

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

Date of Decision: 27.1.2014

+ **R.C.REV. 50 OF 2014 & CMs 1587-88/2014**

SURINDER SINGH & ANR. Petitioners

Through: Mr. Rajesh Kumar Chaurasia, Adv.

versus

KULBHUSHAN BALUJA Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI (Open Court)**

1. The revision petition arises from an eviction petition filed by the landlord under section 14(1)(e) of the Delhi Rent Control Act. The impugned order dated 27.07.2013 passed by the ADJ- cum-ARC (North and East District), Delhi rejected the petitioners'/tenants' application seeking leave to defend and directed their eviction from the tenanted premises i.e. property No. V-48, Rajouri Gardens, New Delhi. It is stated that for a monthly rent of Rs 872, the petitioners/tenants run a boutique shop from the premises since 1992.
2. The eviction petition sought vacation of the tenanted premises on the ground that the landlord required the premises to support his family members, who are stated to be dependent on him, and the tenanted premises were specifically required for opening their own garment shop. It was contended that the petitioner was running Service-Station

on Military Road, but it was closed down by the Government's pollution control owing to its being located in a non-confirming area. The family of the respondent/ landlord consists of a son and an unmarried daughter apart from himself.

3. The tenant contended that the livelihood of the tenant depended on the income earned from the boutique; that the site plan as provided by the landlord was incorrect and the landlord presented concocted facts to evict the tenant, and lastly, that actually the landlord was greedy for higher rent, hence, he wanted to evict the tenant and only to re-let the property at a higher rent later.
4. The Trial Court was required to look into whether the landlord sought eviction without satisfying the conditions set under section 14(1)(e) of the DRC Act. It noted that the contention that the tenant earns his livelihood from the tenanted premises was not a relevant consideration while deciding an eviction petition. It held that in eviction proceedings, the Court needs to look into whether the tenant has brought to the attention of the Court of certain facts which would disentitle the landlord from evicting the tenant. The tenants' comparative hardship or contentions that the tenanted premises is the only source of livelihood does not disentitle the landlord from evicting a tenant. The Delhi Rent Control Act makes no such provision in this regard.
5. The tenants' contention that the site-plan filed by the landlord was incorrect held no good as the learned ARC noted that the tenant while alleging the site plan filed by the landlord to be false failed to file any contrary site plan showing details of the tenanted premises otherwise.

The tenants failed to show as to how the site-plan was incorrect, hence this contention was held to be without any merit.

6. The tenants contended that the respondent/landlord was not the owner of the tenanted premises and that the landlord had failed to file any document of ownership qua the tenanted property. The learned ARC noted that the rent agreement between the parties clearly stated that the respondent was the sole owner of the tenanted premises and that the parties have been in a tenant- landlord relationship since 1992 and that the tenant has been paying rent since 1992. Once the tenant starts paying rent to the landlord, the relationship between the parties stands admitted. The learned ARC held that the landlord was the owner of the property, from the simple fact that the tenant have been paying rent to the respondent and that the rent agreement clearly spells the capacity of the respondent as the sole and the absolute owner of the tenanted premises.
7. The tenant contended that there is no bona fide requirement of the landlord to evict the petitioner. The learned ARC noted that the eviction was sought to open a commercial shop so that the landlord could support his family. The tenant stated that the landlord has sufficient alternative accommodation on the first floor where the respondent could open his garment shop. However, the landlord submitted that it would be inconvenient for him to operate a shop from the first floor and he necessarily required the ground floor. The impugned order noted that the tenant had not clarified in his application seeking leave to defend, as to what other alternative suitable accommodation was available with the landlord but only

averred that the landlord can operate his shop from the first floor where he resides. The Trial Court held that the tenant/ petitioner cannot compel the respondent/ landlord to live in hardship or be inconvenienced for the convenience of the tenant. The impugned order noted that the argument of the tenant that the landlord has several other commercial establishments which fetch him income do not hold good as the tenant has failed to place on record any document to prove the same. The Trial Court also rejected the contention that the landlord sought to *malafidely* evict the tenants only to re-let it out at a higher rent because of the inbuilt protection with the Act itself which required the landlord to occupy the premises within 2 months from the time the tenant is evicted. Section 19 of the Act further lays fetter upon re-letting out such premises within three years of its being vacated.

