

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

+ **RC.REV. 98/2015**

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Reserved on: 2nd March, 2015
Decided on: 24th March, 2015

KANSAL WOOLEN AND HOSIERY
MILLS PVT LTD

..... Petitioner

Through Mr. Abhinav Vasisht, Sr. Adv. with
Mr. Naveen Kr. Chaudhary, Adv.

versus

DR USHA SINGH AND ANR

..... Respondent

Through Mr. Raman Kapur, Sr. Adv. with Mr.
Gursharan Singh, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 19th September, 2014 the petitioner prefers the present petition whereby his leave to defend application in an eviction petition filed by the respondents under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act (in short the DRC Act) was dismissed.

2. In the eviction petition the respondents stated that the erstwhile owner of plot bearing No.A-8/11, Vasant Vihar, New Delhi was Smt. Raj Rani who left behind the two daughters i.e. respondent No.1 and Smt. Kamlesh Bajaj. The ground floor and one room on the first floor of the said plot was constructed by Smt. Raj Rani and the entire second floor except the one room constructed by Smt. Raj Rani out was constructed by respondents of their own funds and resources. The entire ground floor had been let out to the petitioner by Smt. Raj Rani which is the tenanted premises in question.

Smt. Raj Rani passed away on 30th June, 1981 leaving behind respondent No.1 and Smt. Kamlesh Bajaj as her only legal heir. By way of Will half of the suit property was bequeathed to respondent No.2 and 1/4th to respondent No.1 and Smt. Kamlesh Bajaj each. Disputes arose between respondent No.1 and her sister Smt. Kamlesh Bajaj and thus the suit for permanent injunction, suit for partition and probate petition were clubbed by this Court together and disposed of vide order dated 25th August, 2005 wherein it was held that the respondent No.1 and respondent No.2 were exclusive owners of the suit property and Smt. Kamlesh Bajaj had no right, title or interest left in the suit property. Smt. Kamlesh Bajaj was also restrained from interfering in the possession and rights of the respondents over the suit property. Despite all these facts to the knowledge of the petitioner it tendered the rent in the name of respondent No.1 and Smt. Kamlesh Bajaj. Due to financial needs the respondents sold the second floor with roof rights to one Manjit Singh Gill on 28th February, 2007 who constructed the third floor for himself being the owner of the same. Thus they are left with the ownership of only ground floor and first floor. The respondents reside in Patiala and occasionally visit Delhi when they utilize the first floor of the suit premises. Respondent No.2 is a shareholder and Joint Managing Director in Sangam Cinema Pvt. Ltd. and for this purpose visits Delhi. In the year 2009-2010 the grand-sons of the respondents namely Master Suryakaran Singh (the elder one) and Master Udaikaran Singh (the younger one) took admission in Shri Ram School, Gurgaon and thus the two grand-sons along with their mother Smt. Chandani W/o Pratik Thakur shifted to Delhi and started residing on the first floor. It is stated in the eviction petition that the younger grand-son of the respondent Udaikaran Singh needs special education. At the time of filing of the

eviction petition Udaikaran Singh was studying in Class 12th at Shri Ram School and Suryakaran in the IIIrd year in Business Management at IILM, Lodhi Road. It is stated that the tenanted premises i.e. ground floor of the suit premises was bonafidely required by the respondents for the residence of their son Pratik Thakur and his family i.e. his wife Smt. Chandani and grandsons Suryakaran and Udaikaran as their families have grown up and they require more space for residential purposes in Delhi. Further Smt. Chandani, Master Suryakaran Singh and Udaikaran Singh are residing on the first floor of the suit property and their son Pratik Thakur occasionally visits Delhi to be with his family and resides with them at the first floor. The said first floor consists of living-cum-dining room, kitchen, two bed rooms with attached toilets, powder room and servants room with attached bathroom. Thus the said residential accommodation is small, cramped and not sufficient for them to reside. There is no Pooja room for prayers in the house and the grand-children being grown up need separate rooms but they sleep in one room together. Further the daughter of the respondent Shefali and her family or the guests visit the family members and have to stay at the hotels. Moreover the respondents come to Delhi for their work, for visiting son's family and to be with grand-sons when the grand-sons have to shift out of their bedroom and to sleep in living-cum-dining room. Thus the respondents who want to spend time with their grand-children are not able to do so due to paucity of space and thus the tenanted premises was required for the bonafide requirement of the respondents. The respondents enclosed the receipts from Sri Ram Schools showing that Udaikaran Thakur was a child of special needs and that earlier Suryakaran Thakur was also staying in Sri

Ram School and now he was doing business management from IILM Lodhi Road. The site plan was also filed.

