

\$~

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

% ***Date of decision:* 22.09.2016**

+ **RC.REV. 203/2016 & CM No.24654/2016**

VINOD KUMAR AGGARWAL Petitioner
Through **Mr.Vishal Bhatnagar and Mr.Nitin**
Sharma, Advs.
Versus

RITU & ANR Respondent
Through **Mr.M.S.Khan, Adv.**

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present Revision Petition, the petitioner seeks to impugn the order dated 24.11.2015 by which the ARC dismissed the application for grant of leave to defend of the petition under Section 25-B of the Delhi Rent Control Act (*hereinafter referred to as the 'DRC Act'*) and passed an Eviction Order in favour of the respondents regarding property 56, Ground Floor, Kucha Bela Mal, Naya Bans, Delhi-110006 as per site plan annexed to the petition, under Section 14(1)(e) of the DRC Act.

2. The brief facts are that the respondents filed the eviction petition stating that Shri Shiv Kumar was the owner and landlord of the entire property. The respondents are the daughters of late Shri Shiv Kumar. Their parents have passed away. Both respondents are unmarried girls. Respondent No.1 is 32 years of age while respondent No.2 is 23 years of age. Late Shri Shiv Kumar had three Legal Heirs including one son Shri Dinesh Kumar. The dispute with Shri Dinesh Kumar was settled and hence

now the respondents are the owners of the said property. Father of the petitioner, namely, Late Shri Rati Ram Aggarwal was inducted as a tenant by late Shri Shiv Kumar. It is further stated that on the ground floor apart from the petitioner there are three different tenants, namely, Shri Satnam Singh, Shri Rati Ram Aggarwal and Mrs. Jugrani. It was the contention of the respondents that they do not have any means of survival and livelihood. Ground Floor of the property is commercial in nature whereas the first floor and partial built second floor are residential, where the respondents are residing. Respondents being graduate and having diploma in technical education it was urged that the respondents can carry out some commercial activity from the ground floor and earn their livelihood. Hence, it was urged that the respondents require the portion under the possession of the petitioners for their bonafide need. Respondent No.2, it was urged, requires the commercial space to establish a book store for educational books. Respondent No.1 has filed a separate Eviction Petition against the other tenants as she wishes to establish her own computer institute. The present petition was filed for the bona fide necessity of respondent No.2.

3. A perusal of the application for leave to defend filed by the petitioner shows that it was contended that the respondents are not owners of the demised premises as no documentary proof of ownership has been filed. It was further stated that the respondents have in their possession the first and second floor of the property. The entire area is commercial and the same can easily be utilized by the respondents for running of the computer institute. It is further stated that there is nothing on record to show that the respondents have any experience of book business or that they are financially capable of starting a book store. The premises is situated in a grain market in a narrow

bye-lane and there is no college or school in the area. Hence, the alleged need to open a book store is not bona fide.

4. The trial court by the impugned order on the issue of landlord tenant relationship noted that the father of the respondents late Shri Shiv Kumar was the landlord and that the respondents are the legal heirs of late Shri Shiv Kumar and hence are the landlords of the premises.

5. On the issue of bonafide requirements, the trial court noted the submission of the petitioners that the tenanted premises are situated in a grain market in narrow bye-lanes with no school or college in the vicinity and the claim that the premises is required for running a shop for educational books was false. The trial court did not find any merit in the contention holding that the tenant cannot dictate terms to the landlord as to which business he would like to start to earn his livelihood. On the issue of alternative suitable accommodation, the trial court noted that the only alternative accommodation available with the respondents is the first and second floor of the suit property which is being used by them for their own residential use. No other suitable accommodation has been mentioned as available for the residence of the respondent. Further, it noted that it cannot be disputed that the shop on the ground floor would fetch more customers than a shop on the first and second floor. In view of the above, the ARC passed the impugned order dismissing the application for leave to defend of the petitioner and passing the necessary eviction order.

6. I may mention that alongwith the present petition today one other petition filed by the tenants of premises No. 56, Ground Floor, Kucha Bela Mal, Naya Bans, Delhi-110006 i.e. for one of the other shops on the ground floor was also listed in court today which pertains to the bona fide

requirement of respondent No.1. In that matter the petitioners have settled the matter and agreed not to dispute the eviction order passed by the ARC.

