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HIGH COURT OF DELHI AT NEW DELHI

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R.C. Rev. No.93/2013

Decided on : 19th February, 2016

VIJAY KUMAR

..... Petitioner

Through: Mr. Naushad Ahmed Khan, Advocate.

Versus

ASHA JAIN

..... Respondent

Through: Ms. Shalini Kapoor, Ms. Kirti Arora &
Ms. Tina Mago, 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 of eviction dated 05.10.2012 passed against him on the ground of *bona fide* requirement. Before dealing with the submissions addressed by the learned counsel for the petitioner, it is pertinent to mention that under Section 14(7) of DRC Act, the tenant is to be given six months time to vacate the premises while as this revision has been pending for almost three and a half year and the petitioner/tenant has already enjoyed the property for a substantial period of time.

2. Be that as it may, the facts of the case are that an eviction petition was filed by the respondent/landlady against the present petitioner in respect of a shop having dimension of 17.6 feet x 6 feet situated in property bearing No. 1124-1125, Chatta Madan Gopal, Chandni Chowk, Delhi-110006 which was let out to the petitioner by the respondent

landlady on monthly rent of Rs.52.80 per month excluding other charges. It was contended by the respondent/landlady that her family consisting of her two sons their wives, her husband and four minor grand children are residing jointly on the upper floors of the aforesaid property. Husband of the landlady/respondent was doing cloth business from another tenanted shop no. 1219/8 Katra Sat Narain, Chandni Chowk under the name and style of M/s Kashiram Vijay Kumar for the last more than three decades. It has also been stated that the shop wherefrom respondent's husband is doing business is not thorough fare and is situated on the dead end of the Katra which is not easily accessible to customers and accordingly, it was stated that the shop in question which is the only shop in the suit property was required *bona fide* for the purpose of doing the business by the husband of the respondent/landlady (now deceased). The petitioner contested the eviction petition by filing leave to defend which was allowed vide order dated 13.01.2010. Though initially the eviction petition was filed against petitioner and his mother, however, on account of her demise her name was struck off from the array of parties. The petitioner filed his written statement wherein there was no challenge to the number of family members as stated by the respondent/landlady was raised though it was contended that respondent landlady has sufficient alternative accommodation by way of additional floor of the suit property. It was contended that the respondent was not entitled to retrieval of possession of the tenanted shop.

3. On the pleadings of the parties, the matter was dealt with by the learned Rent Controller on merits. The respondent/landlady examined PW-1 to prove the documents given at Page-46, PW-2 Mr. Neeraj Jain i.e. her son, PW-3 Mr. Ajay Jain i.e. her other son and her husband Vijay

Kumar Jain as PW-4. All witnesses supported the averments made in the eviction petition. The respondent/tenant in the eviction proceedings who is the petitioner before this Court examined his brother Mr. A.K. Soni as RW-1, Mr. Pawan Kumar as RW-2, himself as RW-3, Mr. Sukhdev Soni as RW-4, Mr. Prem Prakash as RW-5.

4. Learned Rent Controller after recording of the evidence, heard the submissions of the parties and passed a decree of eviction on merits after observing that the respondent/Landlady was able to satisfy the essential ingredients of Section 14(1)(e) of the DRC Act. As against this the petitioner/tenant while contesting the *bona fide* requirement of the respondent/landlady has tried to pick various holes in her case including the factum that she does not require the premises in question for *bona fide* need of her husband and her family.

5. I have heard learned counsel for the petitioner as well as learned counsel for respondent. At the outset, it needs to be mentioned that essentially the ingredients required for eviction under *bona fide* requirement have been assailed by the petitioner in the present revision including the existence of relationship of landlord-tenant between the parties and respondent's ownership of the suit property.

6. Learned counsel for the petitioner has made a frivolous attempt to challenge the abovesaid issues, however, since it has been brought to the notice of this Court that the petitioner testified before Rent Controller and admitted that he has deposited the rent in the name of the respondent/landlady and therefore, he attorned to respondent as landlady, the aforesaid issue regarding landlord-tenant relationship as well as ownership of the suit property cannot be raised.

