

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on :06.03.2014
Pronounced on :25.09.2014

+ RC.REV. 139/2013
SUKT

..... Petitioner

Through: Ms. Saroj Kr. Thakur, Adv.

versus

RAJ RANI

..... Respondent

Through: Mr. Anil Sharma, Adv.

+ RC.REV. 140/2013
SHANTI OPTICALS

..... Petitioner

Through: Ms. Saroj Kr. Thakur, Adv.

versus

RAJ RANI

..... Respondent

Through: Mr. Anil Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. This revision petition under section 25 B(8) of the Delhi Rent Control Act (DRC Act) assails an order dated 02.01.2013 which directed the petitioners (tenants) to evict the tenanted premises bearing Municipal No. 1/2239, Subhash Marg, Ram Nagar, Shahdara, Delhi-110032. The eviction petition was filed against Smt. Adesh Maheswari and Shanti Opticals. The following judgment shall apply to both the revision petitions filed herein.

2. The brief facts are that the tenanted premises in the above stated address consists of two shops measuring 65 sq. ft. and 55 sq. ft each occupied by the tenants herein running commercial businesses. There is no dispute as to the landlord- tenant relationship between the parties. The landlady filed an eviction petition against both the tenants under section 14(1)(e) of DRC Act on the ground that her grandson required the tenanted premises to run his coaching classes. Both the eviction petitions are filed under section 14(1)(e) of the DRC Act. The landlady submitted that her grandson was well qualified but unemployed. He needed and she wanted to help him to start his own coaching centre. It was submitted that the landlady had no other suitable alternative accommodation and the tenanted premises was best suited for the requirement.
3. In the leave to defend application filed by the tenants, it was submitted that the tenant was running the optical shop and had given the landlady a security deposit of Rs 20,000/- at the time of constructing the tenanted premises with an assurance that the said amount shall be returned during possession of the same. The tenant further submitted that an additional amount of Rs 25,000/- was paid towards the construction of the premises to make it functional. The tenant possessing the other shop submitted, in his leave to defend application that he had also given a security deposit which was refundable and had also paid towards making the shop usable. Both the tenants submitted that

the landlady had not repaid the amounts till date and hence she was restrained from evicting them.

4. The Trial Court took note that the landlady had acquired proprietary possession of the property through a sale deed dated 21.09.1967. She constructed two shops in it, both of them are now in possession of the tenants/ petitioners herein. The learned counsel for the tenants submitted that the landlady had constructed three storeys building in 75 sq. yards which consisted of one big hall, a verandah, latrine and bathroom on the ground floor. The construction on the first floor was similar to that on the ground floor and that the second floor consists of a two room set. The counsel for the tenant further submitted that the landlady was living on the first floor with her unmarried daughter and her grandson. The son of the landlady along with his family allegedly occupied the second floor and that none of the children of the landlady were dependent on her. The counsel submitted that the landlady had a large hall behind the tenanted premises from where the grandson could very well run his coaching centre.
5. In the reply to the leave to defend application, the landlady disputed the construction of three storey building in the 75 sq. yards of land. It was submitted that only one half of the property belonged to her and the other half was under the ownership of her son. It was further submitted that the landlady was living with her unmarried daughter and her grandson on a construction made above the tenanted shops. The godown behind the

tenanted shop is small in size and is used by the landlady and that the rest of construction in the property did not concern the landlady and hence they could not be put to use by her. The Trial Court noted that the application filed by the tenants was identical barring certain details like the size of the tenanted premises and the nature of business run by the tenant.

6. In adjudicating the eviction petition, the Trial Court held that under section 14(1)(e) of the Act, there was no definition of the word “family” and thus it was upon the Trial Court to ascertain if a certain member for whom the eviction was sought was within the scope of the word ‘family’. The Trial Court observed that the tenant had admitted that the landlady, her unmarried daughter and her grandson were living together, which was sufficient proof to show that the grandson was very much a part of the landlady’s family.
7. Insofar as the availability of suitable alternate accommodation was concerned, the Trial Court noted that the landlady had filed copies of photographs filed to show that she had no other shop available with her. The Court noted that there was construction above the tenanted premises and that the construction was a room. However, the photographs filed by the tenants show that the adjoining portion to the right of the tenanted shops is a recently constructed building comprising of a ground floor, a first and a second floor. The Trial Court noted that the construction seemed to be for residential purposes rather than commercial purpose. It was held that the tenants had not

brought anything on record to show that the construction above the tenanted shops are lying vacant or that the dependents of the landlady are not living in the portion above the tenanted shops.

