

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

+ R.C.REV. 543/2011

Date of Decision: 20.09.2012

VINOD AHUJA

.....Petitioner

Through: Mr. J.P. Sengh, Sr. Adv. with
Mr. Gaurav Bhardwaj, Mr
Sumeet Batra and Ms. Ankita
Gupta, Advocates.

Versus

ANIL BAJAJ AND ANR.

.....Respondent

Through: Mr. Shiv Charan Garg with
Mr. Imran Khan, 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') assails the order dated 2.09.2011 of Addl. Rent Controller (ARC), whereby the leave to defend application filed by the petitioner was dismissed and eviction order was passed against him in respect of the tenanted premises.

2. The petitioner is a tenant in respect of one shop with chabutra in front of shop in property No. 38-UB, Jawahar Nagar, Kamla Nagar, Delhi . This premises has two shops in the front portion facing the main road. One shop is in the tenancy of the petitioner,

and the second is stated to be occupied by the respondent No. 2 Sanjeev Bajaj. Both the respondents Anil Bajaj and Sanjeev Bajaj are real brothers. The respondent No.1 Anil Bajaj is stated to be running a kiriyana shop in premises No. 25-UB, Jawahar Nagar. The eviction of the petitioner is sought on the ground of bona fide requirement of the tenanted shop by the respondent No. 1 Anil Bajaj. The respondents' case in this regard is that the kiriyana shop of the respondent No.1 Anil Bajaj at 25-UB, Jawahar Nagar is in a lane, which is 15 ft. wide, and he does not have sufficient business there, and is facing hardship to maintain his large family from the income of the said shop. According to the respondents, if he (respondent No.1) shifts his kiriyana shop in the tenanted premises, which is on the main road, his business will increase.

3. The petitioner filed leave to defend application, raising various issues. He categorically denied the respondents to be requiring the tenanted shop for the kiriyana business of the respondent No. 1 Anil Bajaj or they (respondents) are not having any other suitable accommodation. The petitioner has stated the respondents to be having large number of properties, and that they are doing the businesses jointly. It is also stated that they have acquired various properties and have been selling and letting out them at different points of time. The petitioner has given the descriptions of a large number of properties, alleging the same to be owned or possessed by the respondents in their names or in the

names of their family members. It is also the case of the petitioner that the tenanted shop is not required by the respondent No. 1 Anil Bajaj for his Kiryana shop, since he is running the kiryana shop in a bigger shop measuring 15'X40' feet at 25-UB, Jawahar Nagar, and where, the amount of business is much more than what it was, when the kiryana shop was there in both the shops in the suit premises. It is also alleged that in the adjoining shop being 37-UB, the respondents are having franchisee business of M/s. Numero Uno, which is in the partnership of the respondents and their mother Malika Bajaj. An additional affidavit was filed by the petitioner, stating that during the pendency of the petition, the ground floor of premise 25-UB, Kamla Nagar was also purchased by the respondent No. 2 Sanjeev along with other partners and after redevelopment, four shops have been carved out on the ground floor, and, have been let out.

4. The respondents, in their reply to leave to defend application, denied all the assertions made by the petitioner and reiterated the tenanted premises to be required by the respondent No. 1 Anil Bajaj for his kiryana shop.

5. The learned ARC dismissed the leave to defend application, observing that all the other properties as mentioned by the petitioner to be owned or possessed by the respondents, were either that of the respondent No. 2 Sanjeev Bajaj or his wife, owned individually by

them or in association with others, and that, the respondent No. 1 Anil Bajaj had no concern with any of those properties except, 25-UB where he is running his kiriyana business. With regard to the plea of the requirement of the tenanted shop by the respondent No. 1 Anil Bajaj, the ARC observed that since the respondents had offered to exchange this shop at 25-UB with the tenanted shop to the petitioner, to which he had declined, it would show that the shop in possession of the respondent No. 1 Anil Bajaj at 25-UB is not suitable for running his business. He observed that since the tenanted shop is located on the main road, it would have more business than at the shop 25-UB. The learned ARC consequently, held that there being no triable issue raised by the petitioner, and thus, dismissed the leave to defend application. In the instant petition, the impugned order has been assailed by the petitioner on various grounds.

6. I have heard learned senior counsel for the petitioner as also the respondents and perused the record, including the impugned order.

