

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC. Rev. No.296/2015 & CM APPL No.11114/2015**

Decided on : 18th September, 2015

NITIN CHANDRA

..... Petitioner

Through: Mr. Sanjeev Sindhvani, Senior Advocate
with Mr. Abhishek Paruthi, Adv. &
Mr. Gaurav Goyal, Adv. along with
Petitioner in person.

versus

SARDAR GURDEEP SINGH

..... Respondent

Through: Ms. Advocate
(*Appearance not given*) along with
Respondent in person.

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 19.03.2015 passed by the learned Additional Rent Controller, South, Saket Courts, New Delhi dismissing the leave to defend application of the petitioner-tenant and passing an eviction order.
2. I have heard Mr. Sanjeev Sindhvani, the learned senior counsel for the petitioner as well as the learned counsel for the respondent.
Before dealing with the submission made by Mr. Sindhvani

regarding bonafide requirement of the respondent-landlord, it may be pertinent here to give a brief background of the case.

3. The respondent-landlord filed a petition under Section 14 (1) (e) of the Delhi Rent Control Act against the present petitioner-tenant seeking his eviction from a shop bearing No.135/7, Gautam Nagar, Delhi on the ground of bonafide commercial requirement of the respondent-landlord and his family members.
4. It was the case of the respondent-landlord that the shop in question was let out to the petitioner-tenant in the month of February-March, 2005 at a monthly rent of Rs.2200/- without any agreement. Later on, the elder son of the respondent-landlord entered into a Partnership Deed with the petitioner-tenant on 21.05.2005 which ultimately got dissolved pursuant to a Court order dated 01.03.2013. But, the premises continued to be with the petitioner-tenant in his capacity as an individual tenant under the respondent-landlord. It was alleged that the shop is needed by the respondent-landlord for the benefit of his eldest son Daljeet Singh, who wanted to start a business and also for opening of a Clinic by his granddaughter, namely, Manleen Kaur, who was pursuing at the time of

filing of the petition, Bachelors in Homeopathic Course. It was also alleged that the respondent-landlord does not have any other suitable premises available to him from which the business could be run.

5. The present petitioner filed the leave to defend and questioned the bonafides of the respondent in seeking his eviction. It was alleged by him that the respondent-landlord wants to re-let the shop at a higher rate after getting the petitioner evicted from the shop. It was also alleged by the petitioner that the respondent does not want to start the business as is claimed by him as he is getting a pension of Rs.13,000/- per month. His eldest son Daljeet Singh for whose benefit the shop was required for starting a business was earning Rs.25,000/- per month as he was employed with some private company. Similarly, another son Gurvinder Singh was earning Rs.30,000/- and Daljeet Singh's wife was earning Rs.50,000/- as Vice Principal in Govt. school.
6. As regards the grand-daughter, it was alleged that she will take two years to complete her course and thereafter she would like to undergo Internship before she could start practice and therefore

there was no immediate need to that effect. The petitioner also alleged that he had paid a sum of Rs.5 lac as a refundable security for which he did not produce any document in writing and he had already incurred expenses of Rs.60,000/- for renovating the shop.

7. In reply to the averments made in the leave to defend application, the respondent-landlord admitted that he was getting pension of Rs.13,000/-. He also disputed that his elder son Daljeet Singh was earning Rs.25,000/-. It was, on the contrary stated that Daljeet Singh was earning Rs.16,000/- per month. The factum of his wife being employed was not disputed but it was stated that income of Daljeet Singh was not sufficient to meet their requirement and therefore they needed to supplement their income. So far as grand-daughter is concerned, it was stated that she has completed her BHMS and she is required to undergo Internship. It was also stated that so far as the younger son is concerned, he also needs his space to have his store room in the shop in question and thus, the bonafide requirement by the respondent-landlord was reaffirmed.
8. On the basis of the aforesaid averments made in the leave to defend application and the reply thereto it was contended by Mr.

Sindhwani, that the respondent-landlord's requirement was not bonafide as it was actuated by ulterior consideration of re-letting the property with a view to get more rent. The reason for drawing this inference, Mr. Sindhwani contended that the respondent-landlord did not disclose to the Court that his son was already employed and therefore could not start the business. The only point in issue was with regard to the amount of salary which he was getting.

9. As regards the explanation which was sought to be given by the respondent-landlord it was contended by Mr. Sindhwani that when the respondent-landlord was caught on the wrong side as his son was employed, he started giving alibis by contending that the salary of his son Daljeet Singh was not Rs.25,000/- but was only Rs.16,000/- and the pension which he was drawing for himself and his spouse by way of a salary was not sufficient to meet their requirements, thereby meaning it was a case where the respondent-landlord's son wanted to increase his income which in itself raises a triable issue.

