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THE HIGH COURT OF DELHI AT NEW DELHI

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R.C.REV. 479/2011

Date of Decision: 28.08.2012

SATISH KUMAR

..... Petitioner

Through: Mr. A.P.S. Ahluwalia, Sr. Advocate
with Mr. S.S. Ahluwalia, Adv.

Versus

SUBHASH CHAND AGARWAL

..... Respondent

Through: Mr. K.K. Malhotra and Mr. Tarun
Aggarwal, Advocates

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition under Section 25-B(8) of the Delhi Rent Control Act (for short the 'Act') impugns the order dated 17.09.2011 of Addl. Rent Controller (ARC) whereby the leave to defend application filed by the petitioner/tenant in the eviction petition filed against him by the respondent was dismissed.

2. The eviction petition was filed by the respondent herein against the petitioner on the ground of bona fide requirement under Section 14(1)(e) read with Section 25-B of the Act in respect of the premises bearing No. 3/65 and 3/63, Chhota Bazar, Shahdara, Delhi. These tenanted premises are shown in red and yellow colour in the site plan that was annexed to

the eviction petition. The eviction of the petitioner/tenant was sought on the ground of the respondent/landlord needing the tenanted premises; he being not in possession of any other reasonably suitable residential or non-residential accommodation for himself or for his family members dependent upon him. It was his case that his family consists of himself, his wife, three sons namely Rajnish Aggarwal, Amit Aggarwal, Tarun Aggarwal and two daughters-in-law as also two grandsons. It was also his case that he was suffering from various ailments and was facing problem in climbing the stairs and so, he wanted to live at the ground floor tenanted premises. At present, his entire family was living in the first and second floor of the suit premises. It was also his case that the tenanted premises was also required by his son Tarun, who is an advocate, for his office and also to accommodate his son Amit, who is presently working with him. It was averred that both Amit and Rajnish are married, but since Amit has no independent business, this has become a cause of strained relationship between them. He owned one other property being 304, Bada Thakur Dwara, Shahdara, Delhi, but the same being in dilapidated condition, and situated as a narrow *gali*, was not usable for residential or commercial purpose.

3. The petitioner/tenant had sought leave to defend alleging various grounds. He disputed the respondent to be the owner/landlord of the tenanted premises. He also alleged that there is a dispute regarding the extent of tenanted premises since the landlord himself had claimed the property bearing No. 3/63, shown in yellow colour, to be unauthorizedly occupied by him and not in his tenancy. It was his case that this property

being 3/63 shown in yellow colour, is part of the tenanted premises bearing No. 3/65, which was let out to Umesh Kumar and brothers by one Arun Kumar vide lease deed dated 24.2.1995 and thus, the number of whole of the tenanted premises shown in red and yellow colour in site plan bears No. 3/65. It was also alleged by the petitioner/tenant that the respondent/landlord is in possession of two shops on the ground floor, which are being run by him (respondent) and his family members. He also alleged that there is another small shop on the ground floor which was in occupation of the respondent and he was carrying on the business from that shop and now, he has removed the door of the shop in order to show the paucity of accommodation. It was further his case that on the first floor of the property being 3/61 to 3/65, the respondent/landlord had four living rooms, kitchen, bathroom alongwith latrine and abovesaid portion is in use and occupation of his family members, but he has shown the same as go-down and store. It was also alleged that on the second floor, the respondent/landlord has four living rooms in his possession. With regard to the property at Bada Thakur Dwara, the same was alleged to be in perfect condition and being used by his advocate son Tarun for residential and office purpose. It was pleaded that all the sons of the respondent/landlord are working with him in the shops in their possession and so, they do not need the tenanted premises for their business. It was further stated on behalf of the petitioner/tenant that Tarun, who is an advocate does not require any accommodation for his office purpose, as most of the times, he sits on the shops with his father and brothers. He alleged that relations of the respondent/landlord with his married daughter are not cordial and therefore, they never visits him. He also

alleged that the respondent/landlord is in possession of other property at Bhola Nath Nagar, which is lying vacant, but he does not know the details of that property.

4. During the pendency of the leave to defend application, additional affidavit was filed by the petitioner/tenant alleging Tarun, Advocate son of the respondent/landlord having been allotted a chamber by the Shahdara Bar Association. To this, the respondent/landlord replied by stating that this chamber was allotted to him on twin sharing basis and his son Tarun was also got married on 19.07.2010 and thus, his requirement has also increased.

