

* **THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC REV. 436/2012**

Date of Decision: 04.10.2012

SUKH DEV RAJ SHARMA

.....Petitioner

Through: Ms. Prabsahay Kaur, Adv. with
Mr. Sumit Rajput, Mr. Sarfaraz
Ahmad, Advs.

Versus

KULJEET SINGH JASS

.....Respondent

Through: Mr. Rajiv Bajaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition under Section 25B-8 of the Delhi Rent Control Act (for short the 'Act') seeks assailing the order dated 14.3.2012 of CCJ-cum-ARC, whereby the leave to defend application filed by the petitioner herein, was dismissed.

2. The petitioner is a tenant in respect of a shop No.J-5/101-C, Nehru Market, Rajouri Garde, New Delhi under the respondent. The eviction of the petitioner is sought on the ground of bona fide requirement of the tenanted shop by the respondent for running of his business as also for residential requirement for himself and his family members dependent upon him. The case as set up by the respondent/landlord in the eviction petition is that he is engaged in running Snooker Parlor since 2004 on the ground floor of the suit premises, except in the portion in the tenancy of the petitioner. It is

averred that his younger son is doing his business in a rented shop at Sadar Bazar, and he being permanent disabled and unable to do his business independently, needs assistance of his younger son in running the said business. The present accommodation for his Snooker Parlor business on the ground floor is also stated to be insufficient to accommodate his customers and visitors. It is averred that his elder son Harminder Singh is working in a private company and he is also interested to start his own business, which, he cannot, due to shortage of accommodation. Besides, his daughters-in-law are also unemployed and they are also interested to help the family to enhance their income by starting some business. It is the respondent's case that since he alone cannot run the business on the ground floor and requires the services of his sons and other family members, as such, he requires additional accommodation. It is also averred that he is residing on the first floor with his wife, two married sons and their wives and two minor children, and the said accommodation even otherwise, is not sufficient and suitable for their residential requirement. It is averred that he being a disabled person is unable to climb the stairs and intends to live with his wife on the ground floor. It is averred that his wife is also a patient of depression and requires his constant presence or that of any family member, as she also has suicidal tendencies. Besides, it is also averred that he had two married sisters residing in Delhi, who frequently visit and stay with him.

3. The petitioner filed leave to defend application raising various issues. The learned ARC vide the impugned order has dismissed the application and passed eviction order. This order is under challenge in the instant position.

4. Being conscious of the nature and scope of the revisional power of this court under Section 25-B(8), it may be reiterated that when, from the averments as set up in the leave to defend application, as also the reply filed by the landlord thereto, there appears something on record, requiring to see as to whether the Controller passed the order according to law, this court may peruse the records to ascertain whether any illegality has been committed by the Controller in Passing the order under Section 25-B of the Act. There is no dispute to the submissions, which are made by the learned counsel for the respondent/landlord that the landlord is the best judge to decide about his requirement and choice of the place, and neither the tenant nor this Court can dictate to him as to how else he can adjust himself without getting possession of the tenanted premises. But, at the same time, it is also settled law that mere assertion that landlord requires the premises, occupied by the tenant, for his personal occupation, is not decisive and it is for the Court to determine the truth of the claim and also to see as to whether the claim is bonafide. Further, in determining as to whether the claim is bonafide or not, the Court is entitled and indeed bound to consider whether it is reasonable. A claim founded on abnormal predilections of the landlord may not be regarded as bonafide.

5. 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”.

6. In the backdrop of the legal propositions as enunciated by various judicial pronouncements time and again, I have given my considered thought to the submissions made by the learned counsel for the parties as also perused the averments setup in the leave to defend application and the reply thereto filed by the respondent /landlord, and I find the impugned order suffering from material infirmity and perversity on certain observations made by the learned ARC.

