

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

Reserved on: 23.04.2014
Date of Decision: 30.09.2014

+ RC.REV. 152/2014

T R SHARMA

..... Petitioner

Through: Mr. Amit Sibal, Sr. Advocate with
Mr. Alok Aggarwal and
Mr. Vinay Tripathi, Advocates.

versus

KAMLESH SHARMA & ANR

.... Respondents

Through: Mr. Rohit Gandhi with
Mr. Varun Garg, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

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1. Mr. Rohit Gandhi, Advocate has entered appearance on behalf of the Caveator. The caveat stands discharged.
2. At the request of the learned counsel for the parties, the matter was heard finally.
3. The petitioner (tenant) has challenged the eviction order of the learned Additional Rent Controller dated 30th of October 2013 in respect of the tenanted premises being Shop Number 3, in property Number C-43, Nehru Road, Adarsh Nagar, Delhi - 33. The tenant's application for leave to defend

was rejected. This revision petition has been preferred under section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”).

4. The respondent (landlady) had filed an eviction petition under section 14 (1) (e) read with section 25B of the Act for eviction of the tenant from the tenanted premises for her bona fide need. The ground being that after her superannuation from employment with a bank in May 2011, she wanted to start a business of ready-made garments along with her younger son Mr. Sachin Sharma. It was her case that of her 3 sons the elder one, namely Mr. Amit Sharma, was married and had two school going children. However, his salary from his employment in the private sector was insufficient for the maintenance of his family, therefore the petitioner assisted him financially. The youngest son Mr. Atul Sharma was married and had a daughter. He ran a confectionery and bakery shop from one of the shops in the aforesaid property, which according to her, had been inherited by her husband, who had since deceased. It is her second son namely Mr. Sachin Sharma with whom she wanted to start her business, since this son was a freelancer, did not have a permanent employment and would often be idle. It was further submitted that this son was unmarried and totally dependent upon the petitioner for his financial needs. The respondent/landlady had contended that because of her age, she was suffering from various ailments, the treatment of which and the support given to her elder son was a constant drain on her resources which needed to be augmented. She had submitted that by settling and doing business with her second son she would augment her finances. She further submitted that she did not have any other accommodation to start the proposed business whereas the tenant had

another shop at D- 2/17, Main Rd., Model Town-3, Delhi from where he was running a business of dry-cleaning.

5. In the leave to defend application, the tenant had sought to contest the eviction petition essentially on the ground that: i) the eviction-petitioner was not the exclusive owner of the tenanted premises, ii) there wasn't any relationship of landlady and tenant between the parties and iii) that the said need was not bona fide. The tenant also referred to some alleged dispute between the legal heirs of Mr. Meghraj Sharma the first landlord, regarding the succession/ownership of the suit premises. He contended that the landlady had sought a rent of Rs.200/- per month from him. He further contended that there was no bonafide need since Mr. Sachin Sharma, for whose benefit the premises were sought, was settled in Mumbai where he was engaged with a television channel called 'Colors' TV and engaged in a TV show called 'Big Boss' and other TV serials and in the process was earning a handsome amount. It was further submitted that this son visited Delhi only occasionally, therefore the alleged need for settling him in Delhi was fabricated.

6. The Trial Court determined the matter on the aforesaid three grounds raised by the tenant. It noted that the tenant had not disputed that the eviction-petitioner/landlady had no suitable alternative accommodation. The Trial Court further noted that after the demise Mr. Meghraj Sharma the first landlord in 1989, the tenant had started paying rent to the eviction-petitioner and continued to do so for a period of 5 years till 1994. The landlady had claimed the inheritance of the property through her husband, and a share in the tenanted premises by virtue of a Will, Partition Deed and

