

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

+ RCR No. 222/2014
% **4th September , 2014**

YOGINDAR KUMAR JAISWAL & ORS. Petitioners
Through: Mr. V.K.Srivastava, Advocate.

VERSUS

SHASHIBALA & ORS. Respondents
Through: Mr. Ravinder Sethi, Sr. Adv. with
Mr. S.N.Choudhri and Ms. Stuti, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? (Yes)

VALMIKI J. MEHTA, J (ORAL)

1. This rent control revision petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns the judgment of the Additional Rent Controller dated 15.3.2004 by which the *bonafide* necessity eviction petition under Section 14(1)(e) of the Act filed by the respondent/landlady has been decreed after trial.

2. The case set up by the respondent/landlady for *bonafide* necessity was that she has two sons namely Sh. Sanjeev Kumar and Sh. Sunil Kumar who are married and have their own families. It is stated that

the respondent-landlady alongwith her sons is residing at the property bearing no.A-113, Preet Vihar, Delhi and the family is carrying on business through a private limited company in the name and style of M/s Bhargava Stationery Mart (P) Ltd from the premises no. 2616-17, Nai Sarak, Delhi. Respondent/landlady pleads that she is desirous of settling her two sons separately both as regards business and residence in order to avoid future conflicts between the sons and their families and to avoid consequent loss of brotherly love and affection. Respondent/landlady pleads that her thinking is guided by the fact that in the families there is a history of disputes which had arisen between her late husband and her late husband's brother resulting in litigations and spoiling relations between her husband and his brother. It is pleaded that though there is a common kitchen but both the daughter-in-laws have temperamental differences often leading to quarrels between the daughter-in-laws. Respondent/landlady also pleads that there are differences between her two sons namely Sh. Sanjeev Kumar and Sh. Sunil Kumar. Accordingly, it is prayed that the tenanted premises are required both for residential and commercial purposes to settle her son Sh. Sunil Kumar and his family.

3. Though the eviction petition was contested on various grounds, before me, challenge is laid to the impugned order only on the following grounds:-

(i) The eviction petition is not *bonafide* because the son Sh. Sunil Kumar and his family are not expected to shift from the Preet Vihar locality to the suit/tenanted premises which are situated in Nai Sarak, in old Delhi. It is stated that the suit premises are situated in a slum area and therefore, it is not realistic to expect that Sh. Sunil Kumar and his family will shift from Preet Vihar to the tenanted premises.

(ii) Though the respondent/landlady has pleaded that quarrels exist between her sons, however, in the cross-examination of both the respondent/landlady who appeared as AW-1 and her son who appeared as AW-2 they conceded that there were no differences between Sh. Sunil Kumar and Sh. Sanjeev Kumar.

(iii) Though quarrels have been pleaded between the two daughter-in-laws, the stand is totally vague because no details of the dates, months and years have been given when the daughter-in-laws are stated to have had quarrels.

4. It may be stated on behalf of the respondent/landlady that she herself deposed as AW-1 and her son Sh. Sunil Kumar deposed as AW-2. On behalf of the petitioner/tenant, petitioner no.1 appeared in the witness box as RW-1. I may note that there was a sub-tenant in the suit premises, who was sued as R-8 in the eviction petition, and by a consent order of today's date in connected Rent Control Revision Petition no. 267/2014, time has been granted to the sub-tenant Sh. Vinod Kumar to vacate the subletted part of the tenanted premises on or before 31.12.2015.

5. The Additional Rent Controller has given the following discussion and conclusions in paras 16 to 18 in the impugned judgment 15.3.2004 for decreeing the eviction petition and I completely agree with the said discussion and conclusions which read as under:-

"PART-E

ARGUMENTS

16. Oral arguments as well as written arguments were advanced by both the sides and main focus of the Respondent argument was on the point that the needs as stated by the Petitioner are not genuine and merely the fact that the Petitioner is desirous of settling her two sons separately with respect to their business as well as residential purposes cannot be made a ground for the purposed of passing an eviction order conceding the said needs as bona fide need as defined in section 14(1)(e) of the DRC Act. The arguments were also advanced again on the lines of cross examination of the Petitioner witnesses as well as on the lines of chief examination of RW-1 to the effect that Nai Sarak locality being a congested locality will not be suitable for the Petitioner to shift her as well as her son residence there .

17. Whereas, on the other hand it is argued on behalf of the Petitioner that as far as the choice of locality being a posh and congested one is concerned, that cannot be a ground for denying her the relief as prayed for in view of the large family of the Petitioner consisting of almost ten persons of two different families at present living under one roof at Preet Vihar which keeping in view the human nature are not expected to have cordial relation coupled with the fact that the Petitioner during her life time had already seem bitter property disputes amongst her husband family which culminated into a family settlement before the Hon'ble Delhi High Court and hence in order to avoid the repetition of the same in her own family, her desire to settle her two sons and their family in their respective businesses and residences is infact a bona fide need on her part.

