

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

+ RC .Rev. No. 529/2012&conn.
% 3rd September , 2014

1. RC.Rev. No. 529/2012

HARSH VARDHAN NAYYAR Petitioner
Through: Mr. Akshay Makhija, Advocate.

VERSUS

SHANTI MATHUR & ORS. Respondents
Through: Mr. Ajay Garg, Mr. Ganesh Tiwari,
Mr. Ashwani Sood and Mr. Pankaj
Rajkotra, Advocates.

2. RC.Rev. No. 530/2012

HARSH VARDHAN NAYYAR Petitioner
Through: Mr. Akshay Makhija, Advocate.

VERSUS

R.C.KAKKAR Respondent
Through: Mr. Ajay Garg, Mr. Ganesh Tiwari,
Mr. Ashwani Sood and Mr. Pankaj
Rajkotra, Advocates.

3. RC.Rev. No. 531/2012

HARSH VARDHAN NAYYAR Petitioner
Through: Mr. Akshay Makhija, Advocate.

VERSUS

OM PARMAR Respondent

Through: Mr. Ajay Garg, Mr. Ganesh Tiwari,
Mr. Ashwani Sood and Mr. Pankaj
Rajkotra, Advocates

4. RC.Rev. No. 532/2012

HARSH VARDHAN NAYYAR Petitioner
Through: Mr. Akshay Makhija, Advocate.

VERSUS

K.B.HASTI Respondent
Through: Mr. Ajay Garg, Mr. Ganesh Tiwari,
Mr. Ashwani Sood and Mr. Pankaj
Rajkotra, Advocates

5. RC.Rev. No. 533/2012

HARSH VARDHAN NAYYAR Petitioner
Through: Mr. Akshay Makhija, Advocate.

VERSUS

ASHOK GROVER Respondent
Through: Mr. Ajay Garg, Mr. Ganesh Tiwari,
Mr. Ashwani Sood and Mr. Pankaj
Rajkotra, Advocates

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? (Yes)

VALMIKI J. MEHTA, J (ORAL)

1. These five rent control revision petitions arise out of the identical judgments dated 6.6.2012 passed by the Rent Controller dismissing the *bona fide* necessity eviction petitions under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'). The eviction petitions have been dismissed after trial. The tenanted premises are portion of the property being Flat No. 32, First Floor, Shankar Market, Connaught Place, New Delhi – 110001. The landlord in all the petitions is same. The projected need of the landlord in all the petitions is also the same. These petitions are therefore disposed of by this common judgment. For the sake of convenience reference is being made to the facts in RC.REV. No.529/2012.

2. Petitioner/landlord is the nephew of late Dr. Sushila Nayar who was the original owner of the suit/tenanted premises. On the death of the original owner Dr. Sushila Nayar the suit/tenanted premises vested in favour of the petitioner and Dr. Nandini Khosla. Dr. Nandini Khosla relinquished her share in the suit premises in favour of the petitioner. Petitioner filed the *bona fide* necessity eviction petition pleading that he has settled in U.S.A. since 1975. Petitioner has a degree in Masters of Fine Arts from the School

of Arts, New York University, Graduate Acting Program and that he was a professional actor having acted in various movies, theater productions, television serials etc. Petitioner at the time of the filing of the eviction petition in 2009 was of 61 years of age and today he is therefore roughly about 66 years of age. Petitioner filed *bona fide* necessity petition stating that he intends to open a school for acting, drama and performing arts in Delhi where he can utilize his 30 years experience and teach young students in his home land and that the petitioner ultimately intends to move back to India. Since the petitioner has no other reasonable suitable alternative commercial accommodation in Delhi, the *bona fide* necessity eviction petitions have been filed. Petitioner pleaded that he is the owner of the residential flat no. N-1, Tara Apartment, Alaknanda, New Delhi where he stays when he visits Delhi about two times a year. Accordingly, eviction of the tenants from the different portions of Flat No. 32, First Floor, Shankar Market, Connaught Place, New Delhi – 110001 was prayed.

