

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

% *Date of Judgment: 25.4.2013*

+ RC.REV. 285/2012 & C.M. 11263/2012 (stay)

SHRI GURCHARAN LAL KUMAR Petitioner

Through: Mr.G.P.Thareja, Adv.

Versus

SRIMATI SATYAWATI & ORS. Respondents

Through: Mr.Shiv Charan Garg and Mr.Imran
Khan, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned is the order dated 27.3.2012 vide which Additional Rent Controller (ARC) had decreed the eviction petition filed by the respondent/landlord under section 14(1)(e) of the Delhi Rent Control Act (DRCA); the application seeking leave to defend filed by the petitioner/tenant had been dismissed.

2 Record shows that the present eviction petition had been filed by the respondent under Section 14(1)(e) read with Section 25 B of the DRCA. This was qua municipal number of premises 6671, present known as plot No.D-154, Kamla Nagar, Delhi. The petitioner was inducted as a tenant of respondent no.1. He, however, illegally sublet
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the premises to respondent no.3. Respondent no.3 is not represented before this Court. Even otherwise the present proceedings have been filed under Section 14(1)(e) of the DRCA seeking eviction of the tenant on the bonafide need of the landlord; it is not a petition seeking eviction of the tenant on the ground of subletting. This becomes relevant in view of the first objection raised by the learned counsel for the petitioner that there is a mis-joinder of parties and the petition in the present form wherein the sub-tenant has been roped in is not maintainable. This objection is without any merit. Respondent no.3 even presuming has been mistakenly made a respondent, no relief has been claimed against him and he has been stated to be only a proforma respondent; the ground of subletting as detailed has only been in the narration of facts as is evident from the prayer made in the present petition, the petition is otherwise a petition seeking eviction of the tenant on the ground as contained under Section 14(1)(e) of the DRCA which does not apply to a sub-tenant.

3 In the course of the proceedings an application seeking leave to defend was filed. Apart from the aforementioned first objection it has been argued that the bonafide need as depicted in the eviction petition does not spell out the reason why the premises are required by the aforementioned two petitioners. It has been averred that the grand sons of petitioner nos.1 and 2 respectively i.e. Abhinav Goel and Abheshek Goel seek the accommodation for doing work; what is the nature of the work or business which is proposed to be carried out by them has not been

explained; this proposal is only in the air as admittedly both the brothers are only in their early twenties and in the absence of any knowledge and work experience to start a business it would be unimaginable to believe that the present accommodation is required for their setting up a business which business as per the averments made in the petition is unknown. Another submission of the learned counsel for the petitioner is that an alternate accommodation is available with the petitioner at Shastri Nagar which factum has been concealed; on this ground alone leave to defend should be granted. The third submission made by the learned counsel for the petitioner is that this is clearly a case of additional accommodation as is evident from the eviction petition wherein it has been averred that a firm under the name and style of M/s Hindustan Hosiery of petitioner no.2 and another firm in the name of M/s Abhinav Enterprises in the name of the wife of petitioner no.2 is being run in the ground floor of the same premises; these premises are in fact being used as a godown for the purposes of storage and these are easily available to Abhishek and Abhinav to carry out their business; present premises are thus an additional accommodation claimed by the petitioner. To support this submission reliance has been placed upon a judgment of the Supreme Court report as (2000) 1 SCC 255 Santosh Devi Soni Vs. Chand Kiran decided on 17.01.2000 in Civil Appeal No.412 of 2000; this also being a case of additional accommodation leave to defend should not be refused. Last submission of the learned counsel for the petitioner is bordered on a legal submission; submission being that the judgment of the Supreme Court reported as 148(2008)

DLT 705 (SC) Satyawati Sharma Vs. UOI is wrongly being interpreted by the courts below; the ratio of the judgment is that the landlord can seek eviction of only those premises which are being used by a tenant for commercial purpose and which had initially been let out for residential purpose. The procedure of Section 14(1)(e) and 25 B of the DRCA would be inapplicable in the present case.

4 This is the sum and substance of the arguments which have been propounded by the learned counsel for the petitioner. Elaborate submissions have been made on the aforementioned counts.

5 Para no.18 (a) of the eviction petition has detailed the bonafide need of the petitioner. Petitioner no.1 is the grandmother and petitioner no.2 is the father of Abhishek Goel aged 20 years and Abhinav Goel aged 22 years; both of them are stated to be dependent upon the aforementioned petitioners for accommodation for doing their work. Premises are admittedly owned by petitioner nos. 1 and 2. It has been pleaded that both Abhishek and Abhinav after their studies are unemployed and wasting their precious time; they need the premises for carrying out a commercial activity in order that they can earn their livelihood.

6 The site plan has also been filed along with the eviction petition. The disputed premises is a shop measuring 17'.8'' x 8' in the front portion of ground floor of the dispute property.

7 Record shows that this property was originally owned by Ishwar Chand Goel and his brother Rati Ram Goel. Petitioner nos.1 and 2 are in the line of inheritance of Ishwar Chand Goel. The shop adjoining the suit premises depicted in yellow colour had fallen to the share of Rati Ram Goel which has since been sold and which is an admitted fact. The next adjoining shop is in the share of Jai Kishan Goel who is also from the family of Rati Ram Goel. Present petitioners have no connection with the family of Rati Ram Goel after a partition had been effected between the two brothers i.e. Ishwar Chand Goel and Rati Ram Goel. It is also not in dispute that the present petitioner has attorned to the petitioner and has been paying rent to them regularly. The family business of the parties is garments and hosiery. The premises behind the disputed shop are two godowns which the petitioner no.2 is using as storage space for his business of M/s Hindustan Hosiery; his wife Seema Devi is using the adjoining space for storage of her business goods. Parchhatti/mezzanine floor over and above M/s Abhishek Enterprises is in the share of Jai Kishan Goel i.e. the family of Rati Ram Goel. The Parchhatti above M/s Hindustan Hosiery is a continuation of the godown space of M/s Hindustan Hosiery which as noted supra is a storage space.

