

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

% *Judgment pronounced on: March 27, 2014*

+ **RC. Rev. No.494/2012**

HARBANS LAL MUNJAL Petitioner
Through Mr.Anil Sapra, Sr.Adv. with
Mr.Gaurav Mitra, Mr.Atul Kumar,
Ms.Samreen, Ms.Rupali Kapoor &
Ms.Nikhar Mulwani, Advs.

versus

RAMESH KUMAR KHATTAR Respondent
Through Mr.Sanjay Garg, 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, 1958 (hereinafter referred to as “the Act”) has assailed the judgment dated 23rd July, 2012 passed by Additional Rent Controller, Rohini, Delhi whereby the eviction petition filed by the petitioner was dismissed.

2. Brief facts for adjudication of the present case are that the petitioner filed an eviction petition against the respondent on the ground of bonafide requirement in respect of one shop in B-33, Tagore Road, Adarsh Nagar, Delhi-110033 (hereinafter referred to as the “tenanted shop”) which was let out to the respondent and was being used by the respondent as an auto repairs workshop under the name and style of ‘M/S Mateshwari Auto Works’.

3. The petitioner is the owner and landlord of the property bearing No.B-33, Tagore Road, Adarsh Nagar, Delhi-110033 (hereinafter referred to as the “suit property”). It is alleged that the petitioner and his wife are said to have enjoyed a high status in career as well as in social life and the petitioner has served as Academician for over 40 years. He has done B.A., M.A., B.Ed. and Law. He has retired as Vice Principal from Government School and awarded state level ‘Teachers Award’ by the Government of NCT of Delhi for his exemplary services to the teaching profession. The petitioner is the editor of a magazine published by Dharmarth Hospital. His wife has qualifications including B.A. and B.Ed. and retired as TGT from Government school.

4. The family of the petitioner consists of petitioner, his wife, married son, daughter-in-law, granddaughter and three married daughters. It is stated that the son of the petitioner along with his family resides on the first floor of the suit property while the petitioner and his wife reside on the ground floor of the suit property behind the tenanted shop.

5. It had been stated that the total accommodation available with the petitioner and his wife on the ground floor consists of only two rooms, one kitchen, one bathroom, one toilet, one bathroom-cum-toilet with one small store. It had been stated that the accommodation available to the petitioner on the ground floor for self use is grossly inadequate and insufficient qua his growing needs. The petitioner has to accommodate his daughters whenever they visit and stay with the petitioner in their summer/winter vacations and accommodate the daughters along with their school going children and their husbands in the drawing room. Accordingly, the petitioner needs at least three additional rooms which could be used as bed rooms for his daughters

who visit him together during vacations. The petitioner also stated that he also needed to have a library cum study room, dining room, and a pooja room on the ground floor.

6. It is the case of the petitioner that the tenanted shop is lying closed since the activity of scooter/auto repairs workshops/garage was banned/prohibited in residential area by the Supreme Court in the Writ Petition (C) No.4677/85 titled as *M.C.Mehta vs. Union of India & Ors.*

7. The petitioner also filed eviction petitions for shop No.2, shop No.4 and shop No.5 in the suit property, which was let out to other tenants, for the purposes of personal use and bonafide requirement with regard to construction of more rooms on the ground floor of the suit property as required which have been vacated and possession of the said shops have been handed over by the said tenants and the petitioner has been using the said portion for his personal use, as admitted by the respondent in his evidence. The petitioner after adjustment of the same is still in requirement of two bedrooms for visiting daughters, one dining room and pooja room.

8. The leave to defend application filed by the respondent was allowed by the learned trial Court. Thereafter the respondent filed his written statement and raised objections to filing of the eviction petition. The respondent denied the relationship of landlord-tenant between the parties and it was stated that the suit property was let out by the wife of the petitioner. It was contended by the respondent that petitioner and his wife did not need the tenanted shop as they have been residing on the first floor of the suit property along with their son and his family and the entire ground floor is lying vacant. It was stated by the respondent before the learned trial Court that the suit property is a double storey building measuring 240 sq. yards out

of which the respondent is in possession of only one shop measuring 10 sq. yards and the entire ground floor except the tenanted shop is lying vacant and also on the first floor, at least three rooms are lying vacant.

