

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

+ **RC. Revision No.505/2015 & C.M. No.20186/2015**

Decided on : 19th November, 2015

RAJAN PAL

..... Petitioner

Through: Mr. Sunil Malhotra & Mr. Amit Sanduja,
Advocates.

Versus

MANMOHAN SINGH & ORS

..... Respondents

Through: Mr. Siddharth Bambha & Mr. Shyam D.
Nandan, Advocates.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. The present petition assails the order dated 23.5.2015 passed by the learned Rent Controller (Central) rejecting the leave to defend application of the petitioner and passing an order of eviction in respect of a shop bearing No.2932, Ground Floor, Hamilton Road, Kashmere Gate, Delhi-110006, more particularly, shown in red in the site plan in annexure C-1.
2. I have heard the learned counsel for the petitioner as well as learned counsel for the respondents. Mr. Malhotra, the learned counsel for the petitioner has assailed the impugned order rejecting the leave to

defend application only on two grounds. The first ground on which the leave to defend application has been rejected is pertaining to the fact that the respondent/landlord has an alternative accommodation available to him in the form of a space on the first floor as well as second floor of the same property wherefrom the requirement of the respondent/landlord can be met. It has been contended that the eviction of the petitioner from the shop in question is sought by the respondent/landlord in order to accommodate his two sons in starting a shop of a spare motor parts on the ground floor. The shop which is already under the possession of the respondent is being used as an office of spare parts, for the purpose of export, which office can be shifted on to the first floor and the second floor and consequently, the shop so vacated on the ground floor can be used for the business of selling spare parts in retail by the other two sons of the respondent/landlord.

3. The second submission which has been made by the learned counsel for the petitioner is challenging the *bona fide* of the respondent/landlord in seeking his eviction. In this regard, it has been stated that the respondent/landlord has six shops - three shops on the ground floor, one is in his possession while as the two other shops have

been let out to two private parties, namely, Mahindra Auto Electricals and Mahindra Tractors on a huge premium and a very low rentals only 3-4 years prior to the date of filing of the leave to defend. It has been contended that in case the requirement of the respondent/landlord would have been genuine, then they would not have let out the premises to these two private parties.

4. These submissions of the learned counsel for the petitioner have been refuted by the learned counsel for the respondent, who has contended that the shop in question, which is under the occupation of the petitioner, is lying closed and he is running his business somewhere at Kirti Nagar in the form of a service station, while as the present premises are being held back by him only with a view to extract money from the respondent/landlord. The fact of the shop not being used for the last three years is also reflected by the fact that there has been no consumption of electricity in respect of this shop. It is further stated that this court on the last date of hearing had passed an order directing the petitioner to file an affidavit giving the details of the month-wise consumption of the electricity along with the proof thereof. It has been stated that the said order has not been complied with. On the contrary, an affidavit has been

filed stating that there was no electricity and therefore, no details in this regard can be furnished.

5. I have carefully considered the submissions made by the learned counsel for the parties and have gone through the impugned order. I find that there is absolutely no merit in the contention raised by Mr. Malhotra to say that any triable issue is raised by the petitioner in his leave to defend application. This is on account of the fact that the case of the respondent/landlord is that the property in question bearing No.2932, Hamilton Road, Kashmere Gate was the property of late Mangat Ram, their father and his brother Hari Singh. It is not in dispute that the property was partitioned between the two brothers in the year 1977 as a consequence of this partition, three of the shops each had fallen to the share of each of the brother. Out of the portion which had fallen to the share of Mangat Ram, who has since died, one is occupied by the petitioner and the two other shops are let out to Mahindra Auto Electricals and Mahindra Tractors. This fact is not in dispute and it has been admitted by the petitioner himself that only one shop is with the respondent/landlord, which is stated to be used by them for the purpose of running their business of exporting motor parts. It is also not in dispute

that after the partition, the petitioner, who is in occupation of one of the shops on the ground floor and which has fallen to the share of the respondent/landlord, he has been paying rent to the respondent/landlord, who is the successor-in-interest of late Mangat Ram. Therefore, by virtue of Section 116 of the Evidence Act, the learned Rent Controller has rightly observed that the petitioner cannot challenge the title or relationship between the parties as that of tenant-landlord.

