot be said to be reasonably suitable for the projected requirement of the respondent.

8. The petitioner also took up a plea that in addition to the industrial plot at Bawana, the respondent was in possession of other accommodations. The Ld. ARC in the impugned order has also dismissed this contention of the petitioner as these accommodations were either being used for residential purposes or for other purposes or did not belong to the respondent. He clearly stated to be having no concern with the firm M/s. Ravon Traders of Sadar Bazar. There was nothing brought on record to controvert the respondent in this regard. Thus, these properties could not be said to be available to the respondent. Further, a landlord cannot be expected to adjust himself according to the requirements of the tenant as held by the Supreme Court in the case of ***“Sarla Ahuja v. United Insurance Co. Ltd, AIR 1999 SC 100”***, thus:

“14.....It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bonafides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

9. As regards the contention of the respondent that the petitioner has another property in No. 2488, Gali No. 8, Raghubar Pura No.2, Gandhi Nagar, Delhi-110031, which is admittedly in possession of the petitioner and her husband, it has not been dealt with by the Ld. ARC. Thus, this court cannot extend its jurisdiction by dealing with this issue. It is important to confine the court's view to the order of the Ld. ARC in light of the limited powers as provided for u/S 25 B(8) of the Act.

10. It is vital that in a leave to defend application, the tenant has to prima facie bring out certain triable issues. The words u/S 25 B (5) is very clear to the effect that the facts disclosed by the tenant should disentitle the landlord from obtaining an eviction order. In light of this, the tenant has to substantiate any issue raised by him and cannot rely on mere denials and bald assertions. This aspect was emphasized by the Supreme Court in the case of ***"J. Chatterjee vs. Mohinder Kaur, 2000 RLR 561 SC,"*** as under:-

"11.....Unless a real and substantial case is made out on the averments in the affidavit filed by the tenant in support of the petition filed under Section 25-B of the Act, the proceeding should not be dragged on unnecessarily and should be disposed off with due expedition."

11. The petitioner in the present case has not been able to raise any triable issue that would prima facie convince the Ld. ARC to grant the leave to defend application. The issues raised by the petitioner tenant have all been disproved by the landlord.

12. In light of the factual matrix and the legal propositions applicable to them, as discussed above, I see no infirmity or illegality in the impugned order. The petition is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 15, 2012

rmm