7. Being conscious of the nature and extent of revisional power of this court under Section 25-B(8) of the Act, a glance at the eviction petition as also on the leave to defend application and the reply filed thereto by the respondents, has persuaded me to examine as to whether the learned ARC has rightly examined, evaluated and

adjudicated upon the projected bona fide requirement of the respondents of the tenanted premises. There is no dispute with regard to propositions which have been laid down in various judicial pronouncements, and also reiterated repeatedly that the landlord is the best judge of his affairs and also choices, and the tenant could not dictate as to how the landlord has to live and utilize his premises, but, at the same time, it cannot be said that this judgment of landlord is the decisive factor, and whatever he would say, in every case, would be taken to be as gospel truth. If that was so, then, on the mere asking of every landlord that he needs the premises for doing his business and he is the judge and master of his decisions and choices, the statutory protection afforded to the tenant, would have become meaningless. That is not the intent of the legislation. The landlord, who seeks eviction of the premises, on his projected requirement of the same, based on his subjective decision, is required to be tested by the court.

8. It is also settled law that mere assertion by the landlord that he requires the premises, occupied by the tenant, for his personal occupation, is not decisive and it is for the Court to determine the truth of the claim and also to see as to whether the claim is bonafide. Further, in determining as to whether the claim is bonafide or not, the Court is under an obligation to examine, evaluate and adjudicate the bonafide of the landlord. A claim founded on abnormal predilections of the landlord cannot be regarded as bonafide. In this regard the observations of the Supreme Court in **Shiv Sarup Gupta**

Vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222 can be noted as under:

“Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one, but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need

or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. ”

9. Referring to various decisions of the Supreme Court and our High Court, Justice Sanjay Kishan Kaul in the case of **M/s. John Impex (Pvt.) Ltd. Vs. Dr. Surinder Singh & Ors., 2007 (1) RCR 509**, observed as under:

“21.The conspectus of the aforesaid judgments shows that the broad principles have been set down of the requirement of a landlord not being a mere whim or fanciful but that it should be a genuine need of the landlord. It is only then that the requirement can be said to be bona fide within the meaning of under Section 14(1) (e) of the said Act. This would naturally require all the necessary matrix in terms of the factual averments and the evidence to be adduced in that behalf. Simultaneously it has to be kept in mind that the landlord is the best judge of his requirement and a tenant cannot dictate the terms on which the landlord should live. The bona fide requirement of the landlord would also depend on his financial status and his standard of living. The ARC found in favour of the landlord/owner and thus what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate court though the scope of scrutiny in a rent revision would be more than a revision petition under Section 115 of the Code of Civil Procedure, 1908.”

10. In the backdrop of this, it would be seen that the petitioner has been able to raise various triable issues, which seem to have been overlooked by the learned ARC. It is not the case of the respondents that they are living separately and having separate businesses. Even the eviction petition has been filed, showing both of them to be the residents of the same premises. If both the respondents are the joint

owners of the shops bearing No. 37 and tenanted shop 38, then, how come that the respondent No. 2 Sanjeev Bajaj is in occupation of the shop No. 37, and the respondent No. 1 Anil Bajaj, a shop in the lane at 25-UB, Jawahar Nagar. What is the arrangement between both of them, has not been disclosed. This is one of the apparent triable issues.

11. Further, undisputedly, in this adjoining shop 37, a franchisee business of Numero Uno, is being run. Accordingly to the respondents, this is being run by respondent No. 2 Sanjeev Bajaj alone, whereas it is the plea of the petitioner that this is being run in the partnership of both the respondents as also their mother. There is nothing on record to controvert this plea of the petitioner, except the vague statement of the respondents that this was being run by respondent No.2 Sanjeev Bajaj. Then in reply to leave to defend application, it is averred that it is the business of proprietorship of their mother Malika Bajaj. This is another triable issue, that has been raised and this plea also requires to be tested. It was the petitioner's case that the respondents are also the owners of Ist, IInd and IIIrd floor of 25-UB; but, it was denied by the respondents, who stated that these floors have already been sold long back, and in any case, could not be used for commercial purpose. Premises 25-UB where the respondent No. 1 Anil Bajaj is stated to be running his kiriyana shop under the name of Saran Store is also alleged to be

belonging to both the respondents. There is no specific denial to this by the respondents.