8. On the contention of availability of suitable accommodation, the Trial Court held that mere availability of premises is not sufficient to dismiss the eviction petition and that the Court has to conclude that the available premises, if any, met the requirement made out in the petition. The Trial Court held that suitability of the tenanted premises has to be seen from the requirement of the landlord and if the claim of the tenanted premises being best suited for the requirement is bona fide or not. The Trial Court was of the view that the tenanted premises was most suitable for the landlady as compared to the structure next to the tenanted premises which were residential in nature. On the requirement of two shops for opening one coaching centre, the Trial Court relied upon a judgment of this Court- ***Parmanand v. Smt. Suman Sharma & Ors.*** **RC.REV 113/2011** to which held that it is the landlord's prerogative as to in what manner he/ she can put the tenanted premises to use and it is not for the law to prevent such utilization. The abovementioned judgment relied on ***Ragavendra Kumar v. Firm Prem Machinery & Co.*** **2000(1) SCR 77** which held that the landlord is the best judge of his requirement for residential or business purpose. Further reliance was placed on ***Labhu Lal v. Sandhya Gupta*** **2011(1) RCR (Rent) 231(Delhi)** which held that “ *children are very much dependant on the landlord*

for the purpose of setting up their business and such a requirement is a bona fide one. The Trial Court recorded that the right of the landlord for possession of his property for setting up a business for his son has also been recognized by the Supreme Court in ***Ram Babu Aggarwal v. Jay Kishan Dass*** 2009(2) RCR 455.

9. The Trial Court reasoned that even if the argument of the tenants that the property adjoining the tenanted premises was considered, the number of rooms available in that property was less compared to the number of adults on the family. Such being the situation, it would be highly unlikely that the landlady could have provided space for her grandson to open his tuition classes.
10. The Trial Court was of the view that the tenanted premises was most suitable for the need of opening a coaching centre as these shops were located on the ground floor and had access to the streets. The Trial Court rejected the argument that the grandson was not qualified to open a tuition centre and the ground raised by the landlady was only a ploy to get the tenants evicted. The Court relying on ***Ram Babu Aggarwal (supra)*** held that educational qualification or experience do not form grounds for deciding the eviction petition as long as bona fide need is reflected in the eviction petition. Further reliance was placed on ***Raghunath G. Panhale v. G. Panhale (D) by Lrs. V Chaganlal Sundarji & Co.*** AIR 1999 SC 3864 wherein the Supreme Court held that “*it was not necessary for landlord to prove that he had money to invest in the new business contemplated nor*

that he had experience on it. It was case for eviction on the ground of bona fide requirement of the landlord for non-residential purpose, as he wanted to start a grocery business in the suit premises to improve his livelihood.”

11. The Trial Court held that if the grandson of the landlady required the tenanted premises to open a coaching centre or a tuition centre, there was no necessity for him to prove his experience or his educational background. It was also observed that the landlady being at an advanced age would naturally desire to see her grandson settled and to that effect, she would like to help him in whatever way possible. On the basis of reasons detailed above the Trial Court concluded that there was a bona fide need for the tenanted. Accordingly the eviction order was passed.

12. The learned counsel for the tenants, Mr. Saroj Kumar Thakur, argued before this Court that the Trial Court had erred in treating the petition as a summary proceeding under section 25 B of the Act. The learned counsel argued that the landlady had failed to mention that the eviction was under section 25 B of the DRC Act read with section 14(1)(e). It was submitted that since no such petition requiring the Court to treat the eviction petition as summary in nature was made, the Court was incorrect in treating the petition as otherwise. It was further submitted that the Trial Court erred in allowing the landlord to rely upon the Supreme Court's judgment of ***Satyawati Sharma through LRS v. Union of India* 148 (2008) DLT 705 SC** in the eviction

petition as the judgment abovementioned does not mandate every section 14(1)(e) petition to cite the judgment in its eviction petition.

