

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

+ **RC.REV.25/2013 & C.M.No.865/2013 (stay)**

% **21th AUGUST, 2014**

RAMESH CHAND AGARWAL AND ANR. Petitioners

Through: Mr.Seeraj Bagga, Advocate.

VERSUS

MUNSHI LAL & SONS Respondents

Through: Mr.Sanjeev Bahl with Mr.Karan
Bharihoke and Mr.Eklavya Bahl,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This revision petition under Section 25-B of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') is filed by the petitioners/landlords impugning the order of the Additional Rent Controller dated 12.9.2012 by which the Additional Rent Controller has granted leave to defend to the respondent/tenant to contest the petition for *bonafide* necessity under Section 14(1)(e) of the Act filed by the petitioners/landlords.

2. The facts as pleaded by the petitioners/landlords for seeking eviction of the respondent/tenant from one shop on the ground floor of the property

bearing no.4098-4099, near Nai Sarak, Chawri Bazar, Delhi-6 (as shown in red colour in the site plan annexed along with the eviction petition) were that the petitioner no.1/landlord needed the tenanted premises to expand his business and also to settle his two sons in separate businesses.

3. The respondent/tenant filed its leave to defend application and pleaded concealment of various facts by the petitioners/landlords. The first concealment was that though petitioner no.1/landlord claims *bonafide* requirement for establishing his two sons in business, one son namely Pradeep Kumar Aggarwal was already carrying on his business in the name and style of M/s Ramesh Chand Aggarwal & Sons at property no. 4099, first floor, Gali Satte Wali, Delhi-06. The second concealment of fact on behalf of the petitioners/landlords was that the petitioners/landlords had in fact got vacated the first floor portion and second floor portion of the property from the earlier tenants M/s Veena Art Gallery and Mr. Sheel Kapoor, and which portions are lying vacant and hence can be used by the sons of the petitioners/landlords as also the petitioner no.1 himself. In the leave to defend application, the respondent/tenant pleaded that the petitioner no.1/landlord is not of such a medical condition that he cannot climb to the first floor and the second floor. It is further pleaded that in fact the

petitioner no.1/landlord everyday goes to the first floor and the second floor of the premises. It is further pleaded that the need of the petitioner no.1/landlord is not *bonafide* with respect to either expansion of his business or with respect to the need of his sons.

4. Before proceeding with the merits of the matter, I would at this stage seek to refer to the judgment passed by a learned Single Judge of this Court on 01.10.2012 in RC.REV.No.1/2012 titled as ***Ramesh Chander Agarwal & Anr. Vs. Jagan Nath & Anr.*** and RC.REV.No.2/2012 titled as ***Ramesh Chander Agarwal & Anr. Vs. Sandeep Kumar Babbar & Anr.*** By this judgment the learned Single Judge of this Court dismissed similar petitions which were filed by the present petitioners/landlords against the order dated 17.8.2011 of the Additional Rent Controller granting leave to defend to the other tenants of the same building. It is relevant to note that the facts pleaded in the eviction petitions which were filed against the other two tenants by the present petitioners/landlords are almost verbatim, ie more or less/identical, to the facts as pleaded in the present case viz the requirement of the petitioner no.1/landlord to expand his business and the need of the petitioner no.1/landlord to establish his two sons in business.

5. I am in fact bound by the ratio of that judgment dated 1.10.2012, and hence I need not discuss any of the arguments urged on behalf of the petitioners/landlords in view of the judgment of the learned Single Judge dated 01.10.2012, however, after referring to the relevant portions of the judgment of the learned Single Judge dated 01.10.2012, I am also additionally advertent to the arguments which have been urged before me on behalf of the petitioners/landlords.

6. Let me now reproduce the relevant paras of the judgment dated 01.10.2012 passed by the learned Single Judge of this Court in RC.REV.Nos.1/2012 & 2/2012, and which paras of the judgment are paras 2, 5, 7, 8, 9, 11, 12, 13 & 14, and which read as under:-

“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.

