

. * IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: January 22, 2014

+ RC.REV. 348/2012 & C.M. No.12815/2012

GURBACHAN SINGH SACHDEVA Petitioner
Through Mr.Prag Chawla, Adv. with
Mr.Sudeep Sudan, Adv.

versus

GURBACHAN SINGH PURI Respondent
Through Mr.Raman Kapur, Sr.Adv. with
Mr.Gursharan Singh, Adv.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The petitioner by way of the present petition under Section 25B(8) of Delhi Rent Control Act (hereinafter referred to as “the Act”) has assailed the eviction order dated 31st May, 2012 passed by Additional Rent Controller, Central, Delhi.

1. Brief facts of the case are that the respondent filed an eviction petition against the petitioner in respect of shop no.1 bearing (private) No.2022-2023, Bank Street, Karol Bagh, New Delhi (hereinafter referred to as the “tenanted shop”) which was let out to the petitioner in the year 1973 for running a clinic at a monthly rent of ₹175. The respondent is retired from United Insurance Company Ltd. in January, 1993.

2. It was averred in the eviction petition that the respondent is in need of earning his complete and proper livelihood and wanted to start Insurance and Risk Management Consultancy Services. As the respondent wanted to lead

a respectable self supporting and independent life and did not want to be dependent upon anyone else.

3. It was stated that respondent had a space approx. 610 sq. ft. on the rear side of the tenanted shop but the same is being used now by his daughter-in-law for her designer studio and boutique. Moreover, the said space being on the rear side was not suitable for the requirement of the respondent. It was further stated the floor above the tenanted shop was let out for the last 40 years to a partnership firm for running a guest house. The respondent is unable to climb stairs due to old age, the said floor was not suitable to him, therefore, only the tenanted shop is suitable to him. Allegations against the petitioner are also made that without his permission the respondent had demolished the load bearing intervening wall and also had subletted/parted with possession of the tenanted shop to some other doctor.

4. In the leave to defend application, the petitioner admitted the relationship of landlord-tenant between the parties, however the bonafide need of the respondent was contested. It was averred that the respondent has a petrol pump at Janpath, Connaught Place and that being a commercial place could be used by the respondent for his proposed need. It was averred that the respondent had sufficient accommodation as the entire property except the tenanted shop was under the control and supervision of the respondent. The fact of respondent being retired from United India Insurance was doubted by the petitioner. It was further averred that the respondent had not disclosed the area of his residence. The damage and subletting as alleged by the respondent was denied by the petitioner.

5. The learned Trial Court while dismissing the leave to defend application of the petition vide the impugned eviction order observed that

the ownership and the relationship of landlord-tenant between the parties was not disputed. It was observed that the need of the respondent as stated by him to start his own practice as an Insurance Consultant to earn his complete and proper livelihood, could not be termed as fanciful, rather it was bonafide. With regard to the issue of retirement of the respondent from United India Insurance Company, the learned Trial Court observed the respondent by producing a copy of his pensioner's Identity Card was able to show that he had retired from United India Insurance Co. as averred.

6. The learned Trial Court in respect of objection of the petitioner with regard to starting up of new business by the respondent, observed that if the respondent before starting the practice as Insurance Consultancy will obtain necessary permissions or registrations, then he could not be compelled to obtain the said permission or registration before filing of the eviction petition. And even if he had no experience in the said new business, he could start a new business in the tenanted shop, as per the settled proposition of law.

7. The learned Trial Court noticed that in an earlier petition filed by the respondent under Section 14(1) (a) & (j) of the Act in the year 1988, the respondent had disclosed his requirement of starting business of Consultancy services. However the said petition was dismissed on the ground that no permission of the Slum Areas (Improvement and Clearance) Act had been obtained by the respondent. In another petition filed by the respondent under Section 14(1) (b), (j) and (e) of the Act also the respondent had disclosed about the requirement of starting the business of Consultancy Services. However, that second petition was withdrawn. In the opinion of the learned Trial Court, it had come on record since the year 1998 the respondent needs the tenanted shop for his bonafide requirement.

8. With regard to the contention of the petitioner that the respondent has sufficient accommodation, it was observed by the learned Trial Court that the space on the side of the tenanted shop that was being used by the daughter-in-law of the respondent, being situated on the rear side was not suitable to the respondent and so the respondent could not be compelled to shift to that accommodation. As far the floors above the tenanted shop were concerned, the learned Trial Court observed that the same were not lying vacant as a guest house was being run therein and even otherwise the respondent being an old person could not be forced to climb stairs if his health did not allow the same.

