

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

% *Judgment delivered on : April 2<sup>nd</sup>, 2013*

+ **RC.REV. 578/2012**

GITA GUPTA

..... Petitioner

Through: Mr.R.M.Sinha, Advocate

versus

KAILASH CHAND DHINGRA

..... Respondent

Through: Mr.Ganesh Kumar Sharma, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE VEENA BIRBAL**

**VEENA BIRBAL, J.**

1. By way of this revision petition filed under proviso to sub-section (8) of section 25(B) of the Delhi Rent Control Act, (hereinafter referred to as the Act), petitioner/tenant has challenged the order dated 12<sup>th</sup> September, 2012 passed by the Id.ARC, East Delhi District, Karkardooma Courts, Delhi whereby the leave to defend application filed by her in the eviction petition, has been rejected.

2. An eviction petition under section 14(1)(e) read with section 25(B) of the Act was filed by the respondent herein i.e. owner wherein it is alleged that respondent is the owner/landlord of property no.E-4/17, Krishna Nagar and the petitioner herein i.e. respondent before the Id.ARC is his tenant in

respect of shop no.2 in the aforesaid property. It was alleged that the shop was let out for running a clinic to the petitioner but the same remained locked most of the time. It was further alleged that in the past 10-11 years the shop in question was opened only for four-five times. Neither the petitioner nor any person is sitting in the tenanted premises. A site plan was annexed with the eviction petition. It was alleged that petitioner is also irregular in making payment of rent. Respondent/landlord/owner had averred that he is about 68 years of age and retired from a Punjab Government Undertaking and his wife is about 67 years of age who has retired as a senior teacher from Shishu Bharti School. It was averred that his elder son, aged about 42 years is working as a Lecturer in Agra. The wife of his son is also working as a Lecturer in Agra. His grandson aged about 6 years is a student of 2<sup>nd</sup> class. The younger son of the respondent/landlord is about 35 years of age and is working in a private firm. The wife of his younger son is a graduate. It was alleged that his younger son and son's wife are residing with respondent and his wife. They all are in occupation of common kitchen, common drawing room, common dining room, one bed room for the respondent, one bed room for the elder son, one pooja room and one bath room and toilet, one store room above the kitchen has been converted into a bed room to accommodate the younger son, the younger son shares the drawing room, toilet, bath room, kitchen and pooja room with the respondent. He had averred that his elder son and his wife working in Agra with their son usually come on almost all vacations, holidays, week ends, festivals etc to meet respondent and other family members. It was further alleged that petitioner/tenant is in possession of tenanted premises for the last 41 years. It was further averred that

petitioner/tenant own big house in Naveen Shahdara, one big hospital and a nursing home in Naveen Shahdara, one shop being run as a chemist shop by the son of the petitioner and one more shop in Chhota Bazar, Shahdara, Delhi-32 is lying locked. The son and daughter-in-law of the petitioner are also running a play school in Naveen Shahdara and one big property has been given on rent by the petitioner to M/s Reliance Fresh Department Store in Naveen Shahdara, Delhi-32. Respondent had alleged that he has no source of regular income of his own and he wanted to start a stationery and Photostat shop in the tenanted premises. His daughter-in-law also wanted to start a coaching/study centre with the help of his wife and needed some space but due to scarcity of space, they are unable to do so. His younger son was also in need of space for garage as his car was being parked on the road side. Respondent/landlord also required guest room for his relatives and also wanted to provide separate drawing room, kitchen, bath room to his younger son so that his sons could live their life peacefully and without any disturbance to each other. It was further averred that petitioner/tenant is not running clinic in the tenanted premises. The respondent has averred that shop let out to petitioner/tenant is required bonafide for himself and his family members and he has no other reasonable and suitable accommodation.

3. Petitioner/tenant on being served, in the form specified in Third Schedule, filed an application for leave to defend under section 25-B(5) of the Act and her affidavit wherein it was alleged that respondent is not the owner of the premises in question and is only a landlord of petitioner for collecting the rent. It was averred that due to high rise in the prices of the property, the present eviction petition is filed so that premises can be re-let

out on higher rate. It was further averred that both respondent and his wife are 70 years of age and his wife is not in physical and mental fitness condition to carry out any coaching or teaching classes, as such a frivolous petition has been filed.

4. Respondent/landlord had filed a counter affidavit denying the allegations made by the petitioner/tenant.

5. After hearing counsel for the parties, the Id.ARC observed that petitioner/tenant has not stated anything about the accommodation available with the respondent/landlord and has not disputed the site plan nor has filed any counter site plan to dispute the site plan of the respondent. He has also not challenged the size of the family of the respondent and accommodation available with him. Petitioner/tenant has also not denied the properties available with her as are stated by respondent/landlord. The Id.ARC has also observed that petitioner/tenant has not challenged the source of income of the respondent and requirement of separate accommodation for his sons.

6. Considering the material on record, the Id.ARC has held that requirement of respondent/landlord is bonafide and allowed the eviction petition under clause (e) of the proviso of sub-section (1) of Section 14 read with Section 25-B of the Act and accordingly passed eviction order against the petitioner/tenant in respect of shop no.2 in the aforesaid property as has been shown in the site plan attached and six months time to vacate the tenanted premises.

