

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

Reserved on: 10.02.2014
Date of Decision: 27.08.2014

+ RC. REV. No. 433 of 2013 & CM No. 18773 of 2013

ASHOK KAPOOR & ORS. Petitioners
Through: Mr. Vikas Dhawan & Mr. S.P. Das, Advs.

versus

VIDYA SHANKAR SHARMA Respondent
Through: Mr. C.S. Parasher, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition impugns an order dated 17.8.2013 whereby the petitioners' application for leave to defend was dismissed and an eviction order under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') was passed in respect of the tenanted premises being Shop No.2470 on the ground floor and tin shed on the first floor, Gali No.9, Beadon Pura, Main Ajmal Khan Road, Karol Bagh, Delhi-110005. The respondent/landlord had sought the eviction of the petitioner/tenant from the premises on the ground that it was required by him for his personal use. It was his case that although he was working in a general store in Dilshad Garden, his family including himself and two children required to augment the family income by starting a modest business enterprise; he claimed ownership of the shop by virtue of a Will dated 6.9.1975 and stated that he did not own or possess any other

commercial property in Delhi.

2. The tenant had sought leave to contest the eviction petition on the ground that the landlord had taken a security amount of Rs.1.00 lakh and had enhanced the rent to Rs.1,000/- per month from 1.7.1988; that earlier the landlord had sought to terminate the tenancy through a legal notice dated 13.11.2007 on the ground of alleged subletting but there is no mention of *bona fide* requirement; that on another occasion the landlord had proposed to sell the premises for a total consideration amount of Rs.47.00 lakh and had indeed accepted an advance of Rs.1.11 lakh hence there was part payment of the sale-amount for the sale of the tenanted premises, but now the landlord had resiled from the agreement despite the service of notice upon him. The tenant also argued that the eviction-petitioner was the owner of property No.E-135, Dilshad Garden, Delhi-110095 from where he was carrying on a business of foreign exchange and running a school, namely, R.V. Public School.
3. After considering the arguments, the Trial Court was of the view that the tenant had not disputed that the petitioner's family comprised four members and that he was working in the shop of his step brother Arvind, at paltry wages. The issue of foreign exchange business from Dilshad Garden property and of also running of a school therefrom was taken for the first time in the rejoinder to the application for leave to defend. These constituted new pleas. The Trial Court rejected the amendments seeking to raise the aforesaid pleas, on the ground that in a rejoinder, additional pleas cannot be taken up and the purpose of rejoinder is only to explain or rebut the facts as may be made in the landlord's reply to the application for leave to defend. Although the agreement to sell the

property in 2003 was admitted, it was not considered fatal to the eviction petition or to cast a doubt on the *bona fide* requirement of the landlord when the petition was filed. The issue of the agreement to sell related to 2003 and no monies were paid thereafter hence the agreement was not followed up. The Trial Court was of the view that the tenant had failed to raise any triable issue hence the eviction order was passed.

4. From the preceding narration what emerges is that the tenant's application, raised no grounds other than that of the agreement to sell of 2003; the legal notice dated 13.11.2007; the increase of rent from Rs.1470/- to Rs.1620/- per month and also that the petitioner had been called upon by the tenant to refund the sum of Rs.1.11 lakh. This Court is of the view that the Trial Court's permitting an amendment to the application for leave to defend would tantamount to giving liberty to the tenant to file a second application after the expiry of the limitation period is unexceptionable. It is only the facts incorporated in the application along with an affidavit in the leave to defend which have to be considered. This Court is of the view that an agreement to sell by itself would not terminate the tenancy and the tenant's continued occupation of the premises would only be in the capacity of a tenant. This Court in ***Sunil Kapoor v. Himmat Singh & Ors* 167(2010) DLT 806**, has held as under:

*"11. A mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondents/plaintiffs are found to have agreed to sell the property, the petitioner/defendant would not get any right to occupy that property as an agreement purchaser. This Court in **Jiwan Das v. Narain Das AIR 1981 Delhi 291** has held that in*

fact no rights enure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. Thus in law, the petitioner has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour.”