9. With regard to the issue of non-disclosure of area of residence of the respondent, the learned Trial Court opined that the respondent was not under an obligation to disclose the said accommodation as there is no commercial space available at the said residential premises and that it was for the petitioner to show that there was enough commercial space available to the respondent at the said residential premises that could be used for his bonafide requirements.

10. The contentions with regard to subletting, damage and that whether the tenanted shop is covered under Slum Area (Improvement & Clearance) Act or not, were irrelevant for deciding the petition under Section 14 (1)(e) of the Act as held by the learned Trial Court.

In the light of these observations, the learned Trial Court opined that the petitioner had failed to raise triable issues and so the leave to defend application was dismissed vide the impugned order. Aggrieved thereof, the petitioner has filed the present petition.

11. It is settled law that the High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. The High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'.

12. Proviso (e) to Section 14(1) of the Act is a special provision which has been enacted by the legislature for the class of landlords who require the premises genuinely and their requirement is bonafide and they do not have any suitable accommodation. The essential ingredients for attracting the proviso (e) of the Section 14 (1) of the Act are:

- a) The said premises are bonafide required by the landlord either for himself or for his family member.
- b) The landlord or the family member has no other reasonable suitable accommodation.

These twin thresholds are to be satisfied conjunctively in order to attract the provisions of Section 14 (1) (e) of the Act and the absence of even one of the said ingredients clearly makes the said provision inapplicable.

13. It is settled law that while deciding the leave to defend, the controller is not expected to examine the success or failure of the plea raised but has to examine merely a tenable case. The controller is estopped in view of settled law from recording a finding as to disputed questions of fact. All the above stated propositions of law has been laid down in the case of ***Charan Dass Duggal vs. Brahma Nand***, (1983) 1 SCC 301 speaking through Hon'ble Desai, J. observed thus:-

“5. What should be the approach when leave to defend is sought? **There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action** (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.”

In the same judgment, in para 7 it is further observed:-

“7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. **But equally a triable issue raised, enjoins a duty to grant leave. Maybe in the end the defence may fail.** It is necessary to bear in mind that

when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. **Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise. We are, therefore, satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant the leave.”**
(Emphasis Supplied)

14. The Supreme Court in the case of *M.M. Quasim vs. Manohar Lal*, AIR 1981 SC 1113 which is a three bench decision passed by the court speaking through Hon'ble Desai, J. (as His Lordship then was) has categorically flawed this approach of mechanically stating that the landlord is the best judge without applying a judicious approach in the matter. In the words of Hon'ble Desai, J. it was observed thus:

“Before turning to the next topic, **a word about the judicial approach to the question of personal requirement of the landlord under the Rent Act would not be out of place.** The learned judge of the first appellate court while upholding the claim of personal requirement of respondent 1 has observed as under:

"It is for the plaintiffs to decide whatever they think fit and proper. It is not for the defendant to suggest as to what they should do. The defendant has led evidence to show that the plaintiffs have got some more houses at Girdih.... The defendant appellant has also filed certified copy of judgment of one suit No. 47/73 which is Ext. only to show that plaintiffs have got a decree for eviction with respect to the other house at Giridih. I have already pointed out earlier that it is for the plaintiffs to decide which of the houses is suitable for them. It is not for the defendant to suggest that the house which will fall vacant in the near future is most suitable house for the plaintiffs".

This approach betrays a woeful lack of consciousness relatable to circumstances leading to enactment of Rent Acts in almost all States in the country. The time honoured notion that the right of re-entry is unfettered and that the owner landlord is the sole judge of his requirement has been made to yield to the needs of the society which had to enact the Rent Acts specifically devised to curb and fetter the unrestricted right of re-entry and to provide that only on proving some enabling grounds set out in the Rent Act the landlord can re-enter. **One such ground is of personal requirement of landlord. When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very raison de'etre of the Rent Act. Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is**

commenced in the Court. It would, however, be a bald statement unsupported by the Rent Act to say that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant. This approach would put a premium on the landlord's greed to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate. To curb this very tendency the Rent Act was enacted and, therefore, it becomes the duty of the Court administering the Rent Act to bear in mind the object and intendment of the legislature in enacting the same. The Court must understand and appreciate the relationship between legal rules and one of necessities of life-shelter-and the way in which one part of the society exacts tribute from another for permission to inhabit a portion of the globe. In 'The Sociology of Law', edited by Pat Carlen, the author examines the rent and rent legislation in England and Wales and observes as under: "The prevailing paradigms of neo-classical economics and empiricist political theory have determined the conceptual insularity of law and legal institutions, with the result that they and other social events appear as random existences independent of their historical formation. The force of any theory of law must of course lie in its explanatory power, and this in turn depends on the wider image of social relations which produces it".

