

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

+ R.C. REV 381/2011

Date of Decision: 31.10.2012

MOHD JAMAL MUSTAFA

.....Petitioner

Through: Mr.Prag Chawla, Mr.Saurabh
Shokeen and Mr.Sudeep Sudan,
Advocates

Versus

SABIRA BEGUM

.....Respondent

Through: Mr.Adnan Khan, Advocate

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 (for short "the Act") against the order dated 04.06.2011 passed by the Ld. Rent Controller, Saket Court, Delhi, whereby the leave to defend application filed by the respondent tenant, was allowed.

2. The facts that lead to the passing of the impugned order have been enumerated as under. The respondent was the tenant in two bedrooms, one drawing-cum-dining and verandah, kitchen, latrine and bathroom forming part of property bearing no 352-B, Ground Floor,

Gali No.1, Batla House, Jamia Nagar, New Delhi (hereinafter referred to as the “tenanted premises”). The petitioner landlord along with his family was residing at village Walidpur, Dist. Mau, Uttar Pradesh, in a property owned by his father and was working for gains there. In the year 2009, the petitioner left his job and wanted to shift back to Delhi permanently. Consequentially, he requested the respondent to vacate and handover the peaceful possession of the tenanted premises to him as he had no other alternative accommodation in Delhi. The respondent refused to vacate the tenanted premises, as a result of which, the petitioner filed an eviction petition against him u/S 14(1) (e) of the Act. The petitioner in the petition submitted that the property was required bonafide by him and his family for residential purposes and that he had no other alternative accommodation in Delhi. The leave to defend application filed by the respondent was eventually allowed by the Rent Controller vide order dated 04.06.2011. This order is under challenge in the present revision petition.

3. Before proceeding to examine the submissions made by the counsels, 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 Rent Controller, based on the material provided is not possible, that this Court interferes. Keeping this aspect in mind, I have examined the impugned order and the arguments put forth by the learned counsels.

4. The respondent, in the leave to defend application raised the issue that the tenanted premises were not bonafidely required by the petitioner. According to him, it has nowhere been explained as to how the petitioner landlord required the premises and that it was incumbent on him to prove his bonafide requirement. The learned Rent Controller rightly agreed with the respondent tenant stating that the bonafide requirement of the petitioner of the tenanted premises as also his planning to shift permanently to Delhi, is indeed a triable issue and needs to be examined.

5. It is settled proposition of law that the landlord is the best judge of his own requirements and neither the court nor the tenant can dictate terms to him. It has been held so in a plethora of cases decided by both

the Supreme as well as the High Courts. Having said which, it cannot be said that everything the landlord states should be taken to be the gospel truth. The object behind Rent laws is to strike a balance between the rights of the tenants and the landlords. In the case of **“*Liaq Ahmed v. Habeeb-Ur-Rehman*, (2000) 5 SCC 708”**, the Supreme Court elaborated the object behind rent laws as under:-

“ 3.....It thus became imperative for the legislature to intervene to protect the tenants against harassment and exploitation by the landlords for which appropriate legislations came to be passed by almost all the States and Union Territories in the country with the paramount object of essentially safeguarding the interest of tenants and for their benefit. The Rent Acts also made provision for safeguarding the interests of genuine landlords. The Rent Acts are intended to preserve the social environment and promote social justice by safeguarding the interests of the tenants mainly and at the same time protecting the legitimate interests of the landlords. The provisions of the Rent Acts are, therefore, not required to be interpreted in a hyper technical manner which in cases may result in frustrating the object for which the legislation was made. It should be kept in mind that the Rent Acts undoubtedly lean more in favour of the tenants for whose benefits they were essentially passed. A rational approach in interpreting the law

relating to the control of rents is expected from the courts dealing with the cases under the statutes relating to rent by keeping in mind the object of the legislation intended to provide social justice preventing unscrupulous landlord to exploit the circumstances and force the tenants to submit to their pressure under the threat of eviction.

6. It is also very important to remember that burden is placed on the landlord to prove that his need is a bonafide one. The case of “**Charan Dass Duggal v. Brahma Nand, (1983) 1 SCC**”, the Supreme Court has specifically held that the burden is on the landlord to prove his personal requirements more so when he is residing outside the place where the tenanted premises is located. Reference can be made to the relevant portions of the judgment:-

“4. When landlord seeks possession for personal requirement he has to prove his present need. If he has any premises in his possession he must allege and prove why that is not sufficient for his present use, or why he has to shift to the premises of which he seeks possession. If the tenant avers that the landlord is not in need of the premises and that he is not staying in the city in which the premises involved in dispute is situated and that the landlord has a big building in his possession at a different place

where he is shown to be staying obviously a very serious triable issue would arise.”

7. If in the process of the landlord trying to prove his bonafide requirement, the tenant is able to raise any triable issue then the court has to allow the leave to defend application. By allowing the leave to defend application, an opportunity is being given to the tenant to try and test the contentions of the landlord. It is obvious that on mere assertion of the tenant leave cannot be granted, but if the tenant is able to bring about certain issues which need to be examined then the rent controller is bound to allow him the leave to defend. In this case, the triable issue is the petitioner shifting to Delhi and requiring the tenanted premises for the need of himself and his family. The case of “**Charan Dass Duggal v. Brahma Nand (supra)**” is a classic example of such a case wherein it was held that:-

“7.....Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal

correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise.”

8. In light of the factual matrix and the principles of law as discussed above, the respondent was able to raise some triable issue. I see no infirmity or illegality in the impugned order. The petition is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 31, 2012

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