

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

+ RC. REV. 245/2014 & CM Nos. 11899/2014 (stay),
11900/2014 (exemption)

% **28th July , 2014**

SHRI BHUPINDER SINGH BAWA Petitioner
Through: Mr. Rajesh Yadav, Ms. Ruchira
Arora, Advocates

VERSUS

SMT. ASHA DEVI Respondent
Through: Mr. S.K. Sharma, Mr. Mayank
Bansal, Advocates

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This revision petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') against the judgment of the Additional Rent Controller dated 26.2.2014 which has decreed *bona fide* necessity eviction petition with respect to property bearing no. C-1(old property no. 285) Basai Dara Pur, Sharda Puri, Ring Road, New Delhi –

110015 comprising two rooms and one small room as shown in red colour in the site plan Ex. PW-1/2. The eviction petition has been decreed after trial.

2. Respondent/landlady claimed the tenanted premises for commercial use for opening of the business of sanitary and hardware by her son Sh. Vaibhav Maheshwari who was pursuing MBA at the time of the filing of the eviction petition and completed the same in June, 2011 and who wanted to start his separate business. The tenanted premises is situated in the costly and precious marble market of Raja Garden, and therefore, the tenanted premises is in a very profitable area for the purpose of establishing the business of sanitary and hardware by the son of the respondent namely Sh. Vaibhav Maheshwari.

3. There was no dispute as regards the relationship of landlord and tenant and also with respect to the number of family members of the respondent/landlady, and which is so noted in para 4 of the impugned judgment. The disputes were with respect to availability of various alternative premises for the son Sh. Vaibhav Maheshwari to carry on his business and which properties were said to belong to the husband of the respondent, the family company M/s Jaishree Granites Pvt. Ltd., and, one small shop in the lane in this very property belonging to the respondent/landlady. It was also pleaded that the son Sh. Vaibhav

Maheshwari was a Director in the family company M/s. Jaishree Granites Pvt. Ltd. having a very nominal share and was getting a salary of Rs. 50,000/-, and therefore, he did not require the premises for starting his business.

4. So far as the aspect that the small shop in the lane, not on the main road, which allegedly can be used for starting of the business, besides the fact that the shop is a very small shop and not as big as the tenanted premises which comprises of three rooms is concerned, it is perfectly open to the landlord to choose a more suitable premises for carrying on the business by her son and the landlady cannot be dictated by the tenant as to from which shop her son should start the business from. This is the ratio of the recent judgment of the Supreme Court in the case of *Anil Bajaj & Anr Vs. Vinod Ahuja 2014 (6) SCALE 572*. Therefore, the very small shop in the side lane cannot be said to be an alternative suitable premises available for commencing and carrying on the business of sanitary and hardware by the son of the respondent/landlady.

5. So far as the aspect that the son is a Director in the family company M/s. Jaishree Granites Pvt. Ltd. is concerned, this cannot mean that as a young entrepreneur the son cannot start his own business of sanitary and hardware. It is not the law that if a family member of a landlord/landlady

requires the premises for starting of the business of his/her young son who is an MBA, there can be lacking *bonafides* for the eviction petition and that the son must continue as a Director in the family company M/s. Jaishree Granites Pvt. Ltd. and not branch out as a young entrepreneur. There is no law that a family member of the landlady can be prevented from opening a new business. Therefore, merely because the son Sh. Vaibhav Maheshwari is presently a Director in the company M/s. Jaishree Granites Pvt. Ltd., the same cannot mean that there is no need of *bonafide* necessity of the tenanted premises for starting of a fresh business of sanitary and hardware by the son Sh. Vaibhav Maheshwari. The argument that the son Sh. Vaibhav Maheshwari is already a Director in the family company, and therefore, there is no *bonafide* need of the tenanted premises, is a misconceived argument and the same is therefore rejected.

6. The following properties have been stated to be available to the son Sh. Vaibhav Maheshwari, and which properties are said to be properties owned by the husband of the respondent Sh. Shyam Sunder Maheshwari or the properties belong to the family company M/s. Jaishree Granites Pvt. Ltd.:-

(i) Property no. 285-B, Sharda Puri, Ring Road, New Delhi which is belonging to the husband of the respondent Sh. Shyam Sunder Maheshwari.

- (ii) Property no. A-2/53, W.H.S., Kirti Nagar, New Delhi belonging to the husband of the respondent Sh. Shyam Sunder Maheshwari.
- (iii) Property nos. 43,44,45 and 46 situated, Block-A-1, W.H.S. Kirti Nagar, New Delhi owned by the company M/s. Jaishree Granites Pvt. Ltd..
- (iv) Property no. D-201, Mansarovar Garden, New Delhi which is belonging to the husband of the respondent Sh. Shyam Sunder Maheshwari.
- (v) Property no. D-12, Rajouri Garden, Ring Road, New Delhi which is the registered office of the M/s. Jaishree Granites Pvt. Ltd.

7. So far as the properties belonging to the company are concerned, surely, they not being in a market area cannot be said to be alternative suitable premises for carrying on the business of a shop of sanitary and hardware for which the tenanted premises on the main road are ideally suitable.

8. So far as the property no. 285-B is concerned, the said property is not lying vacant and is being used as a retail outlet for marble and granite by the husband of the respondent/landlady. Once these premises are not vacant and are being used by the husband, Sh. Shyam Sunder Maheshwari for his business as a retail outlet for marble and granite, it cannot be argued that the husband must not use the said premises and vacate the same for opening of the shop by the son Sh. Vaibhav Maheshwari. A tenant cannot force the

family member of a landlady to stop his business so that the tenant in the tenanted premises is not evicted. It is not the law that a petition for *bona fide* necessity does not lie because the husband of the landlady who is carrying on a business in a premises must stop that business, for a son who wants to open a new business, more so when the tenanted premises are more suitable being on the main road and in a valuable market. The argument, therefore, with respect to property bearing no. 285-B being alternative premises is rejected.

