

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

% *Date of Judgment: 14.02.2012*

+ **RC.REV. 545/2011 & CM Nos.23406-08/2011**

SIRAJ KHAN Petitioner
Through Mr. M.S.Khan, Adv.

versus

MOHD AHMED Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned judgment is dated 27.09.2011 whereby the eviction petition filed by the landlord Mohd. Ahmed seeking eviction of his tenant Siraj Khan under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been decreed in his favour. The summary procedure contained in Section 25-B of the DRCA had been adverted to; 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 the landlord on the ground of bonafide requirement. The premises in dispute is shop bearing No. 1641, ground floor, Gali Andheri, Ward No. IX, Gali Andheri, Pahari Bhojja, Jama Masjid, Delhi. Contention of the petitioner is that his parents had purchased this property vide a registered sale deed dated 12.08.1992; after the death of his parents i.e. on 07.02.2002 and 25.07.2007 respectively, their legal heirs inherited this property which included the petitioner and his four other siblings; all the aforementioned siblings are minors and they are dependent upon the present petitioner for all purposes; all of them are joint owners of this property. Further contention is that the petitioner was having no source of income; he was earning a meager amount by way of running a telephone booth in the residential portion of his premises; his brother Osama aged around 15 years is not doing anything and he could complete his studies because of paucity of funds; present premises which is a shop are required by both the petitioners in order that they can earn a livelihood for themselves. Further contention is that their sister Ms. Sara aged 17 years has also not been able to continue with her studies because of financial constraint and the premises are required by

her as well for setting up a business for herself. Further contention of the petitioners is that the apart from the present shop which has been tenanted out to the petitioners, there are two other shops on the ground floor one of which has been tenanted out to Furqan and other is with the other tenant Chand; they are old tenants. Further contention being reiterated that the petitioner is doing job work of telephone booth in a small portion of the ground floor; present premises are required bonafide by him and his brother for carrying out a business to fend for themselves. Site plan has been filed along with eviction petition and is a part of the record.

3 In the application for leave to defend, various grounds have been raised but the petitioner has confined himself only to the following grounds:-

(i) Site plan is not correct and there is no explanation as to why in the site plan filed by the landlord only one shop has been depicted apart from the tenanted shop when in the eviction petition he has clearly stated that apart from the tenanted shop, there are two other shops.

(ii) The need of the landlord is not bonafide; he has not come to the Court with clean hands; he has several rooms and space in his

possession both on the ground floor, first floor and second floor; this eviction petition has been filed malafide only to evict the tenant.

(iii) This is a case of expansion of business and in view of the judgment of the Apex Court reported in Dr. S.N. Mehra Vs. D.D. Malik dated 11.01.1990 passed in Civil Appeal No. 120/90 arising out of an SLP (Civil) No. 236/1990 in all such cases, leave to defend should be granted.

4 The reply filed by the tenant to the corresponding paras and the objection raised by the tenant in his leave to defend have been perused.

5 Ownership and locus-standi of the petitioner to file eviction petition has however not been disputed. Admittedly the parents of the petitioner were the owners of this property which they have purchased by way of registered sale deed dated 12.08.1992; it is also not in dispute that a co-owner can maintain an eviction petition in the absence of other co-owner.

6 The site plan filed by the landlord has depicted the tenanted portion as a shop measuring 6'X7'; another shop measuring 6'X12' is stated to be tenanted out to Furqan. This is not in dispute. The rest of the site plan has shown it as a room, passage and a WC; the shop which is

tenanted out to Chand has not been shown as a shop. However, there is a clear and categorical averment in the eviction petition which states that there are three shops on the ground floor one of which is with the present tenant; one is with Furqan and one is with Chand to which there has been no denial whatsoever in the leave to defend filed by the tenant. In fact, in the application seeking leave to defend, the tenant has admitted that Furqan is a tenant; there is no mention about the status of Chand. The site plan filed by the tenant is almost in conformity with the site plan filed by the landlord; the only difference is that the room which has been depicted in the site plan filed by the landlord has been shown as a shop; there otherwise being no dispute to the factum that all the three shops which are on the ground floor one of which is with the present tenant and two are with other old tenants namely Furqan and Chand. These are the specific averments made by the landlord in his eviction petition. Thus this submission of the petitioner that the site plan has not depicted all the three shops which in turn has raised a triable issue is an argument without any merit. It is accordingly rejected.