(Emphasis Supplied)

15. In the case of *Deena Nath vs. Pooran Lal*, (2001) 5 SCC 705, the Supreme Court observed thus:

“The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire. The 'bonafide requirement' must be

in praesenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, **the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available.** The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. **Bonafide requirement, on a first look, appears to be a question of fact.** But in recording a finding on the question the court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). **If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment.** (Emphasis Supplied).

16. In view of the above, it is to be examined as to whether as per grounds stated in the leave to contest the eviction petition the petitioner is entitled to leave or not.

17. It is necessary to refer the main grounds stated in the affidavit of petitioner to seek leave to defend mainly as per para 3 of the affidavit. The same reads as under :

“3. I say that the petitioner has concealed material facts from this Hon’ble Court including other huge accommodation(s) available with petitioner. The petitioner has made vague allegation that premises in occupation of the petitioner is very much inadequate without specifying the details of the accommodation in possession of the petitioner. Entire property except tenanted premises, including rear portion of tenanted premises and all floor(s) above ground floor of entire property are within direct control and supervision of petitioner and are used by petitioner. Petitioner is in possession of sufficient accommodation viz.

- (i) Admittedly 610 square feet space at ground floor i.e. Double then the tenanted premises was very much available with the petitioner since its purchase and the same was allegedly given by petitioner to his daughter in law after 05.04.2010 i.e. withdrawal of his second petition from court of learned (the then) Additional Rent Controller, Delhi. Petitioner could easily use the said 610.00 square feet area at ground floor, if he have any genuine bonafide requirement, but petitioner firstly withdrawn his second petition on 05.04.2010 and thereafter allegedly given his daughter in law the ground floor, which shows that the petitioner is not in need of such area and thus the present petition apparent to be a false and misconceived petition. Petitioner has even otherwise failed to prove from what time and under what capacity, his daughter in law is using rear portion of tenanted premises.
- (ii) Regarding first floor and above portion at 2022-23 and at 2024, Bank Street, Karol Bagh, New Delhi-110005 allegedly to be used for running a hotel by one partnership firm, petitioner is totally silent qua name of such partnership firm, copy of agreement, rent of premises, who allegedly running hotel by obtaining license ? Petitioner has neither filed a copy of license

obtained by owner of the hotel nor filed on record any document to prove that he is not associated with the said hotel in any manner.

- (iii) Petitioner has also not disputed plea of respondent taken in second petition filed by petitioner that the petitioner is having a petrol pump at Janpath, Connaught Place, New Delhi which is a commercial place and can be easily used by petitioner, if so required.
- (iv) Petitioner has not disclosed area of his residence namely B-155, East of Kailash, New Delhi-110065 and whether the petitioner has paucity of space there.”

18. The petitioner has also referred copy of income tax return of the respondent for the financial year 2011-12, which shows his income for the said year as ₹11,23,911/- per annum received by him as pension and from other sources. It is also stated that shop No.1 in part of ground floor of 2022-23 Bank Street, Karol Bagh, New Delhi-110005 is the tenanted shop. The landlord is occupying much more space than the tenanted shop at 2022-23 and at 2024 Bank Street, Karol Bagh, New Delhi.

19. It also appears from the pleadings of the parties that the respondent has also filed various petitions against the petitioner at earlier point of time as per details given as under:

- (i) First petition filed by respondent vide petition number E-34/98 filed on 26th February, 1998 was an application for ejectment of tenant under Section 14(1)(a) & (j) of the Act, marked to court of Ms. Neena Bansal Krishna, learned ARC, Delhi. The same was dismissed by learned Presiding Officer on 22nd January, 1999 without giving any liberty to respondent.
- (ii) Second petition filed by respondent by petition number E-530/09 filed on 31st August, 2009 was an application for ejectment of

tenant under Section 14(1)(b) & (j) of the Act, marked to court of Sh. B.R. Bansal, ARC, Delhi. In reply to the same petitioner filed his written statement on 7th January, 2010 and has taken a specific and categorical objection that the respondent is owner of entire plot and the entire portion at back of the property in dispute and above the property in dispute is with the respondent, where the respondent is running a hotel and back portion is still vacant and the respondent is renovating the same to again let the same. On 25th January, 2010, learned (the then) Presiding Officer gave liberty to respondent to file replication with copy to the counsel for the petitioner. But the respondent withdrew the petition on 5th April, 2010. The same was dismissed as withdrawn on 5th April, 2010 with liberty to file fresh.

(iii) The present petition is a third one.

