

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

Reserved on: 04.02.2014  
Pronounced on: 19.09.2014

+ **R.C.(REV.) 593/2012**

DEVENDER SINGH & ANR. .... Petitioners  
Through: Mr. Krishan Kumar, Adv.

Versus

RENUKA KANSAL .... Respondent  
Through: Mr. Sandeep Garg with  
Mr. Anubhav Kripal, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

% **MR. JUSTICE NAJMI WAZIRI**

1. This petition impugns an order dated 4<sup>th</sup> October, 2012 passed by the learned Rent Controller allowing the respondent/tenant's application for leave to defend, in an eviction petition filed by the petitioner/landlord. The latter had sought the tenanted premises i.e., House No. 1449/127-B, First Floor, 100 Feet Road, Durgapuri, Delhi-110093 on the ground of bonafide need, under section 14(1)(e) of the Delhi Rent Control Act, 1958 ( "the Act"). The impugned order had restricted the leave to defend only to the issues of: whether the petitioners had bonafide requirement of the premises and whether any other reasonable suitable accommodation was available to them?

2. It was submitted that the petitioners/landlords have four sons and a daughter; that the elder son namely Parveen was married and residing separately at C-543, Hanuman Mandirwali Road, Ashok Nagar, Delhi and

this residential accommodation was on a land admeasuring 50 sq. yds. and was exclusively only for Parveen and his family; that in House No. 1449/127-B, 100 Feet Road, Durgapuri, Delhi-110093, the ground floor was being used for dairy business, while the first floor was occupied by the tenant; that out of the other three sons of the petitioners, Ravinder Kumar and Pankaj (twins) were 23 years old and the other son namely Harinder Kumar was 21 years of age, as on the date of filing of the eviction petition; that were to marry, but due to lack of requisite accommodation, were constrained from doing so; that even their pursuit of higher education was said to be suffering because of lack of adequate space for studying. It was also contended that their current accommodation had no guestroom thus, causing the entire family, immense inconvenience and hardship whenever the married daughter would visit them alongwith her husband. It was further contended that although the premises was rented out for residential purpose, it was malafidely being used by the tenant for commercial purposes.

3. In the application for leave to defend, the tenant had averred that there was no bonafide need and the petitioners were motivated only by avarice, to re-let the vacated premises at a higher rent; that the eviction – petitioner had a number of other properties from which they were earning ‘handsome’ rents. A list of the following properties was given in support of this contention: (i) property bearing No.C-550, Ashok Nagar, Gali No.7, (ii) property bearing No.C-549, Ashok Nagar, Gali No.7, (iii) property bearing No.C-543, Ashok Nagar, Gali No.7 and (iv) property bearing No.12/1, 40ft. Road Krishan Vihar, Mandoli Road, Delhi. It was further contended that the petitioners/landlords had two other properties in D Block, Ashok Nagar, Delhi; that earlier on 10.06.2007, the landlords had forcibly tried to re-enter

and take possession of the suit property against which an FIR No.317/2007 was registered with P.S. Mansarovar Park and it was pending trial. It was further contended that the property was taken on rent sometime in August, 1997; that rent was enhanced from time to time; that since May 2007, the tenant was constrained to deposit the rent in the Court because the landlords avoided accepting it. The landlords however, refuted these contentions and submitted that no triable issue had been raised in the application.

4. On the basis of a certified copy of the judgment dated 19.01.2011 filed by the tenants, pertaining to adjudication of a *lis* between the parties, the Trial Court was of the view that the landlord-tenant relationship stood established. The Trial Court bore in mind, the principle that it is not the mere whims and desire that would form the basis of an eviction order but instead the Court would be required to see that a bonafide need for the same is existent and such need had to be seen in *preasenti*. It was observed that the landlords had not disclosed as to why they had shifted from C-543, Hanuman Mandir-wali Road, Ashok Nagar, Delhi to House No. 1449/127-B, Second Floor, 100 Feet Road, Durgapuri, Delhi-110093. The Trial Court was of the view that the landlords had admitted to their ownership of other properties in Block 'C', and that the reply to para 5 of the application for leave to defend appeared to be bald. The Trial Court perused the FIR dated 10.6.2007 lodged with P.S. Mansarovar Park by the tenant against the petitioners/landlords. The Trial Court held that change of user by the tenant was of no consequence since the purpose of letting out the tenanted premises was irrelevant in view of the Supreme Court's judgment in the case of ***Satyawati Sharma (dead) by LRs v. Union of India & Anr. 148 (2008) DLT 705 (SC)***. The Trial Court further relied upon the *dicta* of the

Supreme Court in *Charan Das v. Brahma Nand*, 1982 (1) All India RCJ 789 which held that it is for the landlord to show as to how, despite the availability of other properties, the same were insufficient. The Trial Court further reasoned that where additional accommodation was sought, the Courts should not ordinarily refuse leave to defend. The Court relied upon the aforesaid judgment 19.1.2011 which showed that the petitioners were residing at C-543, Hanuman Mandir-wali Road, Ashok Nagar, Delhi and not at second floor of House No.1449/127-B, 100 Ft. Road, Durgapuri, Delhi-110093. Therefore, it was held that the former property could well be considered to be suitable alternative accommodation available to the eviction-petitioners. The Trial Court found this to be a triable issue, hence leave to defend was granted, albeit to a restricted extent.

