

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

+ **RC.REV.No.187/2013 & C.M.No.7797/2013 (Stay)**

% **20th November, 2014**

M/S UNITED METAL STORE Petitioner

Through: Mr.Anurag Mangal, Advocate.

VERSUS

SH. ASHOK KHANNA(SINCE DECEASED) THROUGH LRS

..... Respondent

Through: Mr.Sandeep Khurana, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This rent control revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller (ARC) dated 28.1.2013 by which the ARC has rejected the leave to defend application filed by the petitioner/tenant and has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act by the respondent/landlord with respect to the suit/tenanted premises being one room/shop on the ground floor forming part of property bearing no.4708/VII, admeasuring 50 sq. yds. situated at Gali Razia Begum, Hauz Qazi, Delhi-110006.

2. The case as set-up in the eviction petition by the respondent/landlord, who has since died and is now represented by his legal heirs, was that the suit/tenanted premises/shop is required for the landlord himself for his own use as well as for the use of his family members dependent on him. Besides the personal need of the landlord, the suit/tenanted premises was pleaded to be required because the son of the landlord was doing the business of printing press in Noida (U.P.) and he wanted to open a trading office in Delhi in the suit/tenanted premises.

3. In a *bonafide* necessity eviction petition under Section 14(1)(e) of the Act, three aspects are required to be seen for decreeing of the petition. First is the existence of relationship of landlord and tenant and that the landlord is the owner of the suit/tenanted premises. Secondly, the premises are required for the *bonafide* need of the landlord himself and/or his family members. Thirdly, it is to be seen that the landlord has no other alternative suitable accommodation.

4 (i) Before me, learned counsel for the petitioner/tenant has argued two aspects. The first aspect is that the eviction petition was filed only for the need of the landlord himself, and since the erstwhile respondent/landlord has expired, the need of the erstwhile respondent/landlord abates and the

eviction petition has to be dismissed by this Court taking notice of the subsequent event of the death of the respondent/landlord. For taking notice of the subsequent events, reliance is placed upon the judgment of the Supreme Court in the case of *Shantilal Thakordas & Ors. Vs. Chimanlal Maganlal Telwala (1976) 4 SCC 417*. Reliance is also placed upon the judgment of the learned Single Judge of this Court in the case of *Asha Lata Pandey Vs. Braham Pal Singh Yadav 210 (2014) DLT 371*.

(ii) The second aspect argued by the petitioner/tenant is that the respondent's son is stated to have an alternative suitable accommodation, as admittedly, the son is running a factory premises in Noida (U.P.).

5(i) Both the arguments urged on behalf of the petitioner/tenant are misconceived, both in facts and in law.

(ii) The argument that the eviction petition in this case was filed only for the need of the landlord is incorrect on the face of it when we refer to para 18(a) of the eviction petition. It is seen as per para 18(a) of the eviction petition that the need projected was not only for the landlord but was also for his son, who was stated to be doing a business of printing press in Noida (U.P.) and the son wanted to open his business in Delhi by opening a trading office in the suit/tenanted premises. Therefore, I fail to understand how it

can even be argued on behalf of the petitioner/tenant that in the eviction petition, the need which was projected was only of the late landlord Sh.Ashok Khanna and not for anyone else.

(iii) Once the need which was projected was for both the landlord and his son, on the death of the respondent/landlord, the eviction petition neither abates nor the eviction petition can be dismissed merely because the erstwhile landlord is no longer alive. No doubt, courts have to take notice of the subsequent events, but the Supreme Court in the judgment in the case of ***Gaya Prasad Vs. Sh.Pradeep Srivastava AIR 2001 SC 803*** has held that the courts must only take “cautious cognizance” of the subsequent events and unless the subsequent events totally destroy the cause of action pleaded, subsequent events cannot be taken into consideration for dismissing the *bonafide* necessity eviction petition. In ***Gaya Prasad***’s case (*supra*), the Supreme Court has referred to the earlier judgments passed by the Supreme Court on the aspect of considering of subsequent events, and thereafter the ratio of ‘cautious cognizance’ has been culled, and only when the entire cause of action for *bonafide* necessity disappears. It is hence the ratio of the judgment of the Supreme Court in ***Gaya Prasad***’s case (*supra*) which

applies and not the judgment in *Shantilal*'s case (*supra*) which generally lays down the law for noticing subsequent events.

(iv) Since as already stated above, in the *bonafide* necessity eviction petition, the need was also projected for the son of the landlord, merely because the landlord has expired cannot mean that the eviction petition will not survive.

6(i) The second argument urged on behalf of the petitioner/tenant is equally without any merit because it is now settled law in Delhi that before a premises is considered as an alternative suitable accommodation for being available to the landlord, such alternative premises have to be necessarily situated within Delhi, and those premises which are situated out of Delhi, as per the catena of judgments are not considered as alternative suitable accommodation for a *bonafide* necessity eviction petition filed with respect to a premises in Delhi. Therefore, even assuming that the premises at Noida (U.P.) is available to the son of the original landlord who is carrying on his business, the same being situated out of Delhi will result in the fact that the same cannot be considered as an alternative suitable accommodation.

(ii) Further I must note that the premises at Noida (U.P.) is not a shop but a factory premises as per the counsel for the respondent, and therefore the

need of a shop which is projected in the eviction petition surely cannot be satisfied by having a factory premises, that too in Noida (U.P.).

7. The judgment in the case of *Asha Lata (supra)* relied upon by the petitioner/tenant has no application to the facts of the present case because in the facts of the said case, it was found that there was no projected need as pleaded in the eviction petition with respect to a person namely Asha Lata, and consequently the *bonafide* necessity eviction petition was not maintainable on the death of the petitioner no.1 in the said case for whose need the eviction petition was filed.

8. In view of the above, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

NOVEMBER 20, 2014
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