20. It is the case of the petitioner that the tenanted shop was admittedly let out by the respondent to the petitioner for commercial purposes as a partner in the firm with proposed name M/s. Chemicura. More so as per clause 6 of the agreement, petitioner was also entitled to use tenanted shop for commercial purpose for running clinic and pharmaceutical business including a pathological laboratory. The tenanted shop are allegedly being used by petitioner for running a clinic, for medical purposes, as the petitioner is a Doctor, a practicing Registered Medical Practitioner. Petitioner in capacity of a single tenant occupies the tenanted shop.

21. It is also alleged by the petitioner that no part of property in dispute ever has been sub let by petitioner as alleged. The specific statement was made that the entire tenanted shop is with the petitioner alone as a tenant.

The petitioner alone as a tenant is occupying the property in dispute. Neither the petitioner parted with the possession of the shop nor some other Doctor is practicing individually at the tenanted shop.

22. In the present matter, it is not denied by the learned Senior counsel appearing on behalf of the respondent that admittedly 610 sq. ft space at ground floor i.e. double than the tenanted shop was available with the petitioner when the earlier petition filed by the respondent including the ground of bonafide requirement under Section 14(1)(e) of the Act. The respondent in the earlier petition has taken the ground about the requirement of starting of consultancy services. It is not denied by the respondent that the said rear portion was given by him to his daughter-in-law after filing the earlier eviction petition. So it is evident, the respondent could have used 610 sq. ft. space at the ground floor if he intended to do so. The only explanation given by the learned Senior counsel that the rear portion was not in commercial nature and was suitable to him and he can only start his practice as insurance consultant from the tenanted shop which is occupied by the petitioner as the said tenanted shop is suitable to him. During the course of hearing, some photographs were shown to the court by both parties and it appears prima face indicate that even rear side of the area is being used by other shopkeepers for commercial purposes.

23. Applying the said tests to the instant case, it can be seen that the learned controller while passing the impugned order has merely applied the proposition that the landlord is the best judge to decide his needs in a mechanical manner and did not test the case of the competing parties on the objective standards. Thus, the impugned order passed by the learned Rent Controller suffers from legal infirmity.

24. The learned Controller legally erred in the not testing the case of both the parties on the objective standards which is the requirement of the law for examining the reasonableness and suitability of the accommodation available with him before the filing of eviction petition but the same was allowed by him to be used by his daughter-in-law. The learned Controller ought to have considered his plea of non-availability of reasonable accommodation vis-à-vis the accommodation which was available to him.

25. It is, thus, apparent that the need as defined is not a felt need but is the one which can said to be farfetched or based on the desires and imagination. All these facts clearly casts doubts on the stands of the respondent's bonafide need and the conclusion that there is no availability of the reasonably suitable accommodation which cannot be arrived atleast in the summarily manner warranting the leave to defend.

26. It appears to the Court that in the present case, the respondent had in his possession commercial accommodation from where he could operate his business but he did not choose the same. His need projected would be nothing but his desire to start his business definitely from the tenanted shop as *prima-facie* appears to this Court. The projected desire is to be examined at the time of trial. If the leave to defend is refused, an opportunity to test the requirement as averred by landlord is denied which is not the scheme of the Act.

27. This aspect directly goes to the bonafide requirement of the respondent as also to assess the suitability or otherwise of the space was available to him when he filed the first petition for bonafide requirement.

28. So, his desire that it was not suitable to him becomes a triable issue, which is seen to have been raised by the petitioner. The projected

requirement of the respondent is required to be tested by the Controller. From the respondent's own pleadings, a triable issue is seen to have been raised by the petitioner. It is not necessary to discuss the rest of issues raised by the petitioner with regard to other properties as per details mentioned in the application for leave to contest as the respondent has specifically denied having own said properties. The said aspect would also be considered at the time of trial.

29. The petitioner has raised few triable issues, which go to the root of the matter and if the petitioner is allowed to defend the eviction petition, the petitioner would have disentitled the respondent from seeking eviction on any ground, what to say, on the ground of bonafide need. The learned Addl. Rent Controller committed a grave miscarriage of justice by ignoring the well settled principle of law.

30. In view of the above, I am of the considered opinion that the learned Addl. Rent Controller has erred in appreciating the averments made in the leave to defend application. Thus, it could be seen that the petitioner has been able to raise prima facie, triable issue and cannot be overlooked without adjudication by way of evidence. The impugned order is therefore set aside. The petition is allowed, and the leave to defend is granted to the petitioner. The parties to appear before the concerned learned Addl. Rent Controller on 10th March, 2014. In the meanwhile, the petitioner is granted four weeks' time to file the written statement. The learned Addl. Rent Controller is directed to decide the matter expeditiously, if possible, within the period of one year.

31. Copy of this order be sent to the Trial Court forthwith.

32. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 22, 2014