

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

+ **RC.REV. 271/2013 & CM 11588/2013 (stay)**

% **Reserved on: 15th January, 2015**
Decided on: 30th January, 2015

RAMPAT

..... Petitioner

Through Mr. A.K. Srivastava, Mr. Ashish
Sindhu, Advs.

versus

GANGA DEVI

..... Respondent

Through Ms. Gita Dhingra, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 27th April, 2013 declining to grant leave to defend to the petitioner in an eviction petition filed by the respondent under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (in short the DRC Act) the petitioner prefers the present petition.

2. In the eviction petition, the respondent pleaded that the respondent was the owner of premises No.79 (Village Bhadola) Delhi wherein 7 shops had been carved out on the ground floor bearing Shop Nos. T-9/1 to T-9/7. The tenanted shop is shop in the said property which was let out to the petitioner vide rent agreement dated 11th July, 1997 on a monthly rent of ₹2000/- excluding house-tax, electricity and water charges. The said tenanted shop was let out for commercial purposes. Now the respondent

wants to start her own business of fruits and vegetables as the biggest fruits and vegetable market of Delhi was situated near the tenanted shop. It is further contended that the respondent has other shops also which have been let out, however the monthly income from the said shop was not sufficient to fulfill the basic needs of the respondent hence the shop was required for a bona-fide purpose.

3. Petitioner being served with summons under Schedule 3 of the DRC Act filed the leave to defend within the prescribed period. In the leave to defend it was stated that the respondent was harassing the petitioner to enhance the rent to ₹6000/- per month and was also demanding unlawful pagdi of ₹One lakh. Initially the rent of tenanted shop was ₹500/- per month where after the petitioner filed a civil suit against the respondent in which a compromise was arrived at and the rent was enhanced to ₹2000/- per month. Now the respondent has again started harassing the petitioner for increase of rent to ₹6000/- per month. The petitioner contended that respondent owns 7 shops in the building No.T-9 on the ground floor. Shop No.T-9/1 was the tenanted premises at a monthly rent of ₹2000/- whereas shop No.T-9/2, T-9/4 and T-9/5 were in possession of Ram Parvesh, Mukesh Sahu and Ashok Sahu at the monthly rent of ₹2500/-. Shop No.T-9/3 was lying locked and was in the possession of the respondent and shops No.T-9/6 and T-9/7 were in possession of Papple @ Uma Shankar at the monthly rent of ₹5500/-. Thus shop No.T-9/3 is lying vacant under the lock and key of the respondent and she could sell fruits and vegetables from the said shop. It is further stated that the respondent being 70 years old was not capable of starting

business of selling fruits and vegetables and she was earning a sum of ₹63,000/- per month as rental income from her properties.

4. In the reply to leave to defend application the respondent admitted that she owned 7 shops on the ground floor and also that the first floor of the premises has been let out for residential purposes to various persons from where she was earning a rent of approximately ₹11,000/-. The fact that shop No.T-9/3 was lying vacant and was in possession of the respondent was denied and it was stated that the said shop was on rent and not in possession of the respondent.

5. On the basis of rival contentions of the parties since jural relationship of landlord tenant and ownership of the respondent in the suit shop was admitted the only two objections were with regard to bona-fide need of respondent and alternate accommodation being available with her. The bona-fide need of the respondent was contested by the petitioner on the ground that the respondent has sufficient rental income of ₹63,000/- per month and being 70 years old and leading a retired life, the respondent at this age cannot be said to have the requirement of starting a new business for herself. Refuting the bona-fide requirement it is contended that the bona-fide requirement should be reasonable and not a mere fanciful desire or whim of the landlord. Reliance is placed on Raghunath G. Panhale (dead) by LRs Vs. M/s. Chaganlal Sundarji & Co. AIR 1999 SC 3864 and Deena Nath Vs. Pooran Lal (2001) 5 SCC 705. This contention was turned down by the learned ARC on the ground that the landlord was the best judge of her requirement and it was not open for the tenant or the Court to dictate the manner and style in which the landlord must live even if the income of the

respondent was ₹63,000/- per month. Further it cannot be said that starting a new business was not tenable for the respondent at this age and the same was a triable issue. As regards this finding the view taken by the learned ARC is a plausible view. Age is no bar for starting a new business and every person has right to excel in life. It is ultimately the physical capacity and the manner in which a person may like to lead his or her life. It cannot be said that at the age of 70 the respondent cannot start a business of fruits and vegetables.

