

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

+ RC.REV.33/2015

% Decided on: 19th January, 2015

VIJAY GANDHI Petitioner

Through: Mr. Amit Vohra, Adv.

Versus

SMT. VEENA KUMARI Respondent

Through: None.

AND

+ RC.REV.34/2015

MAHENDER Petitioner

Through: Mr. Amit Vohra, Adv.

Versus

SMT. VEENA KUMARI Respondent

Through: None.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM No.935/2015 (Exemption) in RC.Rev.33/2015

CM No.938/2015 (Exemption) in RC.Rev.34/2015

Allowed, subject to all just exceptions

RC.REV.No.33/2015 & CM No.934/2015(stay)
RC.REV.No.34/2015 & CM No. 937/2015 (stay)

1. By the common judgment dated 4th September, 2014 the learned ARC dismissed the applications for leave to defend filed by the petitioners and passed the eviction order which are impugned in the present petitions.

2. The respondent filed two eviction petitions against the petitioners herein stating that she was the owner of property bearing No.WZ-147, Gali No.2, Sri Nagar, Shakurbasti, New Delhi (in short 'suit property) on the basis of title documents and subsequent decree of the Court dated 7th April, 2013. Shop Nos. 1 and 2 in the suit property were let out to the petitioners herein respectively and are in occupation of the respondents in the capacity of tenant since 1982 on a monthly rent of ₹750/- and ₹650/- respectively. The respondent has not been receiving rent from the petitioners since 1996. In the suit property, there are three shops including the tenanted premises. The respondent requires all three shops to start the shop for her son namely Ajay, who is 22 years of age and is unemployed and her husband, who is working in a private firm, is going to leave his job due to ill health. Thus, the respondent wants to start her own shop/showroom by combining all the three shops for her son and husband and no other alternate accommodation was available with her except the tenanted premises.

3. In the leave to defend applications filed by the petitioners, common grounds were taken i.e. there is no relationship of landlord and tenant between the parties, they are not in occupation of tenanted premises in the capacity of tenant of the respondent herein, they are the tenants of Shri Ram Harak S/o Late Gayadin, there is a dispute of ownership between the

respondent herein and Smt. Kiran and the same is pending before Delhi High Court, no written agreement of tenancy is available with the respondent herein, the judgment of the civil Court in Suit No.798/2000 does not decide the title of the suit property nor the relationship of landlord and tenant, the husband of the respondent herein is working in Indian Oil Limited and 5 years are left for his retirement, the son of the respondent herein namely Ajay is also working in a call centre in Gurgaon, Haryana, the respondent herein has not specifically stated as to for what purpose all three shops situated in the suit property were required and what business was to be carried on, the shops are situated on a very narrow road of approximately 20 feet width and thus no showroom can be opened. Since triable issues were raised, leave to defend be granted.

4. As regards the relationship of landlord and tenant, the learned ARC held that the averment that the petitioners were the tenant of Ram Harak were bald assertions as neither any rent receipts issued by Ram Harak nor any other documents has been filed. The respondent herein has title documents of the property in her favour and in Suit No.798/2000 on the basis of same documents, a decree of mandatory injunction was passed against the licensee of said suit property. Since the learned ARC was not deciding the title and has to prima facie see whether relationship of landlord and tenant exists, certified copies of the judgment and decree were sufficient for him to come to the conclusion that landlord and tenant relationship existed.

5. The only plea urged before this court was that the respondent has not been able to show a bona fide requirement. In the eviction petition, the

respondent has stated that her husband is working in a private firm and her son is studying and since no bona fide requirement is made out from these averments, leave to defend could not be refused by the Ld. ARC. It is also stated that the son of the respondent was working in a call centre and thus there was no occasion to open a showroom. Further, no details of the proposed business were given.

