

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

+ **RC. Rev. No.99/2015 & C.M. No.3875/2015**

Decided on : 15th September, 2015

BHARAT BHUSHAN GUPTA Appellant
Through: Mr. Alok Kumar & Mr. Neeraj Gupta,
Advocates.

Versus

VINOD KUMAR SHARMA Respondent
Through: Mr. T.N. Saxena & Mr. H.C. Kharbanda,
Advocates.

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

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner under Section 25 B (8) of the Delhi Rent Control Act, 1958 against the order dated 21.10.2014 by virtue of which the leave to defend of the petitioner was dismissed and eviction order was passed in favour of the respondent.

2. The facts of the case are not being reproduced herein as they are given in detail in the impugned order which are not disputed by either of the parties. But suffice it would be here to mention that the respondent had filed an eviction petition against the present petitioner in respect of

one L-shaped godown-cum-shop situated on the ground floor of property No.3276, Gali Raja Wali, Peepal Mahadev, Hauz Quazi, Delhi, more particularly, shown in red in the site plan attached to the eviction petition.

3. The eviction petition was filed on the ground of *bona fide* requirement by the respondent. It was averred by the respondent in the eviction petition that he and his two sons want to do business from the three shops situated on the ground floor of the suit property, one of which was under the occupation of the present petitioner. So far as the other two shops are concerned, two separate eviction petitions for *bona fide* requirement were also filed. The respondent had also stated in the petition that he has no other reasonably suitable commercial accommodation available to him and therefore, the eviction of the petitioner has been sought.

4. The present petitioner filed his leave to defend application and raised various pleas. One of the main pleas which was taken by the petitioner was that the respondent and his two sons are gainfully engaged in their business of antiques which they are running from the first floor of the suit property. It was further stated that in this business of antiques mostly the market is outside Delhi and they need not have a showroom

kind of shop in the suit premises. It was also stated that the existing accommodation which is available with the petitioner is more than sufficient to meet his requirement. It was stated that the eviction of the petitioner is sought on the ground of *mala fide* reasons to let out the premises afresh at a higher rent because it carries lot of commercial value.

5. In reply to leave to defend application, so far as this aspect is concerned, the respondent denied that his two sons are either carrying on the business of selling antiques or are running the same from the first floor of the suit premises. However, one fact which was noticeable was that he himself did not deny either the running of business from the first floor or the nature of business. Thus, on the basis of these averments, the learned counsel for the petitioner took the plea that he deserves the leave to defend application to be allowed. It has also come on record during the pendency of the present petition that the respondent had been able to retrieve the possession of the two other shops in respect of which similar petition for *bona fide* requirement was filed by the respondent.

6. It has been contended by Mr. Alok Kumar, the learned counsel for the petitioner that while rejecting the leave to defend application, the

learned Additional Rent Controller has fallen into error firstly by mentioning only about one shop omitting possession of the second shop having been taken by the respondent. In addition to this, it was stated by Mr. Alok Kumar that the respondent had shifted his stand taken in the eviction petition to different stand in reply to the leave to defend. It was contended by Mr. Alok Kumar that in the eviction petition his case was that he requires all the three shops for his own benefit and for the benefit of his two major sons for the purpose of running commercial business and further that he has no other commercial space available with him. While as the petitioner had pointed out that the respondent was doing the business of antiques from the first floor along with his two sons but he changed his stand in reply by stating that he needs two shops for his two sons along with a space for godown. Meaning thereby that he has been able to retrieve two shops from the other two tenants but he needs the possession of the shop under the occupancy and tenancy of the present petitioner for the purpose of godown. It was contended by Mr. Kumar that this clearly reflected that the requirement of the petitioner was not *bona fide* and further he had also not revealed the fact that he was himself carrying on the business of selling antiques on the first floor of the suit

property, meaning thereby that he did not require the premises for himself and as a matter of fact, he had alternative accommodation available with him.

7. So far as the learned counsel for the respondent is concerned, he referred to the reply filed by him in response to the leave to defend application where it was averred by him that the petitioner himself owns number of alternative accommodations and it was contended by him that the petitioner has as many as 20 shops which are lying vacant and locked and therefore, he could shift his business to the same. He has also contended that there was no change in the stand of the petitioner inasmuch as the petitioner/landlord, that is, the father of the two major sons, wanted to settle his sons in an independent business, who were unemployed and therefore, he reiterated the orders passed by the learned Additional Rent Controller.

8. I have carefully considered the submissions of the respective sides and gone through the record. I find that there is a considerable merit in the submission made by Mr. Kumar that the learned Additional Rent Controller has fallen into a serious irregularity as well as illegality in dismissing the leave to defend application of the petitioner. This is

purely on account of the fact that the respondent, in the first instance, is expected to come to the court with clean hands. He ought to have been disclosed what business he is carrying on and at what space. This fact was not truthfully revealed by him in his eviction petition. All that he stated in the petition was that they require three shops including the shop of the petitioner for his own commercial purpose and for the settlement of his two sons. Meaning thereby, that each of the person would be carrying on business independently from the shop. This fact was contested by the petitioner in his leave to defend application by pointing out that the respondent was carrying on business of antiques along with his two sons from the same very suit property on the first floor. While replying to the same, again the respondent was not truthful. He though denied association of his sons in carrying out the business with him or of them using the first floor for any commercial activity but he tacitly admits that he himself is carrying on business of antiques and that too from the first floor. This raises a serious doubt with regard to *bona fide* of the petitioner which if permitted to be proved by the petitioner will completely knock out the case of the respondent. The respondent also seems to be acting clever by trying to wriggle out of this fact by taking a

changed stand in his reply to leave to defend. This is apparent from the fact that in the reply now he does not talk about his own requirement so far as shop on the ground floor is concerned. But says that apart from the two shops of which he has already got the possession, (though it is again not disclosed), he is requiring a godown also for the benefit of his sons so that they are able to store goods. In reply also, he does not disclose the kind of business his sons are carrying out. Admittedly, the non-disclosure of kind of business which he is running also adds to this doubt regarding the *bona fide* requirement of the petitioner. So far as these doubts are concerned, they can be cleared only by permitting the petitioner to adduce his evidence on merits after granting of leave to defend.

9. So far as the plea of the learned counsel for the respondent that the petitioner himself has number of accommodations available with him is concerned, that is of no consequence. What is expected and required by law is that the landlord should not have any alternative residential accommodation available to him while as this alternative accommodation was available to the respondent which has not been disclosed in the first instance inasmuch as he had the entire first floor and further during the

pendency of the petition, the petitioner has admittedly got possession of one shop which is taken note of by the learned Additional Rent Controller. The learned counsel for the petitioner has also drawn the attention of the court to the documents of the learned Additional Rent Controller where this factum of possession of second shop having been taken by the respondent is also brought on record though inadvertently it seems this has not been taken into consideration by the learned Additional Rent Controller.

10. Having regard to the totality of circumstances, I feel that the order which has been passed by the learned Additional Rent Controller rejecting the leave to defend application of the petitioner and passing an order of eviction is not sustainable in the eyes of law as no reasonable person could have passed such an order. The petitioner deserves to be granted leave to defend so as to contest the *bona fide* requirement of the respondent in respect of the shop in question.

11. I, accordingly, set aside the impugned order and grant leave to defend to the petitioner, who shall file his written statement within thirty days from today before the learned Additional Rent Controller with an advance copy to the respondent.

12. The parties are directed to appear before the learned Additional Rent Controller concerned on 1st October, 2015 at 2:15 p.m.

13. With these directions, the petition stands disposed off.

V.K. SHALI, J.

SEPTEMBER 15, 2015
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