

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

+ RC.Rev. No. 267/2013

% **10th November , 2014**

DALIP KUMAR BAKSHI Petitioner
Through: Mr. M.M.Kalra and Mr. A.C.Mittal,
Advocates.

VERSUS

VIVEK KHURANA & ANR. Respondents
Through: Mr. J.R.Bajaj, Adv.

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 25 B(8) of the Delhi Rent Control Act, 1958 (in short 'DRC Act') impugning the judgment of the Additional Rent Controller (ARC) dated 26.3.2013 by which the ARC 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 DRC Act with respect to the tenanted premises being one shop no.2 in property no. WZ-201 (shop bearing no. WZ 201/2), Hari Nagar, G-Block, New Delhi-18.

2. In the eviction petition, there were two petitioners and who are the respondents herein. In the eviction petition the need which was pleaded was for the respondent no.1 herein/petitioner no.1 in the eviction petition for the purpose of carrying on business after his coming back from Australia and that he had no other source of income and therefore wanted to use the suit/tenanted premises for commercial purpose of opening a business. Respondent no.1 pleaded that having no source of income he had no option but to start his own business and to rehabilitate himself.

3. In a *bonafide* necessity eviction petition which is filed under Section 14(1)(e) of the DRC Act, three aspects are required to be seen by the Court. Firstly, there exists a relationship of landlord and tenant between the parties and landlord is the owner of the premises. Second is that the landlord needs the premises for the *bonafide* use for himself and/or his family members. Thirdly, the landlord must not have an alternative suitable accommodation.

4. Before this Court, it is the second and third aspects which are argued on behalf of the petitioner/tenant by raising the following arguments:-

(i) Earlier an eviction petition for *bonafide* necessity was filed in which there were three petitioners namely the present respondents and their late mother Smt. Kamla Khurana, and since that earlier eviction petition has been withdrawn, the present petition does not lie. A related aspect is that once the present respondent no.1 was the petitioner no.2 in the earlier eviction petition, he is bound by the order of withdrawal more so because as stated in the present eviction petition the earlier eviction petition was also for the need of the respondent no.1 herein.

(ii) Respondents/landlords have an alternative suitable accommodation being one shop in the very same premises WZ-201, and which being an alternative suitable accommodation, the leave to defend was liable to be granted and the eviction petition was liable to be dismissed. Related with this aspect is that the respondents have taken up different stands at different points of time with respect to the available alternative shop because in the earlier eviction petition this portion was shown as a shop but in the present petition it is shown as a store.

5. In my opinion, both the arguments urged on behalf of the petitioner have no substance and this petition is dismissed for the reasons stated hereinafter.

6. The contention that the earlier eviction petition filed by the mother Smt. Kamla Khurana bars the present petition is a misconceived argument for various reasons. Firstly, *bonafide* necessity is a continuing cause of action and withdrawal of a petition will not mean extinguishment with respect to the *bonafide* need and hence a mere withdrawal will not operate as *res judicata* or make the present petition barred by any provision of law. Not only the *bonafide* requirement is a continuous cause of action, the earlier eviction petition which was filed shows that essentially and basically the same was for the need of the mother Smt. Kamla Khurana and respondent no.1/son was to assist the mother. The relevant paragraphs of the earlier eviction petition showing that the earlier eviction petition was basically for the need of the mother are as under:

“18.(a) The ground on which the eviction of the tenant is sought

1.It is submitted that Shri S.W.Khurana was the sole, exclusive and absolute owner of the entire property bearing Municipal No. WZ-201 Hari Nagar ‘G’ Block by virtue of a ‘Will’ executed by his mother Smt. Shanti Devi and after the death of late Sh. S.W.Khurana the petitioners being the only legal heirs have become the co-owners by law of succession. Admittedly, the suit premises were let out by late Sh. S.W.Khurana.

2. That the premises are required

bonafide by Petitioner No.1 Landlady/Owner of the suit premises for herself as she has no other reasonably suitable accommodation. In short, petitioner No.1, a widow has no independent income of her own except a meagre amount of Rs.4300-00 as monthly rent of five shops forming part of the entire property. This petition is being filed on the basis of the latest Judgment by the Hon'ble Supreme Court of India in the case titled "Satyawati Sharma (dead) by LRs-Versus-Union of India & Anr. reported in III (2008) SLT-Pages 553-585.

3.It is further submitted that petitioner No.2 is the son of petitioner No.1 and is based in Australia, but not very well settled there with his wife and children. Though he helps petitioner No.1 (mother) financially yet petitioner No.1 has made up her mind to be independent financially, economically and socially in every respect and cannot continue to be a burden. It is further pertinent that petitioner No.1 alone cannot run any commercial set-up, but can manage to run the same profitably and successfully with the help of an employee."

7. Therefore, for both the reasons that *bonafide* necessity is a continuing cause of action and withdrawal of the earlier petition does not operate as *res judicata* and also because the earlier eviction petition was essentially for the need of the mother Smt. Kamla Khurana and not for the need of the present respondent no.1 to carry on business as pleaded in this petition, withdrawal of earlier eviction petition will not make any difference to the merits of the present petition.

8. So far as the second argument that there is availability of an alternative suitable premises in the form of a shop in the very same premises and the respondents have taken up different stands at different points of time that the said portion is a shop and not a store as stated in the present petition is concerned, even this argument is a misconceived argument because the respondents have rightly contended, and which contention has been accepted by the ARC in the impugned judgment, that the so called alternative shop had just a 5 ft. frontage on the front and which narrowed down to 1.5 ft. at the back, thus almost effectively making the subject alternative shop almost triangular in nature and therefore was not a suitable accommodation than as compared to the subject/tenanted premises which measures 8 ft. X 16 ft. and is in the form of a rectangle. It is settled law that tenants cannot force

landlords not to carry on business from a less suitable accommodation. Reference in this behalf can be made to a recent judgment of the Supreme Court in the case of *Anil Bajaj & Anr. Vs. Vinod Ahuja 2014 (6) SCALE 572*. There is also a catena of judgments on this aspect that tenants cannot force the landlords to carry on business from a less suitable portion/area if there is available a more suitable premises which is the tenanted premises. Also, in my opinion, the fact that this triangular portion was earlier called as a shop and presently is used as a store cannot make any difference because as stated above this so called alternative accommodation is not a suitable alternative accommodation which can be considered to raise a triable issue for grant of leave to defend.

9. 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.

NOVEMBER 10, 2014
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VALMIKI J. MEHTA, J.