

* **HIGH COURT OF DELHI AT NEW DELHI**
+ **RC. Revision No.166/2015 & C.M. No.6522/2015**

Decided on : 23rd December, 2015

SUNIL ABROL Petitioner
Through: Mr. J.C. Seth, Advocate with petitioner in person.

Versus

USHA SETHI & ANR. Respondents
Through: Mr. P.K. Rawal & Mr. Tarun Agarwal, Advocates.

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

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order dated 23.12.2014 passed by the learned Rent Controller (South), Saket Court, New Delhi, by virtue of which the leave to defend has been granted to the respondent to contest the eviction petition filed by the petitioner under Section 14 (1) (e) of the DRC Act.

2. Briefly stated, the facts of the case are that the present petitioner is claiming himself to be the owner of property No.M-27, Greater Kailash, Part-1 which consists of ground floor, first floor and second floor. It has

been stated that the petitioner has two sisters, namely, Pamela Kapoor and Meenakshi Nijhawan, who had relinquished their share on 29.5.2008 in the aforesaid property belonging to their mother, Swarn Lata Abrol, on the basis of which he had become the absolute owner. He has stated that the premises are required *bona fide* by the present petitioner for his own use for running a consultancy business as he has done two Ph. D, one in High Technology Equipment Services Export Opportunities and second in Behavioral Science granted by Indian Institute of Foreign Trade and University of Delhi respectively. At the time when the petition was filed, the petitioner was holding the post of Director General, Consultancy Development Centre, Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India and he was to superannuate on 30.4.2011 on attaining the age of superannuation whereupon, he wanted to setup his Management Consultancy business in multidisciplinary management consultancy services to provide his expert services to corporate clients. The petitioner also required the premises for the business purpose of his two sons, namely, Siddharth and Satyen, who were pursuing Post Doctoral Studies in Chemical Engineering and M.S. Computer Science in USA respectively. It was stated that their studies

were to come to an end in the year 2010 where after they propose to come back to India and join the present petitioner in his multidisciplinary consultancy services. It was stated that both the sons of the petitioner are highly qualified and that the petitioner has no other alternative suitable accommodation available to him.

3. On notice being issued to the respondent/tenant, they filed the leave to defend application raising the challenge to the *bona fides* of the present petitioner for using the premises as well as the fact that he is already in possession of sufficient accommodation. It was also stated by them that so far as the sons of the present petitioner are concerned, they are settled in USA and they do not intend to come back to India. It was also stated that the petitioner's requirement of the suit premises was not *bona fide* and in any case, he was able to retrieve the possession of nearly 500 square feet of area on the ground floor from another tenant and therefore, if at all the petitioner wanted accommodation for the purpose of setting up of his consultancy business then it would become case of an additional accommodation for which the leave to defend had to be necessarily granted to the present petitioner. It may be pertinent here to mention that the petitioner had setup a requirement of nearly 900 square

feet of an area out of which he had claimed that he is in possession of only 500 square feet of area, portion of the premises, were vacated by the other tenant in pursuance to the court orders.

4. The learned trial court, after hearing the arguments of both the sides and referring to various case laws, gave leave to defend to the respondent on the ground that the respondent was able to raise a triable question with regard to the factum of requirement of the petitioner and his *bona fide* about the same as well as on the ground that the present petitioner had admittedly retrieved possession of 500 square feet area of another shop while as his total requirement was nearly 900 square feet. It was further stated that the petitioner had not disclosed the fact that there was another tenant by the name of Madan Gopal Singh, who was occupying the rear portion of the suit property which is claimed by the present petitioner to be unauthorized and the same having been booked by the MCD. It has also been stated that even if the premises are stated to be unauthorized, the same are protected by the amendment to the NCT of Delhi Laws (Special Provision) Second Act, 2011 from being demolished till 2017 and this fact had not been revealed by the present petitioner in the eviction petition which was treated as concealment of information.

Accordingly, leave to defend was granted by the learned trial court to the respondent/tenant.

