

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

+ RC.REV. 248/2013 and CM No.10785/2013 (Stay)

% Reserved on: 20th May, 2015
Decided on: 29th May, 2015

MOHD. YUNUS

..... Petitioner

Through: Mr. S.K. Verma, Advocate.

versus

JAI BHAGWAN SHARMA

..... Respondent

Through: Mr. Shiv Kumar Sharma, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Aggrieved by the order dated 26th March, 2013 declining to grant leave to defend to the Petitioner Mohd. Yunus in an eviction petition filed by the Respondent Jai Bhagwan Sharma under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act'), the Petitioner prefers the present petition.

2. Jai Bhagwan Sharma had inducted Mohd. Yunus as a tenant in a shop on the ground floor of House No.3045, Street No.223, Tri Nagar, Delhi-110035 on a monthly rent of Rs.400/- per month excluding water and electricity charges in the year 1975. In the eviction petition it is stated that Jai Bhagwan Sharma was the owner of the entire suit property and is aged 73 years. His family comprises of his wife, four sons and two daughters. One of his daughters and her husband had already expired and legal guardianship of the children was handed over to Jai Bhagwan Sharma. Besides this the family of the eldest son of Jai Bhagwan Sharma, who was employed, comprised of his wife and two children aged 15 and 13 years. The family of the second son of Jai Bhagwan Sharma, who had no reliable and suitable

source of income, comprised of his wife and three children. The third son of Jai Bhagwan Sharma was also unemployed but married with two children. The fourth son of Jai Bhagwan was an architect working in a private company and his family comprised of his wife and two children. The ground floor of the suit property consists of three shops, three small rooms, two small kitchens and a toilet. The first floor had 2/3rd covered portion consisting of three rooms, two kitchens and a toilet. Two rooms on the ground floor were occupied by one son and another room by the second son of Jai Bhagwan Sharma. In the first floor portion, one room was occupied by Jai Bhagwan Sharma and his wife and one room by his third son and the third room by the fourth son and his family. Due to paucity of space the maternal grandchildren of Jai Bhagwan Sharma from his pre-deceased daughter had to be lodged with one of the relatives. There was no space to keep the household goods and therefore, the suit shop was bona fide required. Further one of the sons of Jai Bhagwan Sharma, that is, Mukesh Kumar was unemployed and wanted to start his own business from the tenanted shop wherein at night the children could also sleep and if need arises the guests could also stay.

3. In the leave to defend application, it was stated that the tenanted premises was let out by Jai Bhagwan Sharma's wife Smt. Premwati in 1973 and Jai Bhagwan was not the owner of the tenanted premises and was merely collecting rent. In the tenanted premises Mohd. Yunus was running a barber shop which was his only source of income and his son had also settled in the said shop. It is stated that Shop No. A, in the suit property which was of similar size was lying vacant and is not being used by Jai Bhagwan Sharma or his family members. In the suit property Jai Bhagwan Sharma was

residing with his son Kuldeep and his family and the remaining three sons along with their families were not residing in the suit property. Thus there were sufficient rooms in the suit property which were lying vacant.

4. The learned ARC vide the impugned order held that the landlord-tenant relationship stood admitted as Premwati, wife of Jai Bhagwan Sharma had passed away and thus Jai Bhagwan Sharma became the owner of the suit property. Moreover, in the petition under Section 27 DRC Act filed by Mohd. Yunus he accepted Jai Bhagwan Sharma to be landlord of the premises and thus he was estopped from challenging the ownership of Jai Bhagwan Sharma as per Section 116 of Evidence Act.

5. With regard to the bona fide requirement and that three sons of Jai Bhagwan Sharma were not residing in the suit property, the learned ARC held that the averments in the leave to defend application were vague, no material had been placed on record to show that the three sons were living separately and no details had been furnished of their residence. Mohd. Yunus has not denied the custody of the maternal grand children having been handed over to Jai Bhagwan Sharma and thus even if presently they are staying with the relatives, Jai Bhagwan was not absolved of the duty to provide them residence. As regards one shop and some rooms lying vacant in the suit property it was held that the said contention was refuted by Jai Bhagwan Sharma by giving details of each room occupied by members of his family and hence the eviction order was passed.

