

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

% **Date of decision: 6th September, 2017**

+ **RC.REV. No.422/2017 & CM No.32441/2017 (for stay).**

VIJAY SHARMA

..... Petitioner

Through: Mr. Pramod Ahuja with Ms. Amita Sachdeva, Advs.

versus

NAMITA AGGARAWAL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 26th April, 2017 in E.No.189/17 (New No.199/17) of the Pilot Court (Central), Tis Hazari Courts) of dismissal of the application filed by the petitioner / tenant for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent / landlady and the consequent order of eviction of the petitioner / tenant from Shop No.2262, Shankar Gali, Bazar Sita Ram, Delhi – 110 006.

2. The counsel for the petitioner / tenant has been heard and the copies of the Trial Court record filed along with the paper book perused.

3. The respondent / landlady sought eviction of the petitioner / tenant from Shop No.2262 aforesaid on the ground of her own self requirement of the same pleading (i) that the respondent / landlady had purchased the subject shop vide Sale Deed dated 16th June, 2008; (ii) that the petitioner / tenant is an old tenant in the shop at a rent of Rs.150/- per month; (iii) that besides the subject shop, the respondent / landlady also owns adjoining

shops no.2263 and 2264; (iv) that shop no.2264 is in occupation and possession of the mother-in-law of the respondent / landlady who is running her business therefrom in the name and style of M/s. Earthing Material; (v) that the mother-in-law of the respondent / landlady has no source of income other than from the said business as the father-in-law of the respondent / landlady is paralysed and not able to move from the bed – therefore the respondent / landlady has allowed her mother-in-law to carry on business from the said shop no.2264; (vi) that the shop no.2263 is being used by the husband of the respondent / landlady from where he is running his business under the name and style of M/s. Pushpa Trading Company; (vii) the respondent / landlady is herself carrying on business in the name and style of M/s. Sant Enterprises having factory at Ghaziabad but no office at Delhi from which she can trade in the goods manufactured or run her office; (viii) that the shop no.2262 in the tenancy of the petitioner / tenant is most suitable and reasonable for the respondent / landlady to have her office of trading of goods manufactured in the factory at Ghaziabad as in the adjoining two shops the mother-in-law and husband of the respondent / landlady are carrying on their business; (ix) that even otherwise, the aforesaid shops are situated in a commercial area most suitable for the business of the respondent / landlady in the name and style of M/s. Sant Enterprises and easily accessible for the customers of the said business; and, (x) that the respondent / landlady does not have any other reasonable / suitable accommodation.

4. The petitioner / tenant sought leave to defend pleading (i) that the “earlier landlord Girwar Singh” never asked the petitioner / tenant to pay rent to the respondent / landlady nor informed the petitioner / tenant of the

sale in favour of the respondent / landlady; (ii) that though the petitioner / tenant had been depositing rent under Section 27 of the Rent Act in the name of the respondent / landlady but without admitting the respondent / landlady to be the landlady; (iii) that the “earlier landlord Girwar Singh” has been accepting rent from the petitioner / tenant; (iv) that the respondent / landlady along with the petition for eviction has filed documents with regard to her factory at Ghaziabad but has not filed any documents with regard to the two shops no.2263 and 2264; (v) that the respondent / landlady has also not mentioned the age of her mother-in-law and has not filed any documents on record; (vi) that the shop no.2264 alleged to be in possession of the mother-in-law of the respondent / landlady is lying vacant and no document of carrying on of any business therefrom have been filed; (vii) that shop no.2263 is in joint possession of the respondent / landlady and her husband Sanjay Agarwal who has therein been doing business of goods manufactured at Ghaziabad by the respondent / landlady; the name of the said business is Pushpa Trading Company and which is being run by Sanjay Agarwal; (viii) that one can do business from one place only and not from four places as the respondent / landlady is wanting to do; (ix) that the respondent / landlady has got a factory at Ghaziabad and second shop no.2264 which is lying locked and is surplus; (x) that the respondent / landlady has been carrying on manufacturing business since 2012 i.e. for five years prior to the filing of the petition for eviction and had not thought it fit to carry on trading business and in fact trading business has been carried on in the name of Pushpa Trading Company; (xi) that no documents of Pushpa Trading Company had been filed; and, (xii) that the petition for eviction was barred by Order II Rule 2 of the Code of Civil Procedure, 1908 (CPC) owing to the respondent /

landlady having earlier filed a petition for eviction of the petitioner / tenant under Section 14(1)(a) and (b) of the Act.