8. The learned ARC held that the tenant failed to bring triable issues which would disentitle the landlord from evicting the tenant. For the above mentioned reasons, the impugned order held the tenant failed to rebut the presumption of bona fide requirement and accordingly rejected the application seeking leave to defend.
9. Before this Court the tenant has contended that: (i) the eviction petition lacked any *bona fide* requirement; (ii) the ARC failed to take note of the same, instead rejected the application seeking leave to defend on denials made in the counter affidavit by the landlord; (iii) the matter ought to have been put to trial; (iv) rejection of the application has caused prejudice to the petitioner; (v) the respondent-landlord did not bring the correct site plan on record; (vi) has misled

the court; (vii) the space on the first floor is sufficient for the landlord to reside and open his garment shop thereby failing to show any bona fide requirement; and (viii) the landlord has not been accepting rent since January 2012 despite the various efforts made by the tenant to pay the rent. He also pleaded comparative hardship.

10. In this revision petition two questions require to be answered: firstly, the extent to which a landlord is required to show bona fide requirement in an eviction petition under section 14 (1)(e) of the Delhi Rent Control Act (DRC Act) and secondly, whether the landlord has made out a sufficient case of *bona fide* requirement in the present petition. It is contended by the tenant that there was no bona fide requirement of the landlord and that the landlord wanted to evict the petitioner so as to re-let the premises for a higher rent. The petitioner contended that the landlord has several other alternate premises where he could open his garment retail. This Court is of the view that where the requirement of a landlord is challenged, the Trial Court is required to look into the nature of the requirement and whether such requirement said to be bonafide. The Court is required to see whether the facts pleaded by the tenant as such as would disentitle the landlord from evicting the tenant. Allegation of malafide intention of the eviction petitioner is not relevant at this stage. The Supreme Court in *Shiv Sarup Gupta v Mahesh Chand Gupta (Dr)*, (1999) 6 SCC 222 held:

“Requirement is not a mere desire. The degree of intensity contemplated by “requires” is much more higher than in mere desire. The phrase “required bona fide” is suggestive of legislative intent that a mere desire which is the outcome

of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant.....

Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”

11. To be granted leave to defend a tenant is *inter alia* required to show to the Court that the eviction petition arises out of a desire rather than a need. The provision under the DRC Act allows the landlord to evict the tenant when the ARC is satisfied that the landlord has a bonafide need which could be assuaged – partly or in full measure by the use of the tenanted premises and that he does not have any other sufficient alternate accommodation. The rule of bonafide requirement dictates that the landlord shall not be put into hardship for the benefit of the

tenant. The tenant is required to show that the landlord's eviction petition fails the test of an honest and pressing need for the premises.

12. The petitioner has not filed any site plan of his own to discredit the site plan filed by the landlord. This Court agrees with the learned ARC's reasoning that the tenant's objection holds no merit when there is nothing contrary placed on record to substantiate the alleged errors in the site plan. The contention of the petitioner that the landlord has three other shops on the ground floor which are leased out and they should be vacated instead of asking the petitioner to vacate the premises is not acceptable as in an eviction petition, the tenant is required to show what would disentitle the landlord from evicting the petitioner. The tenant is never given the liberty to dictate to the landlord on how he could put the premises to use. The Court or the tenant can never direct the landlord on how he should use his own property. The Supreme Court in *Sarla Ahuja v. United India Insurance Co. Ltd* (1998)8 SCC 119 held:

“14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the

landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

13. On the same note, the Supreme Court in ***Prativa Devi v. T.V.***

Krishnan (1996) 5 SCC 353 held:

“2. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.

4. In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has a legal right to such accommodation. The appellant had established her bona fide personal requirement of the demised premises under Section 14(1)(e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances.”

14. The contention that the petitioner will suffer great hardship if he is asked to vacate the shop is a matter of comparative hardship. This Court, in a number of cases, has held that comparative hardship of the tenant is not a tenable legal ground. It is settled law that comparative hardship is not a legal ground to reject an eviction petition. The Supreme Court in ***Mohd. Ayub v Mukesh Chand (2012)2 SCC 155*** held that the hardship the landlord would suffer by not occupying his own premises would be far greater than the hardship the tenant would

suffer by having to move out to another place. Applying the above mentioned reasoning; the tenant cannot inconvenience the landlord to suit his own requirements. The Court will only consider the bonafide nature of requirement of the landlord and that it will be eliminated, minimised or somehow addressed by the availability of the tenanted premises.