6. Learned counsel for Mohd. Yunus challenges the impugned order in relation to the bona fide requirement and availability of the vacant shop and rooms. As noted above, in the eviction petition, Jai Bhagwan Sharma has given the details of the accommodation available on the ground floor and the

first floor of the suit property and has explained in detail the position of each room occupied by him and his dependant family members. Site plan in this regard has also been placed on record. Mohd. Yunus has not placed on record any site plan to counter the argument. Thus, the number of rooms and shops available in the suit property are not disputed.

7. With regard to the contention that the three sons of Jai Bhagwan Sharma were living separately only bald assertions have been made by stating that they are living in Dwarka. No details have been given. Jai Bhagwan has placed on record copy of the order whereby the custody of his maternal grand children Varun Bhardwaj and Harshita Bharwaj have been handed over to him. Mohd. Yunus has not denied that any of six rooms is lying vacant for Jai Bhagwan Sharma both on the ground floor and the first floor. Even according to Mohd. Yunus, Jai Bhagwan's one son Kuldeep Sharma is residing along with his family at the suit property. Thus at least Jai Bhagwan and at the time of petition his wife who is now since passed away, his one son daughter-in-law with two children, two maternal grand children whose custody has been handed over to Jai Bhagwan Sharma are residing in the suit premises. Even if the version of Mohd. Yunus is accepted that the three sons of Jai Bhagwan are residing away and one son is living in Qatar is accepted to be true, it is evident that the son who is working in Qatar and other sons as and when they come to visit their family would also need accommodation.

8. Division Bench of this Court in Sushila Devi & Ors. Vs. Raghunandan Parshad & Ors. 61 (1996) DLT 426 noting the earlier decisions of this Court held-

“16. In Khurshid Haider & Ors. v. Ms. Zubeda Begum 1979 (1) RCJ 621. Avadh Behari, J. held that the two married daughters had not severed connections with their mother and they will come and stay with her and her requirement for the visits of such daughters could not be ignored. In Radhey Lal v. Kamla Devi & Ors. 1987 (1) RCJ 383 N. N. Goswamy, J. has also observed that there can be need of the landlord based upon the visits of his sons and daughters who were married but do not normally live with him. Following Radhey Lal in Federal Motors Pvt Ltd. v. D. N. Dhir 41(1990) DLT 278, Mahinder Narain, J. held that the need of the landlord for the married sons and daughters who do not normally live with him but come to visit occasionally would be needing a separate accommodation during their visits would be bonafide need of the landlord.”

“36. On principle we find no reason as to why the requirement of a landlord who is in possession of accommodation which is insufficient or hardly sufficient for members of his family actually living with him, to accommodate other relations and guests (and obviously mostly guests will also be the relations) who also visit and stay with him off and on, should not be taken into consideration while considering the requirements of the landlord for accommodation. After all human being is a social being and does not live alone or aloof. One visits his relations and his relations visit him and such relations or one or the other relations continually visit each other off and on. Social customs, conventions, habits and usages and practices of the society and similar other considerations cannot be completely ignored as irrelevant while considering the question of the requirement of the landlord. In our view it would not be proper to say that as a broad proposition of law that the requirements of the family guests visiting the landlord off and on cannot at all be taken into consideration while assessing the need of the landlord. The requirement of the landlord for guests and relations who visit and stay with him off and on, in our view, is also entitled to be considered keeping in view the facts and

circumstances of each case as has also been observed by M. L. Jain, J. in Kanwal Narain v. L. F. Tellis.”

9. In view of the requirement set up even on facts which are not disputed the space available with Jai Bhagwan Sharma cannot be said to be sufficient. Further the assertions of Mohd. Yunus are general and bald. No specific facts have been mentioned and thus I find no infirmity in the impugned order declining to grant leave to defend to the Petitioner. Petition and application are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

MAY 29, 2015
‘vn’