5. The respondent / landlady filed reply to the aforesaid leave to defend application in which she denied that in shop no.2264 her mother-in-law was not carrying on any business or that shop no.2263 was in joint possession of the respondent / landlady and her husband. It was further stated that the respondent / landlady had placed on record documents to show that Pushpa Trading Company was of the husband of the respondent / landlady.

6. The learned Additional Rent Controller has in the impugned order recorded (i) that the respondent / landlady had placed on record the registered Sale Deed dated 16th June, 2008 of purchase of the property from Girwar Singh who had been admitted by the petitioner / tenant also to be the erstwhile owner and landlord of the premises; (ii) that it is immaterial whether the petitioner / tenant attorns to the respondent / landlady as landlady or not as law does not require any act of attornment; (iii) that the relationship of landlord and tenant between the respondent / landlady and the petitioner also stood established in the earlier proceedings between the parties; (iv) that the respondent / landlady had placed on record the Income Tax Assessment orders from which it was evident that the husband of the respondent / landlady was the sole proprietor of Pushpa Trading Company and carrying on business from shop no.2263; (v) the respondent / landlady has also placed on record the documents issued by the Sales Tax Department showing the husband of the respondent / landlady to be the proprietor of Pushpa Trading Company and carrying on business from shop no.2263; (vi) from the aforesaid documents it was evident that the business of Pushpa

Trading Company was not of the respondent / landlady; (vii) the respondent / landlady had also placed on record DVAT registration certificate issued in the name of M/s. Earthing Material at shop no.2264 proving that the business of Earthing Material was carried on from shop no.2264; (viii) the respondent / landlady had also placed on record TIN certificate and the certificate issued by the Punjab National Bank, Asaf Ali Road Branch, New Delhi to prove that the business in the name and style of M/s. Earthing Material at shop no.2264 was of Pushpa Devi, mother-in-law of the respondent / landlady; (ix) all the said documents proved that shop no.2264 was not lying vacant; (x) it mattered not that the mother-in-law of the respondent / landlady was a senior citizen, as long as the business being carried on from shop no.2264 was of the mother-in-law of the respondent / landlady; (xi) that the respondent / landlady had also placed on record documents to show that the business of Sant Enterprises at Ghaziabad was of the respondent / landlady; and, (xii) the pleas of the petitioner / tenant that the respondent / landlady was carrying on business from shop no. 2243 and /or that shop no. 2264 was lying vacant were bald averment on which leave to defend could not be granted.

7. The counsel for the petitioner / tenant before this Court has contended (i) that prior to filing the petition for eviction from which this petition arises, a petition under Section 14(1)(a) and 14(1)(b) was filed and which was dismissed qua 14(1)(b) and allowed qua 14(1)(a), giving benefit of 14(2) to the petitioner / tenant; (ii) that the petitioner / tenant has filed appeal against the said order which is still pending consideration; (iii) that the respondent / landlady at the time of filing the earlier petition did not take the ground of her own requirement – even in the notice preceding the petition for eviction

under Section 14(1)(a) of the Act it was not pleaded that the respondent / landlady required the premises in the tenancy of the petitioner / tenant for her own use; (iv) that the petitioner / tenant has in the grounds of challenge pleaded in this petition, pleaded another premises available to the respondent / landlady – at the time when this order is being dictated it is stated that it was so pleaded in the application for leave to defend also in para 31 of the leave to defend application i.e. that the respondent / landlady was also having property no.“2243;” and, (v) that the registration of the respondent / landlady showed that the respondent / landlady was merely a ‘dealer’ and was not manufacturing the goods at Ghaziabad.

8. I will take up last of the aforesaid contentions first. At the time of hearing, it was enquired from the counsel for the petitioner / tenant what is the definition of ‘dealer’ in the law under which the certificate of registration and allotment of TIN is issued.

9. Though the counsel for the petitioner / tenant at that stage stated that he had not checked the definition of ‘dealer’ but after checking the same on his iPad states that it does not include a manufacturer. However what the counsel for the petitioner / tenant is seeing on his iPad is definition of ‘dealer’ in Wikipedia, contents whereof, as is well-known, any user can change at any time. The argument is to be noted to be rejected. The certificate is issued under the provisions of the Uttar Pradesh Value Added Tax, 2007 and instead of checking up the definition of ‘dealer’ thereunder, definition in Wikipedia is being used. There should be some seriousness while making arguments in the Court of Law, at least in the High Court, and

arguments of this kind without the counsel himself satisfying with respect thereto and / or giving any thought to the same, should not be made.

