

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

+ RC.Rev. No. 484/2013

% **31st July , 2014**

M/S METROPOLITAN BOOK CO. PVT. LTD. Petitioner
Through: Mr. Sandeep Sethi Sr. Adv. with Mr.
Abhishek Singh, Mr. Pankaj Sharma
and Mr. Chirojeet Mukherjee, Adv.

VERSUS

SHRI AJAY RASTOGI & ORS. Respondents
Through: Mr. Rajat Aneja and Mr. Aarohi
Holani, Adv. for R-1 to 6.
Mr. Attin Shankar Rastogi, Adv.

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

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This revision petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller dated 3.9.2013 by which the Additional Rent Controller has dismissed the leave to defend application filed by the petitioner-tenant and has granted an eviction order to the respondents/landlords(essentially for respondent no.1) with respect to the tenanted premises which comprises of one hall on the ground floor on the

property no. 5053, 1, Netaji Subhash Marg, Main Daryaganj, New Delhi as shown in red colour in the site plan filed along with the eviction petition for the residential use of the respondent no.1 and his family members, especially the mother who is aged about 83 years as of today.

2. In a *bonafide* necessity petition there are three aspects which are required to be shown for an eviction order to be passed (i) existence of relationship of landlord and tenant; (ii) the landlord requires the premises for his *bonafide* use and/or for the use of his family members, and (iii) landlord has no other alternative suitable accommodation.

3. The aspect of existence of relationship of landlord and tenant between the parties was not disputed before the Additional Rent Controller and is also not disputed before this Court. What is in issue is actually the availability of an alternative suitable premises and more importantly whether the tenanted premises which have been let out for commercial purposes can be evicted for residential purposes.

4. Let me turn to these issues and examine the same as to whether they raise triable issues for grant of leave to defend.

5. At the outset let us see certain admitted facts with respect to the members of family of the respondents as also the accommodation which is available to the respondent no.1 and his family members. Admittedly, the respondent no.1's family comprises of himself and today respondent's age is 56 years, his wife's age is 48 years, one son aged about 25 years, one daughter aged 26 years and one mother aged 83 years as on today. It is the case of the respondent no.1/landlord that the tenanted premises being situated on the ground floor are required not only for the mother as in her advanced age she cannot climb up to the second floor and also because she is suffering from various ailments including arthritis of knees , the tenanted premises are also required for the need of the respondent no.1 and his wife who are also in their advanced age and therefore find difficulty in climbing to the second floor. The tenanted premises on the ground floor are therefore stated to be required.

6. So far as the aspect of the family members of the respondent no.1/landlord is concerned, a reading of the leave to defend application shows that there is no dispute with respect to who are the family members of the respondent no.1/landlord and their ages, except of course with respect to

the mother, it is stated that she is not economically dependent upon the respondent no.1/landlord for accommodation.

7. In my opinion, from the fact that the mother is 83 years of age, even taking that she does not suffer from any illnesses, and noting that in any case the respondent no.1/landlord has filed the medical certificates with respect to the ailments being suffered by the mother including heart problem, arthritis etc, the advanced age of 83 years of the mother is such that there can be no cavil to the requirement of the mother for use of the ground floor and not climbing to the second floor of the premises. Also, even the advanced ages of respondent no.1 and his wife in the 50's is sufficient for them to claim a room on the ground floor. Accordingly, in the opinion of this Court there is no illegality or lack of *bonafides* in the claim of the respondent no.1/landlord for the ground floor tenanted premises on account of the advanced ages of the mother of the respondent no.1, respondent no.1 himself and his wife because old age itself entitles a person not to climb stairs if he can afford not too on account of a premises on the ground floor which can be made available. Therefore, in my opinion, claim of the ground floor premises is justified. Also merely because the mother has her own income cannot mean that she is not a family member of respondent

no.1 because not only it is settled law in view of a series of judgments of the Supreme Court that a person does not cease to be a family member just because that person has an income. Surely a son is duty bound to look after his aged mother as a family member.

