

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

Reserved on: 15.04.2014
Date of Decision: 11.09.2014

+ RC.REV. 269/2013, CM APPL. 11528/2013 and 11530/2013

SH RAKESH KAPOOR

..... Petitioner

Through: Mr.Amit S. Chadha, Sr. Adv. with
Mr. Mayank Bughani, Adv.

Versus

LATE SMT KRISHNA PYARI THR LEGAL HEIRS & ANR

..... Respondent

Through: Mr. Vineet Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This revision petition under proviso to Section 25B (8) of the Delhi Rent Control Act (DRC Act) impugns an order dated 23.04.2013 whereby the petitioner's (tenant) application for leave to defend was rejected and an eviction order was passed in favour of the respondents (landlords) with the respect to one hall on the ground floor measuring 780 sq ft and one annexe on the first floor measuring 161 sq ft in property bearing no. 8833/2-3, Multani Dhanda, Pahar Ganj, New Delhi-110055 (tenanted premises).

2. The landlords had filed an eviction petition under Section 14 (1) (e) of the DRC Act on the ground of bona fide need. It was the case of the landlords that the tenant was inducted into the tenanted premises through a rent deed at a monthly rent of Rs.1,200/- for commercial use; that the tenanted premises was lying locked and unused; that they required the tenanted premises *bona fide*, for themselves and their family members for residence since the existing accommodation available with them was insufficient; that the landlord no.1 was 90 years old and had undergone hip surgeries, hence, he required the ground floor portion urgently; that landlord no. 2 was living in a cribbed accommodation on the first floor with his family comprising of 6 members; that the landlord no. 2, aged 61 years old was physically disabled by nearly 35% and was also diagnosed with other diseases and therefore, required the ground floor premises; that Smt. Charanjeet Kaur (one of the co-owners) was living on the 2nd and 3rd floor with her family of about 5 members; that Mr. A.S.Wason (co-owner and son of landlord no.1) was based in Canada and since his children have grown up and settled, he along with his wife wanted to return to India permanently; that whenever Mr. A.S.Wason visited India, he was forced to live in hotels due to paucity of accommodation. Consequently, the landlords prayed for an order of eviction in their favour.

3. An application for leave to defend was filed by the tenant. It was stated that landlord no. 1 had passed away and the need of landlord no. 2 was not bona fide; that the other portion on the ground floor was already occupied by the landlords; that the tenanted premises was being used for running a company whose turnover was around Rs. 200 crores and paid about Rs. 14.25 crores as tax during FY 2010-11; that the tenanted premises was very important to the tenant since it received daily mails and couriers from his clients and Government agencies and changing the registered address would be a mammoth task, thereby causing unnecessary inconvenience; that landlord no. 2 owned a hotel which was a four storeyed building, hence, there was no paucity of accommodation with the landlords; that Mr. A. S. Wason and his wife had no plans to settle in India and that his staying in hotels during his visit to India was false; that the contention of the landlords that the tenanted premises was lying locked and unused was false since summons of the eviction petition was received at the said premises; that since the tenanted premises was strategically situated the landlords wanted it actually for expanding their already existing hotel business. Based on the above, the tenant prayed for the grant of leave to defend the eviction petition.
4. Reply to the aforesaid application was filed by the landlords. Prior to this, an application for bringing on record the legal heirs of landlord no. 1 was filed and was allowed on 20.03.2012. In the

reply, it was admitted that landlord no. 1 had expired on 27.02.2012; that notwithstanding her death, the bona fide need for the ground floor still survived; that there was no accommodation available on the ground floor; that the tenant had earlier on two occasions changed the name and status of his company; that the landlords are indeed running a hotel but as the same is a place of business, it could not be used for residence; that the hotel cannot be used by Mr. A.S.Wason and his wife for residence. The other averments of the tenant in his application were denied as false and incorrect.

5. In the rejoinder to the aforesaid reply, the tenant once again refuted the bona fide need of the landlords. It was stated that the hotel was right across the tenanted premises and could very well be used for the purpose of residence. It was also stated that the landlords are running a travel agency business from a portion on the ground floor of the property. The tenant further reiterated the contents of his leave to defend application.
6. The learned ARC, after hearing the parties refused to grant leave to the tenant. As the ownership and the purpose of letting were not disputed by the tenant, the said issues were decided in favour of the landlords. In relation to bona fide need, the tenant had not disputed the age and physical disability or diseases of landlord no. 2. The number of his family members was not disputed by the tenant; nor did he dispute the extent of available accommodation available with

landlord no. 2 or his family members. The learned ARC held that the accommodation presently available with landlord no. 2 could not be considered to be sufficient. To the tenant's contention that the landlords needed the tenanted premises only to expand their already existing hotel business, the learned ARC held that it was merely a bald assertion.

7. In relation to availability of alternate accommodation, the submission of the landlords that the 2nd and 3rd floors of the property were already occupied was not disputed by the tenant. The tenant had averred that the landlords are in possession of a portion on the ground floor from where a travel agency was being operated by them. The learned ARC held that the landlords need not close down their business so as to accommodate themselves in the said accommodation for residential use. The tenant had also contended that the landlords have accommodation in the hotel run by them. To this, the learned ARC held that the rooms of the hotel cannot be treated as accommodation for residence since it was the landlords' source of business and income. In view of the above, the learned ARC held that the landlords were successful in establishing the requirements of Section 14 (1) (e) and the tenant had failed to raise any triable issue for the grant of leave to defend. Therefore, the tenant was ordered to be evicted from the tenanted premises.
8. In this revision petition, the tenant has raised similar grounds as were raised before the learned ARC. The landlords have sought to

sustain the impugned order as a reasoned one and not suffering from any illegality or irregularity.

9. This Court is conscious of the limited jurisdiction it has in Rent Control revisions under proviso to Section 25B (8) of the DRC Act. This Court notices that each of the arguments put forward by the tenant in this petition have been duly considered by the learned ARC.

10. It is a settled law that a tenant cannot neither suggest nor dictate the landlord as to how they should use their alternate premises to accommodate their need so that the tenant is not required to vacate the tenanted premises. It is also a settled law that comparative hardship cannot be a ground for denial of eviction which otherwise is made out on *bona fide* need. Therefore, for the tenant to contend that inconvenience would be caused if they were directed to vacate the premises is an untenable argument. For the tenant to argue that since the landlord had a hotel which was right across the road and the visiting family of Mr.A.S. Wason could stay in the said hotel, is unacceptable because it tantamount to suggesting and advising the landlord as to how they should accommodate themselves elsewhere.

11. The landlord's *bona fide* need for the premises is for residence. The meaning and connotation of residence is an abode for the family which is always associated with privacy, interaction with restricted number of people, intimacy and memories. In contrast, a hotel by its definition is a place for visitors and is a place of business. It is meant for short stays. It cannot be substituted for a residence or a home.

Besides, the occupation of the hotel accommodation would be additional expense upon the visiting family members, nevertheless, if the hotel accommodation were to be used for residential purpose it would be a loss to the family business. In neither of the eventuality, could it be considered to be a suitable alternate accommodation.

12.The impugned order is well reasoned and the views taken in it are plausible in law; it does not suffer from material irregularity. Consequently, the impugned order does not warrant any interference of this Court in the exercise of revisionary jurisdiction.

13.This petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

SEPTEMBER 11, 2014/vmk/acm