

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

Reserved on: 09.05.2014
Date of Decision: 21.07.2014

+ RC.REV. No.495 of 2012

RISHAL SINGH Petitioner

Through: Mr. K. Sunil, Adv.

versus

BOHAT RAM & ORS. Respondents

Through: Mr. J.K. Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

This petition impugns an eviction order dated 31.3.2012, which rejected the petitioner/tenant's application seeking leave to defend the respondents/landlords' eviction petition filed under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (for short 'the Act'). The eviction order has been passed against the petitioner apropos the tenanted premises WZ-1/A/19, Ground Floor, Village Tatarpur, New Delhi-110027, admeasuring 11ft X 9ft. The admitted rent was Rs.1,200/- per month. The landlord sought the eviction on the ground that his grandson required the property to start his own business and that the landlord had no

property, other than the suit property from where he could run his business. The tenant, however, contended that there was no need, much less, a *bona fide* need since the landlord had other shops lying vacant and could put them to use. He further submits that the petition has been filed only to harass the tenant to pay a higher monthly rent. The learned counsel for the tenant states that the landlord was in possession of two other shops but had concealed these facts in the eviction petition. It is also argued that the site plan was not a correct reflection of the tenanted premises nor had the two vacant shops been indicated in it; that the landlord's grandson was not dependent upon him for the tenanted premises since the latter was gainfully occupied and earning his livelihood elsewhere and in any case the said grandson was no longer a part of the family of the landlord; that some time earlier the landlord had chosen to sell a room which was available to him, therefore, it is evident that if the landlord actually required additional space he would not have sold out the room.

The learned counsel for the landlord, on the other hand, has refuted these arguments by stating that the grandson was very much a part of his family and was dependent upon him.

Having heard both the learned counsel for the parties, the Trial Court

found that the two shops referred to by the tenant did not fall into his share but in the share of the brother of the landlord, hence, they could not be considered as suitable alternate accommodation being available to the landlord. The Trial Court held that the tenant had no locus to question the family terms of the landlord and his family members. All that the tenant can and is required to do is to show that the landlord had other properties which could be put to use. The Trial Court relied upon **Mohd. Usman Vs. Siraj Ahmed** (2008) 154 DLT 342 and **Bharat Bhushan Vij Vs. Arti Teckchandani** (2008) 153 DLT 247, which held that the landlord is the best judge of his requirement and the tenant cannot dictate in what manner the landlord should utilise his properties. The Trial Court found that the sale of the room was about two years prior to the filing of the eviction petition. Whatever be the need, prudence or occasion to sell the aforesaid room and that too over two years ago cannot be questioned by the tenant or looked into by the Court. Much can happen or change in two years time. The Trial Court further held that the grandson could well be dependent upon the landlord since dependency is not based upon financial means but upon the lack of accommodation. The Court relied upon **Krishna Kumar Gupta Vs. Swadesh Bhushan Gupta** 152 (2008) DLT 556 to elucidate that such an

argument cannot be taken by a person who is not a member of the family of the landlord.

The Court further referred to **Om Prakash Bajaj Vs. Chander Shekhar** (2003) 1 RCR (Rent) 332 to show the members who would fall within the definition of dependent as mentioned in the Act. Upon an analysis, the Trial Court held that the grandson fell within the definition of dependent.

The argument of the tenant's relative hardship cannot be countenanced in view of the settled law on the subject. The Trial Court rejected the tenant's argument that there was no need for the premises since the grandson lacked the qualification to operate a computer repairing shop.

In **Ram Babu Vs. Jai Kishan** 2009 RLR 58 (NSC), the Supreme Court has held that no experience or qualification was required to start a business. Accordingly, the Court held that an eviction petition cannot be premised upon the landlord or his dependent beneficiary having undergone prior training or possessing the requisite qualification before the start of a new business.

Lastly the tenant's contention of the lack of landlord-tenant relationship was rejected in view of the bar under Section 116 of the Indian

Evidence Act.

The Court found that there was no triable issue raised in the leave to defend and accordingly the application was rejected and the petition was allowed resulting in the eviction order.