7. I have heard learned counsel for the parties.

8. The learned counsel appearing for the petitioner has vehemently made the following submissions:

- i. He submits that the alleged needs stated of respondent No.2 to open a book store is make belief and false. The said respondent No.2 has no experience of running a bookstore. It is not established or placed on record as to from where she will raise the finance to open and run a bookstore. It is further stressed that the shop is located in a grain market in a narrow bye-lane with no school or college in the vicinity and claim of running of bookshop is not bonafide as no book shop would be viable.
- ii. It is further stated that the respondents admittedly are in possession of the first and second floor of the premises where they claim to be residing. It is stated that the first and second floor of most adjoining properties are being used for commercial purposes. The respondents have adequate space available and can carry on any commercial activities which they wish to do on the first and second floor of the premises. Hence, there is alternative accommodation available with the respondents.
- iii. Learned counsel has relied upon the judgment of this court in the case of *Khem Chand & Ors. v. Arjun Jain & Ors.*, 202 (2013) DLT 613 to contend that in matters of commercial tenancy the court should act cautiously and should not apply the same principles, as in the case of residential premises. Reliance also placed on the judgment of the

Supreme Court in the case of *Charan Dass Duggal v. Brahma Nand, (1983) 1 SCC 301* and *Deena Nath v. Pooran Lal, (2001) 5 SCC 705*.

iv. Learned counsel also placed on record a chart showing that in neighbouring areas of the first floor and second floor commercial establishments are operating.

9. Learned counsel appearing for the respondents has submitted that the respondents are using the first floor and second floor as their residence and cannot be forced to use the same as a shop. It is further stated that even otherwise the shop in occupation of the petitioners is two side open facing the main road and is most suited for running of the book store. The requirement of the respondents is bonafide. They have no means of earning their livelihood.

10. I may first see the scope of the present petition. The Supreme Court in *Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta, (1999) 6 SCC 222* described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court.

The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available..."

11. Section 14(1)(e) of the Delhi Rent Control Act reads as follows:-

“14. Protection of tenant against eviction. –

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favor of the landlord against a tenant:

(e) That the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation;”

12. Legal position regarding consideration of application under Section 25B DRC Act for grant of leave to defend are well settled. Reference may be had to the judgment of this court in the case of *Sarwan Dass Bange vs. Ram Prakash*, MANU/DE/0204/2010 where this court noted the impugned orders

as follows:-

“7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition. However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.”

13. The essential ingredients which a landlord is required to show for the purpose of getting an eviction order for bona fide needs are (i) the party applying is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependant upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

14. As far as the relationship of landlord tenant is concerned, the ARC has rightly pointed out that the admitted fact is that the predecessors of the

petitioners were inducted as tenants by late Shri Shiv Kumar. The respondents are the legal heirs of Late Shri Shiv Kumar. Copy of the sale deed and Will in favour of Late Shri Shiv Kumar are on record. Copy of the partition suit between the respondents and their brother and the order passed in mediation proceedings are also on record. The trial court hence rightly concluded that there is in existence a landlord tenant relationship.

15. So far as the issue of bonafide requirement is concerned, the admitted position is that the respondents are the young ladies who are unmarried and do not have support of their parents who have passed away. As per the eviction petition, the need of the present property pertains to respondent No.2 who is aged about 23 years and has an urgent need to carry on some commercial activities to earn her livelihood and to maintain her survival. She is educated having done her graduation. It cannot be said that her need is not bonafide. The contention of the petitioner that the respondents have neither the financial strength nor experience to run a book shop is misplaced.

16. This court in *Puran Chand Aggarwal v. Lekh Raj*, 210 (2014) DLT 131 held as follows:

“26. As far as business is concerned, it is not necessary that the landlord must show some evidence that he has experience of said business. That is not the requirement of law in order to file the eviction petition on the grounds of bonafide requirement.

27. The following judgments do help the case of the respondent:

Start new business/no experience required

(i) In *Ram Babu Agarwal vs. Jay Kishan Das*, MANU/SC/1719/2009MANU/SC/1719/2009: (2010) 1 SCC 164, it was observed 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 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."

(ii) In *Tarsem Singh vs. Gurvinder Singh*, MANU/DE/2640/2010: 173 (2010) DLT 379, it was observed that "If the landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine."

(iii) In *Balwant Singh Chowdhary & Anr. vs. Hindustan Petroleum Corporation Ltd.*, 2004 (1) RCR 487, it was held that "It is not necessary for the landlord to plead and prove the specific business he wants to set up, if the landlord wanted the premises for business purposes."