7. The purpose of letting out of the tenanted shop is also not in dispute as the petitioner is using the suit property as a shop where jewellery articles, gold and silver articles are being sold. With regard to *bona fide* requirement, the learned Trial Court had observed as under:-

*“Now, the last issue related to bona fide requirement of petitioner is required to be analyzed. It is asserted that the husband of petitioner is running cloth business from the shop no.1219/8, Katra Sat Narain, Chandni Chowk, Delhi-06, from a tenanted premises. Petitioner has placed on record the rent receipts Ex. PW-1/15 and PW1/16 in regard to said shops. It is also noteworthy that the respondent (RW3) has also admitted that the husband of the petitioner is running cloth business from the said tenanted shop. Thus, the petitioner cannot be expected to pay rent for running a business to earn livelihood when she has a space available with her and suitable for running the same business. On this subject, reference can be have to decision given in the case of **“Kallash Chand Vs. Chand, 1998 RLR 603”** wherein it was held that if an owner is living in the tenanted premises, he is entitle to seek eviction of his tenant and this desire cannot be held to be imaginary, fanciful or unnatural. Furthermore, it is also established on record that both the sons of petitioner are also running their separate business from rented shops. In such circumstances, when petitioner is held to be owner of the tenanted premises and has no other suitable property for running cloth business, the bona fide requirement of the petitioner in regard to tenanted premises cannot be doubted. On this issue reliance can be placed on the judgment tiled as **“Sarla Ahuja v. United India Insurance Co. Ltd., reported as AIR 1999 SUPREME COURT 100”**, whereby it was held that:*

“..... The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not

bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself....”.

8. In the judgment titled as “**Ram Babu Aggarwal v. Jay Kishan Das reported as 2009(2) R.C.R. 455**”, the Supreme Court observed;

“However, as regards the question of bona fide need, we find that the main ground for rejecting the landlord’s petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bona fide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim 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....”.

Considering the totality of circumstances, this Court is of the opinion that the petitioner bona fide requires her own property, i.e. tenanted premises for earning livelihood through her husband. On record, it is established that apart from profit earned from the business run by husband of the petitioner from a rented shop, there is no source of income for the petitioner. This being the case, the claim of petitioner appears to be urgent and genuine.”

9. One of the main contentions which have been urged by learned counsel for the petitioner/tenant for assailing the order of eviction is the *bona fide* requirement. It has been contended that the requirement of the respondent is not bona fide in as much as the husband of the deceased respondent/landlady is already doing the cloth business from a shop in the immediate vicinity i.e. in Katra Sat Narain where he is paying Rs.300/- per month as rent while as so far as the present petitioner is concerned, he was directed to pay a sum of Rs.20,000/- per month by the Apex Court by way of use and occupation charges to the respondent/landlady, on account of the eviction order having been passed against him. It has been further contended that if permitted, the shop can continue to be occupied by the petitioner and he shall continue to pay the use and occupation charges as fixed by the Hon'ble Apex Court. It has been also contended that the respondent are making money from the property let out to the petitioner while as they themselves are paying a meagre amount of Rs.300/- per month or so as rental and this fact clearly establishes that the premises are not required *bona fide* by the respondent/landlady. The arguments of the learned counsel for the petitioner are totally fallacious on account of the fact that what has been fixed the Hon'ble Apex Court by way of use and occupation charges is quantified to be Rs. 20,000/- per month to be paid to the respondent/landlady is only an interim measure in view of the judgment in *Atma Ram Properties (P) Ltd v. Federal Motors Pvt. Ltd.*; 2005 (58) ALR 650 which has laid down that where a tenant has suffered eviction order for handing over the possession, has been passed against him, he must pay *mesne* profits or compensation for use and occupation of premises to the landlord which is in tandem with market rate for the

period during which he continues to occupy the tenanted premises but certainly it cannot be equated with rent paid or payable by the petitioner to the respondent. The rent which was being paid by the petitioner to the respondent as mentioned in the eviction petition is Rs.52.80/- per month and therefore this argument in my considered view is without any merit.