The rent control legislations in India were passed with the primary objective of protecting the tenants from unjustifiable increase of rents and to prevent landlords from evicting tenants at their desire. The Delhi Rent Control Act, 1958 is no exception in protecting tenants from being at the mercy of landlords; however having pointed out the intent of the Act, it would be pertinent to note that the Act makes a provision where a landlord is entitled to gain possession of the tenanted premises when he requires the premises for himself or for any member of his family under s. 14 (1) (e) of the Act. Section 14 spells the out the broad intent of the Act in its entirety and makes it clear that a tenant shall not be evicted by any order or decree of a Court directing the tenant to do so unless the application made by the landlord complies with the manner prescribed. Section 14 (1)(e) of the Act details that an application for eviction moved under this section stating the reason for eviction of the tenant arises from a bona fide requirement of the landlord or his dependent. Such being the circumstances, the Rent Controller

will require to look into the nature of the requirement and additionally ensure the landlord has no other suitable property available with him prior to passing an eviction order. The section, however, does not vest power with the Court or the tenant to decide on the suitability of the alternate property or the manner in which the landlord could accommodate his need without having to uproot the tenant. An eviction petition filed under the s. 14(1)(e) of the Act shall be considered when the landlord shows that he requires the property genuinely, that he is the owner of the tenanted premises and that he has no other suitable accommodation available with him. When the eviction petition satisfies these requirements, the Court shall pass an eviction order.

It was vehemently argued by Mr. K. Sunil, counsel for the tenant that the grandson of the landlord, who is said to be living separately from the landlord, is not a dependent and hence an eviction petition cannot be sought for him. However, Mr. J.K. Jain counsel for the respondent submitted that the son and the grandson of the landlord with their family are living with the landlord and it would be incorrect to state that the landlord has no concern with the grandson. Counsel for the respondent further submitted that an unemployed grandson of the landlord is wholly dependent upon him, therefore, he falls within the ambit of Section 14(1)(e) of the Act. The

grandson is currently unemployed. Learned counsel Mr. Sunil denied the scope of the section to be as wide as to include grandson in an eviction petition for bona fide requirement and relies upon **Delhi Cloth and General Mills Co. Ltd v. Sri. T. S. Bhatia 1977 AIRCJ (Delhi) 902** to state that questions of whether son of any member of the family of the landlord is a dependent is a question of fact which would require evidence to be lead which in conclusion would mean that the leave to defend application must be allowed. The counsel relied on the abovementioned judgment to further state that such controversies cannot be decided by virtual findings and that they necessarily need to be out to trial. However, counsel for the respondent relied on another judgment of this Court in **Om Prakash Bajaj v. Chander Shekhar (2003)1 RCR 332** wherein the Court included sons' family of the landlord in the meaning of dependent. The Court held that the need of any member including the son; the wife, sons' wife and children are to be treated as the need for the landlord. The impugned order also relied on the same judicial pronouncement to arrive at a conclusion. This Court finds such a decision to be more at par with the intent of the Act that the judicial precedent mentioned by the counsel for the tenant. The law, on this point, has evolved to extent where it is accepted position that a grandson is

included in dependents of the landlord.

In the present petition, the tenant raised a contention that the landlord has alternate shops which he has deliberately concealed and that the Court should have considered the concealment while passing the eviction order. It was argued that apart from a shop lying vacant there are two other vacant shops on the same lane, which has not been mentioned in the site plan. Counsel argued that such concealment is not to be taken lightly as it was indicative of landlord trying to extort a higher rent, rather than there being any genuine need for the tenanted premises. When there are alternative accommodations available, the landlord ought to have been granted an eviction order, it was so argued. This Court finds itself in disagreement with the argument made by the Counsel because in an eviction petition filed for bona fide requirement, the landlord's needs are put on a higher footing than that of the tenant. This certainly does not entail that any eviction petition filed under bona fide requirement will lead to an eviction order being passed automatically. When the Court finds that the need of the landlord to file the eviction petition to be a genuine need and not a desire of the landlord, the Court will allow the eviction petition. The impugned order has already taken note of the fact that the respondent No.2 has verified the submission made

by the landlord that the shop which the tenant claiming to vacant does not belong to the landlord but to respondent No.2. That being the admitted position, this Court cannot overlook such admission and hold to the contrary. When it is shown that the shop, which may be lying vacant as argued by the tenant, does not belong to the landlord, this Court gathers such argument to be irrelevant to determine if the landlord has alternate suitable accommodation. The Court is not vested with the power to question the family settlement whereby the shops lying vacant have fallen into the share of somebody other than the present landlord. On this issue, this Court agrees with the impugned order and sees no reason to interfere with the same. Apropos the contention that the site plan filed by the landlord is incorrect as it fails to disclose two shops lying vacant in the same area, it is without merit as the tenant has not filed any site plan to show the inconsistency. It is well settled law that when the tenant contents the accuracy of the site plan filed by the landlord, he is required to file a copy of the site plan he believes to be correct so as to guide the Court in finding the discrepancies of the site plan filed by the landlord. Without such site plan being filed, mere contentions raised to this effect will be considered meritless.