5. The learned counsel for the petitioners/landlords contended that the learned Trial Court fell into error by not appreciating that every property alleged by the tenant to have been owned by the landlords had been duly replied to and accounted for. It was contended that pursuant to marriage of The petitioners' elder son, Praveen and due to lack of accommodation for his family, they had shifted from C-543, Hanuman Mandirwali Road, Ashok Nagar, Delhi to House No. 1449/127-B, Second Floor, 100 Feet Road, Durgapuri, Delhi-110093; that in property bearing House No. 1449/127-B, 100 Feet Road, Durgapuri, Delhi-110093, the ground floor is used for dairy business and the second floor had only one room, kitchen and toilet which evidently is not sufficient for the requirement of residence of the petitioners and their three sons. It was further submitted that property bearing No. C-550, Gali No.7, Ashok Nagar admeasuring approximately 55 sq. yds. and not 70 sq. yds., had already been sold out by the petitioners on 15<sup>th</sup>

December, 2003 to one Sh. Rampal Singh. It was further denied that property bearing No. C-549, Gali No.7, Ashok Nagar admeasuring about 100 sq.yds. was ever owned by the petitioners. Apropos property bearing No.C-543, Hanuman Mandirwali Road, Ashok Nagar, Delhi, it was argued that the same was admeasuring 50 sq. yds. and not 60 sq. ydrs. and it was occupied by the petitioners' elder son namely, Parveen. The ownership of property No. 12/1, 40ft. Road Krishan Vihar, Mandoli Road, Delhi admeasuring 500 sq.yds. was denied. It was further denied that the landlords were running a school therefrom. They also denied ownership of any other property in D Block, Ashok Nagar, Delhi and submitted that the said allegation of ownership of two other properties in Ashok Nagar was a conjecture since no properties were specified. It was further submitted that the tenant was the absolute owner of House No.84, Gali No.3, Durgapuri Extension, Delhi and the same was being used for commercial purpose just as the present tenanted premises.

6. The learned counsel for the petitioners/landlords relied upon the testimony of the tenant, being PW2 in FIR No.317/2007, where she had admitted to her residence at the aforesaid address. Her testimony was that on 9.6.2007, she had closed the tenanted premises and went to her house which was purchased six to seven years ago, built on a land area admeasuring approximately 80 sq.yds. and is double storied. She had further stated that she could not recall whether the present house was only residential.

7. Having heard the learned counsel for the parties, this Court is of the view that insofar as the landlord had specifically denied, both the ownership and the availability of the alternate accommodations as alleged by the tenant in para 5 of her leave to defend application, the Trial Court fell into error by

treating the same as a mere bald denial. There is a detailed averment on each of the additional properties mentioned in the leave to defend application. The landlords' reply to the leave to defend application would show that the said properties were not available to them. Therefore, the impugned order suffers from material irregularity.

8. Furthermore, insofar as the second floor of the property being House No. 1449/127-B, 100 Ft. Road, Durgapuri, Delhi-110093 shows that there was only one room, one kitchen and a latrine-bathroom, it would not be sufficient for the requirement of the petitioners, their son aged 21 years, two 23 years old sons and one married daughter alongwith her family. Clearly, the sons who were 23 years and 21 years of age at the time of filing of the petition, would require at least one room each for themselves. Similarly, the married daughter too would require a room for herself whenever she visits her parents. Quite evidently, the bonafide need of the petitioners for the tenanted premises was made out and they had shown that they had no suitable alternate accommodation available to them, as alleged by the tenant in the application for leave to defend. When the bonafide need has been made out and no alternate accommodation was shown from the records, clearly there was no dispute or triable issue raised in the application for leave to defend. In these circumstances, it would be for the Trial Court to pass an eviction order in a summary procedure envisaged under Section 25-B of the Act. The *ratio* of ***Satyawati Sharma (supra)*** extended the applicability of the Delhi Rent Control Act to commercial properties as well. It does not however mean that a residential property could, by virtue of the said judgment, be misused for commercial purpose. The said judgment also does not lend legitimacy to conversion of leased residential accommodations

for commercial purposes *de hors* proper consent and through due procedure.

9. In view of the aforesaid, the impugned order dated 4.10.2012 is set aside and an eviction order is passed against the respondent/tenant with respect to the tenanted premises being first floor of House No. 1449/127-B, 100 Ft. Road, Durgapuri, Delhi-110093. The order shall come into effect after the statutory period of six months as envisaged in the said Act. Insofar as the leave to defend was pursued on frivolous grounds in an eviction petition filed in the year 2011 and so defended in this Court too, the respondents are put to costs of Rs.20,000/- to be paid to the petitioner within a period of four weeks from today.

**NAJMI WAZIRI**  
**(JUDGE)**

**September 19, 2014/ak**