Relinquishment deed. The respondent no. 2 who is stated to be the joint owner of the tenanted premises was summoned but he did not come forward to object to the petitioner's claim. The aforesaid documents of succession and title had been brought on record by the eviction-petitioner. The Court was of the view that a tenant could not challenge the authenticity of the Will which takes place between the family members of the owner hence the tenant could not raise the issue as a triable one. Even otherwise, the Court held, that the eviction-petitioner being one of the co-owners of the tenanted premises was within her rights to maintain a petition for eviction. He relied upon the settled law that a co-owner is the absolute owner of each and every inch of joint property till it has been partitioned by metes and bounds. He owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property. The Trial Court relying on various precedents¹ held that a co-owner is within his rights to file a suit for ejectment against the tenant. The Court concluded that as long as the eviction-petitioner was one of the co-owners of the property she could file the eviction petition. Besides, the other co-owner had chosen not to object to the eviction petition and the tenant too had accepted her as the landlady by paying rent to her earlier.

7. On the issue of bona fide need, the Trial Court found that the tenant's submissions regarding the employment and financial capacity of the landlady's son was unsupported by any documents to *prima facie* show that there was a triable issue. The Court found that the tenant had alleged that the

¹*Shri Ram Pasricha v. Jagannath* AIR 1976 SC 2335, *Kanta Goel v. B.P. Pathak* AIR 1977 SC 1599 and *Pal Singh v. Sundar Singh* AIR 1989 SC 758

elder son was employed by the Government on compassionate grounds. This was untrue because the landlady had stated that her son was in a private job. The financial capacity of either the eldest or the youngest son was not in issue. Instead it was the need of the second son Mr. Sachin Sharma, along with that of the landlady herself, that had to be determined. The Trial Court noted that the landlady had admitted to the freelancing of Mr. Sachin Sharma with 'Colors' TV channel for a project titled 'Big Boss' serial. However the landlady had stated that the son had not been paid for the said work and was otherwise unemployed; that as a freelancer he was not getting adequate work to earn a decent assured monthly income/salary. The Court did not place reliance upon the various comments posted on social networking websites because the documents relied upon by the tenant were Internet generated copies and furthermore just because photographs show a person meeting some television personalities does not necessarily mean that he is working with them and therefore earning an income. The Trial Court found that the need was bona fide. Admittedly, the petitioner's lack of suitable alternate accommodation was not disputed. In the circumstances, the Trial Court passed the order of eviction.

8. Mr. AmitSibal, the learned Senior Counsel appearing for the petitioner states that Sachin Sharma, the son of the petitioner was engaged in various serials with 'Colors' TV channel, and was being handsomely compensated for his work, and a fact which was not mentioned in the eviction petition; that only when the issue was raised in the leave to defend application that it was addressed and the landlord's denial of the same is found at page no. 170, paras 12, 13,14,15 of which reads as under :-

“Save and except what are matter of record, rest of the contents of para 12 of the affidavit are wrong and denied. It is specifically denied that the son of the petitioner, Sachin Sharma for whom bonafide requirement is there, that son is engaged with Colors TV. It is submitted that all the allegations made against Sh. Sachin Sharma are unfounded, baseless, frivolous and have been raised without verifying the true facts.

It is submitted that Sh. Sachin Sharma is 12th pass and is not having any other qualification. However, by experience he got some technical knowledge as a Switcher/Mixer. However, he failed to get any job and he does temporary assignment for various people. He did an assignment with Big Boss serial but till date he has not been paid his dues. It is submitted that as he has failed to get a permanent job, he is finding it very difficult to sustain himself as a Switcher/Mixer and thus, he wants to establish himself in a business, which can give him regular income. It is submitted that the nature of job of Switcher/Mixer does not give him regular income and he only gets assignments for some time and then he is sitting idle. Moreover, various firms for whom he does temporary assignments on daily wages, do not pay him in time and thus, due to un-certainty in this come, he is unable to meet his day to day expenses and thus is looking for setting himself in his own business. It is submitted that Shri Sachin Sharma could not get married only because of this reason, as he is not having fixed monthly income. Thus, the contents of the eviction petition are reaffirmed and it is submitted that the petitioner bona fide requires the tenanted premises for the use of herself and her son as explained in the petition.

