

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

% *Judgment pronounced on: August 30, 2013*

+ **RC. Rev. No.26/2013**

FEROZE ENTERPRISES Petitioner
Through Mr.Mohammad Abid, Adv. with
Mr.Shariq Mohammad, Adv.

versus

MOHD. IQBAL & ANR Respondents
Through Mr.Amit Gupta, Adv. with
Ms.Sumati Jumrani, Adv.

+ **RC. Rev. No.27/2013**

FEROZE AHMED Petitioner
Through Mr.Mohammad Abid, Adv. with
Mr.Shariq Mohammad, Adv.

versus

MOHD. IQBAL & ANR Respondents
Through Mr.Amit Gupta, Adv. with
Ms.Sumati Jumrani, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The abovementioned two petitions are filed by the petitioners under section 25B (8) of the Delhi Rent Control Act against the eviction orders dated 12th September, 2012 passed by the learned Addl. Rent Controller (Central), Delhi, dismissing the leave to defend applications of the

petitioners. As the facts in both the matters are common, both the petitions are decided by the common order.

2. The respondents filed eviction petitions against the petitioners on the ground of bonafide personal requirement in respect of one shop bearing Private No.C as shown in the site plan on the ground floor property No.225, Gali Garhiya, Bazar Matia Mahal, Jama Masjid, Delhi-110006. Another eviction petition was filed against only petitioner No.2 in respect of the adjacent shop bearing private No.B. It is stated that allegations of the respondents as well as the defence of the petitioners in both the eviction petitions are the same.

3. In their eviction petitions, it was stated by the respondents that they had purchased the suit premises from the previous owner in 1998 and that the petitioners were old tenants therein. It has been stated that the suit premises is residential in nature however was let out for commercial purposes. It was stated that the respondents required the suit premises bonafidely for their business purposes and that they had no other reasonably suitable accommodation available in Delhi.

4. The petitioners in their leave to defend applications not only disputed the title of the respondents but also stated the respondents were total strangers to the tenanted premises since the petitioners had been paying rent to one Ms. Fatima Begum, who had been issuing them rent receipts. It was stated that the respondents are in occupation of various other premises (including a factory, shops, a workshop) besides the tenanted premises. It was stated that the property bearing No.225, Gali Garhiya, Bazar Matia Mahal, Jama Masjid, Delhi-110006 is a 3 storeyed building. On the ground floor, there is one shop with a basement under the occupation of the

respondents and other shops were under tenanted. On the first floor, out of six rooms which are under the occupation of the respondent No.1, two were being used for commercial purposes and four for residential purposes. Similarly, on the second floor which was under the occupation of respondent No.2, four rooms were put to commercial use while two were used for residential purposes.

5. In their counter-affidavit, the respondents contested the allegations made by the petitioners and explained the occupation of the properties so contended by the petitioners.

6. The learned trial Court on the issue of ownership observed that though the title of the respondents is contested by the petitioners, the respondents filed a copy of sale deed executed in their favour by the previous owners and the petitioners did not disclose as to whom had they been paying rent at present. On the issue of alternative accommodation and bonafide requirement, it was observed that the admitted fact that the respondents were carrying out their commercial activities from the suit premises i.e. their residential premises proved that the respondents were not having alternative accommodation and therefore were disturbing their family members by doing commercial activity in their residential accommodation. As regards the other properties as contended by the petitioners were concerned, there occupation was admitted by the respondents and explained accordingly. With these observations the leave to defend applications of the petitioners were dismissed vide eviction orders dated 12th September, 2012 in both the petitions.

7. Aggrieved by the impugned orders so passed against them, the petitioners have assailed the same on the grounds mainly that the learned

trial Court acted with material irregularity in exercise of his jurisdiction and has erred in making the said observations.

8. I have heard the rival submissions of the parties and perused the file.

9. It has been argued by the learned counsel for the petitioners that the impugned order suffers from illegality as the learned trial court has ignored the trial issues raised by the petitioners. It has been further contended that the learned ARC ignored the material contradictions made by the respondent regarding additional properties available with the respondent as admitted in the reply filed to the application seeking leave to defend. Reliance has been placed by the petitioners on *Santosh Devi Soni Vs. Chand Kiran*, 2000 AIR SCW 4916 to contend that in case of requirement of additional accommodation for the landlord leave to defend should normally not be refused to the tenant.

10. While considering the applications for leave to defend by tenant, the real test is to be, whether the facts disclosed in the affidavit filed seeking leave to defend *prima-facie* show that the landlord would be disentitled from obtaining an eviction order and not whether at the end the defence may fail. If the affidavit filed by the tenant under Section 25-B discloses some substantial triable issues, then injustice would be caused in case the application for leave to defend is dismissed.