8 Admittedly, all these properties fall on the back portion of the disputed plot. The shop in question is on the front side facing the main road; viability and commercial success of a business being carried out from a property facing the main road cannot be equated with a proposed

business to be carried out from the back portion. This is also an admitted position and neither party has any quarrel on this proposition.

9 The first, second and the third floor of this property i.e. the property D-154, Kamla Nagar are being used for a residential purpose by the two petitioners and their family members as also of the family of Rati Ram Goel. The family of the petitioners comprises of five persons. As noted supra this residential complex is being shared by both the families i.e. the family of Ishwar Chand and Rati Ram Goel.

10 Eviction petition has clearly detailed that Abhishek Goel and Abhinav Goel both whom are sons of petitioner no.2 are in their early twenties; they have completed their studies; they wish to start their business and they have no other commercial space from where they can carry out their business activity. Merely because the exact nature of the business has not been described would not take away their bonafide need to carry out a business when admittedly both of them are dependent upon petitioner nos.1 and 2 for this need.

11 In a judgment reported as AIR 1995 SC 576 Raj Kumar Khaitan & Ors. Vs. Bibi Zubaida Khatun & Anr., the Apex Court had observed as under:

“It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody could bind the landlords to start the same business in the premises after it was vacated.”

12 In view of this observation of the Apex Court, if the business need is not disclosed this would not wipe away the bonafide need of the landlord as has been pressed under Section 14(1)(e) of the DRCA. This objection is accordingly without any merit.

13 The second objection of the learned counsel for the petitioner that the factum of the alternate accommodation at Shastri Nagar has not been detailed in the eviction petition is also without any merit. The petitioners have categorically averred that they have no other “suitable accommodation”. The premises bearing No.1887/1 at Shastri Nagar is a residential complex; this has been admitted by the petitioner himself in his application for leave to defend. In para 13 the petitioner has himself stated that earlier a part of this property was being used as a Hosiery Factory, however, when the policy of the government was changed directing removal of factories from residential premises, the respondent has shifted his factory from the aforementioned premises which premises are now being used as business house; this accommodation by itself would be sufficient and would be fulfill the need of Abhishek Goel and Abhinav Goel. The petitioner himself has answered this argument which he has propounded. He has himself admitted that after the government policy of shifting factories from the residential properties, the factory at Shastri Nagar had been shifted elsewhere and this space is now being used as the office space of M/s Hindustan Hosiery. Sales tax documents had in fact been filed by the petitioner along with his eviction petition showing that M/s Hindustan Hosiery had set up its

office at the aforementioned premises. This premises only being a residential would not be an alternate suitable available premises for which the present petition has been filed. In the residential complex no commercial activities can be run. A business cannot be set up by Abhishek Goel and Abhinav Goel in the said premises.

14 Present case is also not a case of an additional accommodation as has been argued by the learned counsel for the petitioner. The eviction petition clearly discloses that there is no other suitable accommodation available with the dependent children of petitioner no.2 where they can run their business activity. It is not a case as if they are already running a business and require additional accommodation to expand their business. Reliance by the learned counsel for the petitioner on the judgment of *Santosh Devi* (supra) is misplaced. Apart from the fact that this is only a one page judgment where the facts can neither be depicted nor deciphered, it is also not as if it is a general rule. The judgment has categorically noted that “looking into facts and circumstances of the case, especially in the light of the additional accommodation which has subsequently been made available to the respondent as mentioned by the appellant, the question of the respondents need was required to be thrashed out on merits by a full-fledged trial.” Facts of the said case are distinct as has been noted in the aforesaid lines. In that case the accommodation has been made available to the landlord subsequently; the facts of that case in that eventuality had justified a grant of leave to defend. Ratio of the said judgment is wholly inapplicable.

15 Last submission of the learned counsel for the petitioner is also without any merit. The Judgment of Satyawati Sharma (supra) which was pronounced in 2008 is a good law till date and has been followed consistently by all courts all over the country. The Supreme Court in this judgment had foreclosed the distinction between premises which are let out for a residential purpose and have let out for a non-residential purpose; that part of Section 14(1)(e) of the DRCA has been struck down. Thus where premises are let out for a residential purpose or for a commercial purpose would make no difference to the right of a landlord seeking eviction under Section 14(1)(e) of the DRCA. The last submission of the learned counsel for the petitioner is thus also rejected.

16 The impugned order had rightly noted that the bonafide need of the landlord has been clearly admitted which was the need of the grandsons and sons of petitioner nos.1 and 2 respectively to carry out their business activity from the aforesaid shop which is under the tenancy of the petitioner. They have no other “suitable alternate” accommodation available to carry out this business activity. The need is genuine. No triable issue has been raised by the petitioner. Leave to defend was thus rightly rejected.

17 In the course of the arguments, a proposal for extension of time to vacate the suit property has been given to the petitioner. Learned counsel for the petitioner sought time to take instructions from his client. He has, however, refused the offer. He had again re-addressed his arguments and seeks an order on merits.

18 Petition is without any merit. The petition as also the application are dismissed with cost of Rs.10,000/- to be deposited with the Delhi High Court Legal Services Committee.

INDERMEET KAUR, J.

APRIL 25, 2013
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