10. I may in this regard mention that the petitioner / tenant, in the application for leave to defend has admitted that the respondent / landlady is running her manufacturing business at Ghaziabad. The argument made today shows the fickleness of the grounds on which leave to defend is being sought and argued and the length to which the tenants are willing to go to somehow secure leave to defend to defer their eviction from the premises.

11. In the same vein is the argument that the petition for eviction under Section 14(1)(e) is barred by Order II Rule 2 of the CPC for the reason of earlier petition for eviction under Section 14(1)(a) and (b) of the Act having been filed. It is settled law that each ground of eviction under the Rent Act constitutes a separate cause of action Reference can be made to (i) ***S. Rajdev Singh Vs. M/s. Royal Studios*** AIR 1972 Del 150; (ii) ***Jai Kishan Balkishan Vs. Dr. M.B. Kagal*** (1972) 8 DLT 422; (iii) ***Abnash Kaur Vs. Dr. Avinash Nayyar*** ILR (1974) II Del 133 (FB); and, (iv) ***Vijay Kumar Sharma Vs. Manoj Kumar Garg*** 2016 SCC OnLine Del 4030. Order II Rule 2 of the CPC does not bar the filing of a petition for eviction on other grounds after the filing of the petition on one of the grounds stipulated in proviso to sub Section (1) of Section 14 of the Act. Moreover, the procedure prescribed for dealing with the petition for eviction under Section 14(1)(e) is special, under Section 25B and not applicable to other grounds of eviction and if the petition for eviction under Section 14(1)(e) of the Act is clubbed with any other ground, the summary procedure under Section 25B would not be available. Thus no adverse inference can be drawn against the respondent for

not invoking ground under Section 14(1)(e) while filing the earlier petition for eviction under Section 14(1)(a) and (b) of the Act.

12. Though the counsel for the petitioner / tenant before this Court has not controverted the ownership of the respondent of premises in tenancy of the petitioner or the existence of relationship of landlord and tenant with respondent, but since in the application for leave to defend such ground was taken, I may record that as per (i) ***Sanjay Singh Vs. M/s. Corporate Warranties Pvt. Ltd.*** (2013) 204 DLT 12; (ii) ***Harvinder Singh Vs. M/s. Paradise Tower Pvt. Ltd.*** (2013) 199 DLT (CN) 25; and, (iii) ***Ambica Prasad Vs. Mohd. Alam*** (2015) 13 SCC 13 once Sale Deed is registered by earlier owner in favour of respondent, attornment by the petitioner, admittedly tenant under earlier owner, to the respondent as landlord is not required. Moreover, the petitioner / tenant himself has been depositing rent under Section 27 of the Act in the name of the respondent / landlady only and without impleading Girwar Singh as party even thereto.

13. Taking of such grounds by a tenant in the application for leave to defend and during the hearing shows that the tenant does not hesitate from indulging in falsehood and making incorrect submissions in law for the sake of securing leave to defend.

14. With respect to the argument of “another property” being available to the respondent / landlady, the plea, as contained in para 31 is as under:-

“The petitioner’s another property near by this property no.2243 and in that property also surplus space is there.”

15. As would be obvious from the above, save for giving the number, no address even of the locality where the said property is situated is given. The counsel for the petitioner / tenant during the hearing has not drawn attention to any document filed by the petitioner / tenant to show any right of the respondent / landlady to any such property. On enquiry also it is stated that no such document was filed along with the application for leave to defend or has been filed before this Court. The affidavit containing the aforesaid averments has been verified as true to knowledge but the counsel is unable to state the basis of the knowledge with respect to “property no.2243”.

16. As far as the shop no.2264, which the respondent / landlady claims to be in possession of her mother-in-law from where the mother-in-law is carrying on business in the name and style of M/s. Earthing Material is concerned, the impugned order has already noticed that the documents had been placed by the respondent / landlady to show the business of M/s. Earthing Material to be of the mother-in-law and at the address of the subject shop. The petitioner / tenant has been in occupation of and claims to be carrying on business from shop no.2262 for several decades and ought to have known, to what use shop no.2264 was being put and since when it is lying vacant. Significantly, leave to defend application is abysmally vague in this regard. It is not stated, what business was being carried on from the said shop earlier and till when and since when it is lying closed.

