

* **THE HIGH COURT OF DELHI AT NEW DELHI**
+ **R.C.REV. 362/2011**
Date of Decision: 10.10.2012

KANTA SACHDEVA & ANR. **..... Petitioner**

Through: Mr Anil K. Kher, Sr. Adv. with
Mr Ankur Bansal,
Mr.Siddhartha Jain and Mr.
Aditya Sharma, Advs.

Versus

A.D.CHOUDHARY **..... Respondent**

Through: Mr. Suman Bagga, Adv.

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

M.L. MEHTA, J. (Oral)

1. This revision petition under Section 25-B(8) of the Delhi Rent Control Act (for short the 'Act'), impugns the order dated 15.04.2011 of learned Sr.Civil Judge-cum-Addl. Rent Controller (South), Saket Courts, New Delhi, whereby the leave to defend application filed by the petitioners in the eviction petition filed against them by the respondent, was dismissed.

2. The eviction of the petitioners was sought by the respondent from the tenanted premises for the purpose of establishing the office of his son Amit Kumar since they stated to be having no space for the same. It was the respondent's case that his son has completed his

education and intends to join his business, but he does not have enough space for his sitting arrangement in the suit premises, and thus, requires the tenanted premises. It was averred that he is facing inconvenience in carrying on his business due to scarcity of space. It was also his case that his son is of marriageable age, but, is unable to carry on the business in association with him (respondent) due to lack of office space. It was averred that he had purchased a portion on the basement of property No. 59, National Park, Lajpat Nagar for storing books, but, the same has since been sealed by MCD, and therefore, he is storing all his books in the space available in the suit premises. It was alleged that the petitioners are the owners of the adjoining property No. C-28, Amar Colony and which was lying vacant and available with him.

3. The leave to defend application was filed by the petitioners/tenants, alleging that all the four floors of the suit premises are in the possession of the respondent, which are adequate and sufficient for his needs and requirement. It was alleged that the respondent had also acquired the basement in 59, National Park for the purpose of storing books. It was alleged that the respondent has also concealed to be in possession of first floor of premises No. 59, National Park, and that he has given terrace floor of the suit premises on rent to M/s. Vodafone Essar Mobile Services. It was next alleged that the respondent is also co-owner of premises A-123 and A-124, Amar Colony, Lajpat Nagar-IV and where he has sufficient

accommodation available. It was also alleged that to the personal knowledge of the petitioners, the son of the respondent is going abroad for studies and does not intend to join business of his father.

4. The learned ARC, vide the impugned order, declined leave to defend to the petitioners, observing that no triable issue was made and consequently, passed the eviction order. The same is under challenge in the instant petition.

5. Before advertng to the submissions made by the learned senior counsel for the petitioners as also the counsel for the respondent, I may reiterate that the power of this Court under Section 25–B (8) of the Act are not as wide as those of Appellate Court, and in case it is found that the impugned order is according to law and does not suffer from any jurisdictional error, this Court must refrain from interfering with the same. The power under this provision is limited and supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion which was not possible, based on the material produced, should this Court interfere in the order passed by the Rent Controller.

6. In the backdrop of above, it may be seen that it is undisputed that the suit premises is a built up one on land measuring 75 sq. yds. and that, each floor i.e. the first, second and third has the halls which are being used for the purpose of storage of books by the respondent.

It is also not disputed that the books are also being stored in a part of the ground floor, where in the remaining part, the respondent is having his office. The learned ARC has rightly observed that the upper floors' halls cannot be used for setting up office for the son of the respondent and in any case, the office on the ground floor from where the sale is to be conducted, is more convenient than on the upper floor. He also observed, and rightly so, that the tenant cannot compel and dictate the landlord to set up the office for his son on the upper floor of the suit premises, which are undisputedly being used for storage of books. It cannot be disputed that the business of sale of books as also the office for the same can be better looked after and managed from the ground floor than from the upper floor. It is well known fact that office situated on the ground floor is more convenient than on the upper floors and the landlord/owner has all the rights and choices to have the business/office for himself or his family members in the premises which is more suitable and convenient, if the bonafide of the landlord is established.

7. The plea that the respondent had concealed about his being in possession of first floor of 59, National Park, was responded by the respondent, stating that this first floor was residential and was being used by him and his family for residential purpose. This was nothing, but a vague and bald plea taken by the petitioners that this premise was available with the respondent for office purpose. The residential accommodation available with the respondent in this premises, cannot be said to be available with him for the office or business of his son.

With regard to the basement area in 59, National Park, it was the case of the respondent that he had acquired this space for storage of books, but, had to stop as this being impermissible, was sealed by MCD. The plea that this basement could be used for storage purpose itself strengthens the case of the respondent, that the latter did require enough space for storage of books.

8. The plea that the terrace floor of premises being C-29 could be used for commercial purpose and had been let out to M/s. Vodafone Essar Mobile Services, was responded by the respondent stating that this was an open terrace, which was let out to M/s. Vodafone Essar Mobile Services for their mobile tower and this space is not available with him. With regard to this floor also, it was observed by the learned ARC, and rightly so, that the tenant cannot compel the landlord to set up the office for his son on the terrace floor and which is otherwise, not suitable for office purpose.

9. With regard to the plea regarding properties No. A-123 and A-124, Amar Colony, Lajpat Nagar-IV, the respondent denied that these properties exclusively belonged to him. It was also the case of the petitioner that the respondent is one of the co-owners. It was submitted by the learned counsel that the respondent had three brothers and these properties were in possession of other brothers, and in any case, these were residential properties, and could not be used for commercial purpose. Assuming that what was stated by the petitioner to be correct

that these properties are there and in which, the respondent has some interest, but it was undisputed that these properties are residential in nature and could not be used for commercial purposes. Be that as it may, the requirement of the respondent is not that of the premises, which is much away from the suit premises, but of the tenanted premises, which is a part of the premises, where he is already having his established business of publication and sale of books. He cannot be dictated to have office for his son at a distant place.

10. The plea that the son of the respondent was likely to go abroad for studies and not intended to join the business of his father, is nothing but imaginary, having no basis at all.

11. With regard to the averment disputing the ownership of the respondent of the suit premises, the learned ARC has recorded that conveyance deed dated 06.04.2005, would clearly demonstrate the respondent to be the owner of the suit premises. In any case, this finding of the learned ARC was not challenged by the petitioner in the instant petition.

12. 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 their parents for the purpose of setting up their business and such a requirement is a bonafide one. The right of the landlord for possession of his property for setting up a business for his son has been

also recognized by the Apex Court in ***Ram Babu Aggarwal Vs. Jay Kishan Das 2009(2) RCR 455***. The moral duty of a father to help establish his son was also recognized by the Apex Court in ***Joginder Pal Singh Vs. Naval Kishore Behal AIR 2002 SC 2256*** in the following words:

“24.....Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identify nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the overlaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent.”

13. In view of my above discussion, I do not see any infirmity or illegality in the impugned order of ARC, warranting any interference by this court. The petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 10, 2012/_{akb}