

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

+ **RC.REV. 410/2013 & CM 17685/2013 (stay)**

% Decided on: 24th February, 2015

MANJIT SINGH		 Petitioner
	Through	Mr. Manjeet Singh Ahluwalia, Adv.
	versus	
VANI JAIN		 Respondent
	Through	Mr. Vijay Tandon, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 26th April, 2013 whereby leave to defend application filed by 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) was dismissed, the petitioner prefers the present petition. During the course of proceedings on 4th September, 2014 learned counsel for the respondent stated that the possession of the tenanted premises has already been taken in execution of the impugned judgment and decree dated 26th April, 2013.

2. In the eviction petition the respondent claims herself to be the owner and landlady of shop No. B-2 (basement floor) in property No. 16-A/19, WEA, Ajmal Khan Road, Karol Bagh, Delhi. It was stated that the tenanted premises were let out to the respondent by her father Shri Trilok Chand Jain on behalf of his two minor sons Vipul Chander Jain and Atul Chander Jain

by way of a lease deed dated 15th September, 1977 for a period of three years. The tenanted premises was let out for commercial purposes and the present rate of rent was ₹2100/- per month excluding all other charges. The respondent became owner of the tenanted premises with effect from 17th April, 1986 by way of a memorandum of gift executed by her brothers and the petitioner herein attorned in favour of the respondent and started paying rent by account payee cheques. The respondent stated that the tenanted premises was required bonafidely by the respondent for herself and for her son Anshul Jain aged 21 years who was a final year student in Delhi University and on completion of graduation was to start a saree business from the tenanted premises which was located in a commercial market known for saree business. The husband of the respondent has his own independent business of Plastic Daana under the name and style of M/s. P.P. Polymers at Kundli, Haryana. It was further stated that besides the tenanted premises, the respondent also owns a portion of basement in property No. F-3/16, Gay House, Ansari Road, Darya Ganj, however the said area was not suitable for the respondent to start saree business as the same is known for publishing business and moreover the said premises is already on rent.

3. In the leave to defend application, the petitioner pleaded that father of respondent Trilok Chand Jain was not the registered owner of the premises and a false memorandum of gift had been executed in favour of the respondent by her brothers on 17th April, 1986. Further as per the own showing of the respondent, she was owner of a portion of basement in property No.F-3/16, Gay House, Ansari Road, Darya Ganj. Thus, an alternative more suitable commercial accommodation was available to her.

The respondent being a house-wife had never done any business, lest saree business and that requirement of the son starting the business in future after graduation is unfounded and uncalled for.

4. Vide the impugned judgment the learned Trial Court held that since the petitioner was admittedly paying rent to the respondent for the last about 26 years the landlord tenant relationship stood established and that the requirement of the respondent cannot be said to be bonafide for settling the son in business who was doing graduation and in view of the assertion that the tenanted premises was located at Ajmal Khan Road, Karol Bagh which was known for saree business and also the fact that Ansari Road, Darya Ganj Market is known for publishing business is not refuted, the petitioner cannot dictate terms to the respondent. The requirement thus being bonafide, leave to defend application was dismissed and eviction order was passed.

5. Learned counsel for the petitioner again reiterates before this Court the three grounds urged in the leave to defend application that the respondent was not the owner of the premises, there was no bonafide requirement of the tenanted premises and an alternative accommodation was available.

6. In the leave to defend application the petitioner has not denied paying rent to the respondent for the last about 26 years as stated by the respondent in the eviction petition. The claim is that the respondent is not the owner of the premises as no legal title has devolved upon her in respect of the premises as her father was not the registered owner of the premises nor any memorandum of gift was executed in her favour. It is trite law that in a petition under Section 14(1)(e) DRC the landlord is not required to prove absolute ownership and is only required to prove that he has a claim on

property better than that of the tenant. The factum of the petitioner paying rent to the respondent for the last about 26 years is not denied in the leave to defend application and hence the claim of the petitioner that the petitioner has raised a triable issue that the respondent is not the owner falls to the ground. Supreme Court in Rita Lal Vs. Raj Kumar Singh (2002) 7 SCC 614, wherein no explanation was given by the tenant as to how his signatures appeared on rent notes, held that:

“6.So also as the respondent does not furnish any explanation worth being considered, much less accepted, as to how his signatures appear at more than one place, that is, on every page of the rent note dated 10-2-1997, he cannot escape the consequences flowing from execution of the rent note. The tenant having been inducted by the landlord so long as he remains in possession cannot deny the title of his landlord in view of the rule of estoppel contained in Section 116 of the Evidence Act.”

7. As regards the bonafide requirement of the respondent in the leave to defend application it is not disputed that the son of the respondent was doing graduation or that he was not required to be settled in a vocation. The vocation in which the respondent wanted to settle herself and her son cannot be dictated by the petitioner/tenant. A person can start new business even if he has no experience. That does not mean that the claim in an eviction petition for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also. (See Ram Babu Agarwal Vs. Jay Kishan Das (2010) 1 SCC 164)

8. As regards alternative accommodation in portion of basement in property No. F-3/16, Gay House, Ansari Road, Darya Ganj is concerned, the respondent has already stated that the said market is not conducive for a saree business as the entire area is known for publishing business. Further the petitioner does not dispute that the alternative accommodation is on rent and further there is a specific assertion that the tenanted premises at Ajmal Khan is more suitable for saree business than Darya Ganj, thus there is no merit in this plea as well.

9. Learned counsel for the petitioner has relied upon a decision in the case of Santosh Devi Soni Vs. Chand Kiran (2001) 1 SCC 255 wherein the Supreme Court stated in the facts and circumstances of the case that since the same was for additional accommodation and also in light of the additional accommodation subsequently made available to the landlord a trial was required. The said decision has no application to the facts of the present case as the present case is not a case of additional accommodation and there is no subsequently available accommodation with the respondent. It is trite law that landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. (See Ragavendra Kumar Vs. Firm Prem Machinery & Co. AIR 2000 SC 534)

10. Consequently, I find no merit in the petition. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 24, 2015
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