

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

Reserved on: 20.03.2014
Date of Decision: 10.09.2014

+ RC REV No. 293 of 2012

GOPAL DASS GOGIA Petitioner
Through: Mr. M.L. Sharma & Mr. Varun Nischal,
Advs.

versus

SHASHI PRABHA Respondent
Through: Mr. Kirti Uppal, Sr. Adv. with Mr. R.S. Sahni
& Mr. Anshumaan Sahni, Advs.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns an eviction order dated 29.3.2012 passed in Eviction Case No.E-233/11. The respondent's application under Section 14(1)(e) of the Act seeking eviction of the tenant from the tenanted premises, being one shop on the ground floor of property No.D-62, Kirti Nagar, Delhi, was allowed while the petitioner/tenant's application under Section 25-B(4) of the Act seeking leave to defend was dismissed.
2. The eviction-petitioner is an NRI settled in Kuwait. She wants to settle in India with her family and also to avail medical treatment for cancer which is stated to be was very expensive in Kuwait. The suit property comprises of ground and first floors with a room on the second floor.

Her family includes her husband and two sons, namely Rajni Chhatwal and Ravi Chhatwal. For the purpose of her settlement and treatment in India, she had already got the ground floor of the aforesaid property vacated from the erstwhile tenant Shri Ashwani Talwar. Her elder son Shri Rajni Chhatwal is running business of sale of soap detergent called “Saffa”, from the room on the second floor, which is also being used as godown and office. The property is otherwise fully built up. The elder son Rajni Chhatwal is unable to expand his business due to constraint of appropriate accommodation. He wishes to open a showroom, office and godown in the suit premises which, according to them, is appropriate place for his business. The eviction-petitioner has disclosed that all the three shops on the ground floor of the suit property were occupied by tenants and eviction had been sought of all three shops because there was a *bona fide* requirement for the entire accommodation. It was claimed that no customer can have access to the second floor; hence the second floor property was not suitable for the son’s business. He was dependent upon his mother, the eviction-petitioner, for accommodation. There was no other property in Delhi owned by either of them to suit their need for commercial accommodation. It was further stated that the business was not remunerative because of the insufficiency of the accommodation and the property was *bona fidely* required by the petitioner and her family. It was further submitted that the other son of the petitioner, namely Shri Ravi Chhatwal who was settled in Dubai, wanted to come to India and serve his mother. He also wants to set up the business of dry-cleaning since he had a running dry-cleaning business and had requisite expertise to set up the proposed business in

India and that he also requires a place to set up his business; that neither the eviction-petitioner nor the said second son have any other requisite/suitable accommodation in Delhi.

3. The petitioner/tenant's application seeking leave to defend was premised primarily on the grounds – that the eviction-petitioner was an NRI settled in Kuwait and her requirement was not *bona fide* as neither she nor her husband or sons have any intention to settle in India as they were already well settled in Kuwait since 1964; that the purported plan to settle in India was only to amass more wealth; that her husband had a dry-cleaning business in Kuwait and her ultimate objective was to sell the suit property to amass more wealth; that she had already been cured of her medical ailment and her visits to India was only occasional for medical check-up and; that she and her family had huge properties in Dubai. Furthermore, it was contended, that her son is not running any business under the trade name of 'Saffa'; that she had not filed any document supporting her frequent visits to India for medical check-up; that she had two properties in Meerut and Dehradun to satisfy her purported needs, whereas the tenant was old and had no other source of livelihood except from the suit property.
4. In reply to the application for leave to defend, it was submitted on behalf of the eviction-petitioner/landlady that the treatment for cancer at Max Hospital was not disputed by the tenant; and the latter could not restrain or dictate to her to curtail her desire to settle in India; that it is the eviction-petitioner's prerogative to provide accommodation to her son to expand his business; that the other properties alleged to have been owned by the landlady were not of commercial nature, hence, they

would be of no relevance or consequence because the requirement was of commercial accommodation. The eviction-petitioner submitted that the application for leave to defend failed to disclose any triable issue, hence it ought to be dismissed.

5. On the basis of the record and the submissions made, the Trial Court found that there was no denial of the fact that the petitioner was a cancer patient and was getting medical treatment at Max Hospital nor was there any denial that the petitioner was willing to settle in India. The Trial Court was of the view that since the petitioner had been frequently visiting India for treatment, it was sufficient to constitute her *bona fide* requirement. The Trial Court held that if the eviction-petitioner wants to avail the residence facility during visits to India for her treatment, it was a *bona fide* requirement. A similar situation was dealt with in *Sheela Sapra Vs. New India Electrical Industrial Co. P. Ltd.* 1992 (23) DRJ 65 which held that foreign citizenship does not disentitle a landlord to reside in his own premises on his stay in India. The Trial Court considered the production of passport to count the visits of the landlady to India to be irrelevant. The Trial Court further held that even if the landlady's son was not running any business in India then too she has an obligation to provide sufficient accommodation to her son to start a business. Furthermore, the Trial Court reasoned that there was no denial that the son was in possession of the second floor. The landlady had contended that the son was using the said floor for godown purposes and insofar as there was a requirement for a showroom and a separate place for storage of goods, the Trial Court found the need to be genuine and *bona fide*. The Trial Court further relied upon the Supreme Court dicta