6. In the eviction petitions filed the respondent pleaded that her husband Shri Suresh Kumar was working in a private firm and was going to leave the job due to old age and ill health and her younger son Ajay aged 22 years is marriageable and unemployed. In the leave to defend application, the averment qua husband of respondent were that he still has five years of service before he retires and that Ajay was working in the call centre which fact was refuted in the reply affidavit filed to the leave to defend application. It was stated that Ajay was not working with call centre and was in fact a student of 2nd year BA Course.

7. The emphasis of learned counsel for the petitioner is on the bona fide requirement on the date of filing of the eviction petition. Indubitably the eviction petitioner is required to show bona fide requirement when the eviction petition is filed. However, the fact that a landlord has a foreseen requirement or continues to do the job and not sits idle till eviction would not disentitle him to raise the plea of bona fide requirement on the ground that it is not a bona fide requirement on the date of filing the eviction petition. The bona fide requirement in presentii can never be given such strict meaning so as to render the family of the landlord jobless and to starve till the competent court decides whether there is a bona fide requirement or not and passes the

eviction order or wait for filing the eviction petition only on the bonafide requirement arising.

8. In P.S. Devgun Vs. S.P. Walia 1975 RCJ 564 this Court noted that it is certainly not a rule of law that a landlord must find himself on the street before he moves the Controller for eviction. The landlord cannot correctly estimate the time during which his petition is likely to be decided and so it is open to the landlord to institute the petition for eviction on the ground that his need is bona fide and is likely to arise in the foreseeable future. Should the Controller find the need to be imaginary or fanciful, he can dismiss it holding that the landlord has failed to establish that landlord needs the premises bona fide. On the other hand, if the Controller finds that the need of the landlord has been established to be bona fide, but the need to physically occupy the premises is not likely to arise before the happening of some particular event or a particular date, e.g. the date of retirement, then, it would be open to the Controller to specify the date before which the order for eviction passed by him would not be executable and he need not dismiss the petition as premature. It may be noted that sub-section (7) of section 14 requires the Controller to give six months time to the tenant to vacate, where he orders eviction on the ground of bona fide personal necessity and there is nothing in law to prevent the Controller from fixing the date for delivery of possession longer than six months in appropriate cases, where the justice of the case so requires.

9. In J.G. Kohli Vs. The Financial Commissioner, Haryana AIR 1976 P&H 107 similar view was taken and it was held that it is not the requirement of law that the landlord's need must be immediate and an

existing one on the very date of the application for ejectment. Indeed he is entitled to anticipate his requirement in a reasonably foreseeable future. Further, the Controller and Appellate Authority thereto can legitimately take into consideration any change in the circumstance regarding the requirement of the landlord on the date when the order of ejectment may have to be passed.

10. In Sukhbir Singh Jain Vs. District Judge Muzaffarnagar & Ors. 1979 (1) R.C.R. 473 the Allahabad High Court took the same view and held-

“8. Reading of the aforesaid provisions makes it clear that an application should be made by a landlord for his own occupation. It does not prescribe the requirement that the same must be a present and existing one on the very date of the making of the application. It is nowhere, to be found in Section 21 of the Act that the bonafide requirement for occupation of the premises by the landlord must exist either on the date of the filing of the application or on the date of the order. The requirement would be satisfied if a landlord files an application for his need. It must not be a need of the remote future and must not be one which may or may not arise. It should be certain. It is enough, if it is reasonably likely to arise in the near future. Knowing that a litigation takes a long period in coming to its end, it will be repelling the provisions of Section 21 of the Act, if courts insist on landlord having present need as against prospective but certain need.”

11. As noted above, in the eviction petition filed in 2013 the respondent pleaded that her son was of marriageable age and unemployed and in reply to leave to defend application filed on 16th May, 2013 it was stated that he was student of BA (2nd year) thus by now graduation of the son of the respondent is likely to be completed and her husband likely to retire in another 2/3 years even if he does not take voluntary retirement. Thus, the requirement cannot be said to be not bona fide in presentii. Consequently, I

find no merit in the petitions. The petitions and applications are hereby dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 19, 2015
‘v mittal’