

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

% *Date of Judgment: 08.02.2012.*

+ **RC.REV. 512/2011 & CM Nos. 22403/2011 & CAV 1127/2011**

SITA & ORS Petitioner

Through Mr. S.K. Singh, Adv.

versus

VIKRAM WASANDI & ORS Respondents

Through Mr. Shiv Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Judgment impugned before this Court is the order dated 30.09.2011 whereby the eviction petition filed by the landlord under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) seeking eviction of his tenant from the shop bearing No. V-2430, ground floor, Budshah Bulla, Chawri Bazar, Delhi had been decreed in his favour; the application seeking leave to defend filed by the tenant had been dismissed.

2. Record shows that the present eviction petition has been filed by three petitioners; premises have been tenanted out to Laxmi Narayan;

during his lifetime with the consent of the parties, Mool Chand his son was substituted as the tenant and the tenancy with Mool Chand continued till it was terminated vide a legal notice dated 15.05.2010. Contention of the petitioner being that the premises in question are being used by the tenant for carrying out the business of wedding cards; rate of rent was ₹100/- per month; the petitioners are stated to be the owners/landlords of the disputed premises. Petitioner No. 1 require the tenanted shop for his separate business of paper and allied services; presently petitioner No. 1 is doing the business of paper trading with petitioner No. 2 from a rented office bearing No. 210, first floor of premises No. 5/2389, Chatta Shahji, Chawri Bazar, Delhi for which they are paying a rent of ₹480/- per month. Petitioner No. 1 wants to start his business and as such he requires this present accommodation which is suitable for his needs. In the eviction petition, it has been detailed that the petitioners have some other shops including shops bearing No. V-2429, V-2429-A and V-2431; these shops are located on the ground floor; shops No. 2382 & 2384 are on the first floor and shop No. 2385 is also owned by the petitioners but all these shops are with the other tenants. Further contention is that petitioner No. 1 has relevant

experience for the said business for the last about 7-8 years and he now wishes to start his own business and no longer wants to remain in partnership with petitioner No. 2. Petition was accordingly filed.

3 In the application for leave to defend, it has been contended that the details of other accommodations available with the petitioners have not been disclosed; submission being that there is a vacant space with the petitioners on the first floor and Mr. P. Oberoi has recently vacated an accommodation which is also lying vacant and is in possession of the petitioners; the complete site plan has not been filed; the petitioners have sufficient accommodation; this petition has been filed malafide only by hook or crook to increase the rent and to harass the petitioners. This is all that is contained in the eviction petition and is the gist of it.

4. Orally it has been submitted that the landlord has about 40 shops which have not been disclosed; admittedly this does not find mention in the pleadings i.e. in the application for leave to defend; this submission cannot be gone into and even otherwise, the details of the said 40 shops have not been disclosed by the petitioner.

5. In fact in the eviction petition, the details of the entire accommodation available with the landlord have been disclosed by the

landlord herself. He has disclosed that apart from shop No. 2430 (disputed premises), he also has shops No. 2431 and 2429 on the ground floor; he also has three shops on the first floor but all the said shops are with other tenants. In the reply to leave to defend also, the landlord has categorically averred that the vacant accommodation purported to be available with him on the first floor is a false submission; the accommodation under the tenancy of Oberoi continues to be under his tenancy; he has not vacated the accommodation; Oberoi is continuing to pay ₹155/- per month for the shop which is under his tenancy. The contention has been reiterated that the present shop is required bonafide by petitioner No. 1 for carrying out his aforementioned business of paper and allied works.

6. The averments made in the application for leave to defend shows that no triable issue has arisen; the submission of the petitioner that the site plan has not been filed correctly is an incorrect submission; in fact the site plan has not been placed on record along with the present petition for reasons best known to the petitioner. However, in the course of arguments, learned counsel for the respondent has placed on record a certified copy of site plan which has been taken on record to which there

is no objection by learned counsel for the petitioner. This site plan has depicted the averment made in the eviction petition showing that shop No. 2430 is with the present petitioner; the other shops i.e. V-2429, V-2429-A, V-2431, 2382 & 2384 have also been depicted in the site plan; further submission of the landlord both in this eviction petition as also in his reply to leave to defend application being that the said shops are under the occupation of old tenants; he himself is carrying out the business with petitioner No. 2 from a rented accommodation for which he is paying ₹ 480/- per month as rental charges. This factual submission has not been disputed. It is also not in dispute that petitioner No. 1 has developed experience in the business of paper and allied works having worked with petitioner No. 2 since the last several years and his submission that he now wants to set up his own independent business in the disputed premises is thus clearly established.

7. Courts cannot and should not in a mechanical or in a routine manner grant leave to defend. The whole purpose and import of summary procedure under Section 25-B of the DRCA would otherwise be defeated. 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.”

8. In Prativa Devi (Smt.) Vs. T.V. Krishnan reported in (1996)5SCC353 it was held as under:-

“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.”

The bona fide personal need is a question of fact and should not be normally interfered with. The bonafide need of the landlord has been established. He is in fact carrying out his business from a tenanted accommodation; he has no other alternate suitable accommodation.

9. In this factual scenario, the impugned judgment decreeing the eviction petition of the landlord and dismissing the application of the tenant seeking leave to defend suffers from no infirmity. Dismissed.

INDERMEET KAUR, J

FEBRUARY 08, 2012

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