

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

% *Date of Judgment: 16.02.2012.*

+ RC.REV. 390/2011 & CM No.18056/2011

ARCHIES

..... Petitioner
Through Mr. Harish Malhotra, Sr.
Advocate with Mr. Tanmay
Nagar, Adv.

versus

SANJEEV KHANDELWAL & ANR

..... Respondents
Through Mr. Pravir K. Jain, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The impugned judgment is dated 08.06.2011. The eviction petition filed by the petitioners namely Sanjeev Khandelwal and Charu Khandelwal claimed to be the owners/landlords of the suit property seeking eviction of their tenant M/s Archies from the suit premises which was on the ground floor of property bearing No. 4714 Dayanand Road 21, Darya Gang, New Delhi in eviction proceedings under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been decreed in their favour. The application seeking leave to defend filed by the tenant had been dismissed.

2 The eviction petition discloses that there are two petitioners (hereinafter referred to as the landlords) who had filed the petition. Contention was that the premises were initially owned by the grandmother of landlord No. 1 namely Smt. Suraj Mukhi Khandelwal who in terms of a registered Will dated 11.12.1997 executed by the deceased had bequeathed this entire property to petitioner No. 1. The respondent was a tenant of the erstwhile landlord namely Smt. Suraj Mukhi Khandelwal. There is no dispute to this position. Suraj Mukhi Khandelwal had died on 06.02.2000. A suit for injunction and declaration was thereafter filed by the present landlords seeking payment of rent by the tenant in their favour; in the course of these suit proceedings, a compromise was arrived at inter-se between the family members on 16.04.2004 and in terms of this compromise the portion shown in green colour in the site plan Ex. C-1 on the first floor and the second floor of the property bearing No. 4712-14 Dayanand Road 21, Darya Ganj, New Delhi had fallen to the share of the present landlords; the portion shown in blue colour in the said site plan had fallen to the share of mother and brother of petitioner No. 1; the tenanted portion red on the ground floor had also fallen to the share of the present petitioners.

This was in terms of a compromise decree dated 16.04.2004. Copy of the aforementioned compromise dated 16.04.2004 is a part of the record; there is no dispute to these averments which have been substantiated from the aforementioned compromise decree. This submission of the landlord is further substantiated by documentary evidence which is mutation Sub-Division Letter dated 07.06.2004 and house tax payment receipts which have been issued in the name of Saroj Khandelwal, the mother of landlord No. 1 substantiating his submission that the blue colour portion had fallen to the share of his mother in terms of the aforementioned compromise. This has been clearly averred in the eviction petition. The eviction petition further contends that because the parties wanted to maintain cordial relations with one another, the petitioners (who were in terms of the Will dated 11.12.1997 of the grandmother entitled to full share in the property) had given up their right in the blue coloured portion in favour of their mother Saroj Khandelwal and brother Rajiv Khandelwal; the landlords continued to remain the owners of the green coloured portion on the first and the terrace floor as depicted in the site plan; red colour portion with the tenant had also fallen to their share.

Further contention of the landlord is that the accommodation presently

available with the landlords is insufficient; the family of two petitioners comprises of themselves as also their adult daughter; they are three persons; present accommodation available with them on the first floor is only two rooms of which in one room along with the terrace, a beauty parlour is being run by landlord No. 2 since last 11-12 years under the name and style of 'Jhalak'; the submission of landlord that his wife i.e. landlord No. 2 is carrying out this work of a beauty parlour; there is no business space with petitioner No. 1 to carry out his business; because of compelling circumstances and lack of office space, he had in fact taken up a private service which he had left in 2007 and had started his own business in the name of 'Vasudha Impex' which was of sale of sanitary pipes and fittings for plumbing and medical applications; he is carrying out his business of 'Vasudha Impex' from the portion shown in 'X' in the site plan i.e. a small portion of the verandah (measuring 9.9'X7.5' feet on the first floor and as depicted in portion 'X') in the green colour portion which was his share. To support this submission documents i.e. the Central Sales Tax registration number of 'Vasudha Impex'; income tax returns for three consecutive years ranging from 2004-2005, 2005-2006 & 2006-2007 have also been filed showing that landlord No. 1 is

earning business income after the year 2007. Bank statement of 'Vasudha Impex' as also VAT returns also substantiate the submission of petitioner No. 1 that the business of 'Vasudha Impex' is being carried out from the portion X on the first floor of the aforementioned property. In fact this has also not been disputed by the tenant; his submission being that it is not petitioner No. 1 who is carrying on the business of 'Vasudha Impex' but it is his bua. Further contention of landlord No. 1 being that the place available with him is not sufficient for running his office for the storage of goods which includes sanitary pipes which have a standard length of 10 feet. Photographs substantiating this submission are also a part of the trial court record.