3. Written statement was filed by the tenant and it was pleaded that the petition is not *bona fide* because neither the petitioner intends to shift to Delhi and nor he wants to open a school of drama. It was pleaded that as per the Master Plan of Delhi a space of 1000 square meters was required for

opening of a school of acting, drama and performing arts, and therefore, the Flat No. 32, First Floor, Shankar Market, Connaught Place, New Delhi – 110001 being an extremely small area of 1650 sq. ft. as compared to 1000 square meters cannot be used for opening of drama school. It was pleaded that petitioner neither wanted to open a school for drama nor he wants to shift to Delhi because petitioner along with his family comprising of his wife and son are well settled in U.S.A.

4. At this stage, I would like to state that the impugned judgment passed by the Rent Controller is a thorough, exhaustive and lucid judgment. Therefore instead of giving my own words I would prefer to simply refer to the apt reasoning and conclusion given by the Rent Controller inasmuch as since this judgment is a thorough judgment, possibly using my words may dilute the thorough reasoning and conclusions which have been given by the Rent Controller. With this preface let me refer to the issues and the relevant observations of the Rent Controller in the impugned judgment.

5. The only issue which is argued on behalf of both the parties is with respect to the *bonafide* need of the petitioner for opening a drama school in Flat No. 32, First Floor, Shankar Market, Connaught Place, New Delhi – 110001. The relevant paragraphs of the judgment dated 6.6.2012 of the Rent

Controller are paras 27 to 32 which reject the claim of *bonafide* necessity, and which paras read as under :

“27. During his examination as PW1 it has been deposed by the applicant that though he is not currently residing in India, presently he visits India at least twice a year and intends to increase the frequency of his travels to India in accordance with the requirement for setting up the school for acting, drama and performing arts. It is further deposed by PW1 Mr. Harsh Vardhan Nayyar that after establishing the school, he intends to visit the school for at least 4-5 times a year for extended period for about a month at a time in order to impart education to the students. It is further deposed by PW1 Mr. Harsh Vardhan Nayyar that he intends to move back to India permanently in the next 4-5 years and to dedicate himself to teaching full time. During his examination PW1 Mr. Harsh Vardhan Nayyar further deposed that his decision for opening a school is part of his larger plan to move back to India permanently. During his examination PW1 Mr. Harsh Vardhan Nayyar also deposed that even though he intends to teach in the school personally however, he will not be doing so alone.

28. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar deposed that his family consists of his wife, who is a housewife, and his son, who is a journalist. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar also deposed that his son is not living with him and his wife is American by nationality. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar also deposed that the property bearing no. 32, First Floor, Shankar Market, Connaught Place, New Delhi is about 1650 Sq. feet. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar further deposed that lease deed in respect of property was never executed. During his cross-examination PW 1 Mr. Harsh Vardhan Nayyar also deposed that he is living in New York, America in a rented accommodation and

further deposed that he has been owning another property in the United States situated in New York State which is a single family house. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar further deposed that his wife does not own any property in the US. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar further deposed that he has not given any acting lessons or lectures on acting in India. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar further deposed that he had been a Teaching Assistant for one year at New York University but when counsel for the respondents asked him to produce any document regarding such teaching he deposed that he could not produce the document instantly. When counsel for the respondents asked PW1 Mr. Harsh Vardhan Nayyar to tell as to how many persons he was going to employ at his acting school, he answered that he would start with himself and the staff would grow as the conditions required. When counsel for the respondents asked PW1 Mr. Harsh Vardhan Nayyar that in the face of his deposition that he tend to stay in India for 4-5 months per year how will he run the school, he answered that he would hire the staff. When counsel for the respondents asked PW1 Mr. Harsh Vardhan Nayyar whether he wanted to move back to India with his wife or alone he answered that he did not know whether his wife would accompany him or not. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar also deposed that there is no requirement of green room, changing room and make-up room in a school of acting. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar also deposed that there was no requirement of costume to impart lessons in acting and the same could be done in any cloths even in T-Shirts and Jeans. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar further deposed that he shall be going to give only training to the students whose performance would be checked in the class room itself. Significantly during his cross-examination PW1 Mr. Harsh Vardhan Nayyar also deposed that for imparting training even one room is sufficient and no big hall is required. When counsel for the respondents asked PW1 Mr. Harsh Vardhan Nayyar as to what fee he

intended to charge from the students, he answered that he had not decided. When counsel for the respondents asked PW1 Mr. Harsh Vardhan Nayyar as to what was his motives in returning to India in future, he answered that his motive is to share his knowledge and experience and he wants Indian actors to improve their craft and skill. During his cross-examination PW1 Mr. Harsh Vardhan Nayyar also deposed that he has no other house in Delhi and the house bearing no.N-1, Tara Apartments, Alaknanda, New Delhi has been sold by him in the year 2010.