(iv) In *Gurcharan Lal Kumar vs. Srimati Satyawati & Ors.*, MANU/DE/1078/2013: 2013 (2) RCR (Rent) 120 it was observed that "Merely because the exact nature of business has not been described would not take away their bonafide need to carry out a business (when admittedly both the sons are dependent upon petitioner for this need). It was observed that if the business need is not disclosed this would not wipe away the bonafide need of the landlord as has been pressed under Section 14(1)(e) of the DRCA, 1958."

(v) In *Raj Kumar Khaitan & Ors. vs. Bibi Zubaida Khatun & Anr.*, MANU/SC/0411/1995: AIR 1995 SC 576, it was observed that "It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody would bind the landlords to start the same business in the premises after it was vacated."

Hence, the legal position is quite clear. The landlord need not to show evidence that he has experience of said business. It is not necessary for landlord to indicate the precise nature of business which he intends to start in the premises. There is no merit in the contention of the petitioner that the need for starting a bookshop is not bonafide requirement.

17. The next contention of the petitioner is that the first floor and second floor of the premises where the shop is located is also available with the respondents. It is the contention of the petitioner that in all adjoining properties, the first and second floor of the premises is being used for commercial purpose. The respondents have possession of this premises and hence, it is urged that the same can be used by the respondents for their commercial venture.

18. Admitted case is that the respondents are using the said first and second floor of the premises as their residence. The argument that they can also use it for their commercial venture appears to be misplaced. The landlord cannot be forced to reduce their living space in the manner as is sought to be argued. A shop on the ground floor is bound to attract more customers than a shop on the first or second floor. Further, the two young ladies are staying alone. It is hardly feasible further to convert a portion of their residence into an office jeopardising their privacy and safety. There is no merit in the said contention of the petitioner.

19. In *Ragavendra Kumar v. Firm Prem Machinery and Co.*, [2000] 1 **SCR** 77, it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In *Prativa Devi (Smt.) v. T.V. Krishnan*, (1996) 5 **SCC** 353, it was held that the landlord is the best Judge of his requirement and Courts

have no concern to dictate to the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with.

20. In *G.C. Kapoor Vs. Nand Kumar Bhasin*, AIR 2002 SC 200, the Supreme Court noted as follows:

“It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In *Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Anr.*: [1999] 2 SCR 912, this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.”

21. It is clear that the shop in question is required bona fide by the respondent for her own personal use and she has no other reasonably suitable accommodation for the said purpose.

22. The petitioner has relied upon the judgment of this court in the case of *Khem Chand & Ors v. Arjun Jain & Ors. (supra)* where this court held as follows:-

“49. In my considered opinion, it is necessary to emphasize that while applying the principle of 'landlord is a best judge' in cases of residential requirement of the properties which are subject matter of commercial tenancy, the court should act cautiously and should not apply the said principal to such cases as liberally as applied to the residential premises. It has to be noted that the judgment passed in the case of *Satyawati Sharma Vs. Union of India*, AIR 2008 SC 3148, has merely held that the provisions

of Section 14(1)(e) of the DRC Act would be applicable in the cases of commercial premises in the same manner as applicable to the residential premises. However, the principle that the landlord is the best judge to decide his residential requirement and the courts have no business to interfere, cannot be applied as a matter of necessary consequence without application of the judicial mind. This is due to the reason that even though the ground of the eviction available to the landlord to evict the tenant for both residential and commercial premises is same, still the requirement of the landlord in both the cases may vary from case to case basis. While the question of eviction of residential premises is the one which affects the right to live which is the basic facet of right to life and human dignity as provided in Article 21, and thus the right of landlord to live at the place of his desired choice along with the family members should normally be respected as a part of basic human right and fundamental right to life. On the other hand, the eviction of the commercial premises affects the right of earning and livelihood of one person who is a tenant. The said right to livelihood is equally the other facet of right to life as evident from the reading of Article 21 of the Constitution of India. Thus, in the event of adopting a summary procedure to evict the tenant who is earning his livelihood from a commercial place at the behest of the landlord and proceeding to affect the longstanding status quo of commercial tenancy on the ground of bonafide personal requirement, the court must take a precautious approach... “

In the facts of this case, in my opinion, it is evident that the respondents do not have any other means of earning their livelihood, it cannot be said that the respondents have failed to show that their need is bonafide personal requirement.

23. In the light of the above, the requirements of the respondents/landlord are bona fide. The defence raised by the tenant/petitioner is moonshine, and no triable issue is raised. The application for leave to defend was rightly

dismissed. There are no reasons to differ with the view of the ARC. Petition is without any merit and is dismissed.

(JAYANT NATH)
JUDGE

SEPTEMBER 22, 2016/n/v