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

+ RC.REV. 596/2012

JASBIR SINGH

..... Petitioner

Through: Mr.Satish Sahai and Mr.Rajesh
Baweja, Advs.

versus

HEMANT KUMAR VERMA

..... Respondent

Through: Dr.Sumant Bhardwaj and Ms. Ankita
Chaudhary, Advs.

+ RC.REV. 599/2012

MADAN KHURANA

..... Petitioner

Through: Mr.Satish Sahai and Mr.Rajesh
Baweja, Advs.

versus

HEMANT KUMAR VERMA

..... Respondent

Through: Dr.Sumant Bhardwaj and Ms. Ankita
Chaudhary, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **21.05.2013**

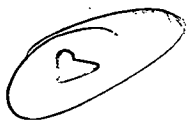
**C.M. No.8191/2013 in RC.REV. 596/2012 & C.M. No.8192/2013 in
RC.REV. 599/2012**

This is an application filed by the respondent seeking appointment of the local commissioner. The respondent does not press this application. Dismissed as withdrawn.

RC.REV. 596/2012 & C.M. No.20687/2012
RC.REV. 599/2012 & C.M. No.20717/2012

RC.REV.Nos. 596/2012 & 599/2012

Page 1 of 7



There are two petitioners before this court. Both of them are tenants of the landlord/respondent. The application filed by the petitioners seeking leave to defend in pending eviction petition under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) had been dismissed. Petitioners are aggrieved by the aforementioned findings.

Record shows that the eviction petition has been filed by the respondent under Section 14(1)(e) read with Section 25B of the DRCA. The premises in question are two shops both numbering No.E-1A on the ground floor, Mansrover Garden, New Delhi. Both the shops are adjacent to one another; each shop measures 7'x 18' i.e. 126 sq. feet and are located on the ground floor of the suit property. The respondent/landlord along with his family is a resident of the second floor. The bonafide requirement has been detailed by him in para 18(a) of the eviction petition. It discloses the need of the landlord for the premises on the ground floor as the need of his mother who is 80 years old; ailing, she is unable to climb stairs and being dependent upon the defendant for her need of accommodation; she having no other accommodation and is suffering from joint pains and not being able to climb the stairs to the second floor, the petitioner requires these premises for their residence in order that his mother can be accommodated on the ground floor. It is also not in dispute that the first floor of the property has been tenanted out to a tenant and the third floor is also with another tenant.

Application seeking leave to defend was filed by the respective tenants i.e. both the petitioners. The submission that the need of the landlord is bonafide has been disputed. It is pointed out that the need of the landlord

24

even if bonafide would only be established through a trial as it is an admitted case that the mother of the petitioner/landlord was earlier not residing with and even as per the case of the landlord she has recently come to join him; in fact the tenants have disputed this submission; submission being that the electoral roll of the year 2003 and 2009 which have been filed by the petitioners in fact show that the mother of the landlord is still a resident of their ancestral house in village Naraina and this whole petition is premised on a false ground; it is only to extract a higher rent from the petitioners; no case of bonafide need is made out.

In fact the arguments premised by the learned counsel for the petitioners are primarily two fold; first submission being that the mother is still living in their ancestral house at village Naraina; the submission of the landlord that his mother has now come to live with him and thus the premises are required bonafide for her house need can only be established by evidence. Second submission being that the premises are admittedly a commercial property and even as per the case of the petitioner (as borne out from the eviction petition) minor repairs would be required in the property to make it residential. Presently it is being used for a shop. To support his submission learned counsel for the petitioner has placed reliance upon the judgments reported as DLT 15(1979) 97 N.N.Khanna Vs. Leela Malhotra; 176 ARCJ 1980(2) Ram Lal & Ors. Vs. Santosh Kumari; 193(2012) DLT 115 Arjun Uppal Vs. Seth and Sons; 200(3) CCC 178 (SC) Santosh Devi Vs. Chand Kiran; CM(M) No.1164/2009 titled as Nitin Garg Vs. Naresh Kumar decided on 23.10.2009 by a coordinate Bench of this Court; (1983) 1



SCC 301 Charan Dass Vs. Brahamanand; (2001) 1 SCC 706 Inderjeet Kaur Vs. Nirpal Singh; 143 (2007) DLT 1 Tulsi Ram Vs. Ram Kishan Dass; 60(1995) DLT 310 Raj Bahadur Vs. Narender Singh.