17. The summary procedure prescribed by Section 25B cannot be permitted to be so abused by the tenants, by taking whatsoever pleas, without any basis and to indulge in falsehood and to claim leave to defend and to protract the eviction. The language of Section 25B(5) requires the tenant to,

in the application for leave to defend, disclose facts as would disentitle the landlord from an order of eviction under Section 14(1)(e) of the Act. What is however found in the present case is that the application for leave to defend, instead of disclosing any facts, is of mere denial and which though may be permissible in a written statement, is not permitted in the application for leave to defend.

18. Similarly, it cannot be said that the reasoning given by the learned Additional Rent Controller with respect to shop no.2263 is not in accordance with law within the meaning of Section 25B(8) of the Act.

19. Reference can be made to the recent judgments of the Supreme Court in (i) *Faruk Ilahi Tamboli Vs. B.S. Shankarrao Kokate* (2016) 15 SCC 431; (ii) *Dina Nath Vs. Subhash Chand Saini* (2014) 11 SCC 20; and, (iii) *Bhupinder Singh Bawa Vs. Asha Devi* (2016) 10 SCC 209 where it has been held that the plea that the landlord has been carrying on business along with the other family members from other premises and earning salary / profits therefrom is no ground to grant leave to defend to the tenant as the landlord is fully entitled to carry on separate business from the premises which were let out long back and the tenant has no locus to dispute the same.

20. Similarly, recently in *Anil Bajaj Vs. Vinod Ahuja* (2014) 15 SCC 610 it has been held that it is not impermissible for the landlord to carry on business from several premises and that it is not for the tenant to dictate to the landlord how the property belonging to landlord should be utilized by him for purpose of his business and cannot be a reason for grant of leave to defend.

21. In the aforesaid state of law, the facts disclosed by the petitioner / tenant cannot disentitle respondent / landlady from order of eviction. Supreme Court in ***Sarla Ahuja Vs. United India Insurance Company Ltd.*** (1998) 8 SCC 119 held that Rent Controller shall not proceed on the presumption that the requirement of the landlord is not *bona fide* and that when the landlord shows *prima facie* case, a presumption that the requirement is *bona fide* is to be drawn.

22. Supreme Court in ***Rahabhar Productions Pvt. Ltd. Vs. Rajendra K. Tandon*** (1998) 4 SCC 49, reiterated in ***Dina Nath*** supra, held that provisions of Rent Control law must be construed harmoniously so as to balance the rights and obligations of tenants and landlord. In ***Dina Nath*** it was further held that a liberalized approach has to be adopted qua the landlord's prayer for eviction when sought on the ground of *bona fide* personal requirement of landlord; it was also noticed that though earlier decisions interpreted Rent Control legislations narrowly, placing rather heavy burden on the landlord in cases where eviction was sought on the ground of *bona fide* requirement but recent decisions have made a significant departure from that approach. It was held that the landlord's requirement need not be only one of dire necessity.

23. I am satisfied that the requirement of respondent / landlady whose family members are admittedly carrying on business from adjoining two shops, for the shop in tenancy of the petitioner is *bona fide*.

24. There is thus no merit in the petition.

25. Dismissed.

26. No costs.

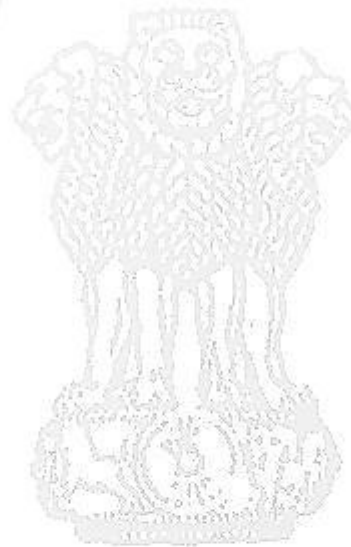
27. At this stage, the counsel for the petitioner / tenant states that the affidavit accompanying the petition for eviction describes the petition for eviction as under Section 14(1)(a) and (b) and not under Section 14(1)(e).

28. Such computer errors more on the part of paralegal staff are also merely inconsequential and cannot entitle the tenant to leave to defend.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 06, 2017

‘pp’ ..



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