7. Aggrieved with the same, present revision petition is filed.

8. Learned counsel for the petitioner has contended that respondent/landlord has concealed the fact that he and his wife after retirement are getting pension. He has also concealed having received the

retiral benefits by him and his wife as such it has been wrongly alleged that respondent/landlord wants to earn their livelihood through stationery/photostat business. It is further alleged that respondent/landlord has misled the learned ARC by contending that he wants the shop in question for running stationer/photostat business for himself and that his daughter-in-law also wants to start coaching//study centre with the help of his wife. It is submitted that respondent has also stated that he needs accommodation for making garage so that his son can park his car and he also needs a guest room for the guests. It is contended that under section 14(1)(e) of the Act the requirement must be bonafide requirement and it should not be on whimsical or flimsy desire. It is contended that in the present case the alleged requirement are of that nature. In support of his contention, learned counsel has relied upon **Deena Nath vs. Pooran Lal: 2001 V AD (SC) 315**. It is stated that petitioner/tenant has raised a triable issue and leave to defend ought to have been granted to the petitioner/tenant.

9. On the other hand, learned counsel for the respondent/landlord has submitted that petitioner/tenant has not disputed the size of the family of the respondent and the accommodation available with him. It is stated that premises was let out 41 years back and now the respondent/landlord bonafide requires the premises as has been stated in the eviction petition and petitioner/tenant has failed to raise any triable issue in the application for leave to defend. It is stated that there is no illegality in the impugned order.

10. I have considered the submissions made and perused the material on record.

11. The finding of the Id.ARC on the issue of respondent being the owner of premises has not been challenged before this court. It is also not

disputed that eviction petition under section 14(1)(e) of the Act can be filed for commercial as well as residential accommodation.

12. In the present case, the contention raised is that the shop in question is not bonafide required by the respondent/owner. Respondent/owner has given details of accommodation with him which has already been stated while narrating the facts of the case. The same are not disputed by petitioner/tenant. It is not the stand of the petitioner/tenant that apart from aforesaid accommodation, respondent has any other accommodation available with him. It is also not her stand that premises available with respondent has been wrongly described. The correctness of the site plan annexed with the eviction petition has not been disputed by the petitioner/tenant. The size of the family of the respondent has not been challenged. Petitioner/tenant has not denied that respondent's elder son and his wife and grand son have not been visiting respondent during holidays, week ends etc. Respondent has categorically stated in the eviction petition that shop in question is required by him for starting a stationery/Photostat shop. He has also stated that even his daughter in law wants to start a coaching centre with the help of his wife but unable to start the same due to scarcity of space. He has also stated that his younger son also needs a garage as he has to park his car outside the house. He also has a requirement of guest room for guests and also wants to provide separate bed room, kitchen, bath room to his younger son so that both his sons can live with comfort. The aforesaid needs have been spelt out clearly in the eviction petition. It has also been stated that premises in question has been bonafide required by the respondent for himself and for his family members as he has no other reasonable suitable accommodation.

13. The stand of the petitioner/tenant is that both respondent and his wife are pensioners and it cannot be said that respondent wants to start stationery/Photostat shop. The petitioner/tenant has not stated that respondent has any other accommodation available except what has been stated above.

14. It may be noticed that respondent and his wife both are qualified persons and it cannot be said that retired person cannot start business as is contended. Even if respondent is an aged person, the same does not mean he cannot run a shop. There is nothing on record to show that respondent is physically or mentally unfit to start his work. Learned ARC has rightly observed that sham ground has been raised by the petitioner/tenant. The requirements of separate bed room for his son is also a bonafide requirement as has been held in various judgments of this court. It has also come on record that wife of respondent was a teacher and his daughter-in-law is also a graduate. The fact that daughter-in-law of respondent is not working is also not denied. Both these ladies are educated women. In these circumstances, it cannot be questioned that they are not in a position to carry out coaching centre, as is alleged. Rather the bona fide requirement of respondent/landlord is much more as compared to tenanted premises. All the requirements stated by respondent/landlord are his bonafide requirements. Respondent has asserted his needs through the eviction petition. The bona fide requirement of respondent/landlord cannot be doubted.

15. A tenant cannot question the competence of respondent by contending that at this age, he cannot run stationery/Photostat business or that his wife can't run coaching centre. It is well settled position of law that landlord is

the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. By not stating about the pension in the petition, the same does not amount to concealment in any manner as is alleged.

16. The petitioner/tenant has failed to raise any triable issue. It is settled law that leave to defend cannot be granted in a routine or mechanical manner. In *Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal reported in (1982) 3 SCC 270*, the Supreme Court has observed that leave to contest can be granted to the tenant only where a prima facie case has been disclosed by him. In the absence of tenant having disclosed a prima facie case i.e., such facts as to what disentitles the landlord obtaining order of eviction, the court should not in a mechanical or routine manner grant leave to defend.

17. The judgment relied by the petitioner has no applicability to the facts and circumstances of the present case, as such, is not discussed herein.

18. In view of the above discussion, no infirmity is seen in the impugned order. The petition is without merits. The same is dismissed.

19. No costs.

**CM No.20227/2012 (stay)**

In view of above order, no further orders are required on this application. The same stands disposed of.

**VEENA BIRBAL, J**

**APRIL 2<sup>nd</sup>, 2013**

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