5. Before proceeding further, it may be noted that an application under Order 7 Rule 11 CPC was filed by the petitioner seeking rejection of plaint, stating therein that since the respondent/landlord had alleged him as an unauthorized occupant in the portion shown in yellow colour in property No. 3/63 in site plan, there was no relationship of landlord and tenant in respect thereof and so, the petition was liable to be rejected. It was also averred by him that he is a tenant in respect of the premises being 3/65, shown in yellow colour in the site plan. Here, it is noted that the respondent/landlord had filed a civil suit for possession against the petitioner/tenant in respect of the property No. 3/63, alleging the same to be in his unauthorized occupation. Since the petitioner/tenant was claiming to be the tenant in respect of this property as well, the respondent/landlord had withdrawn that suit, admitting the petitioner to be the tenant in respect of the said property as well. Vide the impugned

order, the learned ARC declined leave to defend and passed eviction order in respect of the property bearing Nos. 3/65 and 3/63, Chhota Bazar, Shadara against the petitioner, which order is under challenge in the instant petition.

6. I have heard learned counsel for the petitioner as also the respondent and gone through the records including the impugned order.

7. The principles requiring considerations for grant of leave to defend application in the eviction petition have been laid down by the Hon'ble Supreme Court way-back in the year 1982 in the case of ***Charan Dass Duggal Vs. Brahma Nand***, 21 (1982) DLT 378 and which have been reiterated in various judicial pronouncements and can be noted thus:

"4. What should be the approach when leave to defend is sought for? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought for on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is

purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case."

8. The impugned order has been challenged on various grounds. The foremost contention of the learned counsel for the petitioner/tenant was that the need projected by the landlord being that of additional accommodation for expansion of his business, leave to defend ought to be granted to the tenant. Learned counsel for the petitioner relied upon the case of ***Santosh Devi Soni Vs. Chand Kiran***, 2000 (2) RCJ 579 (SC). There was no dispute with regard to this proposition of law that if it was a case of additional accommodation set up by the landlord, ordinarily, the leave is to be granted to the tenant to contest the eviction petition. This was outrightly refuted by the learned counsel for the respondent. This was the undisputed fact that the family of the respondent/landlord consisted of himself, his wife, three sons and two daughters-in-law as also two grandsons. This was also undisputed that the sons of the respondent i.e. Rajnish and Amit were already married and had two sons. This also remained undisputed that Tarun, the third son of the respondent, who was an advocate, also got married during the pendency of the petition. There is no dispute with regard to the proposition that this court can examine, evaluate and adjudicate upon the subsequent events and thus, it cannot be ignored that Tarun, son of the respondent has got married during the pendency of the petition and would certainly require separate living room for himself. Reference can be made to the decision in ***Dev Raj Bajaj Vs. R.K. Khanna***, 1996 RLR 125.

9. Further, it was the petitioner's own case that the respondent/landlord was in possession of two shops on the ground floor of the suit premises where he was running business with his family members. This is not in dispute that both Rajnish and Amit are in business and living along with their father (respondent), on the first floor of the suit premises, with their families. The plea of the respondent that his son Amit was working with him in his business, whereas Rajnish was having in independent business in one of the two shops, is not in dispute. In any case, there cannot be any dispute that both the sons of the respondent namely Amit and Rajnish, need to have sufficient accommodation on the ground floor to set up their independent businesses. It is settled proposition of law that a father is entitled to make provision for the better establishment of his sons and further, that he is also under a moral obligation to help them to set up their businesses. No law does and can compel a landlord to make his independent married sons to confine and huddle in one business. The sons have their rights to set up their independent businesses. This is in fact the natural desire and ambition of a son to have his independent business to maintain his self esteem. In a situation like this where the family has two shops and there are three independent persons looking for setting up their independent businesses, the intention of the father (landlord) or the sons to set up their independent businesses cannot be said to be mere desire lacking genuineness or authenticity. This cannot be said to be a case of wanting additional accommodation for expansion of business.

