

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

+ **RC. REV. No.414/2013 and C.M. No.17814/2013**

% **23rd September, 2014**

SH. MAHESHWARI PRASAD & ANR. Petitioners

Through: Mr. Manoranjan, Advocate.

VERSUS

SMT. SAROJ DEVI MITTAL Respondent

Through: Mr. Vijay Kumar Goyal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This rent control revision petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') challenging the impugned judgment of the Additional Rent Controller dated 17.5.2013 by which the Additional Rent Controller has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act with respect to the tenanted premises being shop bearing private no. C in property no.WZ-273/1, Inderpuri, New Delhi-110012 as shown in red

colour in the site plan Ex.PW1/3. Eviction petition has been decreed after evidence was led by both the parties and final arguments heard.

2. The original landlord Sh. Narinder Kumar Mittal, who is now deceased and is represented by his widow, the respondent herein, filed the eviction petition on the ground that he was carrying his business of dhaba/eating house in a shop bearing private no.A in the same property and which tenanted shop was taken on rent by the landlord from his brother. It was stated by Sh. Narinder Kumar Mittal that his brother wanted him to vacate his property and therefore Sh. Narinder Kumar Mittal filed the subject petition for *bonafide* necessity so that he could shift his dhaba/eating house business to the suit/tenanted premises which is located just few feet away from the place from where he was carrying on his business.

3. The respondents filed the written statement and disputed the claim of *bonafide* necessity by pleading that Sh. Narinder Kumar Mittal was carrying on his business smoothly from another shop almost adjacent to the tenanted premises. It was pleaded that the tenanted shop in which Sh. Narinder Kumar Mittal was carrying on his business was a shop owned by his own brother and therefore Sh. Narinder Kumar Mittal could continue to run his business from the said shop and that there was no *bonafide* need of the suit premises.

4. After pleadings were completed, evidence was led of both the parties. Sh. Narinder Kumar Mittal examined himself as PW-1 and examined his brother in whose property he was a tenant Sh. J.K. Mittal as PW-2. The petitioner no.1 herein examined himself as DW-1 and also examined two shopkeepers of the locality Sh. Ravinder Kumar as DW-2 and Sh. Raghubir Singh as DW-3. At the stage of final arguments, Sh. Narinder Kumar Mittal expired and therefore his wife being the present respondent sought her substitution, and which application was allowed and she – the widow, was substituted in place of Sh. Narinder Kumar Mittal.

5. There are three aspects which are required to be proved in a *bonafide* necessity eviction petition. First, that the petitioner in the eviction petition is the owner/landlord of the tenanted premises. Secondly, the landlord requires the premises *bonafidely* for himself and/or his family members and thirdly that the landlord has no other alternative suitable accommodation.

6. So far as the ownership of tenanted premises is concerned, the same was proved by means of title documents exhibited as Ex.PW1/1 (Colly), and the site plan of the tenanted premises of the property was proved as Ex.PW1/3. There was really not much issue with respect to the petitioner in the eviction petition Sh. Narinder Kumar Mittal being the

owner/landlord of the property, and there is really no serious dispute raised before me with respect to the aspect that Sh. Narinder Kumar Mittal was the owner/landlord of the suit property. It is therefore held that the respondent, and previously her husband Sh.Narinder Mittal, is/was the owner/landlord of the suit premises.

7. The main argument which was addressed before this Court and also before the court of the Additional Rent Controller below, was that Sh. Narinder Kumar Mittal was carrying on his business from an adjoining shop which was owned by the brother of Sh. Narinder Kumar Mittal, and that there was a collusion between the brother Sh.J.K.Mittal and Sh. Narinder Kumar Mittal because there was no threat to Sh. Narinder Kumar Mittal of being evicted from the shop in tenancy with him. It was pleaded that since the brother of Sh. Narinder Kumar Mittal owned the shop in which Sh. Narinder Kumar Mittal as a tenant was carrying on his dhaba business, there was no threat of eviction of Sh.Narinder Kumar Mittal and that the petitioners herein/tenants were wrongly sought to be got evicted from the suit premises.

8. The Additional Rent Controller in regard to this aspect of *bonafides* has observed that merely because two brothers enjoy a good relationship does not mean that Sh. Narinder Kumar Mittal would not have

been asked to vacate the premises belonging to his brother. In any case, Additional Rent Controller rightly notes that even if there is no threat of eviction, every person has a legal right to start/ carry on his business from the premises owned by him and he need not carry on his business in a tenanted premises. These aspects are dealt with by the trial court in the following paragraphs of the impugned judgment, and I agree with the reasoning contained in the same and which paras read as under:-

“31. Further the petitioner cannot be made to wait for his brother to file an eviction petition against him and eviction orders are passed against the petitioner in respect of shop No.A. Once the petitioner is having his own shop it is quite reasonable for him to contend that he wants to shift his business into the tenanted premises bearing no.C, which is owned by him rather than carrying out his business from a rented shop which is owned by his brother. Therefore, it cannot be said that the requirement of the petitioner is not bonafide.