Part-F

FINDINGS/CONCLUSION

18. After considering the grounds taken in the petition, the evidence led by the parties led by the parties and the arguments advanced, the court is of the opinion that the present petition is entitled to be allowed for the following reasons :-

i. *The evidence brought on record to the effect that the earlier petition under section 14D DRC Act was dismissed is of no relevance with respect to the present petition as the ground taken in the said petition are entirely different than the one taken in the present one.*

ii. *The defence contention that the present Petitioner is not the landlady is not proved by way of leading any cogent evidence on the part of the Respondent, but rather it is proved on record and admitted by the Respondent in his cross examination dated -05.10.2012 also that the father-in-law and husband of the Petitioner were the owners/landlords of the suit property and the Respondent used to pay the rent qua the suit premises to the late husband of the petitioner. Even if the family settlement on the basis of which the present petition is claiming the ownership/landlady right qua the suit premises is proved or not proved, there is no doubt with respect to the present petitioner being one of the co-owner qua the law of succession through the original admitted landlord namely father in law and husband of the Petitioner. The said right of the Petitioner has also been upheld in the eviction petition No. E-127/2009 vide judgment date 08.04.2004 which has not been challenged till date and accordingly has attained finality by operation of law. **Hence the question of landladyship of the Petitioner stand decided in Petitioner's favour.***

iii. *The next defence contention that the Petitioner's two sons and their family are not dependent upon her for the purpose of their residence and profession/business in view of the fact that they are independent director with respect to M/s Bhargava Stationery Mart Pvt. Ltd. Presently functioning at 2616-17, Nai Sarak, Delhi and hence in a position to take care of their own needs without the support of the Petitioner, is also not appreciable. The Court cannot be*

oblivious of the fact that in the context of the Indian Society, the parents' responsibilities do not come to an end to moment their children start earning, but rather the same continued till their children are very well settled in their life in terms of their personal and professional life. Further, the above responsibility is also to be seen from the point of view of the changes in the society and its value system. It is an admitted case of the parties and a widely accepted general phenomenon that as soon as the children and particularly sons get married and have their own independent families, on account of the changed preferences/temperament/desires/ needs, they usually want to have their own independent set up with respect to the residence as well as with respect to the businesses. The Joint Family set up, in metro cities like Delhi, have almost come to an end. The evidence with respect to the frequent quarrels among the wives of two sons of the Petitioner has not been controverted by any contrary cogent evidence. Merely on account of the fact that the brothers themselves are having cordial relations, they cannot be expected to lead a life full of tensions on account of non cordial relations between their wives, which ultimately take away the family happiness and peace. Rather this again fortifies the Petitioner; contention that she being the Mother and head of such a Joint Family is obligated to take note of the needs of her Family members and find suitable solutions to their problems.

a. Further on account of the fact that it has also come on record that the premises No. 21616-17, Nai Sarak, Delhi is being used entirely for commercial purposes and having an area of only 58 sq. yards, the said premises cannot be stated to be fit for residential purposes.

b. The defence contention that the petitioner who alongwith her family is residing in so called posh colony of Preet Vihar is not expected to move to a congested colony of Nai Sarak also does not cut ice. As of date in Delhi on account of the ever increasing price of land as well as commercialization of every locality, the concept of posh colony and congested colony has lost its true meaning. A landlord who has acquired properties cannot be denied the benefit of enjoyment of his property when his need arises only on account of the argument that the same is not suitable for his own purpose.

*c. The Petitioner has very well demonstrated and as also observed by the Court above that the ground taken in the petition with respect to the need of the Petitioner to establish his both sons independently with respect to their residence and business are not merely whimsical in nature but rather based upon a very sound footing. It has already come on record that property at Preet Vihar is much smaller in size than the suit property and even otherwise as already established by the Petitioner there is no other property except the property at Preet Vihar and the suit property which can be occupied by each of her sons independently. **Hence the relief claimed by the Petitioner being of Bonafide Need stands established.***

In view of the foregoing, the eviction petition u/s 14 (1) (e) r/w section 25-B of the DRC Act filed by the Petitioner is hereby allowed and an eviction order is passed in respect of the suit premises, more specifically shown in red in the sit plan Ex. AW-1/12. However, it is made clear that the petitioner shall not be entitled to get the eviction order executed before expiry of six months running from today. No order to costs.”

6. I do not find any illegality or perversity in the reasoning of the Additional Rent Controller to interfere with in my revisional jurisdiction inasmuch as, if there has been a history of litigation in the family of respondent/landlady on account of disputes between the late husband of the respondent/landlady with his brother, it is a legitimate expectation that the landlady wants that both her sons should get independently settled not only in residence but also in business. Such a need cannot be said to be malafide. Also, I do not agree with the arguments urged on behalf of the petitioners that no particulars have been given with respect to the quarrels between the daughter-in-laws, inasmuch as, in cases such as the present, I do not think diaries are maintained by noting down the date, month and year of the quarrels which take place between the daughter-in-laws as also the nature of the quarrels. Trivial quarrels and temperamental differences are enough for the respondent/landlady to settle both the sons with their families separately and nothing malafide can be imputed on this count as against the respondent/landlady because small quarrels many a times lead to bigger fights between the families. Even if there is a discrepancy as to quarrels

between the sons cannot mean that there are no quarrels between the daughter-in-laws. Also, the contention that the son Sh. Sunil Kumar with his family would not be interested in shifting to a 'slum area' is a misnomer because unfortunately most of the areas of the walled city of Delhi such as Chandni Chowk for some reason continued to be called 'slum areas' because of the Slum Areas (Improvement and Clearance) Act, 1956, whereas the ground reality is that probably some of the richest and the most financially influential people stay in the walled city of Delhi. Therefore, merely because only technically an area is classified as a slum area will not mean that the area in fact is an area where there are slums. It is therefore a complete misnomer for the petitioners to contend that the tenanted premises are in a slum area. To complete narration on this aspect it may be noted that lacs of people with their families stay in the walled city area of Delhi in huge buildings and which is hence not a slum area. The walled city area is in fact also a flourishing hub for all types of commercial activities.

7. In view of the above, I do not find any merit in the petition and therefore the same is dismissed, leaving the parties to bear their own costs.

SEPTEMBER 04, 2014
ib

VALMIKI J. MEHTA, J.