

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

Date of Decision: 25.03.2014

+ **RC.REV. 441/2013**

NAVEEN ARORA AND ORS Petitioners
Through: Mr. P.S.Bindra, Adv.

versus

SURESH CHAND Respondent
Through: Mr. R.S.Sahni, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI (Open Court)**

1. This petition impugns an order of 30th July, 2013 which allowed the respondent's/landlord's eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (the 'Act'). The petitioners/tenants have been directed to be evicted from the suit premises i.e. Shop No.683/2, Katra Neel, Chandni Chowk, Delhi. The order has been assailed on the following grounds:-

- i) that there was no bonafide need;
 - ii) that the landlord had sufficient alternate commercial space available to him hence there was no requirement for the tenanted shop and
 - iii) that the landlord failed to establish that he was engaged in the business of cloth trade in the Chandni Chowk area.
2. The leave to defend was allowed and the eviction order was passed after complete trial. The learned counsel for the petitioners submits that

the Trial Court fell into error in returning a finding which is not supported by evidence. He submits that the record would clearly establish that the landlord was not engaged in the business of cloth trade. Therefore, he submits that the impugned order be set aside. It was the petitioners'/tenants' case that the landlord owned four DDA flats in Dilshad Garden area bearing Nos. A-391, L-21-A, H-85-A and R-29-A. He argued that while the landlord resided at A-391 which comprised of three bedrooms, a drawing-cum-dining room; the petitioner had constructed numerous shops on the remaining ground floor flats. He further contended that the shops were misuser of the residential premises. Furthermore, he alleged that the landlord did not disclose the nature of business which was sought to be run from the tenanted premises in case it was vacated. In reply thereto, the landlord asserted that all the DDA flats were residential properties which could not be used for commercial purposes. He denied the existence or construction of any shop in any of his flats and considered the tenanted premises as the most suitable for his bonafide need for running a cloth trade. The landlord further contended that the said accommodation could not be considered as a commercial accommodation till the requisite sanction from the DDA is obtained. Further for the sake of arguments he contended that even if it could be used for commercial purposes he did not consider them suitable for his need. According to the landlord, the most suitable place/accommodation for carrying out a business of cloth trade was at Chandni Chowk which is a well known market for the said trade. He reiterated that he has no alternate accommodation for carrying out the said business.

3. Mr. R.S. Sahni, learned counsel for the respondent-landlord

submits that the findings of the Trial Court were based upon the evidence recorded and the eviction order was rightly passed. The Trial Court returned the finding that the tenant in his cross-examination had admitted that the petitioner-tenant is running his business from the premises since the last forty years. The Court observed:

“RW-1 Naveen Arora in his cross examination has admitted that the petitioner is running his business from his residence since last 40 years. He has also admitted in his cross examination that the petitioner has no commercial premises in Chandni Chowk except the tenanted shop. RW-2 Sunil Arora has also admitted in his cross examination that the petitioner is doing his cloth business in Chandni Chowk. The petitioner has also produced the account opening forms Ex.PW2/1 and passbook Ex.PW2/6 of his saving account no.8138 along with the account opening form Ex.PW2/2 of his current account no. S-235. Both these accounts are operated from OBC, Chandni Chowk, Delhi. The aforesaid testimonies of the RW’s and the bank documents of the petitioner proves that the petitioner is doing his cloth business in Chandni Chowk. Had the petitioner not been doing business in Chandni Chowk, he would not have opened two bank accounts at OBC, Chandni Chowk, Delhi, particularly, when his residence is admittedly situated at a distinct place at Dilshad Garden. The aforesaid testimonies of RW’s also proves that he has been running his business from his residence since last 40 years and that the petitioner has no commercial accommodation of his own in Chandni Chowk except for the tenanted shop.”

The Court went out to conclude as under:

“The aforesaid discussion clearly proves on record that the petitioner is a wholesale cloth merchant since last 40 years; that he conducts his business activities in Chandni Chowk; that he has no commercial accommodation in Chandni Chowk except the tenanted shop and that he is running his business from his residence since last 40 years. It is understandable in the given situation that the petitioner is running his business activities from his residence because of the lack of commercial accommodation in Chandni Chowk where his cloth business is predominantly situated.”