10. It cannot be doubted that Tarun, who is an advocate by profession, would also have his own ambition to set up his independent office. To

have such an ambition, cannot be termed to be a fanciful or whimsical desire. It is a common knowledge that the chambers in the court premises have their own constraints in terms of their utilities. An office outside the court premises not only meets the needs of the profession, but certainly adds to the status of an advocate. It was the plea of the petitioner/tenant that the accommodation at Bada Thakur Dwara was being used by Tarun for his residence as also for office purpose. Though it was denied by the respondent, but it was not disputed that the said premises was situated in a narrow *gali* of the width of 8-10 feet. Even if it is assumed that this premises was being used by Tarun for residence as also for his office, but the tenant was nobody to compel him to reside and set up his office only there. On the other hand, the use of this premises for residence as also for his office may be for the reason of paucity of accommodation in the suit premises. It is undisputed legal proposition that the landlord is the best judge to decide about his needs and as to where to live and how and neither the tenant, nor this court can and should compel him to decide the way to live otherwise. In this regard, reference can be made to ***Bantam Enterprises Pvt. Ltd. Vs. Jaspal Singh Kapoor***, 2012 (189) DLT 59 wherein this court has held that landlord is the best judge of his requirement and has complete freedom in the matter and he cannot be deprived of the beneficial enjoyment of his property. Further, in ***Siddalingamma & Anr. Vs. Mamtha Shenoy***, (2001) 8 SCC 431, the Hon'ble Supreme Court while considering the reasonable and bona fide requirement of landlord held that the question to be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by the material on record the need to occupy the

premises can be said to be natural, real, sincere and honest. If the answer be in the positive, the need is bona fide. Thus, it is seen that the respondent/landlord needs sufficient accommodation for his son Amit to set up his independent business, and also sufficient space for his son Tarun to set up his independent office. Needless to say that he also needs sufficient accommodation for the residence of himself, his wife as also for his three married sons and two grandsons.

11. Admittedly, the respondent/landlord with his entire family is living in the first and second floor of the property bearing Nos. 3/61 to 3/65. His case was also that he requires the tenanted premises for himself also as he is having problem in climbing the stairs due to old age and various ailments. There was no dispute that he had no residential premises on the ground floor. Learned counsel for the petitioner/tenant submitted that this was not the case of landlord requiring the rented premises for residential purpose, but, the learned ARC has erred in recording the finding in this regard. This submission of the learned counsel is untenable inasmuch it was also averred by the respondent/landlord that because of his problem in climbing the stairs and various other ailments, he wanted to live on the ground floor. In any case, it is noted above that the requirement of the respondent/landlord is of at least three shops on the ground floor and sufficient space for the office for his son Tarun. Such a need cannot be termed to be fanciful or unreasonable. No triable issue has arisen in this regard.

12. The plea of the petitioner/tenant that the petition is not

maintainable, being for eviction of partial tenanted premises, is also untenable. It has been noted above that the respondent/landlord had averred the petitioner to be the tenant in respect of property bearing No. 3/65 as shown in red colour in the site plan. He had sought his eviction from the said premises as also from the portion of the premises allegedly unauthorizedly occupied by him. This portion was shown as yellow in site plan and bears No. 3/63. For this, the respondent/landlord had filed Civil Suit for possession alleging the petitioner to be in unauthorized possession thereof. However, since the petitioner had taken the plea of he being the tenant in respect of this portion and the same being part of the tenancy in respect of property being 3/65, the respondent/landlord, in his wisdom, chose to accept the petitioner as a tenant therein of that portion instead of going to fight on the issue. I do not think there was any wrong done by the respondent/landlord in accepting the petitioner as a tenant and there was no bar in his doing so. It is undisputed that the respondent/landlord is the owner of both the premises being 3/65 and 3/63 and the eviction of the petitioner was sought in respect of both these portions, respectively shown as red and yellow in the site plan. Thus, the petition could not be said to be for partial eviction of the tenanted premises.

13. The plea that the site plan filed by the respondent/landlord was incorrect is apparently fallacious. The site plan filed by the respondent/landlord showed both the premises i.e. 3/65 and 3/63 respectively in red and yellow colour. The petitioner/tenant had admitted himself the tenant in respect of the property shown in red and also in respect of the property shown in yellow in the instant petition as also in

the civil suit. He has not pointed out any wrong in the site plan, nor has he chosen to file his own plan. Reference can be made to ***R.K.Bhatnagar Vs. Sushila Bhargava***, 1986 RLR 232 that if a tenant does not file his site plan showing that the plan filed by the owner is incorrect, then, the site plan filed by the owner would be assumed to be correct.

11. In view of my above discussion, I do not see any infirmity or illegality in the impugned order. The petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

AUGUST 28, 2012

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