

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

+ **RC.REV. 81/2015 and CM No. 3091/2015 (Stay)**

% Reserved on: 19th May, 2015
Decided on: 29th May, 2015

ANUBHAV DHAWAN Petitioner
Through: Mr. Himal Akhtar, Mr. Aijaz Hussain
and Mr. Sunny Kadiyan, Advocates
with Petitioner in person.

versus

VIJAY KUMAR Respondent
Through: Mr. S.K. Sharma, Mr. Rahul Sharma,
Mr. Archit Vasudeva, Mr. Prayas
Aneja and Mr. Puneet Relan,
Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. An eviction petition was filed by Vijay Kumar, the Respondent herein seeking eviction of shop in the property No.45, Central Market, Lajpat Nagar, New Delhi-110024 (in short 'the suit property') which was let out to the father of the Petitioner Anubhav Dhawan about 30 years ago and no Rent Agreement was executed. Father of Anubhav Dhawan was carrying on the business of trading in laces and ribbons, saree and suit borders under the name and style of 'M/s Venus General Stores' from the said shop which Anubhav Dhawan continued.

2. It was claimed that Vijay Kumar was the absolute owner of the tenanted shop in the suit property. Besides, the suit property consists of four more shops and for the sake of convenience the same are given private numbers, that is, Shop Nos. 1, 2, 3, 4 and 5 and the shop with Anubhav Dhawan was Shop No.3. Father of Vijay Kumar had purchased the suit property and after Vijay Kumar's parents died intestate the other sisters and

brother of Vijay Kumar relinquished their respective shares in favour of Vijay Kumar vide registered Relinquishment Deed dated 4th February, 2013 vide Registration No.812. Thus he became the sole and absolute owner of the suit property. Vijay Kumar has only one shop in his possession i.e. shop No.1 and the other four shops were with different tenants. Father of Vijay Kumar, during his lifetime was running the business of general store in the name and style of 'M/s Vijay Store' which Vijay Kumar continued after his demise.

3. It is stated that the shop was required bona fidely by Vijay Kumar for his own use since trade of general store needs a lot of storage space to keep the products allied with the trade and since the shop was too small, there was no storage facility. Vijay Kumar had been using the basement of E-7, Lajpat Nagar-New Delhi for the purpose of storage of his merchandise however, due to heavy rains in the rainy season and dampness so caused Vijay Kumar could not store his merchandise and he had no space available nearby his shop for the purpose of storage of goods. Vijay Kumar is also owner of one half portion of the basement adjoining to C-II/22 and the entire first floor without terrace in property No.C-II/23 Lajpat Nagar, New Delhi. The first floor being residential in nature is used by the son of Vijay Kumar for his residence. The basement of C-II/22 was also 300 meters away from his shop and could not be used for the purpose of storage. The ground floor of property No.A-20, Lajpat Nagar-III, owned by Vijay Kumar was being used by him for residential purpose. Besides the premises noted above, he had no other reasonably suitable accommodation which could act as storage for 'M/s Vijay Stores'.

4. In the written statement filed by Anubhav Dhawan it was stated that Vijay Kumar has even failed to show his needs by not filing any supporting document and also the suitability of the tenanted shop for the purpose it is sought to be evicted. Lack of bona fide on the part of Vijay Kumar is evident as he stopped using the basement of E-7, Lajpat Nagar for storage. The dampness, if any, could be repaired. Vijay Kumar has failed to disclose that he was using the back portion of the shop which is in his possession for storage purpose. Thus Vijay Kumar admittedly has space for storage in his shop No.1 in the suit property.

5. After the parties led their evidence vide the impugned order dated 29th August, 2014 the learned ARC directed eviction of Anubhav Dhawan from the tenanted premises, that is, Shop No.3 in the suit property. The learned ARC noted that there is the admission of the witnesses of Anubhav Dhawan, RW-2 Surinder Arora, RW-3 Sunny Chaurasiya and RW-4 Vijay Sehgal that the area behind the Shop No.1 of the suit property was 36 sq. ft which was also a part of Shop No.1 and was not sufficient for storage. The servants of Vijay Kumar used to go to the godown to get the articles. Lajpat Nagar being a busy market and with heavy vehicular and pedestrian movement, fetching the goods from the store at a distance of 300 meters on the spur of the moment at the demand of the customers would take sufficient time and may dissuade the customers from visiting the shop again. Hence, the need of Vijay Kumar for storage in the immediate vicinity of the main shop is the most natural need and the two basements cannot be said to be suitable accommodations for the purpose of storage.

