

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 05-05-2014

Date of Decision: 30.07.2014

+ **RC.REV. 133/2014**

SHRI ANIL JAIN Petitioner
Through: Mr. Pradeep Dewan, Sr. Adv. with
Mr. K. Ahmed & Ms. Anupam Dhingra,
Advs.

versus

SHRI BHAGWAN SHANKAR KHANNA Respondent
Through: Mr. Sunil Malhotra & Mr. Amit Sanduja,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. This is a revision petition filed under proviso to Section 25-B (8) of the Delhi Rent Control Act, 1958 (DRC Act), challenging the final order dated 08.10.2013 passed by ARC-1 (Central), Tis Hazari Court, Delhi (the impugned order) whereby the application of the petitioner/tenant seeking leave to defend was dismissed and an order of eviction was passed against him in Eviction Petition No. E-220/11.

Background of the case

2. The respondent/landlord (landlord) sought eviction of the tenant from the suit property bearing No.2371, Chhipiwara Kalan, Delhi citing *bona fide* need for it. The landlord's case was that he required the tenanted premises for his son who wanted to open up and carry on the business of a travel agency; that his son who was working with M/s. AMCO Travels, Gurgaon for a monthly salary of Rs.30,000/- is dependent on him for the said requisite accommodation.
3. The landlord submitted that the property consisted of ground, first and second floors; the ground floor consists of one room and one shop, the shop being the tenanted premises in occupation of the present tenant; the first floor consists of one room and a kitchen; the second floor consist of two rooms, one toilet and a bathroom. He further stated that his family consists of himself, his wife, a son, a daughter-in-law and a grandchild aged about 2 years.
4. The tenant, in his application for leave to defend challenged the said eviction petition and the bona fide requirement of the landlord and asserted triable issues on the following grounds that: a sum of Rs. 30,000/- was given as security deposit; he has undertaken repair work in the premises which was reimbursable; the tenancy was to be at his

will; the landlord after the demise of his father started claiming rent from him but to avoid any dispute, he started paying rent which is presently @ Rs. 220/- per month; the landlord is not the owner of the tenanted premises; that the landlord has filed a wrong site plan; that the landlord served a legal notice earlier for eviction citing residential need; this eviction petition has been filed citing a different need thereby raising doubts on the bona fides; the landlord by way of this eviction petition is seeking a relief of declaration of his title of the property so as to exclude all other legal heirs of his deceased father; the eviction petition is bad for non-joinder of necessary parties; it has been falsely stated by the landlord his son is working in M/s AMCO Travels, Gurgaon earning Rs.30,000/- whereas in reality he is working in M/s Bird Travels earning Rs.70,000/- plus other perks; the son of the landlord has been living in a property in Khajuri Khas with his family owned either by himself or by the landlord; the landlord or his son owns another property in Jacobpura, Gurgaon and the aforesaid properties are much more convenient as compared to the tenanted premises.

5. In his reply to the application for leave to defend, the landlord denied all averments except admitting that this father was married twice and that he had issued a legal notice to the tenant on 21.04.2011.
6. A rejoinder to the aforesaid reply was filed by the tenant where he reiterated and reaffirmed his case as was stated in the application for leave to defend.

Impugned Order

7. The learned ARC, after considering the contentions of the landlord and those of the tenant, dismissed the application for leave to defend and passed an order of eviction in favour of the landlord. His reasoning for such a decision were as follows:
 - a. On the issue of ownership, learned ARC considered two admissions by the tenant; firstly that he was inducted as a tenant by the late father of the landlord and secondly that he has been paying rent to the landlord since February 1996. The learned ARC placed reliance on the decision of this Court in the case of Ramesh Chand v. Ungati Devi, 157 (2007) DLT 450 and decided this issue in favour of the landlord.

- b. On the issue of availability of alternative commercial accommodation, learned ARC held that the tenant has failed to raise a triable issue by making a vague mention of other properties purportedly owned by the landlord or his son. Learned ARC reasoned that since no document/material like sale deed, electricity bill etc. was filed on record by him, vague mention of other properties would not entitle the tenant, leave to defend the eviction petition.
- c. On the issue of whether the landlord required the tenanted premises for bona fide reasons, learned ARC held that the landlord had prima facie established his bona fide requirement i.e., for his son to open and set up a travel agency. The court considered the admitted fact that the landlord's son has been working in a travel agency and disregarded any dispute of whether he was working in M/s AMCO Travels or M/s Bird Travels and earning Rs.30,000/- or Rs.70,000/-. Learned ARC further relied on the decision of the Supreme Court in Raghunath G. Panhale v. M/S. Chaganlal Sundarji & Co., AIR 1999 SC 3864 to say that the landlord's son need not resign his existing job to set up a travel agency business.