3 The averments made in the application seeking leave to defend have been perused. The vehement contention of learned counsel for the petitioner is that the accommodation available with the landlord on the first and second floor is sufficient to meet his needs; attention has been drawn to the site plan; contention being that the compromise decree (Ex.C-1) dated 16.04.2004 has in fact noted that the parties have not made any physical partition wall demarcating their respective shares; contention being that this by itself substantiates the submission being

made by the tenant that in fact even the blue coloured portion is in use and occupation of the landlords. Further contention being that the brother and mother of landlord No. 1 are in fact residents of Bikaner, Rajasthan. The corresponding para of the reply filed by the landlord has been perused wherein it is stated that his brother is working with an NGO in Rajasthan for which has to attend to his work in Rajasthan; vehement submission of learned counsel for the landlord in his reply that the mother at all times live in this blue colour portion to which there is no denial. Even assuming that the brother of petitioner No. 1 is away for period of time for work purposes in Bikaner Rajasthan and even if there has been no physical partition wall made between the blue and green coloured portion, it does not mean that there is a right which has arisen in favour of the landlords to use the area by their brother and mother and which is admittedly their share. A partition wall has not been made only to maintain cordial atmosphere between the families of two brothers and in fact this has been noted in the compromise decree itself. Thus this submission of the petitioner that the accommodation in the blue colour on the first and second floor is also a part and parcel of the accommodation of the landlords is an argument which is bereft of

any merit.

4 The green coloured portion shows that there are only two rooms on the first floor and there is no construction on the second floor in the green coloured portion which is the share of the landlords. Out of two rooms on the first floor, one room is being used as beauty parlour by petitioner No. 2 which is portion mark 'Y' and extended verandah in front of room 'Y' is also being used for the said purpose. A fact that the beauty parlour is being run by landlord No. 2 has in fact been admitted by the tenant himself. The fact that the business of 'Vasudha Impex' is carried out from the portion mark 'X' on the first floor in the green colour has not been disputed by the tenant; this has been admitted. The only contention being that this business is not the business of landlord No. 1 but it is being run by his Buha. This is negated by the documentary evidence which has been placed on record by petitioner No. 1 reflecting the bank statement of 'Vasudha Impex'. The VAT returns as also income tax returns filed by the landlord showing his business income which is reflected in this aforementioned returns. The Central Sales Tax Registration Certificate granted under the Central Sales Tax (Registration and Turnover) Rules, 1957 is also a document

which has been filed by the landlord along with his eviction petition. This document shows that the business of 'Vasudha Impex' is the business of sanitary pipes, sanitary fitting, sanitary tubes, pipe and fitting for medical applications.

5 The next argument of the learned counsel for the petitioner/tenant is that the MCD does not permit a godown to be functional from the ground floor of Darya Ganj and this is evident from the answer which the petitioner had received to his query raised under the RTI Act; attention has been drawn to this communication dated 22.01.2010 which states that property bearing No. 4712-14 Dayanand Road 21, Darya Ganj, New Delhi where a sanitary godown is not permissible; submission of the petitioner being to the effect that a sanitary godown is not permitted in the portion of the premises of which the eviction has been sought by the landlord. Thus it cannot be said that this is a bonafide need and this in fact raised a triable issue. In this context, the certification of registration under the Sales Tax Authority as noted supra is relevant; it clearly states that the business of 'Vasudha Impex' is sanitary pipes, sanitary fitting, sanitary tubes, pipe and fitting for medical applications; the requirement of the landlord as is evident from

the eviction petition is not only for the purpose of storage of these goods which includes goods for medical applications but also for the purpose of an office space for business space which in terms of the eviction petition is clearly falling short and there is no other space available for the petitioner except the portion 'X' in his green colour portion of the site plan. Moreover even as per the answer to the RTI query this is Mix Use Commercial Street (MSCS) which would be both a residential and commercial purpose; the requirement of the landlord in terms of his eviction petition is for an office space which is admittedly a permissive user. Thus this submission of the petitioner is also without any merit; it does not raise any triable issue.