29.From a reading of the application for eviction, replication and the testimony of the applicant it is clear that as per the version of the application himself (a) since the year 1975 he has settled in New York, USA;(b) his family members namely, his son and wife are also settled in the USA; (c) he has no immediate plan to move back to India and intends to eventually move back to India only once he can make his school for acting, drama and performing arts a sustainable business; (d) at the time of making of the present application he had been owning a Flat bearing no. N-1, Tara Apartments, Alaknanda, New Delhi which was sold by him in the year 2010; (e) he is not owning or possessing any other residential building in Delhi; (f) he ordinarily visits Delhi about two times a year but intends to extend his stay in India; (g) he, in fact, is craving to come back and live in his own country i.e. India but has sold his only residential house; (h) he desires to eventually move back to India in the next 5-6 years and not in near future; (i) he intends to visit the school for at least 4-5 times a year for extended period for about a month at a time in order to impart education to the students; (j) he has never given any lessons in acting in India; (k) he has no knowledge as to what shall be the course structure in his prospective school and what shall be the duration of the courses, although he knows that such courses have duration; (1) his motive is to share his knowledge and experience in acting but in the initial phase of setting up of his school he does

not want to remain in India and wants to visit his school occasionally; (m) according to the applicant for imparting training in acting even one room is sufficient and no big place required.

30. As I have already pointed out in the application for eviction the applicant has particularly emphasised that eventually he wants to move back and live in India and to underline this fact the applicant has pointed out and averred that he is the owner of Flat no. N-1, Tara Apartments, Alaknanda, New Delhi and he visits Delhi about two times a year. The applicant has admitted that the said house has been sold by him. According to the applicant the consideration received from sale of the house shall provide corpus for setting up his school but this version of the applicant does not inspire confidence of the court for the reason that if he really wants to settle in Delhi then having sold his only house where shall he live?

31. In the light of the material on record, especially the pleadings of the applicant and his testimony, if one attempts to peep into the mind of the applicant to ascertain his bona fide requirement the only conclusion one can draw is that he has no immediate plans to come India to settle; and even in the initial phase of starting of his school he does not want to devote himself fully to the school. The applicant has more desire and craving to occupy the premises and not a genuine requirement. The contention of the respondents is that the applicant wants to have vacated the premises not to set up a school but to sell out the same like his other property. In the face of the pleadings of the applicant, his conduct in selling out his only residential house in India and his testimony as highlighted hereinabove, this contention of the respondents does not appear unjustified. In the light of the material produced before this court it is found that the premises are not required bona fide by the applicant.

32. In so far as the fourth point for determination is concerned, admittedly the applicant is already in possession of one room at flat no. 32,

first floor, Shankar Market, Connaught Place, New Delhi-11001. During his cross-examination as PW1 the applicant, who claims to be proficient in the field of acting, drama and performing arts, has deposed that he shall be only giving training to the students whose performance would be checked in the class room itself; and that for imparting training even one room is sufficient and no big hall is required . If so is the case and the acting school can be run only in one room, the applicant is already having reasonably suitable accommodation to meet his need, if he is really interested in opening an acting school. And thus his plea for recovery of possession of the premises does not seem to be justified.” (emphasis added)

6. A reading of the aforesaid paras show that the Rent Controller has correctly arrived at the conclusion that the need is not *bonafide* and the petitioner does not want to shift to India, *inter alia*, for the following reasons:

(i) Petitioner who is today of about 66 years of age has a family who is well settled in U.S.A. Besides the petitioner being settled in U.S.A. his wife is a housewife and an American national. His son, who is not living with the petitioner, is also settled in U.S.A. Petitioner hence would not want to shift to India as was pleaded by him.

