

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

+ R.C.REV.- 525/2011

Date of Decision: 06.08.2012

AMARCHAND JAIN

..... Petitioner

Through: Mr. Gaurav Seth, Adv.

Versus

M/S DEWAN SALES CORPORATION

.....Respondent

Through: Representative of Respondent in person.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J.

1. The present rent revision petition has been filed under section 25B(8) of Delhi Rent Control Act (hereinafter referred as "ACT") assailing the judgment/order dated 08.11.2011 passed by Ld. Additional Rent Controller (ARC) in eviction petition bearing no.E-70/2011, whereby the application filed by the respondent seeking leave to defend, was allowed.

2. Brief facts are that, petitioner is the owner/landlord of property bearing no. IX /6882, Arya Samaj Gali, Gandhi Nagar, Delhi-110031(hereinafter referred as 'suit property'). The respondent firm was

inducted as tenant in one two sides open corner shop (hereinafter referred as 'tenanted shop') on ground floor of suit property in 1986 by erstwhile owner namely Sh. Ram Avtar Sharma. Petitioner filed eviction petition under Section 14(1) (e) read with Section 25B of Delhi Rent Control Act (hereinafter referred as 'ACT') for meeting his bonafide commercial requirement. It was stated by the petitioner that he requires tenanted shop for use and occupation of himself and for his two sons namely Sanjeev Kumar Jain and Rajiv Kumar Jain. It was further stated that petitioner is carrying on business of manufacturing and wholesale of readymade jeans under the name and style Vaishali Garments from the shop adjacent to the tenanted shop. Petitioner further stated that he needs the tenanted shop to expand his business, as tenanted shop is situated in commercial hub of business of jeans, from where he can display his products, as at present he does not have good space for displaying his products. He further stated that he is facing crunch of space to stock his products. Hence, the tenanted shop in suit property was stated to be required for meeting his bonafide commercial needs as he does not have any other reasonably suitable commercial property.

3. Upon receiving the summons, leave to defend application was filed by Mr. Manoj Kumar, stating himself to be partner of respondent firm. It was stated in the application that respondent is the partnership firm carrying the business of readymade garments and had five partners in the year 1986, but later on two partners namely Kishan Gopal and Poonam Gupta had retired themselves and new partnership firm was constituted comprising of himself,

Raj Kumar and Rajender Kumar. Respondent further alleged that firm had taken the tenanted shop with area (7'X14') on 04.12.86 after paying Rs. 2,50,000/-, and thereafter remaining portion 7'X4' was taken by the firm on 15.03.87 after paying complete value of Rs. 3,40,000/- to the previous owner Ram Avtar Sharma. It was averred that the amount was received by the previous owner with the condition that in case respondent firm sells the tenanted shop then 1/3rd amount of sale consideration of the profit would be given to erstwhile owner by the firm. It was alleged that petitioner has also filed an eviction petition under section 14(b) & (j) of the ACT, which is pending adjudication. It was averred that petitioner has sufficient space in the suit property being in possession a shop measuring 16'x30'. Therefore, petitioner can display 30 to 40 pieces outside his shop and he can install five counters in his shop in the suit property. It was further averred that entire suit property is in exclusive possession of the petitioner and can be utilized for commercial purpose as on the first, second and third floor petitioner can display and stock his products. It was stated that in 2008, a shop bearing no. 3 in the property was got vacated by the petitioner it was also alleged that the petitioner is the owner of several properties in Delhi.

4. Reply to leave to defend was filed by the petitioner, wherein it was alleged that the leave application had not been filed within 15 days from the date of service of summons. It was alleged that leave to defend application was not filed by competent person as Manoj Kumar is not the partner of the firm. It was alleged that he does not have sufficient space for display or to install counter at ground floor and that other floors are being

used for stocking of goods. It was further alleged that site plan filed by the respondent was wrong as correct dimensions of his shop at ground floor were not given. Thereafter, rejoinder was filed by the respondent wherein he stated that petitioner is also running his business from property bearing no. 9/7014, Prem Gali , which is also situated in commercial hub for business of jeans.

5. The order of granting leave to contest the eviction petition to the respondent has been challenged in the present proceedings on the ground that Ld. ARC failed to appreciate the bonafide requirement of the petitioner and his family members. It was also assailed on the ground that Ld. ARC completely failed to exercise his jurisdiction as he himself raised the triable issue as to whether the petitioner has sufficient space to display his products when he has not disclosed as to how many products he wanted to display. It was stated that Ld. ARC has committed grave illegality by not considering the material on record. It was urged that Ld. ARC wrongly came to the conclusion that the name of partner is required in the memo of parties.