10. It was also contended by Mr. Sindhwani that so far as the bonafide requirement case of the respondent-landlord is concerned, the landlord himself was not clear for what purpose he required the shop and that is the reason he wanted to retrieve the possession of the shop by making all claims rolled in one. He states that he required the premises for his own business, his son to conduct the business, his grand-daughter to run a Clinic and lastly, set up a new case in the reply by contending that his younger son who admittedly has an adjacent shop in possession needs space for store room, thereby indicating that by all hook and crook, the respondent-landlord wanted the eviction of the present petitioner-tenant.
11. This was refuted in general terms by the learned counsel for the respondent. However, the counsel was unable to refute specifically the reasons as to why he did not disclose in the first instance that Daljeet Singh was employed with a private company. He was not able to justify the bonafide requirement of the respondent-landlord or his two sons and a grand-daughter.

12. I have carefully considered the submissions made by the respective sides and also gone through the impugned judgment and I am of the view that though the judgment which has been relied upon by the learned ARC are absolutely correct, however, he has fallen into grave error in not appreciating the submissions made by the learned counsel for the petitioner-tenant with regard to bonafide requirement. Thus, the order of the learned ARC suffers from not only jurisdictional error but is not sustainable in the eyes of law in as much as, no reasonable person could have passed an order rejecting the leave to defend application on the ground of bonafide requirement as alleged by the petitioner it raises a number of triable issues.
13. These triable issues are that the petitioner in his petition has claimed the possession of the shop not only for his elder son Daljeet Singh to start his own business but also for the purpose of running a Clinic by his grand-daughter knowing fully well that at the time when the petition was filed she had two years to go before she could complete her BHMS Course and even if she would have completed her BHMS course, she could not be expected to start an

independent business of consultation without undergoing Internship or getting associated with some senior Homeopathic doctor so as to gain some experience. Therefore, her requirement could not have been made as a basis for seeking eviction of the petitioner from the shop in question though she had completed her degree by the time the order was passed.

14. As regards the eldest son of the respondent-landlord, the respondent was expected to disclose the fact that his son Daljeet Singh was employed and was earning a salary of whatever amount and then should have stated that Daljeet Singh wants to start his own independent business from the shop in question as the income which he might have been getting may not have been sufficient, but the very fact that the respondent-landlord did not reveal the factum of his sons employment or rather concealed this information from the Court and then only on the disclosure of the petitioner-tenant that Daljeet Singh was employed and getting a salary of Rs.25,000/- came out with an excuse that he was employed and earning only Rs.16,000/- which was not sufficient to meet his

requirement clearly shows that the bonafide requirement of Daljeet Singh is suspect.

15. Moreover, the plea which is sought to be taken after the disclosure of employment of Daljeet Singh is insufficiency of income, to meet the requirement of Daljeet Singh. This fact also cannot be taken cognizance of as it was done belatedly only after the petitioner-tenant had taken the plea in this regard. So far as employment of wife of Daljeet Singh as a teacher or Vice Principal is concerned, though per se they may not be very important so as to decide the question of bonafide requirement but it becomes relevant on account of the fact that her income is also the income of Daljeet Singh and therefore, if both the incomes are clubbed together then 25,000/-+50,000/- it comes to Rs.75,000/- per month. Respondent-landlord was expected to state truthfully as to how much, according to him is sufficient to meet the financial requirement of Daljeet Singh. Since this has not been done, all these aspects fall within the domain of a triable issue because they have an impact on the question of bonafide requirement of the respondent.

16. The respondent-landlord has also not revealed the fact that he was getting a pension of Rs.13,000/- per month when he specifically stated that he also wants to run business from the shop in question. In a case of bonafide requirement it is not mere wish or the desire of the respondent-landlord which is important in getting the premises retrieve from the tenant but it is also the fact that this desire or wish by the landlord must be positively assessed by the Court in order to see that it is not actuated by malafides and there is a good faith in seeking the eviction of the tenant in real betterment or comfort of the respondent-landlord or to increase the income of the person for whose benefit the shop is sought.
17. In view of the aforesaid facts and circumstances of the case, I feel that all these aspects essentially are raising a triable issue and in case the petitioner-tenant is permitted to prove these facts after the grant of leave to defend they may as well end up rejecting the case of the respondent-landlord for bonafide requirement. I, therefore, feel that the learned ARC, South has fallen into the serious error. I accordingly, set aside the order passed by the learned ARC and grant leave to defend to the petitioner-tenant.

18. The petitioner-tenant is permitted to file written statement within a period of 30 days from today with an advance copy to the respondent-landlord who may file his rejoinder within one week thereafter.
19. Parties to appear before the learned ARC, South, Saket Courts, New Delhi on 02.11.2015.
20. A copy of this order be given Dasti to the counsel for the parties and a copy of the order be sent to the learned ARC concerned for information.
21. With these observations, the revision petition is disposed of.
22. Pending application also stands disposed off.

V.K. SHALI, J.

SEPTEMBER 18, 2015

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