6. Regarding alternative accommodation being available the petitioner has contended in the leave to defend that shop No.T-9/3 was lying vacant and in the possession of the respondent which fact has been denied by the respondent. This contention of the petitioner was turned down by the learned Trial Court on the ground that though the petitioner has placed advertisement and visiting cards of all other shops but no photograph of shop No.T-9/3 has been placed by the petitioner in support of his averment and thus no triable issue was made out.

7. Learned counsel for the petitioner contends that the scheme of Section 25B(5) requires the tenant to file an affidavit disclosing such facts as would disentitle the landlord recovery of possession. Once the facts are disclosed no evidence is required to be led at this stage and on the basis of averments itself leave to defend application is required to be decided. Reliance is placed on Liaq Ahmed & Ors. Vs. Habeeb-Ur-Rehman AIR 2000 SCC 2470. In Liaq Ahmed (supra) the Supreme Court held that from scheme of the Act if the tenant discloses grounds and pleads cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave

to defend his case against the eviction sought by the landlord. The enquiry envisaged for the purpose is a summary enquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. The law envisages the disclosure of facts and not proof of facts.

8. Indubitably, the stage of proof of facts has not reached and as noted in the decision noted above the tenant is required to prima facie show that the cause pleaded is not baseless, unreal and unfounded. Thus, some prima facie material is required to be placed to show that the facts pleaded are based on some material. In the present case it is the word of the petitioner as against the word of the respondent on affidavit, one asserting a vacant shop and the other denying. It is in this light that the learned ARC held that if photographs were filed by the petitioner, the same would have prima facie shown that the shop T-9/3 was in possession of the respondent, thus entitling the petitioner grant of leave to defend. Of course detailed evidence would have been led thereafter.

9. Dealing with the scope of inquiry at the stage while granting or refusing leave to defend application in response to the summons in an eviction petition under Section 14(1) proviso (e) of the Delhi Rent Control Act, the Supreme Court in Precision Steel & Engineering Works & Anr. Vs. Prem Dev Niranjana Deva Tayal (1982) 3 SCC 270 reiterating its decision in Charan Dass Duggal Vs. Brahma Nand reported later as 1983 (1) SCC 301 held that Section 25-B(5) is a mandatory provision indicating a positive approach and not a negative inhibition. It casts a statutory duty on the Controller to give to the tenant leave to contest the landlord's application for recovery of possession if the affidavit filed by the tenant prima facie, and not

on contest, discloses such facts which if proved would disentitle the plaintiff from seeking possession. The tenant's affidavit alone at that stage is the relevant document and the Controller must confine himself to the averments in the affidavit while examining the question whether there was a proper case for granting the leave. However, the minority judgment in Precision Steel (supra) held that the Controller must apply his mind not only the averments made by the landlord in his application for eviction, but also to the facts alleged by the tenant in his affidavit for leave to contest as well as the facts disclosed by the landlord in his affidavit in rejoinder, besides the other material on record i.e. the documents filed by the parties in support of their respective claims in order to come to a conclusion whether the requirement of sub-section (1) of Section 25-B are fulfilled.

10. In Charan Dass Duggal (supra) the Supreme Court noted that when leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action. At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. It was further held that it is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. Burden is on the landlord to prove his requirements and

his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise.

11. Subsequently, in Inderjeet Kaur Vs. Nirpal Singh (2001) 1 SCC 706 the Supreme Court noted that a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25-B(5). The Supreme Court further held that at the stage of granting leave to defend, the parties rely on affidavits in support of rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a 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 or most unreasonable. Take a case when possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (3) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on

the landlord to establish his case affirmatively. In short and substance, a wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend, but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail.