15. The tenants' argument that the Trial Court failed to appreciate the fact that landlord did not disclose the various shops he owned and which had been leased out at high rents is of no consequence. This Court is of the view that the rent a landlord receives from his leased properties is immaterial and irrelevant in an eviction petition. What is required to be shown by the landlord is that he does not have any other suitable alternative premises for fulfilling the need, in the present present instance the need being to run his garment shop. The tenant is not vested with the power to direct the landlord as to where he could run his own shop; and decide the quantum of rent received from other shops which would be sufficient to maintain his family.
16. As discussed hereinabove, the Trial Court was right in rejecting the tenants' argument that the landlord is evicting the tenant in order to re-let the shop for a higher rent. When a tenant is evicted from the tenanted premises, the landlord has to put the vacated premises for his own use within two months from the time of eviction. The landlord is disentitled from letting it to a different tenant and that he cannot sell the property either for a period of three years thereafter. This Court in ***Krishna Chopra v. Raksha & Others* 82(1999) DLT360** held that if a landlord abuses the process of the Court, obtains an order of eviction

and subsequently lets out the property or sells the same, the tenant can always apply for restitution of the premises under Section 19 of the DRC Act.

17. The petitioner's contention that the landlord has sufficient space in his residence to open a shop and hence there is no need for evicting the tenant from the ground floor is untenable because a landlord is the best judge of his requirement for commercial space or use of the premises. The Supreme Court and this High Court have held in numerous cases that the landlord cannot be dictated on how to use his own property and the landlord can never be asked to live in hardship in order to avoid inconveniencing the tenant. The landlord has clearly shown that the first floor of the property, where he and his family reside, is a residential property. There is nothing brought on record to show that the property is put to both residential and commercial use. In such instance, the landlord cannot be expected to run his business and reside in the same premises. It is settled by a rich stream of judicial pronouncements that the landlord is the best judge of his requirements; the tenant cannot dictate terms to the landlord in this regard. Furthermore, this court in ***Smt. Sudesh Kumari Soni & Anr. Vs. Smt. Prabha Khanna & Anr.*** 153 (2008) DLT 625 has held:-

“24. It is after said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

“25. Suitability has to be seen from the convenience of

the landlord and his family members and on the basis of the circumstances including their profession, vocation, style of living, habits and background.....”.

In this regard, reference can be made to ***Bantam Enterprises Pvt. Ltd. v. Jaspal Singh Kapoor, 2012 (189) DLT 59*** wherein this Court has held that landlord is the best judge of his requirement and has complete freedom in the matter and he cannot be deprived of the beneficial enjoyment of his property.

18. The petitioner contended that the landlord was evicting the tenant as the business of the tenant was well established and that the landlord wanted cause loss to the business of the tenant. This Court finds no merit in the argument since there is no proof to show any malafide intention of the landlord in seeking the eviction of the petitioner. Indeed, this could well be the stock argument of every tenant who is sought to be evicted by a landlord. The petitioners contended that the issues raised by them ought to have been put to trial and that the impugned order is erroneous in rejecting the application for leave to defend. However, from the preceding discussion the only deduction and conclusion that emerges is that no triable issues were raised or made out by the tenants. The learned ARC reasoned that the tenant failed to show the existence of a triable issue which would warrant the grant of leave to defend or disentitle the landlord from evicting them. This Court finds no error in the finding, as the petitioner has failed to bring on record any document which could question the bonafide requirement of the landlord. Mere bald contentions raised are not sufficient to warrant a trial, something more substantial is required.

This Court in *Mukesh Kumar v. Rishi Prakash* 174 (2010) DLT 64 relied upon another judgement in *Meenakshi v. Ramesh Khanna* : 60 (1995) DLT 524 which held that: “*mere denial of ownership is no denial at all. It has to be something more.*” Similarly, by stating that there are triable issues is not sufficient. They have to be shown to be triable for the grant of leave to defend.

19. This Court is of the view that simply because a tenant would be evicted from a tenanted accommodation which may in some circumstances cause a temporary loss of business, it cannot be by itself be deemed to be motivated by malafide intention on behalf of the landlord. For an application seeking leave to defend triable issues have to be raised. From the preceding discussion it is evident that the petitioner-tenant did not raise any triable issues and the Trial Court rightly rejected his application. Accordingly, the eviction order was passed. For such order not to be passed, in a summary proceeding as envisaged under Section 25-B of the Act, it is for the tenant to show the existence of a triable issue which would warrant the grant of leave to defend or disentitle the landlord from evicting the tenant. The petitioner-tenant has failed to raise any such triable issue. The impugned order suffers from no infirmity which would require this Court to interfere with it. Accordingly, the petition is dismissed as being without merit.

NAJMI WAZIRI
(JUDGE)

JANUARY 27, 2014