

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11.03.2014
Pronounced on 22.08.2014

+ **RC.REV. 196/2013 & CM 8431/2013**

SHRI MITTAR SAIN Petitioner
Through: Mr. S.P. Singh Chaudhari, Adv.

versus

SHRI RAJESH KUMAR Respondent
Through: Ms. Uma Aggarwal, Mr. P.
Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. This revision petition filed under proviso to Section 25-B (8) of the Delhi Rent Control Act (hereinafter referred to as 'DRC Act') impugns an order dated 13.02.2013 passed by Learned Additional Rent Controller, North-West: Rohini, Delhi whereby the present petitioner's (hereinafter referred to as the 'tenant') application for leave to defend was rejected and an order of eviction was passed against him.

Brief Facts

2. The dispute arose with the present respondent (hereinafter referred to as the 'landlord') filing an eviction petition u/s 14 (1) (e) of the DRC Act for evicting the tenant from Shop No. 2, Ground Floor, D-2/10, Model Town, Delhi (hereinafter referred to as the 'tenanted

premises') citing the ground of bona fide requirement. It was submitted that his father was the owner of the tenanted premises and had let out the same to the tenant; that after his father's demise on 07.01.2007, he inherited the premises by virtue of his father's will dated 23.01.1995.

3. Before the learned ARC, it was the case of the landlord that he is already in possession of shop no.1, which is adjacent to the tenanted premises and is carrying on the business of artificial jewellery; that the said shop no.1 is not enough as per his requirement and he needs the tenanted premises for himself and his two sons who are graduates, so as to expand his present business; that the requirement of the tenanted premises is bona fide and urgent.

4. An application for leave to defend was filed by the tenant contending that the landlord was not the owner of the tenanted premises since the aforesaid will has not been probated; that alternate accommodation was available with the landlord; that the need of the landlord was not bona fide as both his sons were employed and residing outside Delhi and his wife was employed with Allahabad Bank; that the need of the petitioner was for a commercial shop and therefore, would not fall within the ambit of Section 14 (1) (e) of the DRC Act.

5. In his reply, the landlord refuted the averments of the tenant. It was submitted that his family income was not sufficient and that his elder son was compelled to work temporarily in a bank in Gujarat and his younger son, residing with him was compelled to take up employment at Noida. It was also submitted that after getting the

tenanted premises, both the sons would join him in the business of trading in artificial jewellery.

6. A rejoinder to the aforesaid reply was filed by the tenant where he reaffirmed the contents of his application for leave to defend.

Impugned Order

7. The learned ARC, after considering the contentions of the parties, dismissed the tenant's application for leave to defend and passed an eviction order in favour of the landlord. Learned ARC's reasoning were as follows:

- a. **Ownership-** Learned ARC dismissed the tenant's contention that as the Will dated 23.1.1995 has not been granted probate by a competent court, the same cannot be considered as proof of the landlord's ownership of the tenanted premises. It was held that because the Will has not been granted probate, the same would not operate as an impediment to its operation. It was also held that a Will cannot be challenged and its validity cannot be adjudicated by a Rent Controller during adjudication of an eviction petition. It was noted that the original Will, registered under the Registration Act was placed on record by the landlord.
- b. **Alternative accommodation-** Learned ARC rejected the tenant's contention as to the existence of alternative suitable accommodation with the landlord. It was observed that the tenant's vague averments as to existence of alternative residential accommodation with the landlord would not

entail him leave to defend the eviction petition. It was also observed that the need of the landlord for the tenanted premises was for commercial purposes and there was no averment by the tenant in his application for leave to defend as to the possession of alternative suitable commercial accommodation by the landlord.

