

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

Date of Decision: 01.10.2012

+ RC.REV. 1/2012, CM 85/2012

RAMESH CHANDER AGARWAL & ANR Petitioner

Through: Mr. V.B. Andley, Sr. Advocate
with Mr.Priyank Sharma,
Mr.K.C.Baliar, Advs.

versus

JAGAN NATH & ANR Respondent

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr.Ravi, Adv.

With

+ RC.REV. 2/2012, CM 96/2012

RAMESH CHANDER AGARWAL & ANR Petitioner

Through: Mr. V.B. Andley, Sr. Advocate
with Mr.Priyank Sharma,
Mr.K.C.Baliar, Advs.

versus

SANDEEP KUMAR BABBAR & ANR Respondent

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr.Ravi, Adv.

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

M.L. MEHTA, J. (Oral)

1. Both these petitions are being disposed by this common order as the common questions of fact and law are involved. The petitions are directed against the orders dated 17.8.2011 of Addl. Rent Controller (ARC), whereby the leave to defend applications filed by the respondents in the eviction petitions filed, against them by the petitioners, were allowed.

2. The respondents in R.C. Rev.1/2012 are the tenants in respect of shop No. 4089, whereas the respondents in R.C. Rev. 2/2012 are the tenants in respect of shop No. 4090-A, Nai Sarak, Delhi. Their eviction was sought by the petitioners from the tenanted shops on the ground of bona fide requirement thereof by the petitioner No.1 for expansion of his business of sale of books and also for the establishment of the businesses by his two sons Pradeep and Praveen. The petitioners' case in short was that they are running the business of sale of books in a shop shown as mark 'X' in the site plan and this shop is too small and narrow to accommodate him as also his two sons and staff of five persons. It was further their case that there is no space in their shop for the proper display of books counter as also for the customers. The petitioners have been desiring for expansion of their business, which could not be done due to paucity of accommodation. It was also averred that the space available with the petitioner on the upper floor of the suit premises is not suitable and accessible and his sons tried to start their business there, but could not

succeed and suffered losses. It was averred that petitioner No.1 is aged about 70 years and is unable to climb the stairs, having suffered injuries on his bone and legs in a tragedy in 2006.

3. The respondents filed leave to defend application which came to be allowed by the Addl. Rent Controller vide impugned order. The same is under challenge in the instant revision petitions.

4. Before advertng to the submissions made by the learned senior counsels for the parties, I must reiterate that the power of this Court under Section 25-B (8) Act are not as wide as those of Appellate Court, and in case it is found that the impugned order is according to law and does not suffer from any jurisdictional error, this Court must refrain from interfering with the same. The power under this provision is limited and supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion which was not possible, based on the material produced, should this Court interfere in the orders passed by the Rent Controller.

5. The sum and substance on which the eviction of the respondents was sought is that the present accommodation with the petitioners in the shop mark 'X' is not sufficient and suitable for the expansion of their business of sale of books and that the petitioner

No.1 who is aged about 70 and is suffering from old age ailments and injuries, is unable to climb the stairs, and further that the tenanted shops which are adjoining the shop of the petitioners, are required for setting up of businesses by the sons of the petitioners.

6. The learned ARC granted leave to defend to the respondents observing that they have made triable issues.

7. The foremost ground that was taken by the respondents in the leave to defend application is that both the sons of the petitioners are self-dependent and they are in possession of first, second and third floor of the premises of the same building. It was the case of the respondents that the first, second and third floor of the premises were acquired in the names of the sons i.e. Pradeep and Praveen in April, 2000, and that they both are doing their commercial businesses from those premises under the name and style of M/s Ramesh Chand Aggarwal & Sons. It was also their case that many people in the locality of Nai Sarak and Chandni Chowk are doing the commercial activities from the upper floors. In the reply that was filed by the petitioners, they denied their sons Pradeep and Praveen to be the absolute owners of first, second and third floors of the premises. However, in the rejoinder to the replies in the instant petitions, the petitioners changed their versions and stated that various floors of the

premises in question were owned by various members of their family. It is noted that in the petition, it was nowhere disclosed that the first, second and third floors of the premises have been acquired by their sons Pradeep and Praveen or that they had been doing any commercial activities under the name and style of M/s Ramesh Chand Aggarwal & Sons.