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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.

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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.

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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.”

A review petition filed by the petitioners/landlords against the judgment dated 1.10.2012 was also dismissed on 4.1.2013.

7. A reading of the above paras of the judgment dated 1.10.2012 shows that on more or less identical facts, the learned Single Judge of this Court while granting leave to defend has held that the petitioners/landlords are not only guilty of concealment of material facts but are also guilty of stating false facts and the petitioners/landlords have been forced to come up with

the correct facts only when confronted by the averments made in the pleadings of the tenants.

8. The learned Single Judge of this Court has also held that, in facts such as those found in the present case, once alternative premises of the first floor and the second floor are available to the sons who are the owners of the first floor and the second floor of the property, this aspect as to whether there is at all a *bonafide* need of the petitioners/landlords needs to be decided at the trial.

9. In my opinion since I am bound by the judgment of the learned Single Judge of this Court, for the reasons contained in the judgment dated 01.10.2012, this petition is misconceived and liable to be dismissed, and hence accordingly dismissed. I am also hereafter additionally discussing the arguments urged before me by the petitioners/landlords in this case, besides also referring to certain additional facts urged on behalf of the respondent/tenant and which would be good additional grounds for grant of leave to defend and for dismissal of the present petition.

10. The main contention urged on behalf of the petitioners/landlords before this Court is that the landlord is the best judge of his requirements and courts cannot interfere with the projected need of the landlord,

especially when the expression “alternative premises” must mean alternative suitable premises which are more or less identical to the tenanted premises which is on the ground floor. It is argued that since the alternative premises in this case is the first floor and the second floor belonging to the sons, being not on the ground floor, therefore such alternative premises are not equally suitable as the tenanted premises on the ground floor. Reliance is placed in support of the aforesaid arguments on the following judgments:-

(i) ***Dhannalal Vs. Kalawatibai & Ors.* (2002) 6 SCC 16**

(ii) ***Krishan Kumar Gupta Vs. Swadesh Bhushan Gupta* 152 (2008) DLT 556**

(iii) ***Viran Wali Vs. Kuldeep Rai Kochhar* 174 (2010) DLT 328**

11. There can be no quarrel to the proposition of law urged on behalf of the petitioners/landlords that the alternative premises available should be a suitable alternative premises. Equally, it cannot be disputed that a landlord is entitled to carry on his business from a more suitable location on the ground floor than as compared to the first floor and the second floor. However, the issue as to whether the alternative premises is or is not a reasonably suitable accommodation has necessarily to depend on the facts of each case i.e what is the type of need of the landlord, what is the nature of

the business which is proposed to be carried on, whether there exists actually a *bonafide* need for expansion of the business and whether the landlord is in fact guilty of concealment of very important facts which will show that the eviction petition is not for *bonafide* necessity but is an act of bad faith for illegally seeking to evict the tenant. Even in paras 12 and 14 of the judgment dated 1.10.2012 in RCR No. 1&2/2012 it has been similarly held against the petitioners/landlords.

12. It has come on the record of the present case that the petitioners/landlords are, undoubtedly, guilty of concealment of facts. Firstly, the petitioner no.1/landlord pleaded requirement for both his sons, however, it has now been shown on record, including from the visiting cards of the business of one son Pradeep Kumar Aggarwal, that Pradeep Kumar Aggarwal is already carrying on his business from the premises bearing no.4099, Gali Satte Wali, Delhi-6 in the name and style of M/s Ramesh Chand Aggarwal & sons. Not only the petitioner no.1/landlord is guilty of concealment of facts with respect to his one son already being established in business, petitioners/landlords are also guilty of concealment of fact with respect to non-availability of accommodation on the first floor and the second floor of the same premises, and which in fact are premises which are