6. The main thrust of contention of the Learned Counsel for petitioner was that Ld. ARC failed to appreciate the bonafide requirement of tenanted shop as the same is required for expansion of his business and to settle his sons. It was submitted that the tenanted shop is situated in the commercial hub of jeans business. It was contented by the learned counsel that admittedly the petitioner carries the business of jeans, which requires display. It was also contended that the partnership firm can be sued in the

name of firm, as there is no statutory requirement to name any partner in the memo of parties.

7. Reliance has been placed upon *Gulab Chand Pukhraj v. R.B. Jinender Raj & Anr. , 2009(4)Civil Court Cases 748 (S.C.)* and further on *Mohammadii Kunju Ahammed Kunju v. Abraham George & Ors. . AIR 1953 TRA-Co 209(Vol .40 C.N. 69).*

8. Heard the submissions and perused the material on record.

9. While allowing the application of leave to defend, Ld. ARC has observed that petitioner has sufficient space, as it was admitted by the petitioner in the eviction petition that entire suit property is in his possession except, tenanted shop, to display and stock his products. Therefore, petitioner has sufficient space at first and second floor to run and expand his business. In the present case, the respondent had not denied the bonafide need of the petitioner to settle his sons and expansion of his business. The respondent raised bald pleas with respect to sufficient space available to the petitioner. It is, however, not denied that the tenanted shop is situated in the commercial hub. Therefore, to expand the business and to settle his sons the landlord has all his right and the choices. In *Gulab Chand Pukhraj (supra)* it was held that once it is not disputed that landlord is in bonafide need of premises, court cannot dictate to landlord which floor he should use for his business. Moreover, it is well settled law that it is the landlord's prerogative as to in which location he prefers to run business and law should not and cannot prevent such preference by a landlord in order to meet his bonafide

requirement. And in ***Labhu Lal Vs. Sandhya Gupta 2011(1) RCR,(Rent) 231 (Delhi)***, it has been held by this Court that the children are very much dependant on the landlord for the purpose of setting up their business and such a requirement is a bonafide one. The right of the landlord for possession of his property for setting up a business for his son has been also recognized by the Apex Court in ***Ram Babu Aggarwal Vs. Jay Kishan Das 2009(2) RCR 455***.

10. The petitioner had further taken the plea that eviction petition filed against the respondent firm is maintainable and there is no statutory requirement to name the partner of the firm in memo of parties. In ***Mohammadii Kunju Ahammed Kunju(supra)*** it was held that in describing the cause title of the suit the name of the plaintiff or the defendant should be the name of the firm only, without addition of the name of the partner or manager suing, although addition of such name does not alter the character of suit as one by or against the firm. Therefore, the contention of petitioner is sustainable.

11. It is well settled legal principal that leave to defend is granted to the tenant in case of any triable issue raised before the trial court, which can be adjudicated by consideration of additional evidence. The whole purpose and import of summary procedure under Section 25B of the Act would otherwise be defeated. In ***Precision Steel & Engineering Works & Anr. Vs. Prem Devi Niranjana Deva Tayal (1982) 3 SCC 2870***, 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. In **Baldev Singh Bajwa vs. Monish Saini**, (2005) 12 SCC 778 observation made by Hon'ble Supreme Court are as under;

“It was held that the legislative intent is of expeditious disposal of the application for ejectment of tenant filed on the ground of requirement by the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only. It was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the Court for ejectment of tenant unless his need is bona fide - no unscrupulous landlord in all probability, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him. It was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the court his requirement shall be presumed to be genuine and bona fide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine. The

tenant is required to give all the necessary facts and particulars supported by documentary evidence if available to prove his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord; a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine."

13. In the present case, the respondent has failed to raise any triable issue that would merit grant of leave to defend the eviction petition and further Court cannot direct to the landlord which floor he should use for his business; that is for landlord himself to decide. In ***Bantam Enterprises Pvt. Ltd. Vs. Jaspal Singh Kapoor, 2012 (189) DLT 59*** 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. Hence the view of Ld. ARC that landlord has sufficient space to expand his business, in my opinion, cannot be sustained.

14. On the whole, the requirements as setup by the petitioner, keeping in mind his bonafide needs, are quite just, genuine and natural. For the reasons given above, the order of Ld. ARC is set aside. The petition stands allowed. No costs.

M.L. MEHTA, J.

AUGUST 06, 2012/ss