10. The second submission which has been made by learned counsel for petitioner is that the requirement of the respondent/landlady is not *bona fide* because of the fact that apart from the shop in question of which possession is sought, she is in possession of the entire ground floor, first floor and second floor and a part of that can be used for the purpose of carrying out the commercial activity as is sought to be done by the husband of respondent from tenanted shop. In order to support his submissions, it was contended that the entire locality where the shop in question is situated is surrounded by residential houses and there is not even a single shop of wholesale cloth in the entire area. It was also stated that since respondent/landlady has other floors available to her in suit property there should be no impediment to her or her husband in doing cloth business either from the ground floor or even from other floors which if done would result in fulfillment of his *bona fide* requirement.

11. This argument of the learned counsel for the petitioner is without any merits as it has come on record that apart from shop in question there are no shops available to the respondent/landlady in the suit property. It has also come in evidence that the upper floors are being used by the respondent and her other family members for the purpose of residence and therefore, it will be totally impossible that the respondent/landlady should convert part of the building on the upper floor for the commercial use. Moreover, this point is no more *res integra* that it is not for the

tenant to dictate as to how the landlord has to use his premises, provided the landlord is able to show his *bona fide* requirement in respect of the suit property. Therefore this contention of learned counsel for petitioner is also without any merits.

12. Reliance in this regard has been placed by Ld. Addl. Rent Controller on a case titled as *Uday Shankar Updadhayay & Ors. vs. Naveen Maheshwarj*; VIII (2009) SLT 429 that once it is not disputed that the landlord is in *bona fide* need of the premises, it is not for the courts to say that he has to shift to the first floor or any higher floor. Shops and business are usually conducted on the ground floor because customer can reach easily and the Court cannot dictate to the landlord which floor he should use in his business.

13. Similarly, Delhi High Court in *Viran Wali vs. Kuldeep Rai Kochar*; 174 (2010) DLT 328 held that the business which if run from the ground floor will attract more customers than the business being run from the basement and as to how and in what manner he should his property. Further, similar is the sentiment expressed by the Hon'ble Apex Court in *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*; AIR 1999 SC 2507:

“The landlord may convince the Court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say 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. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the Court may keep in view the profession of vocation of the

landlord and his family members, their style of living, their habits and the background wherefrom they come... ”.

14. All these judgments clearly lay down that it is neither open to the tenant nor to the Court to suggest much less direct the landlord that he should setup his business on the first floor or any other particular floor of the tenanted premises instead of the ground floor. It is also not possible to hold that even though the requirement of the respondent's husband for seeking retrieval of tenanted shop for running the business of cloth merchant is *bona fide* and deserves to be allowed, yet he must continue to run his business from a tenanted premises in Katra Sat Narain while the present petitioner/tenant is permitted to deny the benefit of retrieval of possession of his wife's property for his own benefit.

15. The Judgment which has been cited by learned counsel for the petitioner to support his contention in *Deena Nath vs. Pooran Lal; (2001) 5 SCC 705* wherein the Supreme Court has held that requirement of the landlord must be a pressing need and not mere whimsical or fanciful desire does not apply to the facts of the present case. In the case in hand it cannot be said that by any stretch of imagination that the desire of the husband of the respondent/landlady shift to her own premises is fanciful and whimsical. It can also not be said that this is not the requirement *in praesenti*. The need of the respondent/landlady is *bona fide* and genuine in as much as her husband deserves to be permitted to shift his activity to his own premises rather than conducting his business from a tenanted premises in Katra Sat Narain.

16. For the above mentioned reasons, I feel that the petitioner has not been able to show that there is any illegality/material irregularity or

jurisdictional error in passing the order of eviction against him after a protracted trial. I accordingly, dismiss the present revision petition.

17. At this stage, learned counsel for the petitioner has made an oral request that the petitioner/tenant be given a month's time to relocate himself.

18. Although the eviction in the instant case was allowed on 05.10.2012 and since then more than three and half years have already elapsed and the petitioner continues to enjoy the benefit of occupying the premises which statutorily is to be granted only for a period of six months. However, in order to enable the petitioner to relocate himself as stated by him he is granted a month's time. Therefore, accordingly, the present decree of eviction from the suit premises shall not be executed by the respondent before 20.03.2016.

19. With these observations, the petition stands disposed of.

FEBRUARY 19, 2016
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V.K. SHALI, J.