8. The entire premises bearing no. 5053 was comprised of the ground floor, first floor and second floor. These entire premises are owned jointly by the six respondents/landlords of which only the respondent no.1 is living in Delhi and on the second floor above the tenanted premises only which is in his possession. The other respondent nos. 2 to 6 are living outside Delhi at Lucknow, Kolkatta and Dehradun, and who are admittedly co-owners of the entire property and averred to be in possession of the first floor of the property which is lying vacant and locked. It is contended by the petitioner/tenant that this first floor of the premises is available to the respondent no.1/landlord for user and therefore, the same would be an alternative premises.

(i) In my opinion, the argument in this regard is misconceived because once there are other co-owners of the property besides the respondent no.1, merely because the first floor portion is lying vacant and locked but the same is stated by the respondent no.1 to be in possession of

the other co-owners, this Court cannot force the other co-owners who are entitled on account of co-ownership to possession of some part of co-owned property to vacate the portion in their possession. Surely no co-owner would like to surrender possession of that part of property, possession of which is with him/her to another co-owner and therefore there is no illegality if the portion with the co-owners is not considered as an alternative suitable accommodation. Also, the first floor is stated to be used by other co-owners for residing when they come to Delhi. Further, admittedly this accommodation with other co-owners is on the first floor, and not on the ground floor, and therefore on this additional reason that the first floor of the property is not suitable as the ground floor for aged people, the first floor cannot be said to be an alternative suitable accommodation.

9. The petitioner-tenant had contended that there are a total of five properties which are available to the respondent no.1 and his mother and which are pleaded to be alternative suitable accommodations, and which are:-

- (i) property no. 4/7-2533/X, Asaf Ali Road, New Delhi.
- (ii) property no. 967-68, Bhojpura, Maliwara, Delhi

- (iii) property no. 97, Hindi Park, Darya Ganj, New Delhi,
- (iv) property no. 4910, Darya Ganj, New Delhi, and,
- (v) property no. 757-758, Chandni Chowk, Delhi.

10. Let us examine the position as to whether the aforesaid properties would be alternative suitable residential accommodation available to the respondent no.1 and his family members. Firstly, at the outset I must note that the law does not expect the landlord to partition his family for the convenience of the tenants. Once the properties which are said to be alternative suitable residential properties are far away from the property where the tenanted premises are located and on the second floor of which property admittedly the respondent no.1 is residing with his family members, law does not require and nor does this Court expect that some family members will live in one property and some live in another property far away. A landlord is entitled to keep his family members together, and at the convenience of the tenant he is not expected to have separate residences for separate members of the family by dividing/partitioning the family so as to say. Therefore even assuming the other properties are available, and which actually they are not as stated below, these other properties situated far from the present residence of respondent no.1 and his family members cannot be considered as alternative suitable accommodation.

11. Let us now take each of the properties as pleaded by the petitioner /tenant to examine whether any of them would be an alternative suitable accommodation. The first property is the property no. 4/7-2533/X, Asaf Ali Road, New Delhi. In this property respondent no.1 is a co-owner and in the reply to the leave to defend application it is shown that this property is not vacant because the ground floor of the same is occupied by Assistant Registrar of Delhi Development Authority and the first floor is occupied by a Communist Party of India since 2000. These facts which have been stated by the respondent no.1/landlord in the reply to the leave to defend application and they have not been disputed in the rejoinder filed by the petitioner/tenant, and therefore, once this property is not vacant, this property cannot be considered as an alternative suitable accommodation.

12. The second property is the property at 967-68, Bhojpura, Maliwara, Delhi but this property is not owned by the respondent no.1 nor by any of his family members including the mother as per reply filed in the application for leave to defend. Again there is no adequate challenge in the rejoinder which is filed by the petitioner/tenant because just a self-serving denial is made and which is not enough to raise a triable issue because the respondent no.1/landlord has clearly stated that neither he nor any of his

family members have any right, title and interest in this property. No documents showing that either the respondent no.1 or his family members including the mother have any ownership interest in this property have been filed on record. Self serving averments of bald denials cannot make the landlord owners of a particular property although the landlord is not the owner of such a property and such issues raised by the tenants if are allowed to be pleaded as triable issues then in every case tenant will plead ownership of a particular property not owned by the landlord and which plea would be contended to entitle leave to defend. This however cannot be. I therefore hold that since the property at Maliwara does not belong to the respondent no.1 or any of his family members, the same is not an alternative suitable accommodation.