9. The learned trial Court while dismissing the eviction petition filed by the petitioner vide the impugned order, observed with regard to the relationship between the parties that though the respondent in his written statement had admitted his status as tenant in the tenanted shop, he had denied the landlord-tenant relationship between the parties. The respondent had averred that the tenanted shop was let out to him by the wife of the petitioner, however, the respondent admitted to the said relationship in his cross-examination. On the basis of the same, the learned trial Court opined that the relationship of landlord-tenant existed between the parties.

10. With respect to the issue of ownership qua the tenanted shop, though the respondent denied the ownership of the petitioner, he had not produced any material to support his contention. The learned trial Court opined that once the relationship of landlord-tenant and letting out of the tenanted shop by the petitioner to the respondent was admitted by the respondent, then the respondent was estopped from challenging the ownership of the petitioner qua the tenanted shop.

11. With respect to the issue of bonafide requirement, the learned trial Court observed that the petitioner had filed the eviction petition stating that he needed a dining room since the existing dining room on the ground floor has a passage across it and hence cannot accommodate both sofa set as well as dining table together. The learned trial Court opined that on the face of it, there was an admission on the part of the respondent that a dining room was still in existence on the ground floor. The petitioner and his wife alone are

residing on the ground floor of the suit property and in the opinion of the learned trial Court the petitioner had failed to prove how and in which manner the dining room on the ground floor was not suitable to them. Though it had been stated that there is a passage across the existing dining room, the petitioner was using the same earlier also and there is no change of facts and circumstances which made the dining room unsuitable to the petitioner. In the opinion of the learned trial Court, the need of the petitioner regarding the dining room was a mere desire to live more comfortably and not a bonafide requirement.

12. With regard to the need of the 'Pooja room' on the ground floor of the suit property by the petitioner as he and his wife are old and it is difficult for them to go to the temple every day, the learned trial Court observed that admittedly during the pendency of the eviction petition, the petitioner got vacant possession of the other three shops in the suit property. It was observed by the learned trial Court that all the three shops had got vacated by way of compromise and no order of the court had been passed establishing or upholding on merit the bonafide requirement of the petitioner. The learned trial Court opined admittedly the entire suit property situated on 240 sq. yards was in the possession of the petitioner, except the tenanted shop and the petitioner had failed to explain the use of the three shops for his bonafide requirement. The learned trial Court further opined that the need of the petitioner for further pooja room despite having three shops cannot be said to be bonafide.

13. The learned trial Court further observed that though the petitioner stated that Shop No.5 after vacation by the other tenant during the pendency of the eviction petition was converted into one living room for the use and

occupation by the maid, the petitioner had voluntarily stated that the maid was employed by his son. He had not been able to prove that the said shop was being used by the maid as living room. In view thereof the learned trial Court opined that the said fact gives an assumption that the said shop is lying vacant and available to the petitioner for his requirement.

14. The learned trial Court observed that no doubt, a guest room can be bonafidely required by the landlord for his married daughters or visiting guests but by no stretch of imagination it can be considered as bonafide requirement for having separate bed rooms for all his three married daughters, who visit him occasionally. The learned trial Court opined that if we stretch the concept of bonafide requirement to this extent, all the whimsical and fanciful needs of the landlord shall be included in the definition of 'bonafide requirement'. The learned trial Court opined that the court has to maintain the balance between the landlord and tenant. The contention of the petitioner that he requires three separate bed rooms for his three married daughters, who visit him occasionally during vacations is only a mere desire and cannot be considered a bonafide requirement.

15. It was observed by the learned trial Court that the petitioner had failed to prove that the first floor of the suit property is in exclusive possession of the son of the petitioner and the petitioner is not having accommodation available at the first floor. In absence of the proof of this fact, it was opined that it is clear that the petitioner is having sufficient accommodation available at the first floor of the suit property also.

16. The main reasons for dismissing the eviction petition, after considering the evidence of the parties, are given in para 26 and 27 of the impugned judgment which read as under:

“26. It is also pertinent to mention that the petitioner has stated that he requires three bed rooms for his three married daughters. It is no doubt true that a ‘guest room’ can be bonafidely required by the landlord for his married daughters or visiting guests but by no stretch of imagination it cannot be considered as bonafide requirement for having separate bed rooms for all his three married daughters, who visit him occasionally. If, we stretch the concept of bonafide requirement to this extent, all the whimsical and fanciful needs of the petitioner/landlord shall be included in the definition of ‘bonafide requirement’. The court has to maintain the balance between the landlord and tenant. The court has to assess the requirement of petitioner or see whether it is mere the desire of the petitioner. The desire and requirement are two different things. The landlord cannot get the suit premises vacated for his desire. Therefore, the contention of the petitioner that he requires three separate bed rooms for his three married daughter, who visit him occasionally during vacations is only a mere desire and cannot be considered as bonafide requirement.

