

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

+ **RC.REV. 50/2015 & CM 1636/2015 (stay)**

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Reserved on: 13th March, 2015
Decided on: 25th March, 2015

PAWAN KUMAR

..... Petitioner

Through

Mr. Keshav Dayal, Sr. Adv. with Ms.
Sheetal Mishra and Ms. Saumitri
Pradhan, Advs.

versus

PARAMJIT SINGH GILL

..... Respondent

Through

Mr. Rajesh Aggarwal with Mr. Sushil
Thakur, Advs.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 26th September, 2014 dismissing the leave to defend application filed by the petitioner in an eviction petition filed by the respondent under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (in short the DRC Act) the petitioner prefers the present petition.

2. In the eviction petition, the respondent stated that the tenanted premises was a shop on the ground floor in suit property bearing No. C-145, Hari Nagar, Clock Tower, Main Market. The suit property was purchased by the father of the respondent who executed a Will in favour of the respondent. Thus, he is the sole and absolute owner of the property after the father's demise. The tenanted shop has two shops merged together

admeasuring 8 ft x 15 ft and the other 12 ft x 21 ft. Thus the total measurement of the shop is 372 sq. feets. The premises was let out on a rent of ₹2260/- per month. The respondent's family comprises of himself, his mother, his wife, two daughters, one son and one niece. Three of the children are studying in college. The respondent has a shop from where he does the business of property dealing but his earning is not much from the said shop. The only source of income for the respondent's family is the rent received from the tenants of the suit property. The respondent is living on the first floor of the suit property. The daughter of the respondent aged 24 years is a graduate and doing the Company Secretary course. The respondent wants his daughter to supplement the income of his family and thus she is interested in running a coaching centre, for which he has asked the petitioner to vacate the premises. He has no other suitable accommodation for running a coaching centre for the daughter other than the tenanted premises.

3. In the leave to defend application the petitioner stated that the respondent had filed a wrong site plan and besides the tenanted premises there are three other shops on the ground floor. The respondent has not mentioned how the tenanted premises was suitable. Further the respondent is in possession of the second, third and fourth floor of the suit property which fact has also been concealed. There is no explanation about the vacant second and third floor of the property. It is further stated that in the locality of Hari Nagar, Clock Tower there are number of coaching centers which are being run from upper floors for the last many years. Besides it is stated that the daughter of the respondent after doing the CS course would

prefer doing job in a big company or multinational company rather than running a coaching centre. It is further stated that the respondent is living a luxurious life and has no paucity of money.

4. In the reply to the leave to defend application the respondent clarified that he had only filed the site plan of the tenanted premises whereas the petitioner has filed the site plan of the entire property. The respondent admitted that he had three shops also on the ground floor adjacent to the tenanted premises, however there was no concealment of facts as the site plan filed by the petitioner himself would show that the tenanted shop has a wide front face and was thus more suitable for running a coaching centre. The respondent admitted that he was occupying the first floor of the property and the second and third floor have been given on rent for residential purposes thus the two floors as noted in the leave to defend application were not available to the respondent.

5. In the rejoinder affidavit the petitioner reiterated that the second and third floor of the property was vacant and that the respondent had not filed any document with regard to letting out of the second and third floor of the property and that there were two store rooms on the fourth floor.

6. Vide the impugned order learned Trial Court held that the landlord tenant relationship has not been denied. The learned ARC held that the respondent was the landlord of the petitioner. Further admittedly the shops at the ground floor were not vacant and were under tenancy as admitted by the petitioner and thus the same were not available to the respondent for opening the coaching centre. In Surender Singh Vs. Jasbir Singh 172 (2010) DLT 611 it was held that mere fact that the landlord did not disclose of

accommodation of basement and first floor available to him the eviction petition would not be fatal as same cannot be said to be an alternative accommodation for the purpose of business. Thus, the learned ARC observed that the respondent had shown the suitability of the tenanted premises for the reason that it was located on the main road and had a bigger frontage on the basis of the site plan filed by the petitioner himself. It was further held that since premises was required for commercial purposes, the ground floor was more suitable and it was not necessary for the respondent to have disclosed in the eviction petition that first, second, third and terrace floors portions were utilized by him for the purpose of his residence or given on rent for residential purposes and storing the goods. Even if it is assumed as stated by the petitioner that the respondent was a rich person, the same cannot be a ground to reject the eviction petition and the landlord cannot be restrained from further progress and earning additional income for the purpose of better living. It is for the landlord's daughter to decide what work she wants to do and nobody can force her to do a particular kind of job and there is no necessary inference that after doing the CS the daughter would do only a job in MNC. With regard to the contention that Jagpreet Kaur was the adopted daughter it was held that the fact that Jagpreet Kaur was living with him and dependent on him was not disputed and as per the CBSE certificate of Ms. Jagpreet Kaur she is the real daughter of the respondent and hence the eviction order was passed.

7. Before this Court learned counsel for the petitioner does not contest the landlord tenant relationship or the relationship of Jagpreet Kaur with the respondent. The contention of learned counsel for the petitioner is that there

is material concealment in the eviction petition for the reason that there are three other shops which have not been disclosed. The fact that the respondent has second floor and rooms on the terrace have also not been disclosed. It is not universally applicable formula that ground floor is more advantageous for commercial purposes. Further it is only a whim and desire of the respondent that his daughter has to run coaching classes which can be easily run from the upper floors. Reliance is placed on *Khem Chand & Ors. Vs. Arjun Jain & Ors.* 202 (2013) DLT 613.

