

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

% *Date of Judgment: 16.01.2012*

+ **RC.REV. No.431/2011 & CM No.19791-92/2011**
& CM No.22616/2011

USHA KALRA Appellant
Through: Dr.J.C.Batra, Sr. Advocate with
Mr.Rajan Khosla, Advocate.

Versus

ARYA SAMAJ BHOGAL (JANGPURA) Respondent
Through: Mr.Rajeshwar Kumar Gupta,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned is the order dated 23.7.2011 whereby the application filed by the petitioner seeking leave to defend in a pending eviction petitioner under Section 14(1)(e) of the Delhi Rent Control Act had been declined.

2. Record shows that the present petition has been filed qua the suit premises which is a shop No.2,407, Arya Samaj Bhogal (Jangpura), Hospital Road, Bhogal, New Delhi. Contention is that the petitioner is the owner and landlord of the said shop; respondent was inducted as a tenant in September 1988 at a

monthly rent of `600/- per month; petitioner is an association of the followers of Mahrishi Dayanand and is attached with the Delhi Arya Pratinidhi Sabha, 15, Hanuman Road, New Delhi. Resolution no.5 was passed in their Annual General Meeting by virtue of which the managing committee of the petitioner had decided to open a sale counter for the exhibition and sale of vedic literature/material/articles from the aforementioned tenanted shop which is located on the main road known as the hospital road. Premises are required bonafide by the petitioner for the sale and exhibition of the aforementioned vedic literature.

3. Application for leave to defend has been perused. Contention is that there are four shops in the same row and petitioner does not require the premises bonafide; shop No.2 which was initially given to Grover Departmental Store has been taken back by the petitioner and is lying vacant since the last 12 years; so also is the position of shop No.1 which has been given to Haveli Ram and which has now been taken back and is lying vacant; contention is that the third shop i.e. Shop No.4 which had been got vacated from the earlier mechanic has now been given to Dr. Meenkashi Gupta.

4. Site plan by both the parties i.e. the landlord and the tenant had been filed which are not disputed documents. Photographs

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have also been filed. The site plan filed by the landlord shows that the shutter of shop No.2 opens out on to the main hospital road; shop No.1 is the only other shop in the premises; it is in the back portion and opens out into a bye lane; this shop is admittedly with Dr.Meenakshi from where a homeopathic dispensary is being run. The landlord in his reply has clearly and categorically stated that there is no other shop in the tenanted premises which is available with him. This is also clear from the site plan filed by him. The corresponding site plan which has been filed by the tenant has also been perused. This shows that the store and the office which are with the landlord have been depicted as shops; the further submission of the tenant that all these four shops are in a row is negated from the site plan itself; shop no.1 is admittedly on the back portion and the size of the store and the office (dimensions not given) are definitely much smaller in size than the other two shops; less than 1/5th of shop No.2 and 1/3rd of shop No.2; this store and office thus cannot qualify as a shop. The landlord has specifically averred that keeping in view the nature of the work which has been assigned to the petitioner an office and a store are essential requirements of the Association and as depicted and shown in the site plan. The submission of the tenant that the store and the office are in fact shops which have been tenanted

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out to other persons and which have since been vacated has been vehemently denied. Moreover the photographs filed in the eviction proceedings also depict no such feature.

5. The only other shop which is available in the premises is shop no.1 which is admittedly with Dr. Meenakshi Gupta from where a homeopathic dispensary is being run; the said shop is not available with the landlord; he has no other alternate accommodation. The bonafide need of the need of the landlord to carry out the exhibition and sale of Vedic literature and material from the tenanted premises which open out in the main road has thus been substantiated and established.

6. The alternate argument vehemently raised by the petitioner is that the landlord is not the owner of the disputed premises; further the Association is not permitted to file the present eviction proceedings through its President. These issues now raised were never pleaded in the trial court and nowhere form a part of the pleadings in the application for leave to defend filed by the tenant. They thus do not have to be addressed not being a part of the pleadings of the tenant. Whether or not a triable issue arises has to be gathered from the pleadings which comprise of the application for leave to defend and the reply filed by the tenant

which have to be on affidavit; these submissions and arguments

now urged not being a part of his pleadings cannot thus be gone into. A tenant cannot be allowed leave to defend on pleas which are vague and unsubstantiated without any material in support thereof. Petitioner has categorically and clearly states that he is the owner and landlord of the premises. There is no denial to this; no objection has been raised in the application for leave to defend qua this submission now urged. The landlord is even otherwise the best judge of his requirement and it is not open to the tenant to dictate terms to the landlord for his requirement either for his residential or commercial purpose. It is also not in dispute that the premises which have been claimed by the landlord opens on to the main road which would be a much more viable proposition to exhibit vedic literature and material for sale; shop opening in to the bye lane cannot not be equated or compared with a shop opens on the main road, both on count of profitability as also its viability. Even otherwise that shop as admitted by the tenant himself is with Dr.Meenkashi Gupta from where she is running a homeopathic clinic.

7. In Ragavendra Kumar Vs. [Firm Prem Machinery and Co.](#) reported in [2000]1SCR77 it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In RCR No.431/2011

Prativa Devi (Smt.) Vs. T.V. Krishnan reported in (1996)5SCC353 it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with.

8. Again in G.C. Kapoor Vs. Nand Kumar Bhasin reported in AIR2002SC200 it was noted as follows:

“It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Anr. : [1999]2SCR912 this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.”

9. The defence raised by the tenant is only moonshine, sham and not being a triable issue, the application for leave to defend was rightly dismissed. Impugned order in these circumstances decreeing the petition in favour of the landlord calls no interference. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

JANUARY 16, 2012
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