- c. **Bona fide need-** The tenant's contention that the sons of the landlord were employed outside Delhi and as such were not dependant on the landlord was rejected by the learned ARC. The letter issued by Dena Bank dated 29.1.2013 confirming that Mr. Devesh Kumar was working in their Delhi branch and was resident of Delhi, as produced by the landlord was relied upon to hold that the elder son was residing in Delhi. Further, learned ARC was of the opinion that vague averments as to the employment details of the younger son would entail the tenant, leave to defend the eviction petition. Lastly, as to whether the landlord's wife being employed with Allahabad Bank would stand as an impediment to the landlord's case, learned ARC held that it did not.
- d. **Commercial tenancy-** Learned ARC dismissed the tenant's contention that the suit property being commercial in nature, the landlord cannot seek eviction under Section 14 (1) (e) of the DRC Act. The case of *Satyawati Sharma v. Union of India*, AIR 2008 SC 3148 was relied upon by the learned ARC which extended the ambit of Section 14 (1) (e) to commercial need also.

8. In this revision petition, the tenant has strongly contested the bona fide need as claimed by the landlord and has contended that the certificate issued by Dena Bank dated 29.01.2013 has been filed by the landlord in an objectionable manner before the learned ARC. It is further submitted by the tenant that since this is a case of additional accommodation, leave to defend should have been granted by the learned ARC. Consequently, it is submitted that in so far as the impugned order suffers material irregularity, the same is liable to be set aside and leave to defend the eviction petition must be granted to him. On the other hand, the landlord has sought to sustain the impugned order and has contended that the same does not suffer from any material irregularity.

9. Learned Counsel for the parties were heard. In support of the contentions, learned counsel for the tenant has placed reliance on two decisions of the Supreme Court in *S.M.Mehra v. D. D. Malik*, (2001) 1 SCC 256 (1) and *Santosh Devi Soni v. Chand Kiran*, (2001) 1 SCC 255 to contend that where additional accommodation is sought by the landlord, normally leave to defend should not be refused. Counsel also relies on *Charan Dass Duggal v. Brahma Nand*, (1983) 1 SCC 301, wherein the Supreme Court has enunciated principles in relation to grant of leave to defend. Counsel has also relied upon *Inderjeet Kaur v. Nirpal Singh*, (2001) 1 SCC 706 to contend that a tenant cannot be thrown out from a premises summarily even though prima facie he is able to say that the claim of the landlord is not bona fide. Similarly, on this point, counsel also relies on *Liaq Ahmed & Ors., v. Habeeb Ur Rehman*, (2000) 5 SCC 708.

10. On the other hand, learned counsel for the landlord has relied upon *Sarla Ahuja v. United India Insurance Company Ltd.*, AIR 1999 SC 100 to contend that this Court's jurisdiction under proviso to Section 25-B (8) is merely supervisory in nature, only to ensure that the Rent Controller has not committed any illegality and that it is not permissible for this Court to come to a different conclusion unless the finding arrived at by the Rent Controller is so unreasonable that no Rent Controller should have reached such a finding on the materials available. Counsel has also relied on *Shiv Sarup Gupta v. Mahesh Chand Gupta*, (1999) 6 SCC 222 and particularly on the following:

“If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy.”

11. Counsel has also placed reliance on *R.C.Tamrakar v. Nidilekha*, (2001) 8 SCC 431 to contend that the landlord is the best judge of his requirements and neither the Court nor the tenant may endeavour to show the landlord how she should adjust himself. Counsel further relies on *Siddalingamma v. Mamtha Shenoy*, (2001) 8 SCC 561 and particularly on the following:

“The question to be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive the need is bona fide.”

12. Counsel further relies on ***Narender Kumar Jain v. R S Sewak, RC Rev. 5/2014 decided on 06.01.2014***, wherein this Court has held as follows:

“It is understandable that a room which is merely 6’ x 10’ would not be suitable for a law chamber. However, if, so the landlord desires it can be extended by removing the wall separating it from the other adjoining premises of the landlord, so as to extend its area to 12’ x 10.3’ then the same could provide a fair amount of space to set up an office/chamber to practice from.”

Counsel also relies on the following paragraph in this Court’s decision in ***Raj Kumar Khanna v. Parduman Singh, 204 (2013) DLT 312***:

“It is settled law that where a need of the landlord is bonafide and the same is genuine then it is not proper on the part of the tenant to have doubts towards the landlord who cannot attribute any malafide and he cannot be deprived of the bonafide enjoyment of his property.”