6. Aggrieved by the order dated 29th August, 2014 directing eviction of Shop No.3 from the suit property Anubhav Dhawan prefers the present petition.

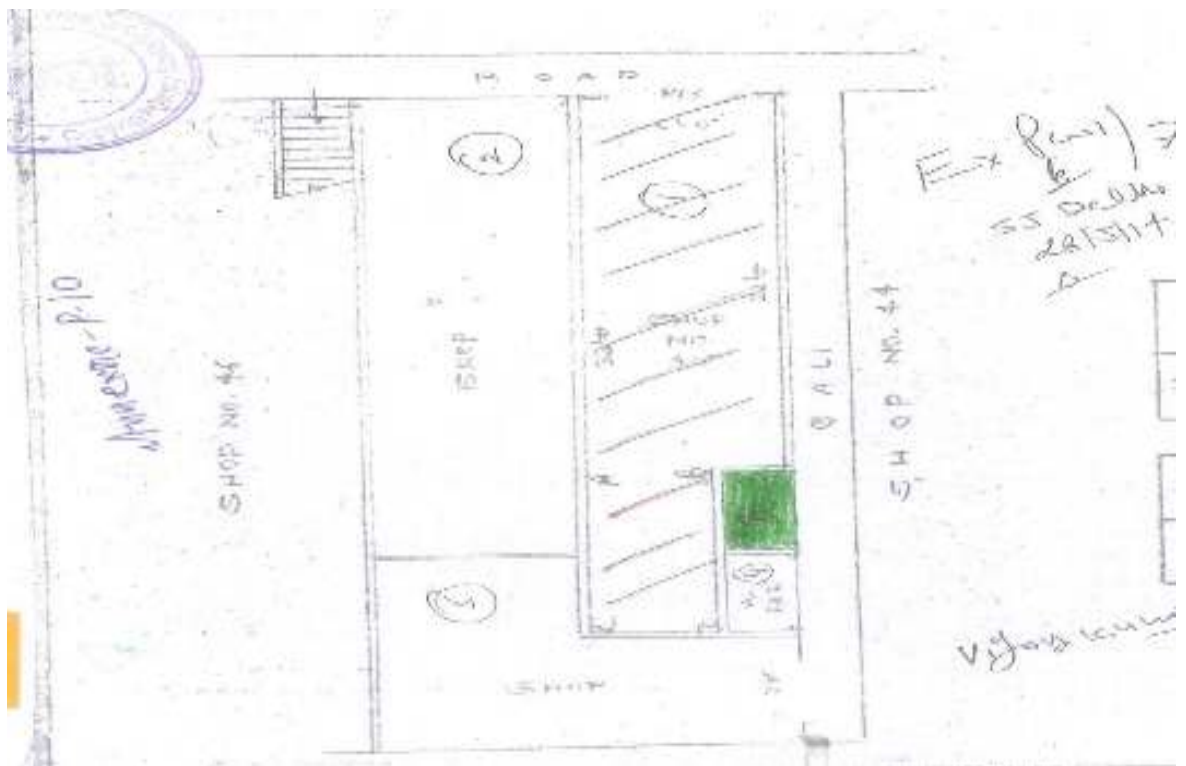
7. Learned counsel for the Anubhav Dhawan contends that the eviction petition filed by Vijay Kumar was not maintainable as he neither mentioned nor proved as to how much space is required for the purpose of the storage. The requirement of Vijay Kumar was not bona fide. In the affidavit of Vijay Kumar it was only stated that the basement was located at a distance of more than 300 meters for storage of merchandise of general store, that the tenanted shops were required bona fide and eviction is also sought from the other tenants by filing petitions. To prove that the business of Vijay Kumar was growing, he was required to bring Stock Register, photographs, Sales Tax Number etc. however, on a bald assertion the Court allowed the eviction petition stating it to be bona fide requirement. Reliance is placed on Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, AIR 1999 SC 2507 and Mohan Lal vs. Tirath Ram Chopra and another, 1982 (2) RCJ 161 to contend that the onus is on the landlord to prove the bona fide requirement.