The petitioner has stated that the first floor is in exclusive possession of his son, whereas the respondent has stated that the sufficient accommodation available. The petitioner has failed to produce any independent witness or material on record to prove that the first floor is in exclusive possession of his son. The petitioner has even failed to examine his son to prove that the first floor of the suit premises is in exclusive possession of the son of the petitioner. The petitioner has pleaded this fact, therefore, the onus was upon the petitioner to prove that the first floor is in exclusive possession of his son and the petitioner is not having accommodation available at the first floor. The petitioner has failed to prove this fact, therefore, in the absence of proof of this fact it is clear that the petitioner is having sufficient accommodation available at the first floor of the suit premises also.

27. Therefore, considering over all circumstances, I am of the considered opinion that the petitioner is having sufficient accommodation available in the suit premises which is at the first floor and even on the ground floor and the need of the petitioner for ‘dining room’ and ‘pooja room’ are not bonafide.

The need of the petitioner for having three separate bed rooms for his three married daughters, who visit him occasionally is also not bonafide. The respondent is able to prove the existence of alternate accommodation available with the petitioner in the suit premises.”

17. Accordingly, in the light of these observations, the learned trial Court opined that the petitioner had failed to prove the necessary ingredient i.e. bonafide requirement and non availability of alternate accommodation and so the eviction petition was dismissed vide the judgment dated 23rd July, 2012 and aggrieved thereof the petitioner has filed the present petition.

18. In view of the abovementioned facts and findings arrived at between the parties and rival arguments addressed by both the sides, let me first discuss the law applicable to the present case:-

(i) In ***Dev Raj Bajaj vs. R.K. Khanna***, 1996 RLR 125, it was observed that, “Where a landlord or his wife were unable to climb the stairs due to old age ailments and wanted to shift to the ground floor, such a need of the landlord was bonafide. A landlord can ask for ground floor for his convenience and comfort of his health.”

(ii) In ***Shree Ram Sharma Vs. Mohd. Sabir*** 2011 (1) RCR (Rent) 228 allowing the revision petition, this Court observed that “The learned ARC has also not taken into account the fact that the Petitioner and his wife being aged and suffering from heart diseases and acute arthritis can’t climb stairs and they need accommodation on the ground floor. Moreover, their three married daughters, along with their family, also visit them frequently. The requirement of the Petitioner cannot be pegged down at only one room. Whenever they visit them, they would require at least two rooms. The disease of the Petitioner and his ailing wife are of such a nature that they

are advised not to climb the stairs and not to put pressure on their knees. Therefore the need of the Petitioner to stay at the ground floor is genuine and bonafide”

(iii) In **Kishan Lal vs. R.N. Bakshi**, 169 (2010) DLT 769, it was held that, *“It is settled law that it is not for a tenant to dictate the terms to the landlord as to how and in what manner he should adjust himself, without calling upon the tenant to vacate a tenanted premises. While deciding the question of bonafides of requirement of landlord, it is quite unnecessary to make an endeavor as to how else the landlord could have adjusted. When the landlord shows a prima facie case, a presumption that the requirement of the landlord is bonafide, is available to be drawn. It is also settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter and it is no concern of the Courts to dictate to landlord how and in what manner, he should live or to prescribe for him a residential standard of their own. The tenant cannot compel a landlord to live in a particular fashion and method until and unless the requirement shown is totally malafide or not genuine.”*

(iv) In **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta** (1999) 6 SCC 222, it was observed that *“If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy”*

(v) In **Krishan Kumar Gupta Vs. Swadesh Bhushan Gupta** 152 (2008) DLT 556, it was observed that *“It is commonly desired by old persons in India that there should be family gatherings. Their sons and daughters should frequently visit them, and on occasions the entire family should live with them for few days. This desire is neither illegal nor unjustified nor is*

the requirement of the landlord for this purpose mala fide. In the present case, the contention of the tenant that lobby has been covered into a room, only shows that the requirement of landlord was so urgent that a lobby in which doors of all living rooms open, had to be covered by him so that he was able to meet some of his requirements. This does not go against the landlord but only fortifies his bona fide requirement”

