

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 03.02.2014  
Pronounced on : 01.10.2014

+ RCR 318/2013 & CM 13394/2013

SMT. PHOOL KUMARI & ORS ..... Petitioners  
Through: Mr. Kirti Uppal, Senior Advocate with  
Mr. O.P. Verma, Adv.  
Versus  
SHRI SHYAMBIR TYAGI ..... Respondent  
Through: Mr. P.S. Bindra, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

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1. The present revision petition filed under section 25 B(8) of the Delhi Rent Control Act, 1958 ("the Act") assails an order dated 09.04.2013 passed by the Learned ARC (West) THC, Delhi whereby the eviction petition was allowed and consequently the eviction order was passed.

**FACTS**

2. The landlord/ respondent filed the eviction petition against the tenants under section 14(1)(e) of the Act on the ground that the tenanted premises bearing No. WZ-5241/1, Basai Darapur, New Delhi was required for his own use as he intended to open a shop in the tenanted premises. The need for the tenanted premises/shop is for commercial purpose and that it was most suitable for his requirement.

3. The shop was let out by the father of the landlord to the husband of the tenant. After the husband's demise, his wife and their children became the tenants of the premises @ Rs. 990/- per month excluding all incidental charges. The landlord issued rent receipts against payments. There is no dispute to the fact that the landlord became the owner of the premises vide partition deed dated 11.01.1990. The landlord is a graduate from Delhi University and is noted to be unemployed; earlier he was engaged in the business of selling motor parts which was consequently shut down in 2004.
4. The landlord contended that with the growing requirements of his family, he was finding it difficult to meet their expenses, hence his need for the tenanted premises is bona fide.

### **IMPUGNED ORDER**

5. Before the Trial Court the learned counsel for the tenant, argued that the landlord did not have a requirement which could be classified as bona fide as mandated under section 14(1)(e) of the Act; the landlord had several other properties which could be used to open his business; the landlord concealed his monthly income and falsely submitted that he was unemployed; the landlord wanted to evict the tenant so that the tenanted premises could be let out at a higher rent; section 14(1)(e) of the Act would not be applicable in eviction petitions pertaining to commercial premises, the tenant and her children received a

meager income from the shop opened in the tenanted premises and that they have no other source of income.

6. The learned ARC held that insofar as an eviction petition filed for commercial purpose is concerned, the landlord can file an eviction petition under section 14(1)(e) by virtue of the Supreme Court judgment of *Satyawati Sharma v. Union of India*<sup>1</sup>. On the contention of the landlord not having a bona fide requirement for the tenanted premises, the learned ARC noted that the registered lease deed filed by the tenants showed that the landlord had let out another property owned by him in 2008 when he was unemployed. The Court considered whether such an act diluted the genuineness of the landlord's need for the tenanted premises and held that the eviction petition was filed in 2010 at a time when the landlord did not have any suitable alternate accommodation to meet his need. While the landlord may have been unemployed since 2004, the need for letting out the property arose in 2008 and the need for using the tenanted premises arose in 2010. This is indicative of the change in his requirement and the tenant cannot question it. The Trial Court held that at the time of filing the eviction petition, the landlord did not have any vacant commercial space which would have been suitable for meeting his requirement. The learned counsel for the tenant contended that the landlord owned another shop bearing No. WZ-60, Basai Darapur, Delhi which was on the main road and commercially more viable and suitable for the

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<sup>1</sup> AIR 2008 SC 3148

landlord. The Trial Court held that though the Court is not required to go into the question as to which property shall suit the requirement of the landlord since he is the best judge of his requirements, but the Court could look into whether the landlord has suitable alternate accommodation.

7. The Trial Court noted that as per the site plan filed by the tenants, the other properties were located in small *galis* or narrower roads. The tenanted premises is the only property which is located on the main road. The Court held that when the site plan itself certifies the locality of the tenanted premises is best suited for the landlord, the tenant cannot successfully argue that the alternate premises are best suited for the landlord's business. The learned ARC held that the landlord did not have a suitable alternate property where he could run his business and that the tenant did not have the right to dictate on how the landlord could use the other shops located in narrow lanes.
8. The counsel for the tenant argued that the landlord did not possess sufficient experience or expertise to start a business in trading motor part and other electronic parts. The Court rejected this argument by relying upon ***Ram Babu Aggarwal v. Jay Kishan Das***<sup>2</sup> to hold that experience is not a prerequisite to start a new business.
9. In answering the issue of the landlord being the owner of the tenanted premises, the learned ARC held that the relationship

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<sup>2</sup> 2009(2)RCR 455

between the parties as landlord- tenant stood established as the tenant has been paying rent to the landlord.

10. Finding that the tenant had not raised any triable issue, the leave to defend application was rejected and an eviction order was passed.