8. Learned counsel for Vijay Kumar on the other hand contends that Vijay Kumar is in occupation of a basement admeasuring 900 sq.ft which was in the name of his wife which was used for storage purpose. In the year 2013, due to heavy rains there was dampness in the basement which fact has been admitted by Anubhav Dhawan in his evidence. He also admits that due to paucity of space, Vijay Kumar keeps the counter outside the shop during the day. Anubhav Dhawan nowhere pleaded that if Shop No.2 is vacated Shop Nos.3 and 4 would not be required. The witness RW-2 of Anubhav Dhawan admitted the case of the Vijay Kumar. Even if the entire area is

available to Vijay Kumar, that is, Shop Nos. 1, 2 and 4, it would be only 380 sq. ft. as compared to basement of 900 sq. ft. where the goods were kept and now cannot be kept due to dampness as occurred due to heavy rains in the year 2013 and thus, it cannot be said that the Vijay Kumar has no bona fide requirement.

9. I have heard learned counsel for the parties at length and perused the evidence.

10. Before proceeding with the rival contentions of the parties it would be appropriate to look at the site plan of the property which consist of five shops given private Shop Nos. 1, 2, 3, 4 and 5.



11. In the site plan as shown above, Vijay Kumar has been running his business from Shop No.1. During the pendency of the eviction proceedings,

Shop Nos. 2 and 4 have also been got vacated. The Petitioner Anubhav Dhawan is running his business from Shop No.3. The contention of learned counsel for the Petitioner regarding availability of storage space in shop No.1 is based on the admission of Vijay Kumar that the rear portion of Shop No.1, that is, marked A, B, C and D is being used for storage purpose and thus there is no requirement for storage. This contention is misconceived. Merely because a part of the shop is being used for storage would not mean that the same is sufficient. In this regard, it would be appropriate to refer the testimonies of various witnesses.

12. Vijay Kumar appeared as PW-1 and stated that the rear portion of his shop was being used for storage purpose and on this admission, learned counsel for the Petitioner bases his case. However, the evidence of Anubhav Dhawan, who appeared as RW-1 itself would show that he admitted in cross-examination that the width of the shop in possession of Vijay Kumar was 6/8 ft. and the counter of the shop of Vijay Kumar was approximately 2 ft. and when Vijay Kumar opens his shop he has to place the counter of the shop outside and at the time of closing of the shop he brings the same inside the shop. He stated that he never visited basement of property E-7, Lajpat Nagar. He admitted that Vijay Kuamr sells merchandise of general store such as wheat flour bags, sugar bags, pulses and other similar items which are required to be stored and that Vijay Kumar was not using basement of E-7 Lajpat Nagar for the purpose of storage due to dampness. He also admitted that Property No.C-23, Lajpat Nagar wherein Vijay Kumar has small basement was at a distance of 300 meters and that goods were being transported through bicycle from the basement to the shop of Vijay Kumar by his staff. Anubhav Dhawan also examined Mr. Surinder Arora as RW-2

who in his evidence by way of affidavit stated that every day he sees one of the employees of Vijay Kumar whose bicycle is parked outside his shop, going on the bicycle and returning after ten minutes carrying approximately 5-7 kilograms of merchandise which was either Atta, sugar, pulses etc. This practice is carried out twice a day. In the cross-examination he admitted that the width of the road was so small that during working hours it was not possible even to bring a bicycle in the street.

13. Thus on the basis of the evidence on record neither the landlord-tenant relationship is disputed nor the fact that one basement, that is, E-7, Lajpat Nagar, Delhi which was being used for the purpose of storage was not being used due to dampness and the present basement at C-22, Lajpat Nagar-II was at a distance of 300 meter and it was difficult to get even a bicycle in the street in the working hours and as and when the cycle went to fetch the articles it took ten minutes.

