

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

+ C. M. (M) 1080/2012

Date of Decision: 17.10.2012

AGGARWAL PAPERS

..... Petitioner

Through: Mr. Vikas Goyal & Mr. Kumar
Mukesh, Advs.

versus

MUKESH KUMAR DECD THR LRS

..... Respondent

Through: Mr. Pankaj Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This is a petition under Article 227 of the Constitution of India, challenging the order dated 07.06.2012, passed by the CCJ-cum-ARC, Tis Hazari courts, Delhi, whereby the petition filed u/S 25 B (9) of the Delhi Rent Control Act (for short "the Act"), for review of the order dated 31.10.2011, was dismissed. The review was sought of the order dated 31.10.2011, whereby the petitioner's leave to defend application was dismissed and consequent thereto, an eviction order was passed.

2. The petitioner is a tenant under the respondent in respect of a commercial premises situated on the 2nd floor of property bearing no.3649. Gali Rura Achar Wali, Chawri Bazar, Delhi-110006 (hereinafter referred to as “tenanted premises”). The respondent sought the eviction of the petitioner through a petition filed u/S 14 (1) (e) of the Act, on the submission that the tenanted premises was needed bonafide for the respondent/landlord’s daughter-in-law, Smt. Rimpdy Gupta, who has been enrolled as an advocate, and who intends to start her office as a lawyer along with her husband in the tenanted premises. The respondent alleges that he has no other suitable premises available with him. The respondent has stated in his eviction petition that he is carrying on business in hardware rubber and iron goods, aluminum, brass, door and window fittings, industrial and other trolley wheels, castor wheels, etc. Stock for the above said business is being stored in shops bearing No. 2 and No. 11 on the ground floor, entire first and third floors and a shed built up at the roof of the third floor of the suit premises.

3. The petitioner challenged the eviction petition on the following grounds. The main issue taken up by the petitioner was that the respondent was in possession of sufficient and alternative accommodation. In addition, the petitioner contended that the respondent’s son (husband of Smt. Rimpdy Gupta), who was also practicing as an advocate, had an office in Sagar Apartment, Tilak Marg, New Delhi. During the pendency of the eviction petition before

the Ld. ARC, the petitioner filed an application u/S 151 of the C.P.C. for bringing certain subsequent events on record. Vide the above application, it was averred that the respondent had obtained an eviction order against one Sh. Rishi Prakash, Advocate, with respect to another office premises, also situated on the second floor of the tenanted premises. The respondents have also obtained the possession of the same and since then have been keeping it under lock and key. The petitioner also contended that the respondents have other properties in Bawana Industrial area. The next ground taken up by the petitioner was that the respondents have not provided any document to substantiate that his daughter-in-law Rimpay Gupta is a practicing advocate, thus proving that his need was indeed bonafide. The learned ARC dismissed all these grounds vide order dated 31.10.2011. The petitioner subsequently filed a review application u/S 25 B (9) and the same was dismissed vide the impugned order dated 07.06.2012. Both these orders are under challenge in the present petition.

4. I have heard learned counsel for the petitioner as also the respondent and gone through the entire record.

5. The principles requiring considerations for grant of leave to defend application in the eviction petition have been laid down by the Hon'ble Supreme Court way-back in the year 1982 in the case of **Charan Dass Duggal Vs. Brahma Nand**, 21 (1982) DLT 378 and which have been reiterated in various judicial pronouncements and can

be noted thus:

“5. What should be the approach when leave to defend is sought for? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought for on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively”.

6. It is also settled that at the stage of granting leave to defend, the test that is applied is whether in the facts disclosed in the affidavit, filed seeking leave to defend, *prima facie* shows that the landlord would be disentitled to obtain an eviction order and not, where at the end, the defence taken by the tenant may fail. If the application filed under Section 25B disclosed some substantial triable issues, then it would be grave injustice to brush them outrightly, without testing the veracity of the claims made by the tenant/applicant. The law in this regard is well settled in various pronouncements and reference can also be made to **Inderjeet Kaur Vs. Nirpal Singh**, (2001) 1 SCC 706, wherein it was held as under:

“A landlord, who bona fiddly requires a premises for his residence and occupation should not suffer for long waiting for eviction of a tenant. At the same time, a tenant cannot be thrown out from a premises summarily even though prima facie he is able to say that the claim of the landlord is not bona fide or untenable and as such not entitled to obtain an order of eviction. Hence the approach has to be cautious and judicious in granting or refusing leave to defend to a tenant to contest an eviction petition within the broad scheme of Chapter IIIA and in particular having regard to the clear terms and language of Section 25B(5).