The next argument of the counsel for the tenant was that the grandson

of the landlord was already employed elsewhere thereby the need for the tenanted premises to open a computer repair shop was false. Counsel went to further argue that since the landlord's grandson was already earning sufficiently and such being the situation there was no genuine need to supplement his income. The Courts have held that income of the person, be it the landlord or a dependent of the landlord, is inconsequential to the outcome of the eviction petition; and that Courts have held comfortable earnings or financial well-being of the eviction-petitioner or his/her dependent cannot be a ground for denying the eviction order sought in a petition founded on *bona fide* need. It is not for the tenant to set standards of the comfortable income of the landlord/dependent of the landlord. The argument of the counsel for the tenant that the grandson of the landlord, lacking the skill and knowledge to operate such a business, should not be granted eviction petition, lacks merit as there is rich body of judicial pronouncements which has settled the law, by holding that the landlord or the member of the family of the landlord who is construed to be dependent, does not necessarily need to possess the skill or knowledge in the area of business for which the eviction is sought. The learned counsel for the respondent submits that the law does not expect the intending landlord or

dependent of the landlord to possess the requisite qualification for opening a business. He relies on **Ram Babu v. Jai Kishan 2009 RLR 58(NSC)** where the Supreme Court held:

“a person can start a new business even if he has no experience. That does not mean his claim is a false claim. Many people start new businesses even if they do not have experience in the new businesses, and are successful”

In view of the above, the Court agrees with the submission of the counsel for respondent and sees no merit in the contention of the tenant.

It was argued by counsel that the landlord had no apparent bona fide requirement as he owned one shop which he sold two and half years prior to the passing of the impugned order. Since the landlord could afford to sell shops when he could give the same to his grandson to facilitate the opening of a computer shops, the landlord had no apparent bona fide requirement as claimed. This Court notices that the eviction petition was filed on 19.1.2011 and the impugned order was passed on 31.3.2012 wherein the counsel submitted that the shop, allegedly lying vacant, was sold 2.5 years earlier – somewhere in the middle of 2009 when no eviction petition was pending. It can only be logically concluded that the landlord did not have a need for the premises at the time of selling the property and that when the need arose he

had no other property which could be put to use. Such being the situation, it cannot be contended that, if at all the landlord needed the premises for a genuine purpose he should not have sold the other property. But this argument too is untenable because neither the reason, nor the timing of the sale can be questioned by the tenant nor could a landlord seek the possession of a leased property till the *bona fide* need for it arises. The Court is required to see the condition of the landlord at the time of filing the eviction petition and in the present case the landlord had no shop as it was sold long back. The impugned order is correct in reasoning that it is not for the tenant to ask the landlord to not dispose property but to hold on to it in case a need arises in the future. On the contention raised that the son of the landlord owns a property which ought to be put to use for aiding his son setting up the shop rather than evicting the tenant, the counsel for the respondent submit that the shop owned by the son of the landlord is unfit for his need, furthermore it is presently rented out to a tenant and finally, that it does not belong to the landlord. This Court is of the view that when the landlord explains why he cannot put other property to use, such prerogative would not be questioned. An argument that s. 14 (1)(e) of the Act does not apply to non- residential/ commercial was raised by the counsel. It was argued that

there was no notification or law by an eviction petition filed for *bona fide* requirement for commercial premises would be allowed and that the learned ARC erred in allowing such an eviction petition. This issue is no more *res integra* in view of the Supreme Court dicta in **Satyawati Sharma (Dead) by LRs v. Union of India (2008)5 SCC 287**. The argument is untenable.

In conclusion the landlord, having shown the Court that he has no other suitable property and needed the tenanted premises for his bona fide need would be entitled to an eviction order under the summary proceedings envisaged under Section 25B of the Act. The tenant has failed to show any triable issue which would warrant grant of leave to defend. The tenant has further failed to show any discrepancy in the site plan nor has he been able to prove that the need was a mere desire as alleged by him. This Court is of the view that a landlord cannot be directed to accommodate or adjust his requirements or need so that the tenant is not disturbed with eviction from the tenanted premises. There is no reason to interfere with the impugned order as no triable issues were raised by the tenant.

There is no merit in the petition and it is dismissed accordingly.

JULY 21, 2014
b'nesh

NAJMI WAZIRI, J.