7. It is noted above that the case of the respondent as set up for the bona fide requirement of the tenanted shop is not only for his business purpose, but for that of his two sons, particularly, the younger one. This fact is undisputed that the entire ground floor, except the tenanted

shop measuring 10'10 X 13'6, is in the possession of the respondent/landlord, and further that this portion has been converted by him for commercial purposes by removing its inner walls. The respondent/landlord states to be running his Snooker Parlor in that portion on the ground floor, which has a gate on the front side towards the main road. The respondent/landlord also states himself to be permanent disabled and unable to carry on his business without the assistance of his sons, particularly that of the younger one. The assertion of the petitioner/tenant is that his younger son is already engaged in business with him on the ground floor, and is not doing any independent business at Sadar Bazar. It is alleged by him that the rent receipt that has been produced by the respondent in respect of the shop at Sadar Bazar, is fabricated. This aspect would be required to be tested as to whether the respondent, who is permanent disabled and is unable to carry on his business without the assistance of his sons as is alleged by him, how he has been doing business since from the year 2004. In this background, the assertion of the petitioner/tenant that he is carrying on business on the ground floor with the assistance of his younger son, and that later is not doing any business at Sadar Bazar, cannot be out rightly brushed aside. Further, if the respondent has been doing his business on the ground floor, and intended his younger son to assist him in the business, then, it would be nothing but the requirement of the tenanted shop as additional accommodation by the respondent. In fact, it is the respondent's own case as mentioned in Para 18(b) of the eviction petition that he requires the space for

additional accommodation for his business. It is trite that in the case of requirement of tenanted premises as additional accommodation, the tenant is ordinarily to be granted leave to defend. Reference in this regard can be made to *Santosh Devi Soni Vs. Chand Kiran*, 2000(2) RCJ 579 (SC).

8. The respondent has also tried to setup his case of requirement for residential purpose, alleging the same to be required by him as also by his wife and other family members. In this regard, it is his case that his wife is a serious patient of depression and cannot live alone and she always requires the company and help of someone, and he is the best person to give her company. This aspect would also be required to be tested as to whether a disabled person would be able to give assistance to his wife, which is undisputedly a commercial and the rest of which is also being used by him for commercial purpose. The type and extent of disability alleged by the respondent, making him difficult to climb the stairs, has not been disclosed. This aspect would also require to be proved by the respondent, moreso, in view of the fact that the same is so denied by the petitioner, and also because of the fact that as per the respondent's own showing that he had been doing the business independently on the ground floor since the year 2004.

9. It is not as simple as sought to be projected by the respondent that he requires the tenanted premises for his commercial as well as residential needs. Prima facie, the respondent himself seems to be not clear as to the purpose of his requirements of the tenanted premises. It

is noted that a small room in the occupation of the petitioner is projected by the respondent as required for his additional accommodation for business as also for the establishment for the business of his both the sons, and also daughters-in-law, and for the residence of himself and his wife.

10. This court in the case of **S.K. Seth Vs. Vijay Bhalla**, decided on 25.07.2012, taking note of such circumstances, held as under:

“8. *At the stage of granting leave to defend, the real test should be whether the facts disclosed in the affidavit filed seeking leave to defend prima facie shows that the landlord would be disentitled from obtaining an eviction order and not whether at the end the defence may fail. If the application filed under Section 25-B discloses 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.*

“9. *In **Inderjeeet Kaur vs. Nirpal Singh** (2001) 1 SCC 706 the Apex Court has held that*

“13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14,

when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend parties rely on affidavits in support of the rival contentions. Assertions and counter assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave.....”

10. 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. Leave to defend must not be granted on mere asking, but it is equally improper to refuse to grant leave when triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits”.

11. Here is a case in which the plea of bona fide requirement, which is state of mind, needs to be determined in the sense as to whether the

same is genuine or authentic. I may not be taken as saying that a landlord cannot require tenanted premises for expansion of his business or even for additional accommodation for residence or business, or that he is not the master of his decisions and choices, and further that the tenant and the court can dictate terms upon him. This all needs to be satisfied by examining, evaluating and adjudicating that his projected requirements are not only his wishes and desires to evict the tenant and to deprive him of the statutory protection at the threshold. Wherever the tenant is able to make out a prima facie triable issue, he is required to be protected at least till the time the landlord is able to prove his bona fide requirement, after opportunity is afforded to the tenant to test the same.

12. In view of my above discussion, I find that the learned ARC has grossly erred in believing whatever has been asserted by the respondent/landlord as a gospel truth and this has resulted in manifest injustice to the petitioner/tenant. Consequently, the petition is allowed. Leave to defend is granted to the petitioner. The parties may appear before the Rent Controller on 16.10.2012.

13. Petition stands disposed of.

M.L. MEHTA, J.

OCTOBER 04, 2012

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