Lastly, counsel relied on ***Madan Lal Gupta v. Ravinder Kumar, (2001) 1 SCC 252*** to contend that the cases of ***Santosh Devi (supra)*** and ***Liaq Ahmed (supra)***, as relied upon by the tenant do not lay down any principle of law.

13. This Court has perused the petition and the records. As compared to the grounds taken in the application for leave to defend, the tenant in this petition has not raised issue of ownership and the issue of commercial tenancy. Hence, the remaining grounds i.e., the

issue of alternate accommodation with the landlord and the bona fide need of the landlord may be dealt with by this Court.

14. On the issue of alternate accommodation, this Court is of the view that the reliance by the tenant on the cases of *S. M. Mehra*, *Santosh Devi Soni and Liaq Ahmed (supra)* are misplaced. This Court is of the view that decision in the said cases were given in the peculiar set of facts and such decisions would not be applicable to the present case as the facts are entirely different. Moreover, as has been relied upon by the learned counsel for the landlord, in the case of *Madan Lal Gupta (supra)*, the Hon'ble Supreme Court has held that neither *Santosh Devi Soni (supra)* nor *Liaq Ahmed (supra)* lay down any principle of law. It was further observed that in these cases, certain orders were passed on the facts arising in them.

15. This Court of the view that in so far, the landlord was successful in establishing the twin requirements under Section 14 (1) (e) of the DRC Act, learned ARC has correctly refused to grant leave to the tenant to defend the eviction petition. The twin requirements were satisfied by the landlord when he contended that the tenanted premises is required bona fide by him for extending his already existing business of trading in artificial jewellery as the current space was not sufficient while providing particulars to show the insufficiency and also contended that there is no alternative suitable accommodation. Admittedly, the landlord has done so. In contrast, the tenant has not made any averment as to the existence of alternate suitable commercial accommodation, so as to falsify the stand of the landlord.

Thus, there does not arise any triable issue and the learned ARC is legally correct in refusing to grant leave to the tenant on this issue.

16. With respect to bona fide need, the tenant has strongly contested that both the sons of the landlord are well settled and hence, the contention of the landlord that his sons would be joining the business is false. The tenant also contends that the landlord has concealed before the learned ARC, the fact that his elder son Mr. Devesh Kumar has shifted to Delhi during the pendency of the eviction petition and that the certificate dated 29.01.2013 issued by Dena Bank has been filed in an objectionable manner. From a perusal of the record, this Court notices that the elder son, Mr. Devesh Kumar has indeed shifted from Gujarat to Delhi during the pendency of the eviction petition. As on 19.08.2011, when the landlord filed his reply to the leave to defend application, the elder son, Mr. Devesh Kumar was living in Gujarat but has thereafter, shifted to Delhi. Therefore, the conclusion of the learned ARC on this point which says that *“from the said certificate it is clear that Devesh Kumar is residing with the petitioner in his residence and it falsify the statement of the respondent that Devesh Kumar is working at Gujarat”* cannot be faulted. Moreover, whether or not the son(s) were residing with the landlord is definitely not fatal to the case of the landlord since his requirement of the tenanted premises is for commercial purposes to extend his already existing business of trading in artificial jewellery.

17. With the respect to the younger son of the landlord, the tenant in this petition has filed “IT Returns” of the said son to contend that he is well settled, thereby trying to controvert the bona fide need of the

landlord. This Court notices that the said IT returns were not adduced before the learned ARC and hence, this Court does not deem it necessary to take them into consideration. Furthermore, the relative economic well being of a dependent of a landlord cannot be a ground to doubt the bona fide. An employed or earning member of a landlord could still be dependent upon him accommodation, both residential and commercial. Mere employment or engagement in a business enterprise does not ipso facto denote possession of immovable property of the nature whose need is espoused in a Section 14 (1) (e) petition.

18. In view of the aforesaid discussion, this Court finds no reason to interfere with the reasoned order of the learned ARC.

19. This petition is without any merit and is accordingly dismissed.

**NAJMI WAZIRI
(JUDGE)**

AUGUST 22, 2014/acm/vmk