owned by the sons of the petitioners/landlords and thus available to the petitioners and their sons. The petitioner no.1 himself after filing of the leave to defend application filed copies of the sale deeds showing ownership of the first floor and the second floor of the property in the name of the sons and which fact was conspicuous by its absence in the eviction petition. Further, act of concealment in my opinion is that the petitioners/landlords have not given details and nor have they filed copies of eviction orders which were obtained against the tenants on the first floor and the second floor of the property namely, M/s Veena Art Gallery and Mr.Sheel Kapoor so as to know as to on what grounds eviction petitions were filed against these tenants i.e what was the *bonafide* need pleaded. These facts and documents of the eviction orders against M/s Veena Art Gallery and Mr. Sheel Kapoor are very vital and material because in those eviction petitions against the tenants M/s Veena Art Gallery and Mr.Sheel Kapoor, if the need which was projected is the same as the need in this case then the present eviction petition would not lie. However, the petitioners/landlords have conveniently not filed the eviction orders obtained against the tenants, M/s Veena Art Gallery and Mr.Sheel Kapoor and have also not pleaded any facts whatsoever qua those eviction petitions against the two tenants M/s Veena

Art Gallery and Mr. Sheel Kapoor as to on what grounds these tenants were evicted.

13. Therefore, in my opinion, petitioners/landlords are guilty of gross concealment of facts, and clearly the eviction petition at this stage seems to be an act of bad faith, hence entitling the respondent/tenant to leave to defend on these grounds.

14. So far as the aspect of need of the petitioner no.1/landlord himself to expand his business, once the petitioner no.1/landlord along with his sons claim to be a joint family, and which aspect has been adverted to by the learned Single Judge of this Court in his judgment dated 01.10.2012 in RC.REV.Nos.1/2012 & 2/2012 in para 14 is concerned, the accommodation available with the sons would be the accommodation available to the petitioner no.1/landlord himself, assuming the petitioner no.1/landlord wants to expand his business. Also, it is relevant to note that for expansion of business, in facts such as the present case, the same will be an aspect of trial because no details whatsoever have been given/filed by the petitioners/landlords for this Court to be satisfied as to how the petitioner no.1/landlord in fact needs to expand his business. The statement as at this stage is only a self serving *ipse dixit* in the facts of this case.

15. It is relevant to note that petitioners/landlords have been taking convenient stands at different places as is observed by the learned Single Judge of this Court in the judgment dated 01.10.2012 in RC.REV.Nos.1/2012 & 2/2012, and that is to be taken with the additional concealment in the present case of the fact of the son Pradeep Kumar Aggarwal in fact doing his own business in a premises at 4099, Gali Satte Wali, Delhi-06.

16. Also, the aspect that allegedly the petitioner no.1/landlord cannot climb to the first floor and the second floor of the property is very much a *bonafide* triable issue in the present case because essentially there is no medical record which is filed before this Court for this Court to come to a conclusion as to how the petitioner no.1/landlord is suffering from such grave ailments that the petitioner no.1/landlord cannot climb to the first floor and the second floor of the property more so when the respondent/tenant has taken up a specific case that everyday the petitioner no.1/landlord goes to the first floor and the second floor of the property. Also, I find it a bit incredulous for the petitioners/landlords to contend that the students find it a bit difficult to go from a narrow staircase to the first floor of the property, and considering that the business is only of sale of books, I do not think that

such a *prima facie* unacceptable argument can be a ground to seek eviction without leave to defend being granted to the respondent/tenant.

17. In view of the above, I do not find any merit in the petition, and the same is therefore dismissed with actual costs. Let the respondent/tenant file its own affidavit supported by the certificate of the counsel with respect to the fees which they have received in the present case, and amount of which fees will be the costs payable by the petitioners to the respondent. Respondent will file affidavit by way of costs supported by the certificate of the fees of the counsel within a period of two weeks from today, and such costs will be paid by the petitioners to the respondent within a period of two weeks thereafter.

VALMIKI J. MEHTA, J

AUGUST 21, 2014
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