13. The contentions raised by the learned counsel for the tenant are untenable. It would be rather absurd and unfounded in law if this Court were to hold, that mere non-mentioning of section 25 B in an eviction petition filed for bona fide requirement, would be a ground to allow an application seeking leave to defend. The purpose of treating “*bona fide*” need petitions as summary in nature would stand defeated if Courts were to allow the leave to defend application and subject the petition to trial, simply because of a certain clerical error or *bona fide* oversight. This Court finds the proposition that unless a section 14(1)(e) petition specifies it is being filed under section 25 B, it cannot be one requiring summary trial as one without merit. Section 25 B(1) is as follows:

“25B. Special procedure for the disposal of applications for eviction on the ground of *bona fide* requirement- (1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A [or under section 14B or under section 14C or under section 14D] shall be dealt with in accordance with the procedure specified in this section.”

A bare reading of the section under Chapter III A of the Act which provides for summary trial of certain applications, it is

apparent that an eviction petition moved under section 14(1)(e) of the DRC Act will be treated as summary proceedings. The purport of section 25B of the Act is to provide summary procedure for a special class of landlords mentioned therein so that their need to possess the tenanted premises is neither prejudiced nor extinguished by the efflux of time. The language of the statute is clear and mandatory. It leaves no doubt or scope for interpretation. The law is settled and it is understood that an eviction petition filed for bona fide requirement under the Act will *ipso facto* be treated as a summary proceeding under Section 25B.

14. The next contention raised by the learned counsel for the tenant is that the landlady had failed to produce details of the grandson from whom allegedly the tenanted premises was sought. It was argued that the landlady has not shown the grandson to be dependent on her thereby failing to make a case under section 14(1)(e) of the Act. This Court does not agree with the argument of the counsel as it has been conclusively held that the grandson is construed as a member of the family who may be dependent on the landlord. This Court in ***Om Prakash v. Chander Shekhar* 102 (2003) DLT 746** held:

“11. It is now well settled that while considering the eviction of the tenant on the ground of bona fide personal need of a landlord the court has to keep in mind that the landlord's requirement of the tenanted premises from which the eviction is sought, is not motivated by extraneous consideration, whimsical or

mere wishful. The need of landlord should be sincere, real, genuine and honest desire. The Controller has to bear in mind the paramount consideration is the requirement of the landlord to be bona fide.....The wife, son and son's wife and children are the members of the family of landlord whose need of accommodation is the need of the landlord. There is no dispute about this fact. His requirement is only qualified by its genuineness and bona fide....”

It is clear that a grandson is considered as a dependent. Such being the settled position, the landlady can evict the tenants herein for her grandson's need. The Trial Court had noted the tenant's admission of the landlady, her unmarried daughter and the grandson living in one portion together (*paragraph 15*). Such being the circumstances, the landlady does not have to satisfy the identity of the grandson to the Court in order to get an eviction order. The landlady is only required to show the existence of *prima facie* need, which in the present petition stands satisfied.

15.The argument of the learned counsel questioning the size of the premises required for opening a coaching class is immaterial to the fate of the eviction petition, as it is exclusively for the landlady to decide how she wishes to put the tenanted premises to use. If the landlady is of the view that the tenanted premises will suffice her need, neither the tenant nor the Court can hold otherwise.

16.Each of the contentions raised by the tenant have been duly dealt with and based upon the material on record, they have all

been rejected with cogent reasons. The view taken by the Trial Court is plausible in law. The reasoning for and the conclusion arrived at in the impugned order does not suffer from material irregularity. There is no cause for this Court to interfere with the said order. There is no merit in the petition and it is accordingly dismissed.

**NAJMI WAZIRI
(JUDGE)**

SEPTEMBER 25, 2014/d/acm