Learned ARC further opined that just because the landlord's son is employed, the same does not stand as an impediment for him to start a business.

- d. On the issue of whether the legal notice dated 21.04.2011 citing reason(s) for the eviction being entirely different to that of the reason(s) of the eviction petition dilutes the bonafide need of the landlord, learned ARC held that it does not. Admittedly, the legal notice stated that eviction from the tenanted premises was required for the landlord's personal residence whereas the eviction petition stated that the said premises was required for the landlord's son to start a new travel agency business. The learned ARC opined that the landlord can definitely prioritize the requirement of his son over his requirement of the tenanted premises for his residence and further held that no mala fide can be ascribed to the requirement of the tenanted premises by the landlord for his son when he has established that no other reasonably suitable alternative commercial accommodation is available with him for his son's business.

Analysis

8. Learned counsels for both the parties were heard. Petitioner/tenant has reiterated almost similar arguments as were submitted in his application for leave to defend before the learned ARC. Counsel for the respondent/landlord has sought to sustain the reasoned order of the learned ARC. Before proceeding to analyze the findings of the impugned order, it would be pertinent to discuss the scope of this Court's jurisdiction/powers under proviso to Section 25-B (8) of the DRC Act.
9. This court in the case of **Ramesh Chand v. Uganti Devi, 157 (2009) DLT 450**, has held that while exercising jurisdiction under the aforesaid provision, the Court does not act as a Court of Appeal. The Court has to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material available before it. Moreover, a Full Bench of this Court in **Mohan Lal v. Ram Chopra and Anr., AIR 1982 Delhi 405**, exhaustively dealt with Section 25-B of the Act. On the scope of the proviso to Sub-section (8) of this Section, after examining the judgment of the Supreme Court in **Hari Shanker and Ors. v. Rao Girdhari Lal**

Chowdhury, AIR 1963 SC 698 and Bell and Co. Ltd. v. Waman

Hemraj, AIR 1938 Bom 223, it was laid down as follows:

“In our opinion the jurisdiction of the High Court under proviso to Section 25B (8) has to be interpreted, keeping in view the legislative intent. The revision under Section 25B (8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act.”

10. Furthermore, the Hon’ble Supreme Court in another case titled as

Chaman Prakash Puri v. Ishwar Dass Rajput and Anr., 1995

Supp (4) SCC 445 has held with regard to High Court’s power to

interfere in revision against the finding as to bonafide requirement of

landlord. It has been held that if the Rent Controller finds that

landlord was in bonafide need of premises, the High Court in revision

was not entitled to re-appreciate evidence and reverse the finding. The same court in **Ram Narain Arora v. Asha Rani & Ors., (1999) 1 SCC 141** at para 12 *has held as follows:*

“It is no doubt that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters or record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter.”

11. This Court would proceed to examine the impugned order within the aforesaid jurisdictional parameters:

- a. **Ownership**- Admittedly, the tenant has been paying rent to the landlord since the year 1996. It has also been admitted by the tenant in his application for leave to defend that he has been paying rent to the landlord so as to avoid any dispute. It is therefore clear that the tenant has acknowledged the relationship between himself and the landlord of what constitutes ‘*landlord-tenant*’ relationship within the meaning of the DRC Act. Moreover, it is well settled

that for the purposes of an eviction petition, a landlord is not required to prove his absolute title. All that he is required to show is that he is more than a tenant. Furthermore, the doctrine of estoppel operates against a tenant within the meaning of Section 116 of Evidence Act and a tenant cannot challenge the title of the landlord once he has in any way admitted '*landlord-tenant*' relationship. The same has been discussed in the impugned order. On this issue, this Court finds no infirmity with the reasoning and conclusion arrived at by the learned ARC.

- b. **Availability of alternative suitable accommodation-** The tenant's contention that the landlord or his son owned alternative suitable accommodation in Khajoori Khas and Jacobpura, Gurgaon has been categorically denied by the landlord. It is settled law that for raising a triable issue, a tenant's averments as to the existence of suitable alternative properties should not be vague and bald statements but must be supported by details and specifics or such compelling information as would ex-facie lead the ARC to conclude that a triable issue has been raised. This Court is of the view that the tenant has to substantiate such statements with some

material so that the court can prima facie come to a conclusion about the need to put the issue to trial. Even in the impugned order, learned ARC has observed that “*no document or any material in the form of sale deed, electricity bill, telephone bill, house tax receipt, voter I card, electoral roll list or even a photograph was filed on record*” by the tenant. For the above reasons, this Court finds no infirmity with the reasoning adopted by the learned ARC.