6 Last submission raised by the petitioner is bordered on the provisions of Section 14 (6) of the DRCA.

7 Section 14 (6) of the DRCA reads as under:-

“Section 14 (6):- Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under subsection (1), on the ground specified in clause (e) of the proviso thereto, unless a period of five years have elapsed from the date of the acquisition.”

8 The emphasis is on the word ‘transfer’; acquisition should be by

way of transfer. To substantiate this submission learned counsel for the petitioner has placed reliance upon the provision of Section 5 of the Transfer of Property Act where the definition of ‘transfer of property’ has been contained; reliance has been placed upon a judgment of this Court reported in ILR (1984) I Delhi 913 Nand Lal Patel Vs. Shiv Saran Lal & Others; attention has been drawn to para 57 to substantiate an argument

‘that partition is a mixture of surrender and conveyance and may fall within the definition of the words ‘transfer of property’ in Section 5 if strictly construed’;

9 Even if this provision is strictly construed, the instant case is clearly not a case of transfer. The averments made in the eviction petition state that the original owner of these premises was Suraj Mukhi Khandelwal, the grandmother of petitioner No. 1 who had in terms of her Will date 11.12.1997 bequeathed the entire property to her grandson i.e. petitioner No. 1. Thereafter in terms of a compromise dated 16.04.2004, petitioner No. 2 had agreed to give up a part of this whole property which has fallen to his share in terms of the Will; the blue coloured portion had been given up in favour of his mother and brother;

it is not his case that the petitioners for the first time had acquired this property. Eviction petition has been filed in 2008; even on a strict construction of Section 14 (6), this bar does not come in the way qua the present landlord. In fact the whole purpose of engrafting this provision in the statute was to keep a check on those landlords who had got evictions effected from their tenants with ulterior reasons; it was with a view to check this menace that this provision had been engrafted to safeguard the interest of the tenant. In the instant case, after the death of original owner on 06.02.2000, landlord No. 1 become entitled to a share in the property; whether it was by intestacy or by Will; even if there was no Will, he would have received a share in the property by way of inheritance; the facts of this case do not qualify or come within the mischief of Section 14 (6) of the DRCA. Provisions of Section 14 (6) are clearly not applicable.

10 In 1972 RCR 924 Nand Kaur Vs. Pandit Taleshwar Ji, it was inter-alia held as under:-

“ The transfer referred to in sub-section (6) of section 14 of the Act cannot be considered to include the case of relinquishment by a co-owner in favour of the other co-owners. The appellants were co-owners of the said property along with the said three married daughters of Balwant Singh. The property had not been

partitioned between them by metes and bounds. They were, therefore, owners of the entire property in proportion to their shares. Which the relinquishment executed by the aforesaid three married daughters of Balwant Singh, the appellants became full owners of the entire property. This cannot be said to be a transfer of the nature contemplated by sub-section (6) of Section 14 of the Act. The contention of the learned counsel, therefore, is without any substance.”

11 Judgment of Nand Lal Patel (supra) is inapplicable.

12 The bonafide requirement of the landlord has been established; this is clearly averred in the eviction petition; accommodation presently available with the landlords is falling short; details have been detailed supra ; there are two rooms in the first floor of which in one portion i.e. portion ‘X’ is the area business from where landlord No. 1 is being run; from the portion mark ‘X’ & ‘Y’ beauty parlour of landlord No. 2 is being run; the family is thus left with only one room on the first floor; the family comprises of three adult persons i.e. two petitioners and their adult daughter. There is no construction on the second floor. There is also no other accommodation available with the said landlords. The tenanted premises which are the ground floor has a huge area and is thus bonafide required by the petitioner for running the business of landlord No. 1 as he has no other space to run his business of ‘Vasudha Impex’;

business of sanitary pipes, sanitary fitting, sanitary tubes, pipe and fitting for medical applications is not a prohibited user in terms of the RTI answer dated 22.01.2010; it is a mix land use which has not prohibited storage purpose of medical applications.

13 All the ingredients of Section 14 (1)(e) of the DRCA stand established. No triable issue has been raised by the tenant entitling him to leave to defend. The tenant unless and until sets up a prima face defence cannot in a routine or a mechanical manner be granted leave to defend otherwise the very purport of Section 25-B of the DRCA which is the summary procedure depicted for a special class of landlords would be defeated and this was not the intent of the legislature. Impugned judgment decreeing the eviction petition in these circumstances suffers from no infirmity.

14 Petition is without any merit. Dismissed.

INDERMEET KAUR, J

FEBRUARY 16, 2012

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