11. The respondent has filed the eviction petition on the following grounds:

“(i) That the premises let out to the respondent are required bonafide by the petitioners for their business purposes and that neither the petitioners nor any member of their families have any other reasonably suitable accommodation available to them in Delhi. Petitioners are the owners of the premises in question.

(ii) That petitioner No.1 Shri Mohd. Iqbal has no place of his own to run his business of repairing Steering Rods and that he is under great difficulty doing the same from one of the rooms on the first floor of property No.225, Gali Garhiya, Bazar Matia Mahal, Jama Masjid, Delhi-110006.

(iii) That petitioner No.2 is doing his repairing job work from his private shop No.E on the ground floor of property No.225, Gali Garhiya, Bazar Matia Mahal, Jama Masjid Delhi-110006. The said accommodation is inadequate for purpose of his business. Both the petitioners as such, bonafide require the premises in question for their personal use.”

12. In paras 6 to 11 of the affidavit along with an application for leave to defend, the petitioners have specifically made the statement that the respondents do not have bonafide need for the shop in question and respondents’ only motive is to harass the petitioners and to extort an amount of rent. The statement made in these paras of the affidavit reads as under :

“6. That I say that the petitioners are well established factory owners who have a big factory in Bawana Industrial Area. The petitioners are carrying on the business of manufacturing of Steering Rods and other Motor Parts, which they supply to various Car Manufacturers and Service Centers.

7. That petitioner No.2, Mohd. Arif, has a big shop bearing No.780, Jama Masjid main road, Delhi-06 from where he also sells the Steering Rods and other Motor Parts manufactured in Bawana to his direct Customers.

8. That petitioners are also having one big workshop, alongwith full basement, bearing No.233, Gali Garhaiya, Jama Masjid, Delhi-06 from where they are carrying on supplementary work of repairing, servicing and overhauling the Motor Parts especially Steering Rods for customers who cannot afford to buy the new parts which are more expensive. The petitioners have installed big grinder machines and other machines and have employed at least four employees for doing the repairing and overhauling work from this workshop.

9. That the petitioners are in occupation of one shop in the property No.225, Gali Garhaiya, Delhi-06 itself on the ground floor. There is one complete basement in this shop. This shop is also used by the petitioners for repairing, servicing and overhauling the Motor Parts especially Steering Rods. The petitioners have employed 4 employees in this shop to do this work.

10. That the property No.225, Gali Garhaiya, Jama Masjid, Delhi-06 is a 3 storeyed building. On the ground floor there is one shop which is with the petitioners. The other shops are tenanted. On the first floor there are 6 rooms which are in occupation of petitioner No.1, Mohd. Iqbal. Mohd. Iqbal is using 2 rooms for commercial purposes of packing the materials. At least 5 employees are employed by him in these two rooms for doing the packing work. The remaining 4 rooms are used by him for residential purposes which are sufficient for his family.

11. That on the second floor of property No.225, Gali Garhaiya, Delhi-06 there are again 6 rooms which are in occupation of petitioner No.2, Mohd. Arif. 2 rooms are being used by the family of petitioner No.2 and 4 rooms are being put to commercial use. The petitioners have wrongly shown these 6 rooms as 1 hall of 630 sq. ft.”

13. In paras 6 to 11 of the reply to the application for leave to defend filed on behalf of the petitioners, the respondents have made the following statements:-

“6. Para 6 of the affidavit of the respondent as stated is wrong and denied. It is correct that the petitioners are engaged in the trade of repairing Steering Rods but they are doing so from the first floor of the premises in question and from one of the rooms.

7. That the contents of para 7 of the affidavit of respondent as stated are wrong and denied. The shop No.780, Jama Masjid, Delhi-6 is in the tenancy of brothers of petitioner No.2.

8. That the contents of para 8 of the affidavit of the respondent are correct to the extent that Shop No.233 is in occupancy of petitioner No.2, but petitioner No.1 has got nothing to do with the same. The petitioner No.1 bonafidely required the suit premises. The said shop is on rent with petitioner No.2 from the D.D.A. and the DDA has even threatened to evict petitioner No.2.

9. Para No.9 of the affidavit of the respondent is correct to the extent that there is one shop in exclusive possession of petitioner No.2 and petitioner No.2 has got nothing to do with the same. The premises in question are bonafidely required for use and occupation of the petitioner No.1.