With this background, we now turn to the facts of the case in hand. It is clear from the reading of the order of the Addl. Rent Controller that he has taken pains to write an elaborate order as if he was writing an order after a full-dressed trial of eviction petition he has considered merits of the respective contentions at the stage of granting leave to defend under Section 25B(5) without keeping in mind the scope of the provisions and statutory duty cast on him. He exceeded the jurisdiction vested in him in refusing leave to defend to the appellant. It appears to us that he did not focus his attention to the scope and content of Section 25B(5). Having regard to the facts stated and grounds raised in the affidavit filed by the appellant seeking leave to defend which we have already narrated above, it is not possible to take a view that no triable issue arose for consideration. The facts stated in the affidavit of the appellant in support of his application seeking leave to defend prima facie do disclose that the respondent would be disentitled to obtain an order for the recovery of possession of the premises from the appellant particularly when other cases are pending between the parties and defence does not appear to be frivolous or untenable on the face of it. The Addl. Rent Controller has acted with material irregularity and committed a manifest error in accepting the case of the respondent-landlord when the facts were seriously disputed and the correctness or otherwise of the documents required to be examined. Whether the suit premises was used for residential-cum-commercial purposes from the inception and whether the respondent and his son and other members of the family are permanently and comfortably settled in U.K. and whether the requirement of the premises by the respondent was bona fide, are the matters which could not be adjudicated as has been done by the Addl. Rent Controller at the stage of dealing with the application to grant leave to defend. In this view of the matter, we have no hesitation to say that the order passed by the Addl. Rent Controller refusing leave to defend to the appellant cannot be sustained. Unfortunately, the High Court also has affirmed it without taking into consideration the correct legal position indicated above having regard to the facts of the case. We are of the view that the Addl. Rent Controller and the High Court both were in error in refusing to grant leave to the appellant to contest the eviction petition.”

7. Further, there is also no dispute with regard to legal proposition that if the tenant brings up some well founded and worth considering subsequent events to the notice of the Court, these need to be considered, and not ignored, for the purpose of examining and evaluating the bonafide requirements of the tenanted premises of the landlord. Reference can be made here to the decision of the Supreme Court in the case of **Hasmat Rai vs. Raghunath Prasad, (1981) 3 SCR 605**, wherein it was held that:-

“14.....If the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the Court including the appellate court has to examine, evaluate and adjudicate the same. Otherwise the landlord would derive an unfair advantage. An illustration would clarify what we want to convey. A landlord was in a position to show he needed possession of demised premises on the date of the suit as well as on the date of the decree of the trial court. When the matter was pending in appeal at the instance of the tenant, the landlord built a house or bungalow which would fully satisfy his requirement. If this subsequent event is taken into consideration, the landlord would have to be non-suited. Can the court shut its eyes and evict the tenant? Such is neither the spirit nor intendment of Rent Restriction Act which was enacted to fetter the unfettered right of re-entry. Therefore when an action is brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit, but must exist on the date of the appellate decree, or the date when a higher court deals with the matter. During the progress and passage of proceeding from court to court if subsequent events occur, which if noticed would non suit the plaintiff, the court has to examine and evaluate the same and mould the decree accordingly.”

8. Though, I am conscious of the fact and to which, there is no dispute that the landlord is the best judge of his affairs and also choices, and the tenant cannot dictate as to how the landlord has to live and utilize his premises; but, at the same time, it is also settled principles of law in such cases that the mere wish or desire of the landlord or his decision to get the tenanted premises vacated is not the decisive factor. It is not that whatever he would say, in every case, would be taken to be as gospel truth. If that was so, then, on the mere asking of every landlord that he needs the premises for setting up an office for his or his family member's business and he is the judge and master of his decisions and choices, the statutory protection afforded to the tenant, would become meaningless. That is not the intent of the legislation. The applicability of above proposition is only after the landlord is able to demonstrate that his assertion of requirement of the tenanted premises is authentic and genuine. If he is able to show and demonstrate so, then certainly neither the tenant nor this Court could dictate terms upon him as to how and in what manner he should utilize his premises. The projected requirement of the tenanted premises, based on his subjective decision, is required to be tested by the Court.

9. In its application under Section 151 of the C.P.C, the petitioner/tenant submitted that an eviction order was passed against Sh. Rishi Sharma with respect to an office premises on the same floor as the tenanted premises. The respondent has not denied the same, but

stated that the said premise was occupied by his son, who is also practicing as an advocate, to set up his office.