8. On the other hand, in reply to the leave to defend application, the petitioners have totally denied Praveen and Pradeep to be the owners of these floors. Now in the rejoinder, they came out with another version, indirectly admitting these floors to be owned by Pradeep and Praveen alongwith the other members of the family. It was in fact the case of the respondents in the leave to defend that 50% of the first floor was owned by Praveen and 75% of the second and third floors by Pradeep. Who are the owners of the remaining portions of these floors, was nowhere disclosed. From the admission of the petitioners in the rejoinder, it comes out to be that the remaining shares of these floors are owned by other family members of the petitioners. It was only in the rejoinder that it was stated that the business of the selling of books under the name and Style of Ramesh Chand Aggarwal & Sons was being carried on in one small room on back side portion of the first floor. It was however, denied that any business was carried on the second and third floor. However, in the later part of the rejoinder, it was stated that these floors were being used for storing the books.

9. Moving further, it is also the plea of the respondents that the tenant Veena Art Gallery and Sheel Kapoor have vacated their tenanted premises on the first and second floor and the sons of the petitioners have already started commercial activities in these floors. This was denied by the petitioners in the reply to the respondents' application. However, in the instant petitions, it is their case that the first floor premises in which M/s. Veena Art Gallery was tenant, is not owned by the petitioners. But, in the rejoinder filed in the instant petitions, they admitted that they alongwith their sons have purchased the entire property including premises No. 4091 in possession of M/s. Veena Art Gallery. Now their case was that this premises was in dilapidated condition and could not be used by them and their sons, and is lying unused. This would show that the petitioners have been changing their stands and taking different stands when confronted with different factual realities. This would all require to be tested by the Rent Controller.

10. It was also the plea of the respondents that three shops on the ground floor in the same market, being shop Nos. 4094, 4096 and 4097 were sold by the petitioners and if they had any requirement of the commercial space on the ground floor for setting up the businesses by their sons, they would not have sold the shops. In this regard the petitioners replied that these shops were sold to the sitting tenants, due to financial constraints and also because these shops were angular

and were not contiguous. Since it was the case of the petitioners that they have been desiring since long to expand their businesses and also to establish their sons to set up businesses, it was certainly a triable issue as to whether those shops were sold due to financial constraints by the petitioners to the sitting tenants and that these were not suitable for the setting up of businesses by any of the sons of the petitioners.

11. It may be that the petitioners required the tenanted shop for the expansion of their business or for the establishment of the businesses by their sons and that the accommodation available with them on the first, second and third floors may not be suitable for their business activities but, having regard to all that has been discussed above, the projected need of the tenanted shops by the petitioners, would require to be tested by the Controller. It is not that on the mere asking of the landlord that he requires the tenanted premises, that the tenant would be deprived of his statutory protection, that too, at the threshold. The petitioners would be required to demonstrate their genuine and authentic need of the tenanted shops for themselves or for the needs of their sons. There is no dispute that if they are able to so demonstrate, they would be entitled to seek eviction even for the need of setting up of their businesses by their sons, if they are proved to be dependent upon them.

12. There is no dispute to the submissions, which are made by the learned senior counsel for the petitioners/landlords that the landlord is the best judge to decide about his requirement and choice of the place, and neither the tenant nor this Court can dictate to him as to how else he can adjust himself without getting possession of the tenanted premises. But, at the same time, it is also settled law that mere assertion that landlord 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 entitled and indeed bound to consider whether it is reasonable. A claim founded on abnormal predilections of the landlord may not be regarded as bonafide.

13. At the stage of granting leave, the real test is whether facts disclosed in the affidavit filed seeking leave to defend, prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end the defence may fail. Leave to defend must not be granted on mere asking, but it is equally improper to refuse to grant leave when triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses. If the application filed under Section 25-B discloses some substantial triable issues, then it would be grave injustice to brush them outrightly without testing the veracity of

the claims made by the tenant/applicant. In ***Charan Dass Duggal vs. Brahma Nand***, (1983) 1 SCC 301, while dealing with the issue of leave to defend the Apex Court has held thus:

“5. 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”.

14. From the entire factual matrix as presented by the petitioners, it is seen that the petitioners and their sons not only constitute a joint family living and messing together, but are also seen to be having joint businesses. The petitioner No.1 himself is aged about 70 years

and is stated to be having suffered injuries and is unable to climb stairs. Whether in the given physical condition, he would be able to do independent business, is also a triable issue.

15. In view of my above discussion, I am of the considered view that the respondents have made prima facie triable issues which cannot be brushed aside outrightly at the threshold. There being no infirmity and illegality in the impugned orders, no interference is warranted by this court. The petitions being without any merit, are hereby dismissed.

M.L. MEHTA, J.

OCTOBER 01, 2012

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