12. Later in Rita Lal Vs. Raj Kumar Singh AIR 2002 SC 3341 the Supreme Court considering the pleadings, affidavits and documents available on record noted that the same showed that respondent was an employee under the appellant and on 10th day of February, 1987 an agreement to lease was executed between the parties. Though the execution thereof was disputed but what was not disputed was the signatures of the respondent-tenant on each of the pages on which the agreement is inscribed. The Court also noted the judgment in a title suit filed in the year 1993 where the respondent had appeared as a witness for the plaintiff and examined on oath. He had traced the source of title of the appellant therein narrating the chain of sale deeds by successive owners of the property. Thus, relying upon the documents filed along with the affidavit, the Supreme Court set aside the order of the High Court setting aside the order of the learned ARC refusing to grant leave to defend and restored the order of the learned ARC.

13. This Court in Ramesh Chand Vs. Uganti Devi 157 (2009) DLT 450 held that a tenant cannot be granted leave to defend on bald assertion that the landlady/landlord was the owner of various properties without placing on

record even a single piece of document of the fact that such property was available to the landlord/landlady. If these kinds of bald assertions are entertained by the learned ARC, then every tenant would assert about the ownership by the landlord of any property owned by a stranger and would go away with leave to defend. That is not the intent of the legislature. In Harsh Kumar & Ors. Vs. Man Mohan & Ors. 2012 V AD (DELHI) 450 also it was held that mere bald assertions would not be sufficient to substantiate that the tenant has raised a triable issue.

14. From the law as noted above, it is thus clear that at this stage no full fledged trial or examination of the veracity has to be gone into. Though the burden is on the landlord to show his bona fide requirement yet the tenant is also required to prima facie show that he has raised triable issues and his defence is not a practically moonshine, shame or illusory in nature. Since mere assertions and counter assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a 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 or most unreasonable.

15. Though in the present case this Court disagrees with the contention of the learned counsel for the petitioner that at this stage the tenant is not obligated to file documents and could only consider the affidavits and counter affidavits, however the facts in the present case would reveal that the learned ARC failed to appreciate the assertions and counter assertions in the affidavits and the documents placed on record. The petitioner in para 2(c) of his affidavit in support of the leave to defend application has clearly stated

that ground floor of property No.T9 of the respondent is divided into seven shops which have been given private numbers as 9/1 to 9/7. The petitioner has also stated in the affidavit in whose possession the remaining 5 shops are besides him and placed on record their visiting cards/advertisement material etc. However, in the counter affidavit of the respondent to the affidavit of the petitioner, the respondent has merely denied these averments. It is not stated that in whose possession Shop No.T9/3 is. From the counter affidavit it is clear that the respondent has tried to avoid clarifying the issue raised by the petitioner. Since the respondent/landlord herself failed to discharge the onus placed on her, in my opinion, the learned ARC committed an error by ignoring this aspect in the affidavit of the respondent and dismissing the application for leave to defend merely because the petitioner/tenant failed to file the photograph of the vacant shop, though he placed on record other material.

16. Whether a triable issue is made out will depend on facts of each case. Like the present case the petitioner/tenant has given vivid details with site plan and other documents of the entire property and how repeatedly it is being let out to various tenants after enhancing the rents and the earlier suit filed by the petitioner which facts are not denied by the respondent/landlord.

17. In view of the fact that the petitioner has pleaded tenanted shop No.T-9/3 to be lying vacant, a triable issue of alternative suitable accommodation is made out and the same could not be denied on the ground that photograph has not been filed when other documents were filed by the petitioner hence the impugned judgment is set aside. The petitioner is granted leave to

defend. Written statement be filed within four weeks. Replication in four weeks thereafter. List before the learned ARC on 7th April, 2015.

18. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 30, 2015
‘ga’