

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

% *Date of Judgment:07.05.2012*

+ RC.REV. 427/2011 & CM No. 19532/2011

SEWA SINGH BHAMRA Petitioner
Through Ms. Gurmeet Kaur, Adv.

versus

HARCHARAN KAUR & ORS Respondent
Through Mr. Narender Kalra, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned before this Court is the order dated 04.09.2011 whereby the trial Court had granted leave to defend to the tenant in pending eviction proceedings under 14 (1)(e) of the Delhi Rent Control Act (DRCA).

2 Record shows that the present eviction has been filed by the landlord Sewa Singh through his attorney holder Surinder Singh under Section 14 (1)(e) of the DRCA seeking eviction of his tenant from two
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shops, one shop on the ground floor as also the first floor of suit property bearing No. WZ/27-A (J-85), Milap Market, Beriwalla Bagh, Hari Nagar, New Delhi which had been tenanted out to the tenant; initially the area under occupation of the tenant was only two shops on the ground floor; later on first floor was also let out to the tenant for his residence. Grounds of eviction are contained in para 18(a). It has specifically averred that the petitioner is the husband of Satwant Kaur who was the original owner of the aforementioned property; vide her Will dated 05.11.1990, she had bequeathed all her properties in favour of her husband including the present property; death certificate of Satwant Kaur dated 24.12.2004 is also a part of the record. Initially as a first argument, learned counsel for the petitioner has disputed the ownership of the petitioner; thereafter he has conceded to the status of Sewa Singh as the owner/landlord. Admittedly Satwant Kaur is the original owner of the suit property. There is also no dispute to the fact that the rent was being paid by the tenant to Satwant Kaur and thereafter to the present petitioner; the status of the present petitioner as the landlord/owner cannot be questioned.

the concept of ownership in pending proceedings under Section 14(1)(e) of the DRCA. In (1987) 4 SCC 193 Smt. Shanti Sharma & Ors. Vs. Ved Prabha & Ors the Apex Court had held as follows:

“The word 'owner' has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be is that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Govt. or the authorities constituted by the State and in this view of the matter it could not be thought of that the Legislature when it used the term 'owner' in the provision of Section [14\(1\)\(e\)](#) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term 'owner' has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act.”

4 In 1995 RLR 162 Jiwan Lal Vs. Gurdial Kaur & Ors. a Bench of this Court while dealing with the concept of ownership in a pending eviction petition under Section 14(1)(e) of the DRCA had noted as follows:

“There is a tendency on the part of tenants to deny ownership in cases

under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises.”

5 This issue is accordingly answered in favour of the landlord.

6 The only bone of contention raised by the tenant is that there is an alternate accommodation available with the petitioner and he had not disclosed this fact which is property bearing No. WZ-3, J-59 Block, Beriwal Bagh, New Delhi which is a 200 square yards plot; this is an active concealment of fact; coupled with this argument is also the submission made that a party who does not come to the Court with clean hands is not entitled to any relief; further contention being that a mere desire of the landlord to shift to Delhi when admittedly he has retired as a carpenter from the United Kingdom in 1981 and eviction petition having been filed in 2010 i.e. almost three decades later only shows that it is distant desire on the part of the petitioner to shift to India and this desire has fructified for so many years is also supportive of his

submission is also not likely to do so even in near future.

7 Arguments on this score have been rebutted.

8 The submission of the petitioner that there has been an active concealment of property bearing No. WZ-3, J-59 Block, Beriwal Bagh is a submission bereft of force; eviction petition itself discloses that Sewa Singh is a resident of. WZ-3, J-59 Block, Beriwal Bagh; his grounds of eviction as contained in the eviction petition discloses that the petitioner Sewa Singh is interested in starting a business venture of air-conditioners for which he is having talks with his old friend Sukhwinder Singh Manku; he requires a commercial space to run the aforementioned business; moreover the elder son of the petitioner namely Jasvir Singh presently working in United Kingdom is also retire shortly and also wishes to settle and work in India after his retirement; accordingly the present premises which are in a commercial locality required by the petitioner and his son who is also dependent upon him for his accommodation in order they can carry out the air-conditioner business in Delhi which will generate a good income for the petitioner son. Further contention of the petitioner is that he wishes to give his son a strong business base in order that he can have a good income in his

post retirement days; they have no other alternate suitable accommodation in Delhi and as such the aforementioned premises are bonafide and genuinely required by the petitioner for himself and his elder son.