14. In the light of the evidence of Anubhav Dhawan and his witnesses it has to be seen whether requirement of the Respondent is a mere desire or bona fide requirement. In Shiv Sarup Gupta (Supra) relied upon by the learned counsel for the Petitioner the Supreme Court drew a distinction between ‘mere desire’ and ‘bona fide requirement’ and held:

“12. A perusal of Section 14 of the Act shows that the law has imposed restrictions on the recovery of possession of any premises by a landlord from a tenant notwithstanding any law or contract to the contrary. However, an order for recovery of possession is permissible on one or more of the specified grounds. One such ground is the premises let for residential purposes being required bona fide by the landlord for occupation as residence for himself or for any member of his family dependent on him. What is a bona fide requirement is not defined in the Act. The words “need”

and “require” both denote a certain degree of want with a thrust within demanding fulfilment. “Need” or “requirement” qualified by the word “bona fide” or “genuine” preceding as an adjective — is an expression often used in rent control laws. “Bona fide or genuine need” of the landlord or that the landlord “genuinely requires” or “requires bona fide” an accommodation for occupation by or use for himself is an accepted ground for eviction and such expression is often employed by rent control legislation draftsman. The two expressions are interchangeable in practice and carry the same meaning.

13. Chambers 20th Century Dictionary defines bona fide to mean “in good faith: genuine”. The word “genuine” means “natural: not spurious: real: pure: sincere”. In Law Dictionary, Mozley and Whitley define bona fide to mean “good faith, without fraud or deceit”. Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by “requires” is much more higher than in mere desire. The phrase “required bona fide” is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself — whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the

landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”

15. In Siddalingamma and another vs. Mamtha Shenoy, 2001 (8) SCC 561 the Supreme Court while considering the bona fide requirement reiterated the test laid down in Shiv Sarup Gupta (supra) and held:

“9. Rent control legislation generally leans in favour of the tenant; it is only the provision for seeking eviction of the tenant on the ground of bona fide requirement of the landlord for his own occupation or use of the tenanted accommodation which treats the landlord with some sympathy. In Shiv Sarup Gupta v. Dr Mahesh Chand Gupta [(1999) 6 SCC 222] this Court has held that a bona fide requirement must be an outcome of a sincere, honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which

would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive the need is bona fide. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises so as to protect the tenant's continued occupation in tenancy premises. In Deena Nath v. Pooran Lal [(2001) 5 SCC 705] this Court has held that bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire.”

16. Admittedly, the basement which had the area of 900 sq. ft., that is, E-7, Lajpat Nagar is not being used due to dampness. The other basement was at a distance of 300 meter and due to heavy traffic it took ten minutes to get the merchandise from C-22, Lajpat Nagar. The area of the basement at E-7, Lajpat Nagar which was used earlier is 900 sq. ft. and even if the area of all the shops, that is, Shop Nos. 1, 2, 3 and 4 are taken together, the same comes to 380 sq. ft. which is much less than the area earlier used for storage. Thus, in the light of the evidence on record, it cannot be said that since there is space on the rear side of the Shop No.1, that is marked A, B, C and D and the two shops were available, there was no bona fide requirement of Shop No.3 with the Respondent. In Shiv Sarup Gupta (Supra) relied upon by the learned counsel for the Petitioner the Supreme Court also adverted on the

subject of an alternate accommodation with the landlord and held that the other available accommodation should be suitable and convenient in all respects and should not have an adverse bearing on the bona fide needs of the landlord. It was held that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction.

17. The main thrust of the arguments of learned counsel for the Petitioner is that to prove the bona fide requirement, the Respondent Vijay Kumar ought to have proved his sales figure etc. and in the absence of documents like, Sales Tax Number, invoice etc. it cannot be said that he needed Shop No.3 as well for expansion of business and storage of merchandise. As noted above, admittedly, Vijay Kumar was storing his goods in 900 sq. ft accommodation which is not available to him now and if all the shops are available then also the area is less than half the available space. The finding of the learned Trial Court that when a customer arrives in the shop he has to wait for ten minutes so that merchandise arrives would be a reason for dissuading him to come to the shop next time cannot be found fault with.

18. Consequently, I find no merit in the present petition.

19. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 29, 2015
‘vn’