

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

+ **RC. REV.No.178/2014**

% **18th November, 2014**

M/S. SHIV DAYAL MAL MAUJI RAM Petitioner

Through: Mr. Kirti Uppal, Senior Advocate
with Mr. Anil K. Pruthi, Advocate.

Versus

DHANPAT RAI AND ORS. Respondents

Through: Mr. Vijay Pandey, 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 Rent Controller (RC) dated 11.2.2014 by which the RC has dismissed 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 with respect to the tenanted shop forming part of property bearing no.2914, Bahadur Garh Road, Teliwara, Delhi-110006.

2. Respondents/landlords filed the *bonafide* necessity eviction petition stating that the tenanted shop is required by respondent nos.1 and 2 herein (petitioner nos. 1 and 2 in the eviction petition) for starting their business of artificial jewellery and toys and that they do not have any alternative suitable accommodation available with them to start the business.

3. In a *bonafide* necessity eviction petition under the Act, three aspects are required to be seen for decreeing the petition. Firstly, there must exist a relationship of landlord and tenant between the parties and that the landlord is the owner of the property. Secondly, landlord must require the tenanted premises for his own use or for the use of his family members. Thirdly, the landlord must not have any alternative suitable accommodation.

4. In the present case, there is no dispute that there is a relationship of landlord and tenant between the parties and that the respondents herein are the owners of the tenanted shop. The issue is with respect to whether the respondents have alternative suitable accommodation being the first floor above the tenanted property bearing no.2915, and which is one hall.

5. Learned senior counsel for the petitioner argues that this premises on the first floor is alternative suitable accommodation and

therefore leave to defend should be granted. Reliance is placed upon the two orders, one passed by a learned Single Judge of this Court in the case of *Mohd. Illyas Vs. Nooruddin and Ors.* RCR No.133/2011 decided on 15.11.2011 and the other order dated 9.10.2014 passed by the Supreme Court in the case titled as *Shanti Devi Vs. Rajesh Kumar Jain and Anr.* in Civil Appeal no.9378/2014. Both these orders read as under:-

“Order of High Court dated 15.11.2011:-

1. Order impugned before this Court is the order dated 19.01.2011 vide which the application for leave to defend filed by the tenant Mohd. Illyas in a pending petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as ‘the Act’) had been dismissed.

2. The premises are a suit shop i.e. no. 3865/3, ground floor, a part of property no.3865, Ward No.XI, Khirki Tafazzal Hussain, Darya Ganj, Delhi. H. Zahiruddin Ahemad was the owner and landlord of the premises who had tenanted them out to the tenant namely Mohd. Illyas in the year 1960; rate of rent is Rs.200/- excluding electricity and water charges. After the death of the original landlord, the present petitioner had inherited this property and since that period i.e. since 29.9.1977 is realizing the rent of the suit premises from the tenant. In the eviction petition the grounds of bonafide requirement have been pleaded ; it is stated that the petitioners (three in number) have no other reasonably suitable residential and commercial accommodation with them. They have a large family and the details have been described. Petitioner no.1 has a family comprising of himself, his wife and one married son, a grandson and four daughters. He is residing on the first floor; the premises in dispute which comprises of a shop on the ground floor (6 feet x 12 feet) is suitable for him for his accommodation; petitioner no.2 is the other brother of petitioner no.1. It is contended that his family is also large and this shop is also suitable for his residential and commercial welfare; so also is submission qua the petitioner no.3.

3. In the application for leave to defend filed by the tenant it has been alleged that the shop in question is very small measuring 6 feet x 12 feet i.e. having an area of 72 sq. feet which is neither suitable for commercial and nor for a residential purpose; a double bed would also not fit in there. The triable issue sought to be raised by the petitioner is that the landlord has not approached the court with clean hands; he has a huge property measuring about 300 sq. yards at 5310, Sadar Bazar, Delhi which can be fit for the needs of the respondents; this factum has deliberately been concealed. In the reply to this corresponding para of the application for leave to defend this factum has not been disputed, however, it is baldly denied that the area is 300 sq. yards; the measurement of the said property has, however, not been disclosed. Submission of the petitioner that this factum of the concealment of this fact as also the area which is in possession of the landlord not having been disclosed, contention of the tenant being that a reasonably suitable accommodation is available with the respondents and this has raised a triable issue.

4. This submission of the petitioner has force. Present case has thus raised a triable issue. The application for leave to defend has been dismissed summarily; impugned order is accordingly set aside. Parties to appear before the Rent Controller on 28.11.2011, who shall proceed to deal the case on its merits.

Order of Supreme Court dated 9.10.2014:-

Leave granted.

2. In this appeal, short question falling for consideration is whether the appellant be granted leave to defend the eviction petition filed by the respondents-landlords.