8. Heard learned counsel for the parties. Indubitably in the eviction petition the respondent did not disclose that besides the tenanted premises there are three other shops on the ground floor, however he clarified that out of the said shops one was in possession of the respondent and two were with other tenants which fact has not been disputed by the petitioner. The case of the petitioner in the leave to defend application is that the respondent cannot play a game of pick and choose. Even as regards the second, third and fourth floor of the property is concerned, there is no denial to the fact that there are no tenants in the said premises. Further the respondent has stated in his eviction petition that his main source of income is the rent being received from the tenants and it will be for the landlord to decide that out of a number of tenanted premises available which one is the best suitable for him. The respondent has given a reason that the tenanted premises is a shop on the ground floor with a wide front face and thus obviously the same would be more suitable. Learned counsel for the petitioner has heavily relied upon a decision of this Court in *Khem Chand & Ors. Vs. Arjun Jain & Ors.* wherein this Court noted its opinion that while applying the principles

of “landlord is the best Judge” in cases of residential requirements of the properties which are subject matter of commercial tenancy, the Court should act cautiously and should not apply the said principle to such cases as liberally as applied to the residential premises. This Court relied on Satyawati Sharma Vs. Union of India and observed:

“49. In my considered opinion, it is necessary to emphasize that while applying the principle of ‘landlord is a best judge’ in cases of residential requirement of the properties which are subject matter of commercial tenancy, the court should act cautiously and should not apply the said principal to such cases as liberally as applied to the residential premises. It has to be noted that the judgment passed in the case of *Satyawati Sharma v. Union of India*, AIR 2008 SC 3148, has merely held that the provisions of Section 14(1)(e) of the DRC Act would be applicable in the cases of commercial premises in the same manner as applicable to the residential premises. However, the principle that the landlord is the best judge to decide his residential requirement and the courts have no business to interfere, cannot be applied as a matter of necessary consequence without application of the judicial mind. This is due to the reason that even though the ground of the eviction available to the landlord to evict the tenant for both residential and commercial premises is same, still the requirement of the landlord in both the cases may vary from case to case basis. While the question of eviction of residential premises is the one which affects the right to live which is the basic facet of right to life and human dignity as provided in Article 21, and thus the right of landlord to live at the place of his desired choice along with the family members should normally be respected as a part of basic human right and fundamental right to life. On the other hand, the eviction of the commercial premises affects the right of earning and livelihood of one person who is a tenant. The said right to livelihood is equally the other facet of right to life as evident from the reading of Article 21 of the Constitution of India. Thus, in the event of adopting a summary procedure to

evict the tenant who is earning his livelihood from a commercial place at the behest of the landlord and proceeding to affect the longstanding status quo of commercial tenancy on the ground of bonafide personal requirement, the court must take a precautionous approach. While deciding the question of genuineness of the need or availability of alternative accommodation, the court must apply its judicial mind rather than merely reiterating the theorem based principle that the landlord is the best judge to decide his need. In that way, the test for evaluating the eviction of commercial properties on account of bonafide need is slightly distinct and more stringent than that of the one relating to residential premises. The court should weigh the competing rights to livelihood of both the landlord and tenant and adopt a balanced approach. Where genuineness of the need or availability of the alternative commercial premises is doubtful, the court should postpone the said issue so that the tenant be granted an opportunity to contest the proceedings. Doing otherwise would be whittling down the entire policy behind the rent control legislation which is still the law for the time being in force.”

9. The opinion of this Court in Khem Chand is based on the fact that eviction of a commercial premises affects the right of earning and livelihood of one person who is a tenant. The said right to livelihood is a facet of right to life under Article 21 of the Constitution. Thus, in the event of adopting a summary procedure to evict a tenant who is earning his/her livelihood at a commercial place at the behest of the landlord and proceeding to affect the long standing status-quo of the commercial tenancy on the ground of bonafide personal requirement, the Court must take a cautious approach. Thus the test of bonafide requirement to be applied to a tenanted premises in case of commercial property should be more stringent. Indubitably, whether it is the residential premises or the commercial premises, the eviction affects

the tenant's right to live and human dignity or the right to livelihood which are both protected under Article 21 of the Constitution of India.

10. A tenanted premises given for commercial activity is also required for commercial activity of the landlord which affects the right of livelihood of the landlord also. The cautious approach emphasized by this Court does not mean that in all cases of commercial tenancy, the leave to defend should be granted and the matter should proceed on merits. If the landlord has been able to make out a bonafide requirement and he has no other suitable accommodation which is vacant and available, the landlord certainly has a right to choose one out of the number of tenanted premises which according to him is the best.

11. Learned counsel for the petitioner emphasizes that in all cases of commercial tenancy it cannot be said that the ground floor is more advantageous and the same is not a universally acceptable principle. No doubt, number of people run coaching centers from the top floor, however that does not mean that if a person has availability on the ground floor he must also be compelled to run the coaching floors above the ground floor.

12. This Court in Ramesh Chand Aggarwal Vs. Munshi Lal 2014 SCC OnLine Del 4245 noted:-

“ 13. At the stage of granting leave, the real test is whether facts disclosed in the affidavit filed seeking leave to defend, prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end the defence may fail. Leave to defend must not be granted on mere asking, but it is equally improper to refuse to grant leave when triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth

through cross-examination of witnesses. If the application filed under Section 25-B discloses some substantial triable issues, then it would be grave injustice to brush them outrightly without testing the veracity of the claims made by the tenant/applicant. In Charan Dass Duggal v. Brahma Nand, (1983) 1 SCC 301, while dealing with the issue of leave to defend the Apex Court has held thus:

“5. What should be the approach when leave to defend is sought for? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought for on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively”.

13. I find no merit in the petition. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 25, 2015
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