

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

% *Date of Judgment: 13.02.2012*

+ **RCR No. 67/2012, CM Nos. 2722-2723/2012 & Caveat
No.155/2012**

A.K. KAKAR Petitioner
Through: Mr. V.K. Verma, Mr. Y.R.
Sharma Markanday, Advocate.

versus

SHEELA KHANNA Respondent
Through: Mr. Sudhir Nandrajog, Sr. Adv.
with Mr. Siddharth Aggarwal,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The order impugned before this court is the order dated 23.09.2011 vide which the eviction petition filed by the landlady Smt. Sheela Khanna widow of Late. Sh. Dwarka Nath Khanna against her tenant Dr. A.K. Kakkar who was running a Dental Clinic from the disputed premises (a shop located in property bearing No. 23/19, East Patel Nagar Market, New Delhi) had been decreed. The application seeking leave to defend filed by the tenant had been dismissed.

2. Record shows that the eviction petition had been filed by the
RCR No.67/2012

landlady claiming herself to be the owner of the disputed premises which had been let out to the tenant vide a registered lease deed dated 20.07.1963. Contention was that the premises are required bonafide for running a business of Harware and Pipe Fittings which is proposed to be run by her son Rakesh Khann who is residing with her and is dependent upon her. Contentions as borne out from the eviction petition are that the landlady is a widow; she has two sons, namely, Yashpal Khanna and Rakesh Khanna; Rakesh Khanna is stated to be out of job; earlier he was running a business with his brother-Yashpal Khanna in partnership at 38, Shankar Market, Connaught Place, New Delhi from where he has retired on 31.03.2005. The dissolution deed of the partnership between Yashpal Khanna and Rakesh Khanna is on record substantiating this submission that this business of the two sons of the landlady finally stood dissolved with effect from 31.03.2005. There is also no dispute to this contention. Further contention of the landlady is that she alongwith her son Rakesh Khanna had thereafter shifted to Gurgaon as he had started his new business of hardware and pipe fittings under the name and style of 'M/s. M.G. Hardware' at Gurgaon; the fact that she was residing at Gurgaon with her son Rakesh Khanna

has also been substantiated by the fact that the present petitioner i.e. tenant-A.K. Kakkar had in this intervening period continued to pay rent to her at her residence at Gurgaon. This factual position is also not disputed. It is also not in dispute that in fact Rakesh Khanna was filing his Income Tax Return at Gurgaon and last return filed by him is dated 31.03.2009; a perusal of this document has revealed that the income of Rakesh Khanna was about Rs. 47,000/- per annum which was for the year ending March 2009. This document is also not in dispute.

3. Further contention in the eviction petition is that the son of the landlady -Rakesh Khanna has since closed his business at Gurgaon; now they have shifted back to Delhi; Rakesh Khanna has no employment. Present premises are required for running his business of hardware and pipe fittings. The need of the petitioner is thus bonafide as her son is dependent upon her for his need for accommodation.

4. The averments made in the application for leave to defend have been perused.

(i) First contention which is raised is that the need of the landlady is not bonafide; this shop is only a small portion on the part of the ground floor; the back portion on the ground floor of the premises is in her

possession which can also be used her; it is lying useless and locked.

(ii) Second submission is that the property bearing No. 38, Shankar Market, Cannaught Place, New Delhi where Rakesh Khanna was carrying on a business with his brother-Yashpal Khanna is also available to the parties and Rakesh Khann can continue his business with his brother.

(iii) Third submission is that the landlady has another shop at 55, Shankar Market, Delhi which is lying closed which fact has been concealed from the court.

(iv) Last submission is that the averment of Rakesh Khanna that he has closed his business at Gurgaon is in fact a false statement. There is no document to substantiate this fact.

5. Although the averments made in the application for leave to defend also state that the conduct of the petitioner has been fraudulent and the documents which he has filed in support of his petition are fraudulent yet no such argument has been addressed before this court today. Submissions which have been urged and argued vehemently before this court have been outlined above.

6. The reply to the corresponding paras of the application for leave

to defend has also been perused. The landlady has specifically denied that she has any connection with shop at 55 Shankar Market, Delhi; contention being that she is in no manner related to this property. Although rejoinder had been filed to this specific denial made by the landlady in reply, this is only a bald averment; the petitioner admittedly does have any evidence either oral or documentary to substantiate this plea that property bearing No. 55, Shankar Market, Delhi belongs to the landlady which contention has been specifically refuted by her on affidavit. As such this appears to be only a sham plea which has been taken by the tenant and having no force, being a mere illusory defence, it cannot amount to a triable issue.

