

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

+ **RC.REV. 307/2011**

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Reserved on: 2nd February, 2015
Decided on: 10th February, 2015

RAJENDRA KATARIA

..... Petitioner

Through

Mr. Bhachawat, Mr. Manoj Joshi,
Adv.

versus

BALDESH KUMAR KAUSHIK & ORS

..... Respondent

Through

Ms. Reeta Kaul, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The petitioner impugnes the order dated 8th April, 2011 whereby his application for leave to defend, the eviction petition filed by the respondent under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act (in short the DRC Act) has been dismissed.

2. Respondent No.1 filed an eviction petition claiming himself to be the co-owner of premises bearing No. 699 Chirag Delhi measuring 500 sq. ft. along with respondent Nos. 2 to 6. The said tenanted premises was let out to the petitioner for commercial purpose for running a clinic on a monthly rent of ₹ 187/- excluding water and electricity charges. It was stated that the respondent No.1 required the tenanted premises for the bona-fide residence of himself as well as other family members dependent on him as he has no

other reasonably suitable accommodation in Delhi or elsewhere. It was further stated that respondent No.1 was residing at House No.836/11, Chirag Delhi measuring 100 sq.yds. with his family and the family of deceased brother late Shri Pratap Singh who were impleaded as respondent No.2 to 4 in the eviction petition. According to the respondent No.1 his family comprised of himself, his wife, his two sons namely Lalit Kaushik aged about 25 years and Dhiraj Kaushik aged about 23 years, wife of his deceased brother Smt. Anu Kaushik, daughter of the deceased brother Pooja aged 23 years and son of deceased brother Bhupesh Kaushik. It is further stated that the accommodation consisted of only 5 rooms which were highly insufficient for the requirement of the family which was growing. Further that the elder son of the respondent Lalit Kaushik, Bhupesh Kumar and Ms. Pooja son and daughter of his deceased brother were all of marriageable age but the marriage could not be performed due to shortage of accommodation. The respondent did not even have a proper drawing room to entertain the guests. The respondent No.1 has married sisters who also often visit the house along with their family members and children.

3. In the leave to defend application, the petitioner took the pleas that the tenanted premises was non-residential/commercial premises wherein he was running his medical clinic, hence the eviction petition on the ground of requirement for residential purposes was not maintainable; the petition was not maintainable as the same was filed only by one co-owner; the affidavit in support of the eviction petition is no affidavit in the eyes of law and the verification in the alleged affidavit was not as per the requirement of law. The widow and the children of the deceased brother of the respondent No.1

were not dependent on him either solely or partially. Residential house of the respondent No.1 consisted of 20 rooms excluding the kitchen, toilet and bathrooms on each floor and 13 rooms had been rented out and some of which were rented out in the course of about an year or two. Further the tenanted premises was situated at a distance of more than 1 and ½ furlong from the house of respondent No.1 and had no bathroom and toilet and thus could not be used for residential purposes.

4. In the counter affidavit to the leave to defend application the respondent No.1 denied that the house consisted of 20 rooms excluding the kitchen, toilet and bathroom or that 13 rooms had been let out, or that they had been given on rent within a course of about an year or so. It is further denied that the tenanted premises was more than 1 and ½ furlong away from the house of the petitioner. It is stated that on being vacated the tenanted premises can be converted into a livable accommodation.

5. Learned ARC on hearing the parties held that the eviction petition qua vacation of commercial purposes was also maintainable and the respondent No.1 being one of the co-owners could have maintained the eviction petition. It was held that any defect in the verification clause of the affidavit will not give rise to a triable issue and will not be sufficient to grant leave to defend to the petitioner herein. Further the provisions of CPC are not strictly applicable in summary proceedings under Section 25B of the DRC Act and hence leave to defend cannot be granted on technical grounds. Regarding the bona-fide requirement it was stated that the petitioner had not denied the family members of the respondent No.1's family as well as that of his deceased brother's family or that they were not residing together in property

No.699, Chirag Delhi, New Delhi. Even as per the petitioner 7 rooms were available to the respondent No.1 to fulfill his residential requirement and the same were insufficient for a family consisting of 7 grown up persons. The requirement of drawing room-cum-Baithak for a large family cannot be denied besides separate study room for members of the family who are pursuing their studies. Only bald assertion has been made that some rooms have been let out by the respondent No.1 about one or two years back, hence the same does not constitute a triable issue. As regards the distance between the residential house of respondent No.1 and the tenanted premises was concerned, and that tenanted premises does not have any bathroom and toilet, the Court stated that it was for the landlord to decide whether he or any of his family member can comfortably live in the tenanted premises or not and the Court cannot sit in judgment regarding the place where the landlord wishes to reside. Since no site plan was filed by the petitioner, the challenge to the site plan of the tenanted premises filed by the respondent No.1 was not accepted and in view of the affidavit filed by the petitioner failing to disclose such facts as would disentitle the landlord an eviction order, leave to defend was declined.

6. Learned counsel for the petitioner before this Court reiterates his pleas taken in the leave to defend application. It is stated that the affidavit in support of the eviction petition being not as per the requirement of law, the eviction petition was not maintainable. The eviction was sought of a commercial premises which was 1 and a ½ kms away from the house of respondent No.1. The family of the brother of respondent No.1 cannot be said to be dependent on the respondent No.1. There are 20 rooms built up in

the residential property of which 13 rooms have been rented out. It is further stated that at the stage of leave to defend only averments on affidavit are sufficient. Reliance is placed on Precision Steel & Engineering works & Anr. Vs. Prem Deva Niranjana Deva Tayal AIR 1982 SC 1518; M/s. Sukhwinder Pal Bipan Kumar & Ors. Etc. Vs. State of Punjab & Ors. AIR 1982 SC 65 and M/s. Sunder Industries & Anr. Vs. M/s. General Engineering Works, New Delhi Air 1982 DELHI 220.