(ii) The total area of Flat No. 32, First Floor, Shankar Market, Connaught Place, New Delhi – 110001 is 1650 square feet and which is therefore insufficient for opening of a drama school and to which aspect I may add

that no licence would be given to the petitioner in violation of the Master Plan of Delhi because the area in question is not only small but also not the requisite area which is required for opening of a school of drama.

(iii) Petitioner admitted that he would be moving to India permanently within the next four years during his deposition but that event till date has not taken place and in fact petitioner in his deposition stated that he would stay in India only for 4-5 months in a year, and therefore, it was not believable that he would be able to run a drama school merely by hiring staff more so when the claim is that he wants to give benefit of his personal experience to the students and which cannot be done by the staff.

(iv) Petitioner could not produce any document to show that he has done teaching or given acting lessons or lectures. And, it is not that petitioner is a person of national or international repute that students will come flocking to him to learn, much less by paying fees.

(v) Petitioner in fact has sold his only residential flat in Delhi at Tara Apartments, Alaknanda in the year 2010, and it was not believable that he would sell the flat to use as capital for opening of a school for drama because after all if the petitioner wants to settle in Delhi then why to sell the only house in which he was to live.

(vi) Petitioner has no knowledge what will be the course structure, what would be the duration of the course and what would be the fees he would be charging.

(vii) Petitioner could not answer as to whether his wife would or would not shift with him in India, thus showing that there really were no plans to shift to India.

(viii) There is no green room or changing room or make up room which exists or can be made in the Flat No. 32, First Floor, Shankar Market, Connaught Place, New Delhi – 110001 and all of which are necessary if real acting and drama has to be taught, assuming that in Flat No. 32, First Floor, Shankar Market, Connaught Place, New Delhi – 110001 there can be operated a school for drama and which cannot be in view of the Master Plan of Delhi. Changing room etc are required to put on costumes etc in order to perform the acting and drama because only then a correct situational atmosphere is made out and after all in T shirts and jeans it is improbable that acting and drama can be taught and performed.

(ix) According to the petitioner only one room was required for imparting training and if that be so, since petitioner is already in possession of one

room in the flat then the petitioner really can impart proficiency in acting, drama and performing arts from that room with himself.

7. This Court finds the case set up by the petitioner unbelievable because there is no reason why the petitioner who neither has the necessary qualifications in India for opening of a drama school nor is having an area for opening of a drama school and is not so hugely famous that people would pay him for sharing his alleged experience. Also besides the fact that the petitioner did not shift to India within 4-5 years as he stated in the eviction petition, and in fact sold his only residential flat at Tara Apartments, New Delhi, it is very much clear that at his advance age the petitioner would not have any intention to move away from his settled life in U.S.A. and come to a far away place at New Delhi allegedly for “sharing his experience” and “teaching acting/drama”.

8. It has been consistently held by this Court as also by the Supreme Court that *bonafide* need is different than the expression “desire”. Also, *bonafide* need is not a mantra to be uttered for eviction of the tenants in the facts of the present case where petitioner and his family are well settled in U.S.A., and, the petitioner at his advance age of 66 years would really not be interested in shifting to India much less for opening of a so called school

of acting and drama. As already stated above, the alleged *bona fide* need to shift to Delhi stood demolished when the petitioner sold his only residential flat at Delhi because if the petitioner intended to live in Delhi then where can he live if he has sold his only residential flat at New Delhi.

9. In view of the above, I do not find any illegality in the impugned judgment dated 6.6.2012 of the Rent Controller for interfering with the same in exercise of my revisional jurisdiction. Merely because two views are possible this Court will not interfere in exercise of its revisional jurisdiction once the Rent Controller by the impugned judgment has taken one possible and plausible view, and in fact, in my opinion, that could be the only view which could be taken in the facts and circumstances of the present case and which is to dismiss the petition.

10. Revision petitions are therefore dismissed, leaving the parties to bear their own costs.

SEPTEMBER 03, 2014
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VALMIKI J. MEHTA, J