5. The learned counsel for the respondent has argued that the premise for the *bona fide* requirement was false because the landlord was already running a foreign exchange business from property No.E-135, Dilshad Garden, Delhi-110095. He also argued that the word *bona fide* means genuine and in good faith, without fraud and deceit, whereas in the present case the landlord has made false claims which establishes deception. To support his contention the learned counsel has relied upon the judgement of the Allahabad High Court in **Chandra Kumar Sah & Anr. v. The District Judge & Ors. AIR 1976 Allahabad 328**, where the word ‘*bona fide*’ has been described as under:

“15. The word ‘*bona fide*’ was again interpreted in the case of *Om Prakash Singhal v. Roshan Lal Khanna* [1969 R.C.J. 645.] and was construed to mean genuinely or in good faith and it conveys an idea of absence of any intent to deceive. If the landlord is not seeking evidence on false pretext of acquiring additional accommodation with an oblique purpose and his requirement cannot be considered to be inspired by a pure fanciful which the plea of *bona fide* requirement put forward by him deserves ordinarily to be upheld.

16. In *Harbhagwan v. Pritam Singh* [1971 R.C.J. 488.] it has been held the only case where the court would decline to accede to the landlord's request for eviction would be when the court is satisfied that the landlord's allegations are not *bona fide* and are merely an excuse to serve some ulterior purpose or

fanciful whim.

....

18. The words ‘*bona fide* requirement of landlord’ came up for interpretation in the case of *Nathu Lal v. Radhey Lal* [(1974) 2 SCC 365 : A.I.R. 1974 S.C. 1596.] and their Lordships of the Supreme Court observed:

“.....mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the court to determine the truth of the assertion and also whether it is *bona fide*. The test which has to be applied is an objective test and not a subjective one..... The word ‘required’ signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show—the burden being upon him—that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business.”

The aforesaid discussion makes it clear that the ‘*bona fide* requirement’ means the genuine or reasonable need of the landlord.”

6. However, this Court is unable to see as to how the judgement benefits the tenant/petitioner as the said paragraphs only expound on the definition of the expression “*bona fide* requirement” to mean that it is a genuine and reasonable need of the landlord and not a mere desire.
7. The learned counsel then submitted that the landlord had a share in other buildings bearing municipal Nos.1528-1532, Gali No.28, Naiwala, Karol Bagh, Delhi; which comprised several shops. Therefore, the landlord

could not have stated as to how the shops were either unsuitable or unavailable for the commercial requirement of the petitioner. The landlord further submitted that shop No.2473 was got vacated by the father of the landlord. This Court notes that these issues of additional properties, details of which were now sought to be brought on record were not before the Trial Court. Indeed, there is not even a whisper of these properties in the application for leave to defend, accordingly they cannot be taken into consideration at this stage.

8. Reliance of the petitioner upon the judgement of this court in **Munna Alias Manoj v. Ram Narain** MANU/DE/4144/2011 is misplaced because in that case it was established that the landlord had three vacant shops in his property which could be said to be available to him. The Court found that it was for the landlord in those circumstances to have disclosed as to how the said properties were suitable for the kind of business he wanted to start. The Court found the eviction-petitioner guilty of concealment of material facts. In the present case, however, no case of concealment was made out in the application for leave to defend. As stated earlier the said application raised only two issues, i.e., of the tenancy having annulled by virtue of the agreement to sell, the transaction payment of Rs.1.00 lakh to the landlord and secondly that the legal notice of 2007 did not mention the need of the premises for *bona fide* requirement. The Trial Court was supposed to look into these two aspects to consider whether a triable issue was raised, neither of which was considered triable.
9. Thus where a tenant is in possession of leased premises and if a claim for transfer of rights is claimed by him in the eviction proceeding on the

basis of an agreement to sell, he would still need to vacate the premises, because merely the agreement to sell would not make him the owner of the premises. In the present case the agreement to sell was not acted upon. Furthermore the tenant himself had asked for the return of the advance money.

10. In view of the above, it is evident that no case is made out for interference by this Court with the impugned order. The reason for and the conclusion arrived at is based on the record and is a plausible view in law. The petition is without any merit and is accordingly dismissed.

AUGUST 27, 2014
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NAJMI WAZIRI, J.