32. PW1 has also deposed that he has no other reasonably suitable alternative accommodation available with him. The premises no.A in occupation of the petitioner cannot be said to be a reasonably suitable alternative accommodation since the brother of the petitioner is the owner of the same and he has already called upon the petitioner to vacate the said shop No.A. There is no evidence on record that the petitioner is having any other shop in his possession. It is, therefore, clear that the petitioner has made out a case for passing of eviction orders.

33. The respondents have contended that the petitioner has filed the present petition in collusion with his brother Sh. Jitender Kumar Mittal. Counsel for respondents has averred that the PW2, brother of the petitioner is also deriving profits from the Dhaba being run by the petitioner and this fact has been stated in the cross examination of

PW1. PW2 has averred in his cross examination that he is only receiving expenses and not profits.

34. Be that as it may the aspect of collusion is to be examined in light of the fact that PW1 and PW2 are real brothers and not strangers. Thus they may share concern for each other or continue to have cordial relationship or business relationship even though PW2 has made a request to the petitioner to vacate the shop no. A. There is no cogent and viable evidence on record to establish that the claim of the petitioner is not bonafide or genuine or that the petitioner has filed the present petition in collusion with his brother. Even otherwise if the petitioner simply contends that he wants to shift his business to his owned premises his desire is very much reasonable.”

(underlining added)

It is therefore clear that Sh. Narinder Kumar Mittal was *bonafidely* entitled to the suit/tenanted premises for carrying on his business.

9. It was contended on behalf of the petitioners that on account of death of Sh. Narinder Kumar Mittal the *bonafide* necessity eviction petition does not survive, and which aspect has been held against the petitioners by the Additional Rent Controller in paras 41 to 43 in the impugned judgment in the following words:-

“41. The counsel for the respondents has further contended that the shop was claimed by the petitioner for his bonafide requirement for running a Dhaba/ eating house. Now the petitioner has expired and nothing has been explained by his wife Smt. Saroj Devi regarding her bonafide requirement of the shop, and therefore, it is to be premised that L.R.Saroj Devi does not require to shop bonafide for the purposes of running a Dhaba/ eating house.

42. Section 14(1)(e) of the DRC Act provides for eviction of a tenant from the tenanted premises where the premises is required bonafide by the landlord for himself or any member of his family.

43. The tenanted premises in question is a shop which is to be put to commercial use. The petitioner required the tenanted premises for running his business/Dhaba. It is trite that the petitioner wanted to run the business/Dhaba for his benefit and also for the benefit of his family members. Infact any commercial venture undertaken by the petitioner would be definitely for the benefit of his wife as well. Now, since the petitioner has expired, any business being run by the petitioner would be in turn be inherited and managed by his wife/family members. Therefore, it cannot be said that the bonafide requirement of the petitioner has ceased to exist on his demise. The right to sue therefore survives.”

10. Besides agreeing with the aforesaid observations, It is necessary to refer to ratio of the judgment of the Supreme Court in the case of *Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LR's (1997) 4 SCC 413* and which judgment of the Supreme Court holds that merely because the landlord died during the pendency of the eviction petition, and which eviction petition was filed to start the business in the tenanted premises, the death of the landlord is not sufficient to dislodge the *bonafide* need established by the landlord. The relevant observations of the Supreme Court read as under:-

“.....That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord

died during the pendency of the writ petition in the High Court the bonafide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder (sic other) son.”
(underlining added)

Therefore, the eviction petition cannot be dismissed on account of death of the original landlord/petitioner Sh. Narinder Kumar Mittal.

11. The petitioners had taken up a *malafide* stand during the pendency of the eviction petition that they have handed over the possession of the tenanted premises to one Sh. Vipin Kumar on 5.5.2013 and therefore the petition has become infructuous, but this was a baseless and an dishonest plea and the same has rightly been rejected by the Additional Rent Controller in terms of following observations in paras 38 to 40 of the impugned judgment and which paras read as under:-

“38. However, the respondents having admitted that they are tenants in the tenanted premises under the petitioner were obliged to handover the possession back to the petitioner (or his L.R.s) only. Section 108 (q) of the Transfer of Property Act stipulates in unequivocal terms that on the determination of the lease, the lessee is bound to put the lessor into possession of the property. The act of the respondents in transferring the possession of the tenanted premises to a third party is, therefore, is contravention of the settled law.

39. Moreover, section 25 of the Delhi Rent Control Act also provides that case the respondent/tenant unlawfully transfers the tenanted premises to some third party, the eviction order shall be executable against that third party also and vacant possession shall be handed over to the landlord after evicting all such persons who claim through the tenant or have been illegally inducted by the tenant.

40. In this background the act of the respondents in transferring the possession of the tenanted premises illegally to a third party does not render the present petition infructuous. The application under section 151 CPC moved by the respondents is devoid of any merit and therefore stands dismissed.”

12. I completely agree with the aforesaid observations because petitioners cannot make an eviction petition infructuous by illegally parting with the possession of the tenanted premises during the pendency of the eviction petition. I may also note that if the possession of the premises was really handed over, there was no need for the petitioners to keep on contesting the *bonafide* necessity eviction petition and also to thereafter file this rent control revision petition in this Court, thus showing that the plea of transfer of the tenanted premises was a wholly dishonest plea, and the same was rightly rejected by the Additional Rent Controller that the same did not make the eviction petition infructuous.

13. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

SEPTEMBER 23, 2014

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