12. The petitioner has alleged another property i.e. 44-UB as owned by the respondents. The respondents' reply in this regard was that this property is owned by Usha Bajaj, Anita Bajaj and Sunita Arora, and the respondent No. 1 Anil Bajaj had no concern with the same. It is noted that Usha Bajaj and Anita Bajaj are none else but the wives of the respondents Sanjeev and Anil respectively. This would not only prima facie show the respondent No. 1 Anil Bajaj to be having good amount of interest in this property, but that both the brothers and their wives are forming part of the joint family and owning joint properties and having common interest.

13. Then, there is another property being 17-UB, Jawahar Nagar, which was stated by the respondents to be owned by the respondent No. 2 Sanjeev Bajaj, and Anil Bajaj (respondent No. 1) having no concern with the same. Likewise, another property being 26-A/UA was also stated to be purchased by Sanjeev Bajaj along with two other persons, and Anil Bajaj to be having no concern with the same.

14. The respondents also have a rented shop at 121-E, Kamla Nagar. In this regard, the respondents' plea was that the respondent No. 1 Anil Bajaj has surrendered his share to respondent No. 2 Sanjeev Bajaj and now, the later is in occupation of the said shop

and is carrying his business along with his wife and to which, Anil has no concern. This is astonishing that the respondent Anil had been doing business in this shop alongwith his brother Sanjeev and Anil has surrendered his share to him and now, says to be having no concern with the same. This aspect also needs to be tested to assess the projected bona fide requirement of the respondents. Further, the petitioner also alleged one property being 19-UB to be owned by the respondents. In this regard, the respondents' case is that this was purchased by Usha, wife of the respondent Sanjeev, along with other persons, and the respondent Anil has no concern with this. Who are those other persons, has not been disclosed by the respondents. There is another property being 22-UB, which was admittedly purchased by the respondents; but, they stated having sold the same three-four years back. There is another property being 49-UB, which is stated to have been surrendered in 2009 to its owner. Further, there is still another property being 30-UB, which according to the respondents, was purchased by Usha, wife of the respondent No. 2 Sanjeev and other persons, and, to which, the respondent No. 1 Anil Bajaj has no concern.

15. As per the additional affidavit, filed during the pendency of this petition, ground floor of property 25-UB, Kamla Nagar was purchased in the name of Sanjeev Bajaj (respondent No. 2) and others, and the same has been redeveloped into four shops, and have been let out.

16. From the above, it would be noticed that it is not as simple as is sought to be projected that the respondent No. 1 Anil Bajaj is in bona fide requirement of the tenanted premises, and does not have any other reasonably suitable commercial space for running his kiriyana shop or that, accommodation at 25-UB where he is running his kiriyana shop, is not suitable.

17. The ARC seems to have outrightly believed what has been stated by the respondents, just influenced by the proposition that the landlord is the best judge to decide about his requirement and choices. As discussed above, both the respondents or their wives seem to be having some or the other interest in some of the properties, and to say that the respondent No. 1 Anil Bajaj has no concern with those properties, even which are owned by his wife, would require to be tested. Whether the respondent No. 1 Anil Bajaj has interest in any of those properties or the businesses being run by the respondent No. 2 Sanjeev Bajaj jointly with others, or being run by their mother, also would be required to be looked into to assess the bona fide requirement of the respondents of the tenanted premises. Here is a case, in which the petitioner seems to have done sufficient on his part, and could not be expected to do more than that. At this stage, what is to be seen is as to whether, prima facie, a triable issue is raised by the petitioner, which could only be determined by the adjudication, and not by the affidavits.

18. In view of my above discussion, I strongly feel the petitioner having, prima facie, set up triable issues, calling upon the court to objectively assess the projected bona fide requirement of the respondents of the tenanted premises. The learned ARC seems to have overlooked various relevant and important pleas raised by the petitioner and thus, grossly erred in dismissing his leave to defend application. The impugned order is thus, not sustainable and is set aside. Consequently, the petition is allowed and the leave to defend is granted to the petitioner. Parties to appear before the court of ARC for further proceedings on 04th October, 2012.

19. Petition stands disposed of.

M.L. MEHTA, J.

SEPTEMBER 20, 2012

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