13. So far as the third and fourth properties are concerned, the respondent no.1 has stated in his reply to the leave to defend application that these properties are in fact one and the same because the plot is numbered 97 and on which plot the property no. 4910 has been constructed. These properties also have been specifically pleaded by the respondent no.1 not to be owned either by him or by any of his family members and therefore

adopting the reasoning already given with respect to the property at Maliwara, this argument of the petitioner/tenant is also therefore rejected.

14. That takes us finally to the property no. 757-758, Chandni Chowk. The respondent no.1/landlord has pleaded in the reply to the leave to defend application that this is a commercial property jointly owned by the respondent no.1 and his mother from where the business of cloth is being carried out and which is duly reflected in the income tax return, copies of which have been filed. Also, counsel for the respondent no.1 rightly contends that only those grounds which are pleaded in the leave to defend application have to be considered by the Additional Rent Controller and this Court cannot consider this ground of the property at Chandni Chowk in view of the ratio of the judgment of the Supreme Court in the case of ***Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*** that beyond the statutory period of 15 days for filing a leave to defend application a tenant cannot file any additional grounds or additional affidavits or additional documents because whatever has to be stated for seeking leave to defend has necessarily to be stated only within the inflexible mandatory statutory period of 15 days provided under the Delhi Rent Control Act, 1958 as long as the aspects/facts/events existed before the 15 day period of filing

of the leave to defend application. Therefore, looking at it in any manner as to on merits or with respect to not allowing this plea to be raised once it is not raised in the leave to defend application, the existence of the property at Chandni Chowk cannot be said to be an alternative suitable accommodation including for the reason that the same is not vacant and is being used for business purposes.

15. The last argument which was urged on behalf of the petitioner/tenant was that the lease deed with respect to the property in which the tenanted premises are situated shows that the same is to be used only for commercial purposes and therefore the suit premises cannot be used for residential purposes. Reliance is placed upon by the petitioner upon Clause I(vi) of the Perpetual Lease Deed dated 17.2.1942 in support of the arguments, however, when this subject Clause is seen, this Clause nowhere bars user of the ground floor portion of the property for residential purpose and all that is written in this Clause is that the entire suit property will be used for shops with residential purpose. It is not the subject matter of lease that there is not any restriction put on the landlord that the ground floor can only be used for commercial purposes and not for residential purposes. Learned senior counsel for the petitioner also agrees that he is not able to

show any statutory provision that commercial premises cannot be used for residential purposes. Therefore, I reject the argument that the suit premises cannot be used for residential purpose once they are found to be suitable for the *bonafide* need of the landlord.

16. At the end, I would like to observe one aspect though that aspect does not form part of the pleadings in the eviction petition or in the leave to defend application with its replies and rejoinders, and which is that possibly how can the ground floor where the tenanted premises is situated be used for residential purposes because there is no kitchen or bathroom attached to the same. In this regard, I would like to observe that so far as kitchen is concerned, respondent no.1 already has a running kitchen in the second floor and there is no need for making a kitchen on the ground floor. So far as the bathroom is concerned, surely, the respondent no.1 will be entitled to take necessary sanction to construct a bathroom within the covered area/hall of the tenanted premises on the ground floor and merely because today there is no bathroom cannot mean that subsequently the respondent no.1 cannot construct a bathroom for use of the mother or any other person who would use the room on the ground floor which is presently with the petitioner/tenant.

At this stage, counsel for the respondent no.1 states that in fact there is existing a WC on the ground floor of the premises, and which is duly shown in the site plan filed alongwith the eviction petition, and hence for this reason, in my opinion, the ground floor portion can be used for residential purposes.

17. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

JULY 31, 2014/ib

VALMIKI J. MEHTA, J.