(vi) In **Ranjit Kumar Chopra Vs. Virinder Khosla** 155 (2008) DLT 658, it was observed that *“The requirement of landlord of a Pooja Room and a guest room and the requirement of the sister of the landlord who is living on the ground floor and the requirement of his wife, who is an old lady, to live on the ground floor are all bonafide requirements. I consider that he and his ailing wife have a right to live at the ground floor when they find it difficult to climb the stairs, more so when the tenant is keeping the premises locked only as a luxury and is having his own farm house to live in Ludhiana where he had already shifted and living with his family and running an industry.”*

(vii) In **Suraj Prakash Vs. Sri Gopal** 75 (1998) DLT 579, it was observed that *“....With the growth of family, petitioner's claim for having a drawing room, a dining room or a guest room where guests of the petitioner and his married daughters and their family members can come and stay, cannot be considered by any standards as unreasonable.”*

(viii) In the case of **Knerka & Co. (Agencies) Pvt. Ltd. vs. Santosh Khurana**, 1997 VI AD (Delhi) 821, it was held that, *“Bonafide requirement continues even after marriage of daughter.”*

(ix) In **Sain Dass vs. Madan Lal**, 1971 RCR 887, it was held that, *“The need of the appellant who had rooms already with them as just sufficient for his needs and the needs of the sons who were living with him, his need for*

some more accommodation for the use of any of his other children (including the married daughter) when they visit him, was held to be a bonafide need.”

(x) In **Smt. Sudesh Kumari Soni and Anr. Vs. Smt. Prabha Khanna and Anr.** 153 (2008) DLT 652, it was observed that;

“23. It is very natural and consistent that the petitioner requires more space for affording atleast a basic standard of living with a sense of decency. A drawing room, pooja room and guest room are the bare necessities for a comfortable living. In 1982 RLR 33 Tilak Raj v. Krishan Lal it was held that the married daughter keep on visiting their father’s home and are well entitled to some accommodation (guest room) and hence landlord was entitled to say that he wanted some accommodation for their use also.

24. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

25. Suitability has to be seen from the convenience of the landlord and his family members and on the basis of the circumstances including their profession, vocation, style of living, habits and background. Landlord is the best judge of his residential requirement....”

19. The petitioner examined himself as PW-1 in order to prove his case and deposed that the total accommodation available to him on the ground floor only two rooms, one kitchen, one bathroom, one toilet, one bathroom-cum-toilet with one small store and he has no separate room to use as library cum study room for which he had to file an eviction petition in respect of shop No.4 of the suit property. After the tenant in the shop No.4 had vacated, the petitioner reconverted the said shop into library cum study room. Shop No.5 was also vacated by the other tenant during the pendency of the eviction petition and was converted into one living room for the use

and occupation by the maid. Shop No.2 after vacation of the tenant therein was converted into an additional room. It was stated that the petitioner required at least two additional bed rooms for which the tenanted shop was required.

20. During cross examination, the petitioner deposed that he has one store on the ground floor of the suit property at point A in the site plan filed by him, however, that store was located at point B of the site plan and there is a passage at point-A. It was stated that the petitioner shifted to the first floor in the year 1975, however shifted back to the ground floor in 2008. It was stated that on the first floor there is one bedroom, one guest room, one drawing room, one dining room, one kitchen, two latrine-cum-bathrooms, one pooja room and one change room. It was stated that after 2008, the married daughters of the petitioner have been staying on their visits, at the ground floor. It was stated that there is no quarrel of the petitioner with the son and the daughter-in-law.

21. It was further stated that he has around 2000 books at his home which he is in the process of shifting to the newly constructed library-cum-study room. On specific questioning, it was stated that there are two bath rooms cum toilet on the ground floor while the third one under the staircase was unuseable. The petitioner denied that no maid was residing with him, that he is residing along with his son and daughter-in-law, that except the suit shop, the entire ground floor is lying vacant.

22. On the other hand, the respondent examined himself as RW-1 and deposed in terms of his written statement. He admitted in his cross-examination that that he took the tenanted shop on rent on 1st September, 1976 and that the rent has been being paid to the petitioner for last 36 years of which he has the rent receipts bearing signatures of the petitioner. Besides

other things, he also admitted that he has been doing the scooter repairing business in the tenanted shop since inception which is prohibited by law in the vicinity/area of the suit property. It was also admitted that he had shifted his business at C-35B, New Acharya Kirplani Road, Adarsh Nagar, Delhi in February, 2009. It was denied that room R3 as per the site plan filed by the respondent was not a room but a verandah. It was admitted that after filing of the eviction petition, three shops except the tenanted shop were got vacated and converted into rooms.