3. Appellant is a tenant in respect of shop premises situated on the ground floor of a property No. 6157, Partap Street, Behind Kothi Bhagwan Dass, Gandhi Nagar, Delhi -110031 since 1988. The appellant has been engaged in carrying on her business (Disco Hair Dresser) in the said premises. The respondents-landlords filed an eviction petition under Section 14 (1) (e) of Delhi Rent Control Act (DRC Act) against the appellant, *inter alia*, on the ground of bonafide

requirement to open office-cum-display counter on the main road side to expand their business of cosmetic unit. The appellant filed application under Section 25B (5) of DRC Act read with Section 151 CPC seeking leave to defend the eviction petition. The appellant raised the plea that there is no bonafide requirement and that the respondents have alternative accommodation. The Addl. Rent Controller, Karkardooma Court, Delhi dismissed the application of the appellant-tenant on the ground that the appellant has failed to raise any triable issue. Being aggrieved, the appellant filed revision petition before the High Court under sub-section (8) of Section 25B of DRC Act and the same was dismissed. Hence, this appeal by special leave.

4. We have heard counsel for the appearing parties. Learned counsel for respondents contended that the landlords needed the property in question to expand their business, as the space currently available to them is insufficient. It was submitted that the appellant-tenant owned another property, along with her husband in the same locality, where she could shift her business. The appellant-tenant denied the issues raised by the respondents-landlords with respect to having alternative accommodations.

5. We are not inclined to go into the merits of rival contentions, lest, it would amount to expression of views on the merits of the matter. In the facts and circumstances of the case, we are of the view, that the appellant has raised a triable issue, in the sense, that there is a fair dispute to be tried in the eviction petition and the appellant be granted leave to defend. However, leave to defend could be granted to the appellant only conditionally. When the revision petition was pending before the High Court, the appellant agreed to pay to the landlords rent at the rate of Rs.3,000/- per month and the same could be continued.

6. The impugned order of the High Court in Revision Petition No. 347/2011 is set aside and the appeal is allowed. The appellant shall file her reply statement before the Addl. Rent Controller, Karkardooma Court, Delhi within four weeks from today and the learned Addl. Rent Controller shall afford sufficient opportunity to both the parties and proceed with the matter in accordance with law and dispose of the same preferably within a period of six months from the date of receipt of copy of this Order. Till the disposal of the

eviction petition, the appellant shall continue to pay rent at the rate of Rs.3,000/- per month on or before 7th of each succeeding English calendar month. No costs.”

6. The issue with respect to whether respondents/landlords have alternative suitable accommodation being one hall on the first floor bearing no.2915 is dealt with by the Rent Controller by holding that the same is not suitable alternative accommodation because premises on the ground floor are more suitable than the premises on the first floor for carrying on the business. Rent Controller also refers to the fact that shop on the ground floor attracts more customers than a shop situated on the upper floors. Rent Controller has accordingly held that even if the first floor of the property, bearing no.2915 and being one hall, is available to the respondents/landlords, the same is not an alternative suitable accommodation as compared to the tenanted shop which is situated on the ground floor. I must note that though the Rent Controller has not referred to any judgment, but the direct judgment on the point for arriving at the conclusion reached by the Rent Controller is the recent judgment of the Supreme Court in the case of *Anil Bajaj and Anr. Vs. Vinod Ahuja 2014 (6) SCALE 572* wherein the Supreme Court has held that tenants cannot dictate to the landlords that the landlords should not carry on their business from a

more suitable location and instead they should carry on their business from a less convenient location. Therefore, the property at the first floor bearing no.2915 surely is a less convenient accommodation and therefore the same is not an alternative suitable accommodation for grant of leave to defend and the Rent Controller has rightly dismissed the leave to defend application.

7. The orders which are relied upon by the petitioner have no application to the facts of the present case inasmuch as the order passed by the learned Single Judge of this Court on 15.11.2011 finds existence of alternative suitable accommodation and consequently arising of a triable issue. Whether or not alternative suitable accommodation exists is not a question of law but a question of fact as per the facts found in each case, and in the facts of the present case, the hall on the first floor bearing no.2915 is not an alternative suitable accommodation and consequently the judgment dated 15.11.2011 in the case of *Mohd. Illyas (supra)* will not in any manner be relevant for the disposal of this petition. Even the order of the Supreme Court dated 9.10.2014 which is quoted above is only an order and not a judgment laying down any ratio and the Supreme Court has specifically observed that in the facts of the case before the Supreme Court it was found that a triable issue arises as to whether or not an additional space was required for expansion of business. Therefore, the order of the Supreme

Court dated 9.10.2014 also has no application to the facts of the present case.

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

VALMIKI J. MEHTA, J

NOVEMBER 18, 2014
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