10. The respondent is carrying his business of hardware products from 3663, Chawri Bazar and states to be keeping his stocks in the shop-cum-godown space No. 2 and 11 on the ground floor and at the first and third floor as also in the tin-shed built up at the terrace of the third floor of the suit premises. It was averred that he also requires lower floors including the ground floor for the storage purpose and for which, he has also initiated the eviction proceedings against the other tenants. That being so, the respondent, undisputedly is carrying on business of hardware in premises 3663, but storing his stocks in the major part of the suit premises. This prima facie, appears to be triable issue as to whether the first, third and terrace floor of the suit premises could be used for storage of stocks of hardware, and that no space could be made available for the occupation of his daughter-in-law. The learned ARC has proceeded to believe what was stated by the respondent that the aforesaid portions in the suit premises were being used by the respondent for storage of his hardware products and was not available for the requirement of his daughter-in-law. He also proceeded to observe that in any case, his daughter-in-law wanted to start her office along with her husband on second floor. This was certainly upon the respondent/landlord to prove that the entire above-said portion in the ground, first, third and terrace floor, is in fact being used by him for storage and no space is available there and further, that

the same in any case, is not suitable for the office of his daughter-in-law. In the case of **Shiv Sarup Gupta vs. Dr Mahesh Chand Gupta, (1999) 6 SCC 222**, the Supreme Court held that:-

“14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural.....The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist.”

11. The Supreme Court in the case of **Liaq Ahmed & Other Vs. Habeeb-Ur-Rehman, (2000) 5 SCC 708** held that “from the scheme of the Act, it is evident that if the tenant discloses the grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave to defend his case against the eviction sought by the landlord. The inquiry envisaged for the purpose is a summary inquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. If the tenant brings to the notice of the Controller, such facts as would disentitle the landlord from obtaining an order for recovery of possession, the Controller shall

give him leave to contest. The law envisages the disclosure of facts and not the proof of the facts”. Further, in determining as to whether the claim is bona fide or not, the Court is under an obligation to examine, evaluate and adjudicate the bona fide of the landlord. A claim founded on abnormal predilections of the landlord cannot be regarded as bona fide.

12. The last ground taken up by the petitioner was that the respondent has not placed any document on record showing his daughter-in-law Rimpay Gupta, to be a practicing advocate. When the basis of his bonafide need of the tenanted premises was for the requirement by the respondent’s daughter-in-law, to enable her to set up her office for practice as a lawyer, and when it was disputed by the tenant, it was incumbent upon the respondent to have substantiated the same with some cogent proof. It is not that such a proof could not be available in the case of an advocate. In any case, it becomes a triable issue as to whether Smt. Rimpay Gupta is a qualified law graduate and eligible to do practice and in fact genuinely intended to do so from the tenanted premises. During the course of arguments also it was stressed upon by the learned counsel for the petitioner that till date nothing is placed on record to show that Ms. Rimpay Gupta is an advocate. It is settled law that the burden to prove a bonafide requirement lies on the landlord and that the intention to evict the tenant is not a fanciful desire or whim. The Supreme Court in the case of **Kempaiah vs. Lingaiah &**

Ors, (2001) 8 SCC 718, explained the difference between the terms “require” and “desire”:-

“8.....It may have been a wishful desire of the appellant to occupy the leased premises but he failed to prove the reasonable bonafide requirement as contemplated under the Act. The word “require” implies something more than mere wish or impulse or desire on the part of the landlord. Although the element of need is present in both the cases, the real distinction between “desire” and “require” lies in the insistence of the need. There is an element of “must have” in the case of “require” which is not present in the case of mere “desire”.....the term “reasonable and bonafide requirement are complementary and supplementary to each other in the context....Where eviction is sought on the aforesaid ground, a duty is cast upon the court to satisfy itself with the alleged requirement of the landlord. Even in a case where the tenant does not contest or dispute the claim of the landlord and the tenancy is governed by the rent control legislation, the court is obliged to look into the claim independently and give a specific finding in that regard.”

13. It is necessary to bear in mind that when leave to defend is refused, the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross- examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not as simple as is sought to be projected by the respondent that he requires the tenanted premises for setting up an office for his daughter-in-law, and that, he does not have any other reasonably suitable space for this purpose.

14. In view of my above discussion, and in the backdrop of legal propositions as noted above, it could be seen that the petitioner has

been able to raise prima facie, triable issues, which seem to have been overlooked by the learned ARC, and which could not be prematurely decided, without the adjudication by way of evidence and not merely on the affidavits of the parties. As such, the petitioner cannot be thrown out of the tenanted premises at the threshold at least till the time, the respondent is able to make out his case of bona fide requirement of the tenanted premises, after opportunity is afforded to the tenant to test the same. I strongly feel the impugned order suffering from infirmity which has resulted in miscarriage of justice to the petitioner. Thus, the impugned order is liable to be set aside. The petition is allowed and the leave to contest is granted to the petitioner. The parties are advised to appear before the learned ARC on 01.11.2012.

M.L. MEHTA, J.

OCTOBER 17, 2012

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