7 The eviction petition has been bordered on the bonafide need of the petitioner for his brother Osama; because of financial constraint,

Osama has even left his studies; on the date of filing of the eviction petition which was in July, 2008 his brother Osama was about 15 years of age; his need to set up a business was the need depicted in the eviction petition. The case of the petitioner himself is that he is running a small telephone booth from the ground floor. In view of these averments made in the eviction petition, it can in no manner be said that what the petitioner is seeking is an expansion of his business; the bonafide need is to start a business for his brother Osama who being a co-owner is admittedly dependent upon the petitioner for his need for accommodation. The judgment of D.D. Malik (Supra) relied upon by learned counsel for the petitioner would thus be inapplicable.

8 Admittedly, the ground floor is for commercial user. Apart from his shop, there is no other commercial space available with the petitioner to fulfill the need of his brother Osama. The petitioner himself is doing his business of STD booth only from a small portion from his residential premises. Thus the need of the petitioner for running a business for his brother Osama who is dependent upon him for all his needs including his need for accommodation has been established.

9 In 2009(2) RCR 455 titled as Ram Babu Agarwal vs. Jay kishan

Das, the Apex Court in the context of an applicant wishing to start a new business had inter-alia observed as under:-

“However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.”

10 In Sait Nagjee Purushotham and Co. Ltd. v. Vimalabai Prabhulal and Ors. reported in 2005 8 SCC 252; the Apex Court observed:

“It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business.”

11 Thus this argument of the petitioner is also without force.

12 The last vehement submission of learned counsel for the petitioner is that he had filed certain documents which are a part of the trial court record which depict that there are admissions made by the landlord in his cross-examination in a connected eviction petition which would fortify his submission that the landlord does not require these premises bonafide; said documents be adverted to. Record shows that these documents had been filed in the trial Court on 07.12.2009 whereas his application for leave to defend had been filed much prior in time i.e. on 20.10.2008. It is also not the contention of the petitioner that this a plea now raised was a pleading in his application for leave to defend; that apart these documents had been filed by him more than 10 months after the filing of his application for leave to defend and thus cannot be looked into in order to decide whether a triable issue has been raised by the tenant or not. If this is permitted, the whole purport of the summary procedure engrafted under Section 25-B of the DRCA would be given a go-bye which specifically postulates that the application for leave to defend has to be filed within 15 days of the service of summons and no

defence after that period can be set up by the tenant for this special class of landlords.

13 The landlord is also the best Judge of his requirement and it is not open for any person i.e. neither the tenant and nor even the Court to dictate terms as to how and in what manner he has to meet his needs for an accommodation. Landlord in order to obtain an eviction decree must however show his needs is genuine and bonafide; it should not be malafide. The tenant unless and until sets up a prima faced defence cannot in a routine or a mechanical manner be granted leave to defend otherwise the very purport of Section 25-B of the DRCA which is the summary procedure depicted for a special class of landlords would be defeated and this was not the intent of the legislature. If the defence raised by the tenant is merely bald, whimsical or fanciful having no basis or foundation, leave to defend may not be granted.

14 In 111 (2004) DLT 534 Shri Hari Shanker Vs. Shri Madan Mohan Gupta and 155 (2008) DLT 383 Rajender Kumar Sharma & Others Vs. Smt. Leela Wati and Others the Courts have time and again reiterated:-

“The Courts cannot and should not in a mechanical or in a routine manner

grant leave to defend.”

15 In the instant factual scenario no triable issue has arisen. On the other hand, it is clear that the landlord has been able to establish his genuine and bonafide need for these premises which are required by him for his brother to run a business who because of paucity of funds was not even able to complete his studies; he was around 15 years in the year 2008 when the eviction petition was filed; his need to stand on his own feet for a stable financial status has been established. Decree which had followed in favour of the landlord thus suffers from no infirmity.

16 Petition is without any merit. Dismissed.

17 Trial Court record be sent back.

INDERMEET KAUR, J

FEBRUARY 14, 2012

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