It is further vehemently denied that after leaving Delhi Sachin Sharma comes only on the occasion and settled at Mumbai. It is further vehemently denied that it is a false and fabricated plea raised by the petitioner that

Sachin Sharma is financially depend upon petitioner, just to evict the respondent illegally and deprive the respondent, and his family from his family business upon which the whole family of the respondent is dependent.

Save and except what are the matter of record, rest of the contents of para 13 of the affidavit are wrong and denied. It is specifically denied that the youngest son of the petitioner is also doing well in the confectionary and bakery shop and earning handsomely. It is further vehemently denied that eldest son of the petitioner is in a government job. It is submitted that the elder son of the petitioner is working a private company and trying to earn his livelihood from the same. It is further vehemently denied that all the pleas of the petitioner are false and frivolous, moreover contradictory itself. It is further vehemently denied that no bonafide requirement is at all either to petitioner or any of her son. It is further vehemently denied that it is mere a conspiracy to evict respondent illegally from the shop in question. It is submitted that all the allegations are unfounded, baseless, frivolous and have been raised without verifying the true facts.

That the contents of para 14 of the affidavit are wrong and denied. It is specifically denied that no furniture or fixture was supplied by the petitioner. It is further vehemently denied that the respondent or his sons tried to repair the furniture or board of the shop they were not only disallowed but also get abused and manhandled by the all of them.

That the contents of para 15 of the affidavit are wrong and denied. It is specifically denied that the person shown in the photographs are the employees of the respondent one is pressman and one is counter boy. It is further vehemently denied that the petitioner is

misleading this Hon'ble Court or it is family business of the respondent running with the help of his three sons who are assisting him in the shop is being very well used by the respondent and his sons. It is further vehemently denied that it would cause irreparable loss and injury to the respondent and his family who is solely depend upon family business. It is further vehemently denied that it is matter of trial whether actually there is a bonafide requirement to the said son of the petitioner. It is further vehemently denied that there are various triable issues could be decided only by the trial."

9. Mr. Sibal further contends that what the Court is required to see is whether *prima facie* triable issue is made out. He relies upon a judgment of ***Precision Steel & Engineering Works and Another v. Prem Deva Niranjana Deva Tayal***, (1982) 3 SCC 270, particularly, on para 22, which reads as under :-

"What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in sub-section (5) of Section 25-B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts – no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant leave because the statute says "on disclosure of such facts the Controller shall grant leave." It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation

which is sufficient for him ; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction ; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitled him the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the court in person though he could have without the slightest inconvenience approached in person and with a view to shielding inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.”

10. He also placed reliance on a judgment ***InderjeetKaur v. Nirpal Singh***, (2001) 1 SCC 706, particularly, on para 11, which reads as under :-

“As is evident from Sections 25-B(4) and (5) of the Act, burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in clause (e) of the proviso to Section 14(1) of the Act, with which we are concerned in this case, are good enough to grant leave to defend.”

11. In ***CharanDassDuggal v. Brahma Nand***, (1983) 1 SCC 301, the counsel for the petitioner has placed reliance on paragraph nos. 4, 5, 6 which read as under:-

“When landlord seeks possession for personal requirement he has to prove his present need. If he has any premises in his possession he must allege and prove why that is not sufficient for his present use, or why he has to shift to the premises of which he seeks possession. If the tenant avers that the landlord is not in need of the premises and that he is not staying in the city in which the premises involved in dispute is situated and that the landlord has a big building in his possession at a different place where he is shown to be staying obviously a very serious triable issue would arise. To return to the facts of this case it is not in dispute that there is a house named ‘ParkashBhawan’ situated at Pathankot but in this behalf the case of the landlord is that the same belongs to his sons and daughters and he would stay in that house whenever he visits Pathankot and his normal correspondence address is at Pathankot. A sale deed was shown to the learned Judge of the High Court relating to Pathankothouse which appears to be in the name of the sons and daughters of the respondent-landlord. The High Court concluded that there was no reason to doubt the plea of the landlord that he wants to live at Delhi.