9 Leave to defend has been filed and the averments contained therein have been perused. As noted supra, the question of ownership is no longer raised. The submission of the tenant that there has been an active concealment of premises bearing No. WZ-3, J-59 Block, Beriwal Bagh is an argument without merit; in fact the whole impugned order is based on this premise that this fact has been disclosed by the petitioner in his eviction petition; the scrutiny of the eviction petition shows that in the memo of parties itself, the landlord has disclosed that he is a resident of the aforementioned property bearing No. WZ-3, J-59 Block, Beriwal Bagh. Moreover this is admittedly a residential property and the need of the landlord is for a commercial establishment. This fact has specifically been explained in the reply filed by the landlord to the application seeking leave to defend; that this tenanted premises is a commercial property and is a viable location to start their air-conditioners business for himself as also his son is thus prima facie established. There is also

no dispute to the factum that apart from this property at WZ-3, J-59 Block, Beriwal Bagh, there is no other alternative accommodation with the landlord. Thus, the submission of the landlord that the landlord has failed to substantiate his bonafide need is a submission without any force.

10 Section 14(1)(e) of the DRCA affords a right to a landlord to seek vacation of his premises if the premises are required by the landlord either for himself or for any member of his family who is dependent upon him. The specific averment of the landlord in this case is that he requires the premises to run a business venture for himself as he has no other commercial accommodation available with the landlord; his son who is presently working in United Kingdom is shortly going to retire and he requires the commercial space to run his air-conditioners business for spending his post-retirement life in India. The petitioner has no other commercial accommodation from where this aforementioned business can be run for the need of his son. In these circumstances, the need of the petitioner for the present premises has prima-facie been established; there is no other commercial space available with the

petitioner. Thus the submission of the tenant that the details of the air-conditioner business have not been disclosed also raises no triable issue.

11 The Apex Court in AIR 1995 SC 576 Raj Kumar Khaitan and Others Vs. Bibi Zubaida Khatun and another has held as under:-

“ It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody could bind the landlords to start the same business in the premises after it was vacated.”

12 In a judgment reported in 48(1992) DLT 208 T.D.Dhingra Vs. Pritam Rai Khanna a Bench of this Court while dealing with the need of a non-resident Indian to enjoy his own property in India when she chooses to return India the Court had inter alia noted as follows:

“Counsel has not been able to point out any provision of law whereby an India who had acquired foreign citizenship is disentitled to enjoy residence in his own property in India when he chooses to return to India. The passport of the respondent was brought in the Court which shows that ever since 1988 he has been staying in India and even in 1991 his visa was extended up to the year 1994.”

13 In the instant case also it is specifically averred that the petitioner wishes to return to India to settle here but cannot do so because of non-availability of accommodation; there is nothing to show that this statement is to be disbelieved.

14 Unless and until triable issues arise leave to defend should not be granted by the courts in a routine and mechanical manner. This proposition has been reiterated time and again by Apex Court.

15 In Nem Chand Daga Vs. Inder Mohan Singh Rana 94 (2001) DLT 683, a Bench of this Court had noted as under:-

“That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.”

16 In (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal the Apex Court has held that the prayer for leave to contest should be granted to the tenant only where a prima-facie case has been disclosed by him. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend.

17 The landlord is the best judge of his requirement; it is not for the tenant or the court to dictate terms as to how and in what manner he has

to meet his needs for an accommodation. In Prativa Devi (Smt.) Vs.

T.V. Krishnan reported in (1996)5SCC353 it was noted:-

“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”

18 The impugned judgment holding otherwise thus suffers from a perversity which perversity is liable to be set aside. Accordingly, the petition is allowed and the eviction petition stands decreed in favour of the landlord.

INDERMEET KAUR, J

MAY 07, 2012
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