

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC REV No.154/2015**

Decided on : 10th September, 2015

BABU LAL Petitioner
Through: Mr. Sushil Kumar, Advocate

Versus

MUKESH KUMAR Respondents
Through: Mr. Sunil Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order dated 31.1.2015 by virtue of which leave to defend of the respondent was allowed on the ground that the respondent/tenant has been able to raise triable issues.

2. Briefly stating the facts of the case are that the petitioner herein is the owner of property bearing no. RZ-16A/15D, Gali No. 3, Main Sagarpur New Delhi (suit property). The respondent herein was inducted as a tenant in a shop on the ground floor of the suit property (tenanted premise) in 1987

initially at a monthly rental of Rs. 400/- which was later increased to Rs. 550/-.

3. The petitioner/landlord in 2014 filed an eviction petition against the respondent seeking possession and occupation of the tenanted premise for the bonafide requirement of the daughter in law who is financially dependent on him. Further it was stated that he has no other suitable accommodation available to him. It was the case of the petitioner in the eviction petition that the respondent has not been paying rent for last almost three years and since he has a bonafide requirement of the tenanted premise to settle his daughter in law therefore the possession of the same be transferred to him.

4. The petition for eviction was contested by the respondent/tenant who took the plea that the petitioner/landlord has other suitable accommodation available to him in the form of a multistory building consisting of three floors which are in the possession of the petitioner/landlord. It was further contested that the daughter in law cannot be said to be dependent on the petitioner/landlord.

5. The petitioner in reply to the aforesaid contentions had averred that the multistory premise is purely residential and cannot be used for any

commercial activity. Further the petitioner pleaded that the family of the petitioner consists of his wife, two unmarried daughters, his son, daughter in law and two minor granddaughters. It is stated that his son is facing some criminal charge and is presently unemployed and therefore all the family members are dependent on him.

6. The learned counsel for the petitioner has placed reliance on the judgment of this court in Abdul Malik & Anr. Vs Shashi Bhalla 186 (2012) DLT 669 wherein it was held that the landlord is the best judge of his needs and it is not open for the court or tenant to dictate him the terms. Further it was held that unless and until triable issues are raised, the leave to defend cannot be granted in a routine manner. In furtherance of the aforesaid the learned counsel for the petitioner has further relied on the judgment of this court in Bantam enterprises Pvt. Ltd. vs Jaspal Singh Kapoor 189 (2012) DLT 59 wherein the aforesaid view was re-echoed.

7. With respect to the availability of the alternate accommodation the learned counsel for the petitioner has relied on the judgment of this court in the case titled Viran Wali vs Kuldeep Rai Kochhar 174 (2010) DLT 328, wherein it was held that the ground floor is more convenient than the shop situated in the basement. It was further observed that the landlord has all

right and choice to start his business in the premises which is more suitable and convenient to him and the tenant cannot dictate the landlord as to how and in what manner he should use his property.

8. On the basis of the pleadings of the parties, the short point that arose for consideration before the learned ARC was with respect to the bonafide of the petitioner/landlord herein in seeking the eviction of the present respondent/tenant. Vide order dated 31.5.2015 the leave to defend was granted by the learned ARC on the grounds that the respondent/tenant has been able to raise triable issues with respect to the availability of other suitable accommodation to the petitioner/landlord and in the absence of material information by the petitioner/landlord the eviction petition cannot be decided in a summary manner without giving due opportunity to the respondent/tenant to lead evidence. Aggrieved from the aforesaid the petitioner/landlord has filed the present revision petition.

9. I have heard the learned counsel for the petitioner. I have also gone through the record. During the course of arguments the only aspect which was raised by the learned counsel for the petitioner/landlord was with regard to the bona fide requirement of the tenanted premises by the respondent/landlord. I have considered the submissions. However, I do not

agree with the contentions of the learned counsel for the petitioner that the petitioner has been able to give satisfactory answers for all the issues raised by the petitioner. As has already been recorded in the impugned order the petitioner failed to provide material information with respect to the unemployment of his son or the financial dependency of his daughter in law on him so as to establish a clear bonafide requirement.

10. The judgment relied upon by the petitioner are of no help to him on account of the peculiar factual matrix of the present case. It is indeed trite principle that the landlord cannot be guided by the dictates of the tenant with respect to the use of his property but at the same time the landlord cannot remove the tenant in a whimsical manner. He must establish a genuine bonafide need and mere design or desire is not sufficient to order relocation of the tenant.

11. The tenant has been able to raise triable issues with respect to availability of other suitable accommodation. It is pertinent to note that keeping in mind the size of the petitioners' family and the accommodation available to him of the three floors of a multistory building, seems to be more than sufficient. So far as the opening of the tailoring shop is concerned the petitioner can very well operate the same in the multistory residential

premise under his possession as the same has been notified as one of the twenty two small businesses that may be run from residential premise by the Honorable Apex court in the case titled M.C. Mehta vs Union Of India & Ors. 2006 (9) SCALE 634 as well as in the Master Plan 2021. Therefore the residential nature of the multistory premise under the possession and occupation of the petitioner cannot be a hindrance in his desire for opening a tailoring shop, for the settlement of his daughter in law.

12. The questions relating to absence of suitable accommodation or financial dependency of the daughter in law cannot be decided in a summary manner especially when prima facie the respondent/tenant has been able to raise triable issues. Final adjudication of the matter can only take place once all the facts and evidence are judiciously analyzed. Therefore, I am of the view that the Ld. ARC was right in granting the leave to defend to the petitioner.

13. In exercise of its revisionary power the court does not sit in appeal and can only interfere where it is shown that the impugned order suffers from patent illegality or material infirmity or jurisdictional error. The view taken by the petitioner is not only a possible but also a plausible view and the same cannot be set aside merely because this court is a superior court.

14. I have carefully considered the submissions and I feel satisfied that the judgment granting the leave to defend is correct as the respondent was able to raise triable issue in the matter.

15. For the aforesaid reasons, the revision petition is dismissed.

V.K. SHALI, J.

SEPTEMBER 10, 2015
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