23. I have heard the learned counsel for the parties and have gone through the record of the trial Court as well as the grounds stated in the present petition. The tenanted shop, i.e. shop No.1 was let out to the respondent in the year 1976 for running an auto repair workshop under the name and style of M/s Mateshwari Auto Works through an oral agreement for a period of 11 months with effect from 1st September, 1976 at a rent of Rs.150/-. The contention of the petitioner throughout was that on the ground floor of the suit property, there is only one bedroom and one drawing room besides kitchen, garage, toilet, WC-cum-bath and open space on the front and the backside of the property. The petitioner and his wife are senior citizens and well qualified and they enjoy high social status in the society. The petitioner is about 79 years old and his wife is about 73 years old. His case is that they are residing at the ground floor. The first floor of the property is in exclusive occupation of their son. It is having two bedrooms, one drawing room and one dining room besides kitchen, storeroom, study-cum-pooja room and toilet etc. The son of petitioner is a Chartered Accountant and is also having Law Degree and MBA. His wife is also working with the World Health Organization. His son has a separate kitchen at the first floor and there is no interference of the petitioner in the family of his son.

24. The petitioner has three married daughters and they often stay with the petitioner overnight for long durations during their school holidays. They have children. They are residing in Delhi within the radius of 12 km from the petitioner's house. Thus, he needs at least three additional rooms which could be used by his three married daughters, one room for library-cum-study, one room for maid servant besides separate dining room and pooja room. On the date of filing of the eviction petition, the ground floor was having only one bedroom which is being occupied by the petitioner and his wife and one drawing room.

25. It is not denied by the respondent that the two daughters of the petitioner are having two children each and the third daughter is having one child. All the three daughters of the petitioner are teachers in Government Schools of Delhi Administration. It has come on record that being senior citizens and of old age, the petitioner and his wife are not able to climb stairs and they wish to reside at the ground floor of the property. In his cross-examination, the respondent (RW-1) has admitted that the tenanted shop has been closed for the last many years, as the same was prohibited by law. He has also not denied the fact that he has already started his business from another area at C-35B, New Acharya Kirplani Road, Adarsh Nagar, Delhi since February, 2009. He has admitted that the three shops which were vacated by other tenants have been converted into rooms.

26. The respondent has not denied the fact that the petitioner has three married daughters who have five children and they use to visit the petitioner. A tenant cannot ask the landlord not to have the study-cum-library room or pooja room where the tenant is staying in case there is insufficient accommodation with the landlord. The observation given by the learned trial Court is against the pleadings, the material placed on the record and

against the law. The findings of the learned trial Court are also not correct who failed to understand that there was only one drawing room on the ground floor and the requirement of the petitioner is with respect to a separate dining room as the petitioner has three married daughters who are teachers working in Government Schools in Delhi and they use to come to the petitioner in holidays with their respective families. The learned trial Court did not notice the size of the family of the petitioner and has committed an error in whole assessing the situation of the accommodation available with the petitioner.

27. Under these circumstances, I am of the view that the findings of the learned trial Court are not correct and the same are liable to be set-aside in view of the facts and circumstances of the present case. The learned trial Court did not appreciate the fact that even after vacation of other three shops, the petitioner has converted the said area into rooms which are being used by the petitioner and still his requirement is not fulfilled. The petitioner's case is that after getting the possession of the shop of the respondent on the ground floor, he would merge the same along with the existing accommodation available with him to fulfill his requirements.

28. For the aforesaid reasons and the settled law, the impugned judgment dated 23rd July, 2012 is set-aside. The present petition is allowed. Accordingly, the eviction petition filed by the petitioner is allowed and eviction orders with regard to the tenanted shop, i.e. Shop No.1 in the property bearing No.B-33, Tagore Road, Adarsh Nagar, Delhi-110033 are passed against the respondent. As the tenanted shop is already lying closed for the last number of years, considering the overall facts of the case, the respondent/tenant is granted one month's time from today to vacate the tenanted shop. During this period, the respondent shall not sublet or create

any third party interest in the tenanted shop and after the expiry of said period, the respondent shall hand over the peaceful and vacant possession of the tenanted shop to the petitioner.

29. The present petition is accordingly disposed of with these directions.

30. No costs.

(MANMOHAN SINGH)
JUDGE

MARCH 27, 2014