10. That the contents of para No.10 of the affidavit of respondent are correct to the extent that petitioner No.1 is operating from residential portion on account of compulsion. Petitioner no.1 needs the suit shop and as such requires the same bonafidely.

11. That the contents of para 11 of the affidavit of the respondent as stated are wrong and the same are denied. All the rooms on the second floor are used for residential purposes, since the space in shop which is in occupation of the petitioner No.2 is small, as such on account of compulsion some of the goods are being stored within the residential portion by petitioner No.2.”

14. It appears from the reply that the respondents admitted that in addition to property No.225, Gali Garhiya, Bazar Matia Mahal, Jama Masjid, Delhi-110006, there are other shops available with the respondents. The factum of the same was admitted by them in the reply to leave to defend. The respondents have not denied that the shop No.233, Gali Garhaiya, Jama Masjid, Delhi-110006, is in occupancy of the petitioner No.2. However, it is stated that the petitioner No.1 has nothing to do with the same. The respondents have also not specifically replied to the averment made in the application for leave to defend with regard to the accommodation available

with the respondent No.1 at the first floor where it was alleged by the petitioners that there are six rooms in occupation of respondent No.1 who is using two rooms for commercial purposes of packing the materials and the remaining four rooms are for the purposes of residential purposes and the second floor having six rooms which are in occupation of respondent No.2 who is also using four rooms as commercial and two rooms for residential purposes. There is no specific denial in this regard. In the absence of specific reply on behalf of the respondents, it appears that the learned ARC committed an error by ignoring the significant triable issues raised by the petitioner in his application for leave to defend. It is necessary for the adjudication of the eviction petition that the factual position regarding the accommodation with the landlord is revealed otherwise in the absence of the specific reply to the affidavit filed by the tenant in support of his application for leave to defend, the said issue would have to be decided with the help of evidence. In the present case, the respondents have not made full disclosure about the accommodation available with the respondents in the eviction petition. Therefore, the triable issues raised by the petitioner would require evidence.

15. In *Inderjeet Kaur Vs. Nirpal Singh*, (2001) 1 SCC 706 the Apex Court has held that :

“13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction.....”

16. In *Santosh Devi Soni Vs. Chand Kiran*, (2001) 1 SCC 255, Supreme Court has observed in para 13 as under :

“The short question is whether in the light of the requirements put forward by the respondent landlady, who is a widow and is in occupation of the first floor of the building in which the suit premises are situated, leave to defend to the defendant-appellant could have been refused. As this a case for additional accommodation and looking to the facts and circumstances of the case, especially in the light of the additional accommodation which is subsequently made available to the respondent as mentioned by the appellant, the question of the respondent’s need was required to be thrashed out on merits by a full-fledged trial. This court on 11.01.1990 in the case of S.M. Mehra (Dr.) Vs. D.D. Malik has ruled that in the cases where additional accommodation is asked for in proceedings under the Delhi Rent Control Act, normally leave to defend should not be refused.”

In *S.M. Mehra (Dr.) Vs. D.D. Malik*, (2001) 1 SCC 256, Hon’ble Supreme Court has observed in para No.1 as under :

“Special leave granted. Having heard counsel for both the sides and also perused the material, we are of the opinion that this is a case where the Court below ought not to have refused leave to contest. The landlord is occupying the ground floor besides the entire second floor. The tenant is occupying the first floor. The question is whether the landlord requires the first floor also. This question, in our opinion, could be properly determined only by granted leave to the tenant to contest. There is no need to take a summary procedure since it is a case of additional accommodation.”

17. It is true that the leave to defend may not be granted on mere asking, but it is equally not correct to refuse to grant leave when triable issues are raised in order to decide the controversy to be adjudicated after ascertainment of truth.

18. It appears to the Court that the present case is of an additional accommodation as sought by the respondent. Therefore, in view of the

settled law on this subject and the facts stated above, the petitioner/tenant is entitled for the relief claimed in the application for leave to defend.

19. In view of the abovementioned discussion, it is apparent that jurisdictional error is committed by the learned trial court, thus, the impugned order is set aside mainly on the reasons that the petitioners raised triable issues as appeared from the affidavit of the petitioners and after filing the affidavit, the respondents have admitted the accommodation in their possession.

20. The application for leave to defend filed by the petitioner is allowed. The written statement be filed by the petitioner before the ARC within four weeks from today. Parties are directed to appear before Addl. Rent Controller on 22nd October, 2013 for further directions.

21. The petitions stand disposed of. No costs.

(MANMOHAN SINGH)
JUDGE

AUGUST 30, 2013