

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

+ **RC.REV.No.440/2012 & C.M.No.15123/2012 (Stay)**

% **14th October, 2014**

USHA DEVI & ORS. Petitioners

Through: Mr.G.P.Thareja, Advocate.

VERSUS

SHRI RANJEET SINGH Respondent

Through: Mr.K.V.Mavi with Mr.B.P.Mishra,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns the judgment of the Additional Rent Control dated 09.4.2012 by which the leave to defend application filed by the petitioners/tenants has been dismissed and eviction has been ordered with respect to the suit/tenanted premises being one shop on the ground floor of the property bearing no. H-6, Vijay Chowk, Laxmi Nagar, Delhi – 92.

2. In a petition for *bonafide* necessity filed under Section 14(1)(e) of the Act, three aspects have to be shown for the landlord to succeed. Firstly there exists a relationship of landlord and tenant between the parties. Secondly it has to be seen that the landlord requires the premises *bonafidely* for his need and/or for his family members. Thirdly, landlord must not have an alternative suitable accommodation.

3. In the present case, it is the second and third aspects which are argued before this Court as to the petition for eviction not being *bonafide* and the respondent/landlord having alternative suitable accommodations.

4. The subject eviction petition for *bonafide* necessity was filed by the respondent/landlord by stating that his sons have grown up and are aged 21 years and 15 years (when the eviction petition was filed in 2011), and the wife of the respondent/landlord therefore has sufficient time to devote to the business, she comes from a business family, and therefore she needs the suit/tenanted premises for opening of business of cosmetics and ladies jewellery.

5. In the leave to defend application, the petitioners/tenants allege that the respondent/landlord has various properties, and which are alternative

suitable accommodations i.e; (i) H-65, Laxmi Nagar, Delhi – 92; (ii) A-145, Shakarpur, Delhi; (iii) Shop No. 252, Kamla Market, New Delhi; (iv) Shop No.255, Kamla Market, New Delhi, and; (v) G-75, Vijay Chowk, Laxmi Nagar, Delhi. The respondent/landlord has in response categorically denied that he owns any of the properties or the businesses as alleged to be carried out in the aforesaid properties.

6. I do not find any error in this conclusion of the Additional Rent Controller, rejecting the stand of the petitioners/tenants as regards the alternative suitable accommodation inasmuch as bald averments made in the leave to defend application of the respondent/landlord owning properties cannot create triable issues, otherwise, in every case all that the tenants will have to do is to set up an imaginary ownership of a property said to belong to the respondent/landlord, and the courts then will be forced to grant leave to defend, because the tenants will contend that a *bonafide* triable issue arises on account of the landlord owning various properties. That is however not the law because there is a difference between a triable issue and a *bonafide* triable issue. A *bonafide* triable issue means that the issue must be reasonably raised and there must be some *prima facie* merit in the issue for the same to become a *bonafide* triable issue. It is settled law that bald

averments cannot create triable issues. Counsel for the respondent before this Court again reiterates that the respondent/landlord has nothing to do with any of the five properties as aforesaid and which are not owned either by the respondent/landlord or any of his family members.

7 (i) Two other properties which are stated to be alternative suitable accommodations is one shop in the possession of the respondent/landlord in the very same property in which the suit/tenanted premises are situated and portions on the first floor and second floor of the same property which are said to be used as a hostel by the landlord as per the case of the petitioners/tenants. It is argued that since the respondent/landlord is carrying on business in these portions of the property bearing no.H-6, Vijay Chowk, Laxmi Nagar, Delhi, the respondent/landlord has alternative suitable accommodation, and hence the eviction petition filed is not *bonafide*.

(ii) This argument urged on behalf of the petitioners/tenants totally lacks substance because a property to be an alternative suitable accommodation must be a vacant property. It is not the case of the petitioners/tenants that the other portions of the property no.H-6 are vacant because admittedly the case of the petitioners/tenants is that the respondent/landlord is carrying on a business from the other portions. Once the portions which are alleged to be

alternative suitable accommodations are not vacant, the said portions cannot be said alternative suitable accommodations because it is not the law that the landlord must stop his own business being run by him and must surrender the possession of that portion for his wife for carrying on of a business by her.

(iii) Therefore in my opinion, there is no other alternative suitable accommodation available to the respondent/landlord where his wife can start the business of cosmetic and ladies jewellery.

8. Counsel for the petitioners/tenants argues that the wife of the respondent/landlord has no experience, and therefore the need is not *bonafide*, however, I need not dilate on this aspect because the Supreme Court has now in a catena of judgments held that no prior experience is required when a petition is filed for *bonafide* necessity because experience is gained only after the business is started and not having prior work experience is not a disqualification for starting of a new business and seeking eviction of a tenant on the ground of a *bonafide* need.

9 (i) The last argument which was urged on behalf of the petitioners/tenants was by placing reliance on the judgment of the Supreme

Court in the case of *Santosh Devi Soni Vs. Chand Kiran (2001) 1 SCC 255*, and on the basis of this judgment it is contended that once the need is for additional accommodation, leave to defend should be granted.

(ii) This argument urged on behalf of the petitioners/tenants by placing reliance on the judgment of *Santosh Devi*'s case (*supra*) is misplaced for various reasons. Firstly, the judgment in the case of *Santosh Devi (supra)* is actually only a short order which essentially contains just two paragraphs. No facts of the case are stated in the cited order, and therefore it is not possible to decipher as to what was the extent of existing accommodation already available and because of which the leave to defend was granted. Surely, the Supreme Court was not laying down the law in *Santosh Devi*'s case (*supra*) that even when the accommodation with the landlord was grossly insufficient, and even one or more rooms are clearly found to be required by the landlord and his family members, then merely because the landlord already has an accommodation then leave to defend must be granted in all cases. For example admittedly additional accommodation may be required because landlord has five family members and has only one bed room, and such a case will be a case of additional accommodation, but in such cases it cannot be argued that the leave to defend is bound to be granted

because additional accommodation is sought. As held by the Supreme Court in the Constitution Bench judgment in the case of ***Padma Sundara Rao & Ors. Vs. State of Tamil Nadu & Ors, (2002) 3 SCC 533*** that ratio of a case is facts specific and even a single fact can make a difference to the ratio of two cases. The relevant para of the judgment in the case of ***Padma Sundara Rao (supra)*** observing so reads as under:-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

(iii) Another reason why the decision of ***Santosh Devi's*** case (***supra***) does not apply to the present case is that the present is not a case of *bonafide* necessity for an additional accommodation for the respondent/landlord, but, the requirement is for a premises for starting of a new business by the wife of the respondent/landlord. It is not that the wife is already carrying on business and she needs the additional accommodation to expand her business and, therefore really the cited order in the case of ***Santosh Devi (supra)*** has absolutely no application to the facts of the present case.

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

VALMIKI J. MEHTA, J

OCTOBER 14, 2014
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