7. There is no dispute to the factum that property bearing No. 38, Shankar Market was a shop where Yashpal Khanna and Rakesh Khanna were earlier carrying on their joint business of hardware and pipe fittings; it is not disputed that the said business was dissolved by a dissolution deed dated 31.03.2005 which has been placed on record and adverted to by the Trial Court. The fact that Rakesh Khanna and the landlady had in an intervening period thereafter shifted to Gurgaon has also been substantiated and in fact could not have been disputed for the

reason that the tenant had been sending cheques of rent at her Gurgaon address for this intermediate period; income tax return for the year 31.03.2009 filed by Rakesh Khanna from Gurgaon supports his submission that his income from the business which he was running at Gurgaon was about Rs. 47,000/- per annum which being meager was not sufficient to support his financial needs which had led to the closure of this business. It is not disputed that after 2009 the petitioner with her son Rakesh Khanna and his family are living at Punjabi Bagh which is also the address in the eviction petition.

8. The last submission urged by the tenant and which has been raised as an alleged triable issue is the submission that the area on the back portion of the premises is also an area which is lying locked and available with the landlady. This has been vehemently denied by the landlord. In fact a reply filed by the tenant to a legal notice of the landlady has been placed on record; this is a document dated 18.03.2008 which had been written by the petitioner to his landlady wherein in para 7 he has averred as under:-

“That at the back of the said premises i.e. 23/19, East Patel Nagar Market, New Delhi-110008, your client’s nephew is residing with his

family and there is no rupture of the building from anywhere.”

9. This is an admission of the tenant himself admitting that the landlord's nephew is residing with his family on the back portion of the disputed premises. Thus the contention of the tenant that this premises is now available to the landlady is both contrary and conflicting to the submission now sought to be raised.

10. These were the only issues raised and being illusory and imaginative were rightly declined by the ARC; by no stretch of imagination can they be pre-judged as triable. There is no doubt that as and when a triable issue arises and the application for leave to defend discloses such facts which would disentitle the landlady to a decree of eviction, leave to defend should be granted. This is the ratio of the judgment of the Apex Court reported in AIR 82 SC 1518 titled as Precision Steel & Engineering Works and Anr. vs. prem Deva Niranjana Deva Tayal and hereby relied upon by the petitioner. There is no doubt to this proposition.

11. While dealing with an application for leave to defend the court must advert to the pleadings of the parties which includes the eviction

petition, the application for leave to defend and the reply filed by the parties which are supported by their documents. This is the recourse which has been taken to by the ARC. It was on the basis of the oral and documentary evidence which had come on record that the Trial Court was of the view that the triable issues have not arisen.

12. At the cost of repetition, it is reiterated that this shop i.e. demised premises measuring about 240 sq. feet is the only commercial space which is available with the landlady for setting up a business for her son who is presently unemployed. He was earlier carrying on a business of hardware and pipe fittings with his brother which partnership was dissolved in the year 2005; thereafter, to fulfill his financial needs he had shifted his business and residence at Gurgaon with his mother; from where he was running the same business which business also he could not successfully establish and this is evident from his last Income Tax Return filed in the year ending 2009 which had reflected his annual income to be less than Rs. 50,000/-; this had lead to the closure of this business at Gurgaon and had cut short his stay at Gurgaon. Petitioner with her son Rakesh Khanna and family had returned to Delhi to run a business; he is staying with his mother/landlady in East Punjabi Bagh,

New Delhi which is admittedly a residential accommodation; there is no commercial space available with the landlady from where her son can run his proposed business of hardware and pipe fittings in which has acquired considerable experience and expertise having been in this business for almost a decade. The back portion of the demised premises is admittedly in the occupation of the nephew of the landlady who lives there alongwith his family. Submission of the tenant that this back portion is lying locked and available with the landlady is a submission without any force as the tenant himself in his reply which he had sent to the landlady on 18.03.2008 had admitted this fact.

13. The Courts time and again have held that unless and until a triable issue arises leave to defend should not be granted in a routine and a mechanical manner. If this is allowed, the very purpose and import of the summary procedure as contained in Section 25 B of the DRCA shall be defeated and this was not bonafide intention of the legislature.

14. 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.”

15. Landlord is also the best judge of his need and how and in what manner he should live or earn his livelihood is his prerogative alone. In Prativa Devi (Smt.) Vs. T.V. Krishnan reported in (1996)5SCC353 it was noted:-

“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.”

16. In this factual scenario, the application seeking leave to defend was rightly dismissed; the eviction petition was decreed as a necessary corollary.

17. Impugned judgment suffers from no infirmity; dismissed.

FEBRUARY 13, 2012/rb

RCR No.67/2012

INDERMEET KAUR, J

Page 10 of 10