5. I have heard Mr. Seth, the learned counsel for the petitioner as well as Mr. Rawal, the learned counsel for the respondent. The contention of the learned counsel for the petitioner is that the order of grant of leave to defend to the respondent is erroneous on the ground that the learned trial court has not taken into consideration correctly the requirement of the sons and has further stated that in any case, even if the sons' requirements is not taken into consideration, the petitioner being highly qualified and having a rich experience of consultancy business with public sector undertaking, he wants to start his own consultancy business in multi speciality so that he is able to reap the benefit of his expertise. It is accordingly contended that the leave to defend ought not to have been given. The learned counsel has also referred to the judgments passed in *Krishna Kumar Rastogi vs. Sumitra Devi*; (2014) 9 SCC 309, *Olive Marques and Anr. vs. Union of India & Ors.*; (2013) 199 DLT 727 (DB), *Manika Rani Ghosh & Ors. vs. Dharwinder Kaur*; (2013) 197 DLT (CN) 18, *Mohd. Ayub and Anr. vs. Mukesh Chand*; (2012) SCC 155, *Usha Kalra vs. Arya Samaj Bhogal (Jangpura)*; 2012 SCC OnLine Del. 266

and *Shri Suresh Kumar Gupta vs. Dr. Sunil Abrol & Anr.*; 2011 SCC OnLine Del.4492.

6. I have carefully considered the submissions made by the learned counsel for the petitioner and gone through the impugned order. However, I find myself unable to get persuaded with the submissions made by the learned counsel for the petitioner that it is not a case where the leave to defend ought to have been refused to the respondent/tenant. The learned counsel for the petitioner has not been able to point out any illegality, impropriety or jurisdictional error in the leave to defend having been granted by the trial court.

7. This is on account of the fact that the contention made by the learned counsel for the petitioner during the course of oral submissions have been that he has not projected the requirement of his sons as the requirement for which he is seeking retrieval of accommodation but this is factually incorrect. A perusal of the eviction petition will clearly show that one of the grounds on the basis of which the retrieval of possession is sought, is the fact that two of his sons are doing higher studies in USA and they want to come back to India and join the petitioner in his multi speciality consultancy business. Therefore, this requirement of the

petitioner for the benefit of his sons has been clearly pleaded in the petition and claimed to have been dealt with by the learned trial court. Admittedly here, so far as the sons requirement is concerned, it is not a requirement in *presenti* but in future. The law regarding eviction of a tenant on the ground of *bona fide* requirement is very well settled and it has been laid down by the courts repeatedly that only a requirement in *presenti* can be considered to be *bona fide* and not in future. It has nowhere been shown that the sons have come back or setup some business independently. Therefore, on this ground itself, the respondent deserves grant of leave to defend.

8. So far as the requirement of the petitioner for the purpose of setting up a consultancy business is concerned, admittedly, the petitioner has been able to retrieve nearly 500 square feet of area from another tenant on the ground floor of the suit property. Till date, the petitioner has not stated as to whether he has setup the said consultancy business. From the impugned order, it is not reflected that the petitioner is using 500 square feet of which possession has been retrieved by him for the purpose of running his multi speciality consultancy business or not. The petitioner, who is present in person, has stated that as a matter of fact, he is using the

said 500 square feet of area which was retrieved by him from the other tenant for the purpose of running his consultancy business and for this purpose, he has drawn the attention of the court to some paper clipping where some board is displayed for the purpose of running the consultancy business. So far as the board is concerned, it cannot be taken to be giving the correct picture as to whether the petitioner is actually running the consultancy business or not. There ought to have been a pleading to that effect. Even if it is assumed that he is running the consultancy business on 500 square feet area, which was retrieved by him, even then petition for retrieval of additional area or requirement for additional area becomes a case of additional accommodation for which the leave to defend has to be given to the respondent/tenant.

9. In addition to this, there is another flaw in the case of the petitioner which has been noted by the learned Rent Controller. The petitioner has indulged in concealment of fact as observed by the learned Rent Controller because before filing of the eviction petition, the petitioner had also let out the rear portion to one Madan Gopal Singh which he is now claiming to be unauthorized in respect of which demolition order is passed. The petitioner, who was present in court, had very fairly