in *Ram Babu Vs. Jai Kishan* 2009 RLR (NSC) 76 in support of the settled principle that experience to start a new business is not an essential requirement for seeking eviction of a tenant. As regards the other properties mentioned by the tenant as being sufficient to satisfy the needs of the landlady, the Trial Court held that the properties were situated in Meerut and Dehradun, both of which were not in Delhi where the property was required. Besides, the law in this regard is settled: that the landlord is the master of his choice and the tenant cannot dictate to the landlord as to how the alternate accommodation, if any, should be utilised without the vacation of the tenanted premises. Apropos the tenant being an old person and that he would suffer hardship if the eviction order was issued, the Trial Court held that comparative hardship is not a defence against an eviction petition. The Court relied upon *Susila vs. 2nd Additional District Judge, Banda* 2003 (2) SCC 28, which held that “*long possession of the tenant and hardships have no relevancy to decide bona fide requirement.*” The Trial Court held that even assuming that the tenanted premises provided the only source of earning/income to the tenant, the requirements of the landlady would supersede such circumstances. The Trial Court found that there was no triable issue. In view of the aforesaid reasoning, the impugned order was passed.

6. The learned counsel for the petitioner/tenant has reiterated the arguments made in the application for leave to defend. Additionally, he contends that the respondent/landlady had not filed her passport or Income Tax Returns only to conceal her status and income, hence, the entire eviction proceedings were initiated and pursued with *mala fide* intent. He further

argued that the landlady had failed to show that her family members were dependent upon her. It was submitted that mere pleadings in this regard was not sufficient and she was required to prove the ingredients of section 14(1)(e) of the Act and in the absence thereof, the eviction-petition was liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908. In support of this contention, the learned counsel has relied upon *Dr. (Mrs.) N.D. Khanna vs. Hindustan Industrial Corporation* 20 (1981) DLT 236 and *Mohan Lal vs. Tirath Ram Chopra & Anr.* 1982 (2) All India Rent Control Tribunal Delhi, 161 (F.B.).

7. He further relied upon the Supreme Court's dicta in *Precision Steel & Engineering Works & Anr. Vs. Prem Deva Niranjan Deva Tayal* 22 (1982) DLT 458 and *Inderjit Kaur Vs. Nirpal Singh* (2000) Suppl 5 SCR 707 to contend that "initial onus is upon the landlord to plead and prove the ingredients of Section 14(1)(e) of the Act. For grant of leave to defend only the averments made in the affidavit are to be considered, which if disclose triable issues, leave to defend is liable to be granted. Merit of the defence shall not be considered which obviously shall be proved in the course of the trial."
8. The learned counsel also relied upon *Charan Dass Duggal Vs. Brahma Nand* (1983) 1 SCC 301 and *Deena Nath Vs. Pooran Lal* (2001) 5 SCC 705 to contend that *bona fide* requirement has to be something more than a mere desire and necessity and not a fanciful need. The learned counsel would further contend that *bona fide* requirement is a state of mind and unless a person claiming requirement is subjected to cross-examination,

requirement without his evidence cannot be established¹.

9. In reply, the learned counsel for the respondent/landlady has submitted that the law on the issue was well settled – that foreign citizenship does not disentitle the landlord to reside in his own premises on his stay in India²; experience to start a business is not a pre-requisite³; that the tenant cannot dictate terms to the landlord⁴, that the other properties were either in far-off cities of Meerut and Dehradun, hence not suitable for the purposes of business of the sons of the landlady; that her treatment in Max Hospital was not disputed; that four (4) of the past seven (7) years, she has spent in Delhi whereas her elder son has spent seven (7) of the last eight (8) years in Delhi, while the younger son has spent three (3) of the last seven (7) years in Delhi and this clearly demonstrates that the respondent/landlady and her sons visit India very frequently and required the property for the stated purposes; that space is required for opening a showroom to entertain customers and a separate godown for storage of goods.
10. This Court is of the view that from the aforesaid discussion and arguments of the learned counsel for the parties, what emerges is that the landlady had established that she had been in India for a considerable period of time; she is being treated for cancer for many years; that the premises were required *bona fide* by her and her family for their commercial need; that the eviction of all the three shops on the ground floor was sought on the *bona fide* need for them for expansion of the

¹ *Nanlal Goverdhandas & Co. Vs. Samratbai Lilachand Shah AIR 1981 Bom 1*

² *Sheela Sapra (supra)*

³ *Ram Babu (supra)*

⁴ *Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal & Ors. (2005)8 SCC 252*

son's business. The properties mentioned in Meerut and Dehradun would be irrelevant since they are outside Delhi. The Delhi Rent Control Act, 1958, extends only to the geographical boundary of Union Territory of Delhi. Therefore, only the properties in Delhi would be relevant for any proceedings under the Act. It is settled law that a tenant can neither dictate nor suggest how a landlady should conduct her affairs apropos alternate premises, if any, that the tenanted premises are not vacated. The contention of the learned counsel for the petitioner/tenant that the tenant would face serious hardship in case he is evicted from the tenanted premises is untenable, in view of the settled legal position that comparative hardship cannot be a ground against eviction of a tenant from the premises on the ground of *bona fide* need.

11. 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.

SEPTEMBER 10, 2014
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NAJMI WAZIRI, J.