### **CONTENTIONS AND ANALYSIS**

11. The learned Senior Counsel, Mr, Kirti Uppal, *inter alia*, contended that the landlord did not have bona fide need for the tenanted premises as the landlord had several other premises which were available to him. The learned counsel submitted that the landlord suppressed the availability of these properties. It was further argued that the landlord's contention that his unemployment was creating financial hardships hence he needed the tenanted premises, was incorrect as the landlord had leased out another shop owned by him vide lease deed dated 20.8.2008; and yet another portion of the property on the ground floor for commercial purposes. It was also argued that when the landlord had the luxury to lease out other shops, he couldn't claim that he had no suitable alternate accommodation to open his shop.
12. This Court does not agree with the contention of the tenant. The law is settled that insofar as availability of alternate accommodation is concerned, the landlord is the best judge. Neither the Court nor the tenant can direct the landlord to

occupy a particular accommodation in order to avoid evicting the tenant. The Court can interfere when it is of the view that the landlord has alternative premises which are suitable but the landlord chooses to not put them to use. The Trial Court has considered the same argument in light of the site plan filed by both parties. This Court notices that the impugned order duly records that the site plan filed by the tenant reveals that all other shops allegedly owned by the landlord are located in *galis* or smaller lanes, which this Court considers is sufficient to prove that such other premises are not best suited for the landlord's need. It would be unjust if Courts were to force landlords to accommodate themselves in premises that not suitable to them in order to avoid evicting the tenant. When evidently the tenant's site plan reveals the unfavourable location of the other premises hence the argument of the tenant that such other shops are suitably located holds no merit.

13. On the contention of the landlord leasing out other shops yet claiming eviction of the tenanted premises thereby negating the bona fide need for the tenanted premises, the counsel for the tenant relied upon *Mattulal v. Radhe Lal* <sup>3</sup> wherein the Supreme Court held that the landlord who had extended the lease after its expiry and then filed an eviction petition on the ground that he wished to start a business dealing with iron and steel diluted the genuineness of the need. The Supreme Court held that the sudden requirement for eviction when the landlord

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<sup>3</sup> (1974)2 SCC 365

had voluntarily extended the tenure of the lease, there was no urgent need for the tenanted premises. Moreover, the Supreme Court noted that a landlord who was a grocer certainly did not have the expertise to run a business in iron and steel materials. This Court is of the view that the need of the landlord for the tenanted premises at the time of filing the eviction petition has to be *in praesenti*. It is admitted that the landlord has been unemployed since 2004 and during that time he did not file any eviction petition; in 2008 he leased out of one the shops, while he continued to be unemployed. However, the Court cannot reject an eviction petition solely on the ground that he has been unemployed prior to the filing of the eviction petition. The need for the premises could arise at any time, so long as it is present during the time of filing the eviction the *bona fides* would not be doubted. The judgment relied upon the tenant contain a fasciculus of facts different from the present petition. The landlord may not have felt the pressing need or the financial burden forcing him to evict the tenant in 2004 or thereafter. It is not the tenant or the Court to call upon the landlord to explain why he did not press an eviction petition when he was unemployed prior to filing the same. Needs of the landlord has changed and the Court has to take the growing demands of his family into consideration. If the landlord is of the view that he requires the tenanted premises in order to sustain his family, it is a ground that can be construed as bona fide requirement. The learned counsel relied on ***Jawahar Lal v. Ravinder Kumar***

***Khanna & Anr***<sup>4</sup> wherein this Court held that in instances where the landlord is affluent and yet seeks eviction of the tenant, the bona fide requirement of the landlord requires to be assessed and that Courts ought not to reject the leave to defend application at the first instance. This Court agrees with the ratio that Courts should not deny the tenant to defend himself and raise such triable issues which warrants the petition to be out to trial. However, in doing so, it is pertinent to note that the legislative intent should not be defeated in subjecting every eviction petition under section 14(1)(e) to trial. This would diminish the very purpose the summary nature of the proceeding. The abovementioned judgment relates to facts that are different from the present petition and the ratio cannot be applied in the present petition. The Trial Court, in adjudicating the eviction petition has rightly concluded that the landlord does indeed have a bona fide requirement for the tenanted premises. Moreover this Court notices that the shop leased out by the landlord was not located in a viable location thereby negating such shop as a suitable alternate location. The Supreme Court in ***Raghunath G. Panhale v. M/s Chaganlal Sundarji & Co.***<sup>5</sup> held:

*“A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business.”*

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<sup>4</sup> 195(2012)DLT239

<sup>5</sup> AIR 1999 SC 3864

14. This Court holds that every other ground raised before this Court have been duly addressed in the impugned order. This Court is of the view that the tenant as not raised any triable issue to warrant the leave to defend application being allowed. The landlord has shown a *prima facie bona fide* requirement and there is absence of other suitable accommodation.
15. Each of the contentions raised by the tenant have been duly dealt with and based upon the material on record, they have all been rejected with cogent reasons. The view taken by the Trial Court is plausible in law. The reasoning for and the conclusion arrived at in the impugned order does not suffer from material irregularity. There is no cause for this Court to interfere with the said order. There is no merit in the petition and it is accordingly dismissed.

**NAJMI WAZIRI  
(JUDGE)**

**OCTOBER 01, 2014/d**