7. Learned counsel for the respondent No.1 on the other hand contends that it is just not feasible to construct 20 rooms even on 3 floors of a property admeasuring 100 sq. yds.. The respondent No.1 has denied the number of rooms as stated or that 13 rooms have been rented out. It is stated that the contents in the leave to defend application are vague. Further the tenanted premises is quite close to the residential premises and hence the same can be suitably used.

8. I have heard learned counsel for the parties at length. The contention of learned counsel for the petitioner that the verification in an eviction petition was not as per requirement of law needs to be rejected, for the same is a procedural requirement and the defect can be remedied at any stage. Pursuant to the leave to defend application, the respondent No.1 has filed a counter affidavit wherein the contents of the eviction petition are reiterated. Moreover petitioner has not been able to show prejudice caused from the procedural requirement and hence the same would not raise a triable issue. In M/s. Sukhwinder Pal Bipan Kumar (supra) relied upon by the learned counsel for the petitioner the Court was dealing with the petitions under Article 32 of the Constitution wherein it noticed that onus of proof lies

heavily on the person alleging mala-fides and thus the affidavit must clearly disclose the source of information. In view of the affidavit not being as per requirement of law, the Court was justified in refusing to investigate the allegations of malafide in the writ petitions. Even in the decision relied upon in M/s. Sunder Industries (supra) the Court noted that affidavits are either affirmed as true to knowledge or for information received provided the source of information is disclosed or as to what deponent believes to be true provided the grounds of such belief are stated. In the present case deponent/respondent No.1 in the eviction petition stated that the contents of paragraph 1 to 19 of the application were true to his knowledge and last paragraph was the prayer. Thus, on oath he was affirming that the same was true to his knowledge. Hence the same would not have the effect to non-suit the respondent No.1 in the eviction petition.

9. As regards one of the co-owners filing the eviction petition it is trite law that an eviction petition by one of the co-owners is maintainable (India Umbrella Manufacturing Company and Ors. Vs. Bhagabandei Agarwalla (dead) by LRs. Smt. Savitri Agarwalal and Ors. (2004) 3 SCC 178 and Mahinder Prasad Jain Vs. Manohar Lal Jain AIR 2006 SC 1471.) Further in case the family of the pre-deceased brother is living in the house as a joint family, the same would be said to be dependent on the co-owner and besides his own legal heirs a petition for eviction for the family of the pre-deceased brother would also be maintainable. In the present case in the leave to defend application there is no denial to the fact that when the eviction petition was filed the widow and the two children of the deceased brother i.e. respondent No. 2 to 4 were living with respondent No.1. Supreme Court in Joginder

Pal Vs. Naval Kishore Behal (2002) 5 SCC 397 while dealing with Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 interpreted the expression “for his own use” and held:

“24. We are of the opinion that the expression “for his own use” as occurring in Section 13(3)(a)(ii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove, we have found the *pari materia* provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependants and kith and kin in the requirement of landlord as “his” or “his own” requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the

landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by the landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.

33. Our conclusions are crystallised as under:

(i) The words “for his own use” as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression — landlord requires for “his own use”, is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal “emanations” of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence — economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are: (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement; and, (ii) whether on the facts and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by the landlord as “his own” occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as “his own” and the person who would actually use the premises;

(ii) the circumstances in which the claim arises and is put forward; and (iii) the intrinsic tenability of the claim. The court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the court shall adopt a practical and meaningful approach guided by the realities of life.

(v) In the present case, the requirement of the landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord “for his own use” within the meaning of Section 13(3)(a)(ii).”

10. The assertion in the leave to defend application that 20 rooms were available in the residential premises of the respondent of which 13 rooms have been rented out is a bald assertion not supported by any document or a site plan. Even the particulars of tenants have not been stated and on the basis of such bald assertions no leave to defend can be granted. In *Inderjeet Kaur Vs. Nirpal Singh (2001) 1 SCC 706* Supreme Court held that assertions and counter-assertions made in affidavit may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable and most unreasonable. This Court in *Ramesh Chand Vs. Uganti Devi 157 (2009) DLT 450* and *Harsh Kumar & Ors. Vs. Man Mohan & Ors. 2012 V AD (DELHI) 450* held that mere bald assertions would not be sufficient to substantiate that the tenant has raised a triable issue.

11. It is well-settled proposition of law that the landlord is the best judge of his requirement and even if it is a single room available at a short distance from the residential premises it will be for the landlord to suitably accommodate his requirements and deal with it. The petitioner or this Court cannot dictate how well the respondent/landlord is required to meet his bonafide need. (*Prativa Devi (Smt.) Vs. T.V. Krishnan (1996) 5 SCC 353 and Ragavendra Kumar Vs. Firm Prem Machinery & Co. AIR 2000 SC 534*)

12. In *Shiv Sarup Vs. Dr. Mahesh Chand Gupta (1996) 6 SCC 222* the Supreme Court noted that while exercising revisional jurisdiction under Section 25B(8) the High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts, however the High Court is obliged to test the order of the Rent Controller on the touchstone of “*whether it is according to law*”. For that limited purpose, it may enter into re-appreciation of evidence i.e. for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available.

13. The petitioner had filed an application CM No.12845/2014 under Order VI Rule 17 CPC in the present petition seeking amendment to bring on record subsequent events which has been dismissed by this Court vide order dated 2nd February, 2015.

14. The view taken by the learned ARC being a plausible view and no error of law having been committed, I find no merit in the petition. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 10, 2015
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