3. In the leave to defend application the petitioner stated that since Smt. Kamlesh Bajaj was one of the legal heirs of Smt. Raj Rani, the eviction petition was liable to be dismissed for non-joinder of necessary parties and that the petitioner had never tendered the rent to respondent No.2 who was a stranger and had no right to maintain the eviction petition. The respondents want to sell the property and the ground floor premises being tenanted, the respondents are not getting a good offer and thus they want to oust the petitioner. It is further stated that the respondents hardly use the first floor of the premises and the said floor is lying vacant except that the eldest grand-son Master Suryakaran Singh occasionally visits the premises. The petitioner is depositing the rent under Section 27 of the DRC Act, however after the Senior Civil Judge-cum-Rent Controller passed the order on 8th February, 2012 the petitioner was tendering the rent to the respondent No.1 by way of cheque. Petitioner denied that respondent No.2 was a shareholder or Joint Managing Director in Sangam Cinema Pvt. Ltd. or that he had any business interest or that his grand-sons or Ms. Chandani shifted to Delhi and started residing on the first floor. It was further denied that the younger grand-son Master Udaikaran Singh requires special education or that the tenanted premises was required bonafidely by the respondents, and that the residential accommodation available with the respondents was more than sufficient on the first floor, second floor and third floor. It is stated that Master Udaikaran Singh resides at Gurgaon and stays at Gurgaon whereas Ms. Chandani is residing with her husband at Patiala and the respondents are

also residing at Patiala. Occasionally one room is used by Master Suryakaran Singh who resides there only for two-three days in a week. It is stated that the premises has five rooms at the first floor, thus four rooms are lying vacant. The daughter of the respondent is happily married at Patiala and does not visit Delhi. Moreover the respondents also being aged do not visit Delhi.

4. On the basis of material on record the learned ARC came to the conclusion that in view of the judgment of the Delhi High Court dated 25th August, 2005 wherein both the respondents have been held to be exclusive owners of suit property and the order of the ARC dated 8th February, 2012 directing the petitioner to tender rent in favour of respondent No.1, the issue of ownership raised by the petitioner was not a triable issue and that it was well-settled that on transfer of title of the property in occupation of a tenant, the transferee under the law becomes the landlord and no overt act of attornment is required.

5. During the course of arguments before this Court learned counsel for the petitioner fairly did not contest this issue, however the main contest was that the present was a case of additional accommodation and since suitable accommodation was available to the respondents, the matter requires trial and leave to defend ought to have been granted. Reliance was placed on S.M.Mehra Vs. D.D. Malik (2001) 1 SCC 256 and Mohd. Jafar & Ors. Vs. Nasra Begum 191 (2012) DLT 401 and Ms. S.K.Seth & Sons Vs. Vijay Bhalla 191(2012) DLT 722. Though the special education of Udaikaran Singh was not disputed but it was stated that he was only a dyslexic child who does not need such a special care and that he was living in Gurgaon and

not at the tenanted premises. It was further contended that the respondent had no intention to shift to Delhi. Ms. Chandani visits Delhi occasionally once or twice and only Master Suryakaran Singh Thakur occasionally visits the premises. Learned counsel for the petitioner further fairly admitted that the second and third floor of the premises have been sold out as is evident from the registered sale deed dated 28th February, 2007 and thus he does not press the same and also that the plea taken in the leave to defend that the first floor of the premises contained five bedrooms is also incorrect as the property being 300 sq.yds the same would contain only three bedrooms along with the dining-cum-drawing room.

6. Thus, the issue for consideration before this Court is that whether the requirement of the respondent is an additional requirement in view of the space available with the respondent.