4. The Trial Court also considered that of the six residential flats admittedly owned by the landlord, three were situated on the ground floor which were being used for commercial activities by his tenants. Flat No.R-29-A was vacated about two years ago and the remaining two flats were occupied by other tenants. However, the landlord denied the suggestion that he was in possession of the two or three commercial shops at the time of filing the petition. The tenant had contended that though the flats owned by the petitioner and his wife were residential in nature, they were put to commercial activities by their tenants. He relies upon photographs to emphasize his point. The Trial Court was of the view that question of conversion of these three flats into shops and the running of the commercial activities therefrom by the tenants would be of no significance since the landlord had let them out as residential accommodation and change of user or irregular user by the tenant cannot

be said to have changed the intrinsic character of the property: i.e. from residential to commercial from there loses its significance. This Court is of the view that the property could not be legitimately considered a commercial accommodation without prior sanction of the authority concerned.

5. The Trial Court was of the view that Flat No.839 being used by the petitioner for his residence could not be considered as an alternate accommodation apropos his business needs. Since the other properties were in occupation of other tenants, the Trial Court concluded that the landlord had no alternate accommodation. The Court then deliberated upon the flat No.R-29/A which was vacated by the earlier tenant, Mr. Mukesh Kumar and concluded that on the comparative analysis the said residential flat could not be compared with the commercial accommodation located in the Chandni Chowk. It deduced that *“the tenanted shop is a better and suitable alternative for answering the business needs of the petitioner. Chandni Chowk is known as the centralized hub of wholesale cloth business in Delhi and adjoining areas. It is also one of the oldest and biggest centralized market place for the wholesale cloth business whereby it is a comparatively better business place for carrying on the kind of business being run by the petitioner. The petitioner has been running his wholesale cloth business from this area since long whereby he must have developed business relations and good will in this area. Thus it would be totally unreasonable to ask the petitioner to shift his business now to flat no.R-29/A in Dilshad Garden leaving behind all his business relations, goodwill and the opportunities he has created for himself in Chandni Chowk over the span of time.*

Moreover the Dilshad Garden where the flat no. R-29/A is situated is not a renowned business area for cloth business. It is a lesser known market as compared to Chandni Chowk. Furthermore it is situated far from Chandni Chowk where the petitioner has already established his business in the last 35 years. The petitioner otherwise being the landlord is always at liberty to choose amongst his properties as to from which he wants to carry his business. The respondents being the tenants cannot dictate terms to the petitioner as to how and in what manner, he should run his business or to prescribe a business standard for him. The petitioner being the landlord is the best judge of his requirements and he has complete liberty to choose from his available accommodations as to which of them is more suitable qua his needs. Thus the flat no. R-29/A cannot be considered as a suitable and reasonable alternative to the tenanted shop.

Thus the contention of the respondents that the petitioner's need is in the nature of additional accommodation fails."

6. The learned counsel for the respondent submits that some years ago an agreement had been arrived at between the parties, whereby the tenant had agreed to provide a three feet area for staircase to be constructed to access the terrace of the tenanted premises. Upon such access being provided additional commercial space was contemplated to be constructed on the terrace which could have satisfied the abiding need of the landlord for commercial space in Chandni Chowk. However, the tenant resiled from the said agreement, therefore the contemplated additional space could never be constructed. Also, with the passage of time the municipal authorities stopped permitting the construction of

another shop on the terrace of the existing shops, thereby foreclosing all likelihood of any such serendipitous fruition. The learned counsel relies upon the evidence of the tenant where he admits that such an agreement is existed and his (tenant's) father did not give the three feet access. This Court notices that the tenant's evidence (PW-1/5) where he deposed that *"my father complied with the terms and conditions of Ex.PW-1/5. However, it is correct that my father did not give the three feet access."*

7. Mr. P.S. Bindra, the learned counsel for the petitioners/tenants states that the landlord had failed to establish that he was engaged in the business of cloth trade in the year 1993 in Chandni Chowk area and that the landlord had not filed any documents whatsoever in support of his said claim. He refers to his two bank accounts having been opened in the Oriental Bank of Commerce in the years 1983 and 1987 and contended that mere opening of account is not sufficient to establish that the business of cloth trade was carried out. He submits that the turnover of the cloth trade has to be established.

8. In rebuttal thereto Mr. R.S. Sahni, the learned counsel for the respondent submits that the landlord was indeed carrying out the business and has so stated in his affidavit in evidence which was not challenged by the tenant in his cross-examination (at Page 86). He refers to the deposition of the landlord to the effect that *"the suit shops are bonafidely required by the deponent for cloth business."*

And further in the cross-examination, the landlord has reiterated that:-

".....it is correct that I have filed a civil case

against respondent for providing the three feet passage from within the shop for going to the roof and for the recovery of rent as per agreement dated 17.3.1993 which is Ex. PW-1/5. The said suit has been partly decreed and partly dismissed. The court has not granted the three feet passage to me as claimed by me with regard to the suit property.