admitted that Madan Gopal Singh continued to occupy this so-called unauthorized structure in rear portion of the property for almost 15 years. If Madan Gopal Singh could occupy this additional portion at the rear, the court does not know how much area it consists of which and if it was used for a period of 15 years, the petitioner immediately can utilize the said portion also for the benefit of his own consultancy business. It does not lie in the mouth of the petitioner to contend that the said portion is unauthorized and there being an order of demolition, therefore, the said portion cannot be taken into consideration in order to meet the requirement of the petitioner which is to the tune of 900 square feet. Admittedly, NCT of Delhi Laws (Special Provisions) Second Act, 2011, has prohibited demolition of any unauthorized construction till about 31.12.2017, therefore, so far as the said structure is concerned, it is safe against demolition till 31.12.2017 and there is no threat of demolition. These factors have all been taken into consideration as the grounds which have not been fairly revealed by the learned counsel for the petitioner before the learned Rent Controller and have been treated to be constituting a triable issue. A triable issue is an issue which, if permitted to be proved, would disentitle the petitioner from retrieving the

possession. It is also not necessary that every triable issue must necessarily, in all cases, result in success. But certainly, it must be an issue which, in a given circumstance, if permitted to be proved, can disentitle the petitioner to retrieve the possession.

10. In view of the aforesaid facts, I feel that the learned Rent Controller was absolutely right in granting the leave to defend to the respondent/tenant primarily on four grounds. Firstly, concealment of fact, secondly, that the so-called construction which is stated to be unauthorized is with the petitioner and there is no threat of demolition of the same and as on date, we do not know how much area it consists of and thirdly, the petitioner during the pendency of the petition itself, has been able to retrieve 500 square feet of area from another tenant while as total requirement projected by him is 900 square feet and thus, this 500 square feet coupled with the so-called unauthorized construction can substantially be touching or nearly the total accommodation which the petitioner needs and fourthly, so far as the sons of the petitioner are concerned, their requirement is not a requirement in *presenti* as admittedly the petitioner's sons are not stated to be in India nor has this

fact been urged as a ground for retrieval of possession during the course of arguments by Mr. Seth, the learned counsel for the petitioner.

11. I am also tempted to refer to the judgments which have been relied upon by the learned counsel for the petitioner. So far as the *Krishan Kumar's (supra)* judgment is concerned, that is not applicable to the facts of the case because that was a judgment on merits and it did not involve the question of refusal or grant of leave to defend at the threshold, therefore, the observations in the said case cannot be made applicable without co-relating the facts of that case with the present case. Similarly, in *Olive Marques's case (supra)*, single judge's view of our own High Court does not apply because that was a case in which the validity of the procedure to be followed in cases of *bona fide* requirement was under challenge as being violative of Article 14, 19 (1) (g) and 21 of the Constitution of India. In *Manika Rani's case (supra)*, it was held that the leave to defend application was rightly dismissed since tenant had raised vague pleas which were mere averments without any evidence, while as in the instant case, leave to defend has been granted since admittedly the petitioner/landlord had alternative accommodation. In *Mohd. Ayub's case (supra)*, the court had considered the comparative hardship of the

landlord and the tenant in an eviction case relating to U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. So far as the question of comparative hardship is concerned, the said question would arise only at the stage when parties have adduced their respective evidence and the question of *bona fide* requirement is decided on merits rather than at the stage when the court is confronted with the question of grant or non-grant of leave to defend. Similarly, in *Usha Kalra's* case (*supra*), where leave to defend had been refused on the ground that it was observed to be a moonshine, sham and not raising any triable issue and therefore, it is in no way comparable with the facts of the present case where the leave to defend has been granted on the basis of concealment and availability of alternative accommodation. Last but not the least, the learned counsel for the petitioner has referred to the judgment of the single judge of this court in *Suresh Kumar* (*supra*), which is the case of the petitioner himself pertaining to another tenant by the name of Suresh Kumar Gupta where the leave to defend was held to be not raising any triable issue and the revision petition was dismissed. It is in pursuance to the said dismissal of the revision petition that the petitioner has been able to retrieve the possession of 500 square feet of area of shop which is

alternatively available at the disposal of the petitioner which can be used by him. Merely because, the leave to defend of another tenant has been dismissed, does not mean that every tenant has to necessarily suffer the same fate so far as his case is concerned.

12. In view of the aforesaid facts and circumstances of the case, I am of the considered view that there is no infirmity, illegality or jurisdictional error in the analysis of evidence *prima facie* produced by the parties so far as the question of the pleas taken by the respondent/tenant raising a triable issue is concerned for which he has been rightly given the leave to defend. I, accordingly, dismiss the present revision petition of the petitioner as being without any merit.

V.K. SHALI, J.

DECEMBER 23, 2015
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