6. So far as the non-availability of shop on the ground floor for the purpose of running a retail business by two of the sons of the respondent/landlord is concerned, the learned Rent Controller has rightly observed that Kashmere Gate is an area which is a hub of the largest retail motor part shops in India and for that matter in Asia. The retail business can be considered viable only if it is run from the ground floor because all the customers would be loath to climb on to the first floor to check the rates and purchase the motor parts when most of the shops are located on the ground floor itself. In a competitive market where most of the shops of selling motor parts are on the ground floor, to have a retail out let on the first floor is practically as good as not running the business at all. Therefore, the learned Rent Controller has rightly concluded that the

submission of the learned counsel for the petitioner that the availability of accommodation on the first floor with the respondent/landlord for the purpose of accommodating his two sons for running the retail business cannot be considered to be an alternative accommodation.

7. So far as the suggestion which has been given by the learned counsel for the petitioner that the shop wherefrom the office of the respondent/landlord is being run, should be re-located and can be shifted to the first floor and the second floor and the shop so vacated can be used for retail business will tantamount to giving a lever to the tenant to decide for the respondent/landlord as to how he is to conduct his affairs or do business which is totally against the settled legal position laid down by the Supreme Court in catena of authorities that it is not for the tenant to decide as to how the landlord has to manage his business or his *bona fide* requirement. Reliance in this regard can be placed on the judgments of the Apex Court in *Anil Bajaj and Anr. vs Vinod Ahuja*; AIR 2014 SC 2294, *Sarla Ahuja Vs. United India Insurance Company Limited*; AIR 1999 SC 100, *Prativa Devi vs. T.V. Krishnan*; (1996) 5 SCC 353, *Mohd. Ayub and Anr. vs. Mukesh Chand*; AIR 2012 SC 881 and *Maganlal son of*

Kishanlal Godha vs. Nanasaheb son of Udhaorao Gadewar; AIR 2009 SC 278.

8. Therefore, this first submission of the learned counsel for the petitioner regarding availability of alternative accommodation has absolutely no merit.

9. As regards *bona fides* of the respondent/landlord in seeking eviction of the petitioner is concerned, that also cannot be found fault with because admittedly the petitioner is claiming that the other two shops on the ground floor have been let out to Mahindra Auto Electricals and Mahindra Tractors only 3-4 years prior to the date of filing of the leave to defend. The leave to defend has been filed sometime in May, 2011 and 3-4 years prior would take us to the month of May, 2008 while as the eviction petition has been filed in the year 2011. So, a gap of 3-4 years cannot be considered to be such a small gap that a respondent/landlord must anticipate in future as to how he will require his premises nor can it be said to be a case as is sought to be met out by Mr. Malhotra for additional accommodation.

10. This is a case of pure and simple fresh accommodation for the purpose of starting an ancillary business of retail by a landlord, who is

admittedly dealing in export of spare parts. I, therefore, feel that this plea of petitioner that the *bona fides* of the respondent/landlord are suspect is also without any basis.

11. On the contrary, I find some merit in the contention of the learned counsel for the respondent/landlord that the petitioner was directed specifically on the last date of hearing to file his affidavit indicating the amount of electricity consumption done month-wise. Though this affidavit has been filed but now it has been stated in the affidavit that the electricity was disconnected not by the respondent/landlord but by the service provider long back and the premises in question is being used as godown. The electricity is stated to be provided from a generator as the godown does not require much of the electricity. This clearly is not only scuttling the main issue and the submission which was made by the learned counsel for the petitioner on the last date of hearing that electricity was disconnected by the respondent/landlord but also trying to create a defence that as if electricity is not being consumed by them genuinely. The submissions which have been made today in this regard do not reflect the contemporaneous conduct of the petitioner which is in line with the defence which was taken by them. On the contrary, I feel

that there is some degree of merit in the submission made by the learned counsel for the respondent to the effect that the premises is being deliberately held back to bargain with him.

12. For the reasons mentioned above, I am of the considered opinion that there is absolutely no merit in the contention of the learned counsel for the petitioner that any triable issue is raised from the leave to defend application or that the impugned order dated 23.5.2015 rejecting the leave to defend application and consequently, passing an order of eviction against the respondent/landlord suffers from any illegality or jurisdictional error so as to warrant any interference with the same.

13. I, accordingly, dismiss the present revision petition of the petitioner with costs of Rs.10,000/- to be deposited with the Delhi High Court Legal Services Committee.

V.K. SHALI, J.

NOVEMBER 19, 2015
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