If the respondents surrender the said three feet area to enable you to construct the first floor at their costs upon suit property for your business, are you willing for the same ?

Ans: No, I require suit premises which is situated on the ground floor as the cloth business can flourish from the ground floor as now days cloth is being sold after showing the same.

I am into the whole sale business of cloth selling and not in retail as on date. I had instructed my counsel at the time of drafting of the eviction petition all the averments mentioned in my affidavit. It is incorrect to suggest that I do not require the premises in question bonafidely. It is incorrect to suggest that I have filed the present petition to put undue pressure upon the respondent to vacate the suit property. It is incorrect to suggest that I have been asking the respondent to pay me substantial amount in case they want to continue in the premises. It is wrong to suggest that the statement of the fact made by me in my affidavit are incorrect and false to my knowledge. It is wrong to suggest that I am deposing falsely and do not require the suit premises. It is wrong to suggest that I have

filed false petition.”

9. Mr. Sahni submits that the findings of the impugned order is based upon these submissions of the landlord which were unrebutted by the tenant in the cross-examination. Therefore, the unquestioned evidence was duly accepted and there is no fault with the order impugned.

10. The Trial Court considered the ratio of ***Vinod Kumar Arora vs. Smt. Surjit Kaur***, AIR 1987 SC 2179 relied upon by the tenant in support of the contention that the pleadings of the parties are the foundation of their case and it is not open for them to set up a new and different case in their evidence which is at variance with their pleadings. However, it rejected the tenant’s arguments that the testimony of the petitioner was beyond the pleadings, therefore it could not be taken into consideration.

11. Insofar as the Trial Court found that the landlord had established that he was engaged in the business of cloth trade and that he required the tenanted shop for his wholesale cloth business as stated in his replication, the aforesaid precedent relied upon by the tenant was rightly distinguished. It is settled law that the permission from competent authority under Section 19 of the Slum Act is not required in the case of bonafide requirement of the landlord (***Saghir Ahmad & Ors. vs. Mohd. Irfan***, RCR No. 200/12 decided by the Delhi High Court on 10.10.2012).

12. In view of the tenant’s admission that the landlord was engaged in business for the last 40 years (albeit from his residence); the factum of the landlord having opened two bank accounts in 1983 and 1987 with the Oriental Bank of Commerce, Chandni Chowk and the unrebutted

deposition of the landlord that he was carrying on his cloth business at 642, Gali Ghanteshwar, Katra Neel, Chandni Chowk, Delhi, which was tenanted premises. The petitioner was carrying his cloth business in partnership with his brother and the said partnership has been now dissolved and the deponent is without any place of work. The deponent is in cloth business for the last 35 years. Surely it cannot be anyone's case that although the landlord did not engage in any such business but had then opened the said two bank accounts in Chandni Chowk only to use them as a prop for evidence at an opportune time decades later. The Trial Court rightly concluded that it would be highly impractical and unlikely for the landlord to run his business from his residence in Dilshad Garden but to have his bank account miles away in Chandni Chowk. A business person would always prefer for convenience's sake to have his bank operations in the vicinity of his principal place of business. Besides, three decades ago the nature of banking services required more personal interaction and between the bank officials and the account holder. It is only in the past few years that internet banking options have obviated the necessity for such personal interaction or for being near a bank. Therefore, it would be a rational deduction based upon the evidence that the landlord carried on his business from Chandni Chowk.

13. In view of the aforesaid discussion, this Court is of the view that the Trial Court had considered every argument and with good reasons rejected the tenant's contention. The reasons for and the conclusion arrived at cannot be faulted. This Court has considered the evidence as discussed hereinabove and finds that there is clear admission on behalf of the tenant that the landlord did not have any other suitable

accommodation. Once it is established that there is a bonafide requirement of the tenanted premises neither the tenant nor the Court can determine or suggest as to which accommodation would be most suitable for the landlord's need. It is the landlord's exclusive prerogative to determine the suitability of the property for his need. In ***Prativa Devi v. T.V. Krishnan*** AIR 1987 SC 2060, the Supreme Court held: "*the landlord is the best judge of his requirement.*" This Court in ***Kishan Lal v. R.N. Bakshi*** 169 (2010) DLT 769 has held that "*it is settled position of law that the landlords is the best judge of residential or business purpose.*" This Court is unpersuaded by arguments of learned counsel for the petitioner and finds no reason to interfere with the impugned order. The petition is without merit and is dismissed accordingly.

NAJMI WAZIRI
(JUDGE)

MARCH 25, 2014/ak