What should be the approach when leave to defend is sought ? 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, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge is the test of a triable issue and not the final success in the action (see Santosh Kumar v. BhaiMool 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 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. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

Recently in a good number of cases from Delhi we have noticed that long contested judgments are written refusing leave as if the trial has been concluded after recording evidence and a final decision is being reached. That is certainly not apposite at the stage of granting leave.”

12. The learned counsel further states that there is an error in the impugned order, in so far as it was passed even when no case of bona fide requirement was made out, that it is only the desire of the petitioner to settle her son in Delhi, in a business with regular income whereas the Court ought to have distinguished between the ‘*desire*’ and the ‘*requirement*’.

13. The eviction petition was filed on the ground that the premises were required by the landlady and her son. The impugned order was passed on the ground that there was no triable issue raised. In particular, that the documents in support of the tenants’ contention that son Sachin Sharma was engaged in the entertainment industry with ‘Colors’ Television and was a

resident of Mumbai were mere internet generated copies. Mr. Sibal submits that the petition was filed in October, 2012 whereas the Facebook profile of Mr. Sachin Sharma, over which the latter would have full control, showed his residence in Mumbai as of December 15, 2012. He further submits that the entertainment industry is such that the person would be engaged from serial to serial. The Trial Court disbelieved the documents adduced in support of the tenants' contention that the property was not required by the son, Sachin Sharma, since he was adequately engaged in work in Mumbai and was not likely to return to Delhi. The reason for the Court's non-reliance on the said documents was that the authenticity could not be assessed by the Court as they were merely Internet generated copies.

14. This Court is conscious of the limited jurisdiction in rent control revision petitions. The Supreme Court has brought clarity to the scope of jurisdiction of the High Court in entertaining a Revision Petition under section 25-B(8) of the Act in **Ram Narain Arora v. Asha Rani**² which held:

"12. It is no doubt true 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 on 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. In this case, the Rent Controller proceeded to analyse the matter that non-disclosure of a particular information was fatal and, therefore, dismissed the claim made by the landlord. It is in these circumstances that it became necessary for the

²(1999)1 SCC141
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High Court to re-examine the matter and then decide the entire question.”

15. Having considered the above, this Court is of the view that for those engaged in the entertainment industry puffing-up of one's profile on the social networking media, on the Internet, is not regarded as anomalous. Indeed the endeavour would be to make one's profile more attractive, albeit through the borrowed glory of the celebrity with whom the photograph space is shared. Simply being seen in the momentary company of people successful in the entertainment industry, would not necessarily imply that the landlady's son Mr. Sachin Sharma was financially successful. Nor would it mean that he was permanently engaged in Mumbai, so as not to have any need to return to Delhi and/or to arrange for a regular source of income, as has been claimed by the landlady, through the proposed business. There are many a story of failed dreams of countless aspirants in the entertainment industry.

16. However this Court is of the view that the need was on two counts: one for the landlady herself and the other for that of her second son Mr. Sachin Sharma. Even if it is assumed that the latter was not a resident of Delhi, it would not rob him of his need for the premises in Delhi to start and maintain a business for himself as well as for his mother. Nor would the lack of residence of Mr. Sachin Sharma in Delhi take away the bonafide need of the landlady for the tenanted premises, from where she could independently run her business, through appropriate arrangement. The landlady could seek the eviction in her own right for herself. Neither advanced age nor ill-health have been recognized as a constraint or

disqualification for maintaining an eviction petition. Indeed both these conditions would be added grounds for bonafide need. Therefore there would be no occasion to examine the authenticity of the copies of the internet-based profile of Mr. Sachin Sharma. Consequently, there would be no occasion for placing reliance upon the precedents cited by the learned Senior Counsel on behalf of the petitioners. This Court is not persuaded by his arguments. There is no triable issue warranting the grant of leave to defend.

17. The conclusions arrived at in the impugned order are plausible in law. The reasoning for the conclusions are cogent and rooted in the records. There is no material irregularity in the impugned order. The petition is without merit and it is accordingly dismissed.

NAJMI WAZIRI, J

SEPTEMBER 30, 2014