- c. **Bonafide need of the landlord-** Admittedly, at the time of filing the eviction petition, the landlord needed the tenanted premises for his son to open up and start the business of a travel agency. The tenant, in his application for leave to defend and also before this court, has contended that the son is employed with M/s. Bird Travels, is well settled and earning a sum of Rs.70,000/- and hence he need not start a new business. However, this was denied by the landlord and he stated that his son was employed with M/s. AMCO Travels earning a sum of Rs.30,000/-. The tenant further contended that in the past several years he never intended to start such a business, besides the tenanted premises was too small and in by lane in old Delhi, which has no potential for such business.

Learned ARC relied upon **Raghunath G. Panhale v. M/S Chaganlal Sundarji & Co., AIR 1999 SC 3864** wherein it was observed that:

“A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business.”

“One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises.”

Applying this principle to the present set of facts, learned ARC held that the tenant had failed to raise any triable issue where as the landlord had succeeded in establishing his bona fide requirement of the tenanted premises for his son's business.

This Court is in agreement with the reasoning and finding of the learned ARC. Moreover, it is well settled that a landlord is the best judge of his requirement. It is neither open for the Court or for the tenant to dictate terms to the landlord. Furthermore, the contention of the tenant that the son in the past never intended to start such a business and that too from a small bye lane situated in old Delhi which has no potential for such business is without any merit. A

tenant cannot be permitted to dictate terms to the landlord as to the suitability of the premises for purposes under which the eviction is sought. Therefore, the finding of the learned ARC does not warrant any interference by this Court.

- d. **Change in bona fide need in the eviction petition vis-a-vis the legal notice-** The tenant had strongly contested the changed circumstances of the landlord in the eviction petition (i.e., for his son to start a travel agency business) as compared to the legal notice wherein the tenanted premises was required for residence of the landlord. The impugned order has noted that the dependency of the landlord's son for commercial space has not been disputed by the tenant. It observes that the landlord, being a father can definitely prioritize the requirement of his son over his requirement of the tenanted premises for his residence. This Court is in agreement with the finding of the learned ARC and is of the view that the need of the landlord is to be examined on the date of the institution of the eviction petition, an incident too remote therefrom would not be a relevant consideration. Admittedly, there was a gap of over 7 months between issuance of the legal notice

and filing the eviction petition. The circumstances and needs of the landlord could well have undergone a change of the nature claimed by him. There would be no reason to doubt it at the outset. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in **Dinesh Kumar v. Yusuf Ali, AIR 2010 SC 2679** and of this Court **Anand Swaroop Vohra v. Bhim Sen Bahri (C.R.P. 777/1999 decided on 01.06.2012)** which relied on **Shakuntala Bai v. Narayan Das, (2004) 5 SCC 772**. Moreover, a landlord is not required to serve a legal notice on the tenant before filing an eviction petition under Section 14 (1) (e) of the DRC Act. Reliance in this regard is placed on this Court's decision in **The Punjab State Co-Operative Supply & Marketing Federation Limited v. Amit Goel, 2013 (2) RCR (Rent) 493** which relied on **Mehendra Trivedi v. Jai Prakash Sharma 157 (2009) DLT 690 Para 27** and **T.B.Jain v. Savita Ravi, 2008 VI AD (DELHI) 103 Para 12**. Therefore, the said issuance of legal notice dated 21.04.2011 is irrelevant and can be disregarded.

- e. This Court is not persuaded by the other grounds taken by the tenant in this revision petition which were also raised before the

learned ARC like (i) paying security deposit of Rs. 30,000, (ii) amount spent towards repairs, (iii) non-joinder of necessary parties, etc. and does not deem it necessary to deal with them.

12. This Court is of the view that the case of the tenant is legally untenable since he has failed to raise, ex-facie any triable issue warranting the grant of leave to contest the eviction petition in a summary proceeding envisaged under Section 25-B (4) of the DRC Act. In view of the discussion above, the reasoning for and the conclusion arrived at by the learned ARC cannot be faulted. This Court finds no reason to interfere with the impugned order. This petition is without any merit and is accordingly dismissed.

**NAJMI WAZIRI
(JUDGE)**

July 30, 2014