7. Along with the eviction petition, the petitioner has placed on record copy of the letter dated 5th February, 2009 informing about the admission of Udaikaran Thakur in Class 8th for 2009-10 session in Shri Ram School, Aravali. The letter notes Class VIII (SENP) i.e. admission of Udaikaran Singh for Class VIII for special education. Besides education fee, individualized education fee has also been charged. The letters and documents and statement of fee to be paid nowhere include hostel fee rather the same includes bus fee which would show that Udaikaran Singh was not availing residential accommodation in the school. Further the letter dated 3rd June, 2009 informing about the admission of Suryakaran Singh Thakur also does not include any residential/hostel fee or individual education fee. From the documents placed on record it is apparent that both Suryakaran Singh

and Udaikaran Singh were studying in Shri Ram School, Gurgaon since the year 2009 without any hostel/residential facility. Except a bald averment that Udaikaran Thakur is staying in Gurgaon without any details as to where he is staying, the plea of the petitioner that he is not staying in the tenanted premises is unacceptable. The respondents have also placed on record documents to show that Suryakaran Singh Thakur was admitted in the business management course at IILM Lodhi Road on 22nd August, 2011. The same also does not show any hostel/residential charges. Further it is the admission of the petitioner that Suryakaran Singh comes to the tenanted premises two-three times a week. From the documents on record the learned ARC rightly inferred that the two grand-sons of the respondent are studying in Delhi/Gurgaon and residing at the tenanted premises and in view of the non-availability of the separate rooms are constrained to live in one room.

8. The fact that Udaikaran Singh is a child of special needs is vaguely disputed in the leave to defend application without any material being placed on record. In the course of arguments it was stated that he was a dyslexic child. A child with special needs cannot be expected to be staying alone without a guardian or parent to look after. As per the site plan placed on record by the respondent out of the three bedrooms one is being used by Ms. Chandani, the second by the two sons and the third by the servant which requirement cannot be doubted. It is also a known fact that there are not many schools for children of special need which explains the purpose of both the grand-sons being shifted to Shri Ram School in the year 2009. Once the grand-sons are living in Delhi it is apparent that the other family members if not living with them would often come to meet them and without any

material to the contrary being brought out by the petitioner except bald assertion that the respondent own or possess other property in Delhi for their residential purposes, the requirement of the respondent has rightly been held to be bonafide by the learned ARC. Reliance was placed by the learned ARC on the decision of Sarla Ahuja Vs. United India Insurance Co. Ltd. AIR 1999 SC 100 wherein it was held that it is not for the Courts or for the tenants to dictate terms to the landlord as to how he can adjust himself without getting possession of the tenanted premises.

9. Learned counsel for the petitioner stressing on the fact that this was a case of additional accommodation stated that in a case of additional accommodation leave to defend should be granted and relied upon S.M.Mehra (supra). In the said case the Supreme Court noted that besides the ground floor the landlord had the entire second floor and in view thereof it was held that whether there was requirement of the first floor also needs to be determined only by granting leave to contest. In the present case as noted the respondents are only in possession of first floor, the second floor having been sold. The requirements have already been noted above and by mere bald assertion that neither Udaikaran Singh stays at Delhi nor Ms. Chandani nor the respondents visits Delhi, no leave to defend can be granted. In Mohd Jafar & Ors. (supra) the eviction petitioner had admitted availability of accommodation on the first and second floors and thus the Court held that leave to defend ought not be refused. Further in M/s. S.K. Seth & Ors. (supra) the plea taken by the tenant was that the landlord had in its possession a shop on the ground floor and thus the shop required was an additional accommodation.

10. The decisions relied upon by the learned counsel for the respondents were rendered on the facts of those cases. Supreme Court in the Constitution Bench judgment in Padma Sundara Rao & Ors. Vs. State of Tamil Nadu & Ors. (2002) 3 SCC 533 held:—

*“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL)] [Subnom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”*

11. Thus what would be an additional accommodation in one case may be the basic requirement in another. In most of the cases of residential accommodation, the landlord will be having some accommodation, thus every further requirement would be an additional requirement. The Court is required to see whether the same is bonafide or not and by merely terming the same as additional accommodation, leave to defend cannot be granted. I find no error in the impugned judgment. No triable issue has been raised by the petitioner and the view taken by the learned ARC is a plausible view. Consequently, the petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 24, 2015
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