9. At this stage, I would like to clear an aspect that the counsel for the petitioner has argued that this property no. 285-B is shown in the Income Tax Returns of the respondent/landlady as her property, and therefore, actually the property no. 285-B is owned by the respondent/landlady. This argument appeared to have some merits on the first blush, however, the argument really is only making mountain out of a molehill because the suit property no. 285-B in the Income Tax Returns of the respondent/landlady shows the rental incomes from the tenanted premises in her return, and the alphabet 'B' appearing after number 285 is wrongly written in the Income Tax Return of the respondent/landlady. In any case, the suit property no. 285-B belongs to the respondent/landlady is an argument which has no legs to stand upon because the case of the petitioner/tenant as per his own

pleadings was that the property no. 285-B belongs not to the respondent/landlady but to her husband Sh. Shyam Sunder Maheshwari. Therefore, no capital can be made out of the typing errors in the income tax returns of the respondent/landlady of shop property bearing no. 285 being wrongly typed as 285-B. This argument of the petitioner is also therefore rejected.

10. The next argument which was urged for existing of an alternative property was with respect to property no. A-2/53 at Kirti Nagar. In this regard, it has been proved by the respondent in her evidence that this property is owned by the husband of the respondent, and the same is not lying vacant inasmuch as the same is used by M/s. Jaishree Granites Pvt. Ltd. as godown for the stock of the marble and granite. I put it to the counsel for the petitioner to show me any averment made by the respondent that the premises no. A-2/53 is vacant and available to the son of the respondent for starting of the business, however, no deposition of the petitioner or any admission in the cross-examination of the respondent was pointed out that the property no. A-2/53 is lying vacant. Once the property no. A-2/53 is not lying vacant and is being used by the husband of the respondent for his business, this property cannot be alternative suitable property for dismissing of the *bonafide* necessity petition.

11. So far as the properties in Block A-1 at Kirti Nagar are concerned, once it is admitted that these properties belong to the company, thereafter it cannot be argued by the petitioner that properties of the company even if it is a family company, are available for starting of the business more so because this property is not vacant and is already being used as a godown for marble. This aspect is specifically admitted in the cross-examination by RW-1 Sh. Bhupinder Singh Bawa, petitioner/tenant, conducted on 9.12.2013. This relevant admission of the petitioner herein appears in the second page of the cross examination dated 9.12.2013 from the first line to the fourth line. Therefore, once the properties at Block A-1 are being used by the company, and is not lying vacant, it cannot be urged that this property should be vacated by the company for opening of the business by the son of the respondent. Also, assuming that more than one properties are available for carrying on the business or opening of the business, a tenant cannot dictate which property will be more suitable inasmuch as property on a main road in a very valuable area such as the tenanted premises is a much better option for commencing of a new business. The argument of the petitioner, therefore, relying on the properties at Block A-1, Kirti Nagar is also misconceived and hence rejected.

12. That takes us to the final argument and the final property bearing no. D-201, Mansarovar Garden, New Delhi. It was argued by the petitioner that the first floor of this property was let out by the husband of the respondent to the brother of the husband of the respondent and which should not have been let out because the same could have then been used for the business of the son of the respondent. This argument is misconceived for various reasons. Firstly, a property on a main road and on the ground floor is much more suitable for carrying on the business of sanitary and hardware, then as against a property which is situated on the the first floor of the property no. D-201 which is on tenancy with the brother of the husband of the respondent/landlady. During the course of the arguments, counsel for the petitioner sought to make out the case that the entire property including the ground floor of property no. D-201 was available, and therefore, the ground floor of the property no.D-201 is alternative suitable property. However, this stand of the petitioner is not correct because in the cross examination conducted of the petitioner as RW-1 on 9.12.2013, at page 2 of the cross examination, the petitioner has admitted that in the first floor and second floor of the property no.D-201, brother-in-law (Dever) of the respondent is carrying on his business. In fact, in this cross-examination at the end of the page 2 the petitioner only states that the son can carry on business from the

basement of property no. D-201, and therefore, impliedly admitting that the husband of the respondent is not the owner of the ground floor of this property. Also, there is no positive statement in any deposition of the petitioner in the court below that the ground floor of property no. D-201 is owned by the husband of the respondent. No doubt, it is stated that the property no. D-201 is owned by the husband of the respondent, however, once it becomes clear that the ground floor is not specifically stated to be owned by the husband of the respondent, and only the basement is owned as per the specific admission made by the petitioner in the cross examination on 9.12.2013, I do not find any error in the conclusion of the Additional Rent Controller that there is no ground floor of the property no. D-201 which is owned by the husband of the respondent and from where the son of the respondent can start and carry on his business. Merely because there is some amount of confusion with respect to the ground floor which is not owned by the husband of the landlady, the same cannot mean that the petitioner can take any advantage of that, more so when the same is to be taken with the fact that it is always open to the landlady and her son to decide which premises are more suitable for commencing and carrying on business of sanitary and hardware.

13. In view of the above, I do not find any reason to interfere with the detailed conclusion and exhaustive judgment of the Additional Rent Controller which has been passed after trial and whereby the eviction petition of *bona fide* necessity has been decreed. This petition is therefore without any merit and is accordingly dismissed, leaving the parties to bear their own costs.

JULY 28, 2014
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VALMIKI J. MEHTA, J