

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

+ **RC.REV. 236/2010**

10th September, 2014

GOPI CHAND

..... Petitioner

Through Mr.Praveen Chauhan with Mr.Yash
Prakash, Advocates.

versus

SABIA NAZ

..... Respondent

Through Mr.Diwan Singh Chauhan, Advocate.

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 Controller dated 03.8.2010 by which the leave to defend application filed by the petitioner/tenant in the *bonafide* necessity eviction petition filed by the respondent/landlady under Section 14(1)(e) of the Act has been dismissed and eviction has been ordered with respect to the tenanted premises comprising of one shop at the ground floor and two rooms on the first floor at property no.5389, New Market, Sadar Bazar, Delhi (as shown in red colour in the site plan annexed with the eviction petition).

2. The respondent/landlady pleaded that she needed the suit/tenanted premises for starting of the business and settling her son Farhan Mansoor, who was aged 21 years in the year 2009 i.e the son would be about 26 years of age today. The respondent/landlady stated that she has no other alternative suitable premises in Delhi from where business can be carried on for her son.

3. The petitioner/tenant in the leave to defend application firstly contended that he was not the only tenant in the suit premises, but the tenancy was of a partnership firm carrying on business in the name and style of M/s Gopi Roadlines, and which partnership had besides the petitioner/tenant one other partner Ankur Bagai. The petitioner/tenant also pleaded that the respondent/landlady was the owner of many properties in Delhi including property nos.5389, 5390 and 5391 at New Market, Sadar Bazar, Delhi. It was also pleaded that since the respondent/landlady had these alternative premises, the *bonafide* necessity eviction petition lacked *bonafides*, and therefore had to be dismissed.

4. In para 4 of the leave to defend application, the petitioner/tenant has mentioned that the respondent/landlady is the owner of three properties i.e. 5389, 5390 and 5391. In response to the leave to defend application, the

respondent/landlady has specifically denied that the respondent/landlady is the owner of property nos. 5390 and 5391. It is stated that the property nos.5390 and 5391 are not owned by the respondent/landlady, but, by one Ms.Sheeba Parveen @ Naeema Naaz by virtue of a family settlement dated 26.10.1998. The respondent/landlady agreed that she is the owner of property nos.5388 and 5389 by virtue of the said family settlement dated 26.10.1998, and these two properties are completely occupied by the tenants and the list of tenants was enclosed with the reply to the leave to defend application.

5. The Additional Rent Controller by the impugned judgment dated 03.8.2010 has held that there is no tenancy in the name of the partnership firm but tenancy is only of the petitioner/tenant herein because it was the petitioner/tenant along with his wife who was inducted as tenants, and after the death of the wife of the petitioner/tenant who died issueless, only the petitioner/tenant remained as a tenant. The petitioner/tenant has filed the rent receipt issued in the name of the petitioner/tenant showing that it is only the petitioner/tenant who is the sole tenant in the suit/tenanted premises. Accordingly, the Additional Rent Controller has, in my opinion, rightly held that tenancy was only of the petitioner/tenant and not of the partnership firm.

I have stated these facts only to complete the narration because this aspect is not disputed before this Court that the petitioner/tenant is the sole tenant of the suit/tenanted premises and the finding of the Additional Rent Controller is incorrect.

6. Before this Court two aspects are argued on behalf of the petitioner/tenant. Firstly, it is argued that the respondent/landlady is the owner of the property nos 5389, 5390 and 5391 at New Market, Sadar Bazar, Delhi as stated in para 4 of the leave to defend application, and therefore this becomes a triable issue, and accordingly leave to defend should have been granted. The second aspect which is argued is that the eviction petition lacks *bonafides*, and therefore had to be dismissed.

7(i). The arguments which are urged on behalf of the petitioner/tenant before this Court are without any merits, inasmuch as the petitioner/tenant in para 4 of the leave to defend application while mentioning that the respondent/landlady owns the property nos.5389, 5390 and 5391 specifically admits that tenants are occupying the properties. In para 4 of the leave to defend application it is not the case of the petitioner/tenant that there are any vacant portions of these properties which are available to the respondent/landlady. Therefore, besides the fact as stated above that the

respondent/landlady is the owner of the premises bearing nos.5390 and 5391, it is the specific case of the petitioner/tenant himself that these premises are occupied by the tenants and the petitioner/tenant has not pleaded that there are any vacant portions in the property nos. 5390 and 5391.

(ii). So far as the property no.5388 is concerned, the reasoning and discussion given above applies for these premises not being available to the respondent/landlady because actually it is occupied by the tenants, even as per the case of the petitioner/tenant, as per para 4 of the leave to defend application. As already stated above, the respondent/landlady had filed along with the reply to the leave to defend application a complete list of tenants in the property nos. 5388 and 5389 which were owned by the respondent/landlady.

(iii). Therefore, except the tenanted premises, there is no other vacant portion of any premises owned by the respondent/landlady which is available to the respondent/landlady for carrying on the business by her son.

8. It may be noted that the petitioner/tenant has disputed the family settlement, but the petitioner/tenant has not even filed his rejoinder to deny the existence of the family settlement dated 26.10.1998 which shows that the

respondent/landlady is not the owner of the property nos. 5390 and 5391 and is only the owner of the property nos. 5388 and 5389 at Main Market, Sadar Bazar, Delhi.

9. I bear note that the respondent/landlady has pleaded a grievance that the petitioner/tenant is in fact using tactics to extort moneys because he is keeping the suit/tenanted premises locked inasmuch as the petitioner/tenant is no longer carrying on his business from the suit/tenanted premises because he in fact is carrying on his transport business from Khanna Market and Transport Nagar, Delhi. This aspect is denied by the petitioner/tenant, and therefore I need not examine this aspect in detail.

10. In view of the above, there is no merit in this petition, and the same is therefore dismissed. The interim order passed by a learned Single Judge of this Court with respect to interim user charges on 14.9.2011 is made absolute. Parties are left to bear their own costs.

VALMIKI J. MEHTA, J

**SEPTEMBER 10, 2014
KA**