The reply filed to the application seeking leave to defend has been perused. It has been denied that the mother of the landlord is a resident of her ancestral house at village Naraina. It is also an admitted fact that the father of the petitioner has since expired. It is an admitted fact that the petitioner has another brother namely Ashwani Kumar and in terms of a partition deed/family settlement arrived at between the parties the aforementioned suit property has fallen to the share of the present petitioner. This position is unchallenged. Ashwani Kumar, the brother of the petitioner, is in fact living in a flat on the first floor bearing No.B-66/2, Naraina Vihar, New Delhi.

Along with the eviction petition the medical record of the mother of the landlord had also been filed which are medical prescriptions of a doctor substantiating the submission of the petitioner that the mother of the petitioner who is aged more than 80 years is suffering from Osteo Arthritis and has been advised not to claim stairs. The fact that the lady is more than 80 years old also advances the submission that knee joints with the passage of time do come weak and nimble and the ability to climb stairs to reach one's residence becomes not only difficult but almost impossible in some cases. On this count, learned counsel for the petitioner submits that since the mother of the landlord is aged more than 80 years, there is no real need of her to come down the stairs and she can well spend her life being confined to the second floor. This Court finds this submission almost

6

preposterous; merely because the lady who has reached at an advanced age of 80 will not take away her right of liberty which would be her right to move freely which can be enabled if she is only on the ground floor and does not have to climb the stairs time and again which would make her mobility almost nil.

The impugned order has recorded this factual narration in the correct perspective.

The law is well settled. It is for the landlord to decide the mode and manner in which he should live and it is not for the tenant to dictate terms to him. The landlord must however establish that his need is genuine and bonafide; it shall not be sham or malafide; merely to extract a higher rent and to get the tenant evicted.

In the present case the bonafide need of the landlord clearly stands established. Not only have counter documents been filed by the landlord to support and substantiate his submission that the voter identity card of Smt. Krishna Devi (mother of the landlord) was of the year 2010 showing that she is a resident of the second floor of the property in question but the medical evidence filed on record also substantiates that she is suffering from Oesteo Arthritis. Such a senior citizen cannot be expected to climb the heights of stairs to reach her residence on the second floor; she has also been medically advised not to do so.

The fact that the premises had initially been let out for the purpose of a shop also does not take away the right of the landlord to use it for a residential purpose. As noted supra each shop measures 7' x 18' and on the



vacation of both the shops the landlord would have an area of approximately 252 sq. feet in order that he could answer his need and which would enable him to set up a residence for his mother on the ground floor. The business of shops being run from the ground floor would not in any manner subtract from this genuine need as minor repairs here and there could be effectively carried out to convert the shops into a habitable residence.

Unless and until a triable issue emanates from the pleadings of the parties which would be the application seeking leave to defend, the reply filed to it, the eviction petition and the documents annexed to it leave to defend should not be granted in a routine and mechanical manner. The very purpose of the summary procedure which has been engrafted for this special class of landlord under Section 14(1)(e) of the DRCA would in such an eventuality be defeated.

It has thus been established that the petitioner admittedly who is the owner and landlord requires the premises for the need of his mother who is ailing and unable to climb steps to the second floor. Present shops located on the ground floor would serve her need for the residence. The fact that the mother is living with the landlord is also established from the documents filed by him which is the electrical roll of the year 2010 substantiating the fact that Smt. Krishna Devi is living with her son in the aforementioned premises. The medical prescriptions filed of Smt. Krishna Devi also fortifies the submission of the landlord that his mother is in fact ailing and suffering from knee and joint pains and has been advised against climbing stairs.

8

The judgments relied upon by the learned counsel for the petitioner are distinct on their own facts. In N.N.Khanna (supra) there were conflicting medical reports about the seriousness of the condition of the landlady which had pursued the court to grant a leave to defend to the tenant. In Ram Lal (supra) the court had enunciated the undisputed proposition that the pretence of the landlord should not be taken into account but only his genuine element of his need should be considered. The other judgments are only on the proposition that the bonafide need of the landlord has to be examined by the ARC objectively; the desire of the landlord is not by itself sufficient; as and when a triable issue is raised leave to defend should be granted; the plausibility of a defence raised cannot be equated with proof. These later propositions are undisputed.

It was in this background that the applications seeking leave to defend had been dismissed and the eviction petitions had been decreed. These orders suffer from no infirmity.

Both the petitions are without any merit. Dismissed.

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INDERMEET KAUR, J

MAY 21, 2013

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