

* **HIGH COURT OF DELHI AT NEW DELHI**
+ **RC. Revision No.124/2015, C.M. Nos.4485/2015,**
14031/2015, 15160/2015 & Crl. M.A. No.11640/2015

Decided on: 3rd February, 2016

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Ms. Maninder Acharya, Senior Advocate
with Ms. Prabhsahay Kaur &
Mr. Abhishek Kukkar, Advocates.

Versus

KUSUM LATA JAIN Respondent

Through: Mr. Sanjeev Sindhvani, Senior Advocate
with Mr. Alok Kumar Pandey, Advocate.
Mr. Uday Gupta & Mr. Avinash Singh,
Advocates for the intervenor.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. The present revision petition has been filed against the order of the Ld. ARC (Central), Tis Hazari Courts, Delhi dated 27.11.2014 passed in E-1059/14 titled 'Kusum Lata Jain v. North Delhi Municipal Corporation' wherein the leave to defend application filed by the petitioner/tenant was rejected and eviction order in respect of tenanted premises was allowed in favour of respondent/landlady.

2. Briefly stated that facts of the case are that the respondent/landlady filed an eviction petition under Section 14 (1) (e) claiming herself to be the owner of the tenanted premises bearing no. 1747/48, Gali Satyawati Lane, Bhagirath Palace, Chandani Chowk, Delhi-110006 on the basis of Will dated 14.01.2009 purported to be executed by her husband. It was stated in the eviction petition that the petitioner/tenant had attorned to respondent after the death of her husband on 17.06.2013. The petitioner/tenant is running a primary school from the tenanted premises which consists of first, second and third floor.

3. It was further stated that the premises were required *bona fide* by the respondent/landlady for her grandson Rahul Jain for running his business. It was averred that Rahul Jain was currently running his electric goods business from a rented premises No.1999/9, 2nd Floor, Katra Lachoo Singh, Fountain, Chandani Chowk but said shop measured only 7'x 6' and therefore the space was inadequate for storage as well as display of goods. In addition to this, the landlady of the said premises requires the petitioner to vacate the premises.

4. The respondent/landlady also contended she does not have any other alternative suitable commercial accommodation and that the tenanted premises being situated in a famous electrical goods market would be most suitable for running business.

5. The petitioner/tenant in its leave to defend application disputed landlord-tenant relationship and stated that no proof of ownership was

filed by respondent/landlady and that the Will on the basis of which the ownership was claimed was not probated. It was also averred that there are 13 shops on the ground floor of the tenanted premises which are vacant and are in possession of the respondent and this fact was concealed by them in the eviction petition. It was further alleged that respondent's whole family including her grandchildren were carrying out business of electric goods from Ambala Cantt, Haryana and they had no intention to shift to Delhi and therefore the *bona fide* need as stated in the eviction petition did not exist.

6. The petitioner/tenant also stated that earlier an eviction petition under Section 14 (1) (a) was filed by deceased husband of the respondent/landlady which was dismissed and thereafter CM (Main) was filed against the same before this court which is still pending.

7. In reply, the respondent/landlady denied all the averments made in the leave to defend application and reiterated that the ground floor of the tenanted property is occupied by various tenants and separate eviction petitions were filed to retrieve the possession of the same for the benefit of another grandson of respondent. Regarding the place of business of respondent's grandson Rahul Jain, it was again stated that he is already running his business from Delhi and thus the question of not shifting to Delhi does not arise.

8. The petitioner/tenant filed its rejoinder and denied all the averments made in the reply affidavit.

9. The Ld. ARC allowed the eviction petition of the respondent/landlady while observing that the landlord and tenant relationship was already admitted by the petitioner in previous eviction proceedings under Sec 14 (1) (a) and, therefore, it precludes the petitioner/tenant from challenging the title of the respondent now. As regards *bona fide* need, it was observed that since the premises in Katra Lachoo Singh, Fountain, Chandani Chowk from where the respondent's grandson was running his business were sought to be vacated, it cannot be said that the need was not genuine or *bona fide*. Moreover, no alternative accommodation was pointed out by the petitioner/tenant in its leave to defend and hence the ARC concluded that the three ingredients of eviction under Sec 14 (1) (e) were fulfilled by the respondent.

10. The petitioner has challenged the said eviction order raising similar pleas that were raised before Ld ARC. It has been contended that a school is being run from the tenanted premises where children belonging to poor families come for studying and therefore leave to defend should have been allowed. Petitioner has also alleged concealment regarding availability of 13 shops on the ground floor of the tenanted premises. Reliance in this regard has been placed on *Charan Dass Duggal v. Brahma Nand*; (1983) 1 SCC 301, *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*; (1999) 6 SCC 222 and *Swarn Singh v. Surinder Kumar and Ors*; MANU/DE/3870/2010.

11. The respondent/landlady has also placed reliance on *Anil Bajaj v. Vinod Ahuja*; AIR 2014 SC 2294, *Smt Lado v. Nannu Ram*; 2015 (151) DRJ 139, *Sh. Anil Jain v. Sh. Bhagwan Shankar Khanna*; RCR 133/2014, *Kishan Swaroop v. Mawasi*; 95 (2002) DLT 560, *Swarn Singh Bange v. Ram Prakash*; 2010 (167) DLT 80, *Khem Chand Ramesh Kumar v. Smt. Vijay Mehra*; 2015 (216) DLT 544, *Veena Vig v. Swatantra*; 2015 (1) RLR 594.

12. I have gone through the aforesaid judgments as well as the record. Ms. Acharya, the learned senior counsel appearing for the petitioner has raised three principal contentions against denial of the leave to defend. Firstly, the petitioner has denied the existence of relationship of landlord and tenant between the parties; secondly, that the respondent is claiming herself to be the owner of the suit property on the basis of a Will dated 14.1.2009 purported to have been made by her husband while as the said Will has not been probated and thirdly, that the requirement of the respondent/landlady is stated to be not *bona fide*.

13. With regard to the *bona fide* of the respondent, it has been stated that the premises are sought to be retrieved by the respondent for the benefit of her grandson, namely, Rahul Jain by contending that he is doing the business of selling electrical goods in a shop which has been taken by him on rent at premises bearing No.1999/9, second floor, Katra Lachoo Singh Fountain, Chandni Chowk which is situated on the second floor. It has been contended that the said shop was taken from one Sarika Jain on a monthly rent of Rs.4,000/- on or around 21.10.2013 for a period

of eleven months which period has already come to an end and therefore, Rahul Jain, is required to vacate the said premises. It has been contended that the tenanted premises are required for the benefit of Rahul Jain.

14. In order to demolish the requirement of the respondent as *bona fide*, Ms. Acharya, the learned senior counsel has referred to few factors in order to create a serious doubt. It is contended that they raise triable issue with regard to the *bona fides* of the respondent/landlady. These factors are firstly that the respondent has not disclosed that Sarika Jain, who is purported to have let out the shop at Katra Lachoo Singh Fountain is the granddaughter of the respondent/landlady and thus, closely related. Secondly, it is stated that after expiry of period of eleven months, Sarika Jain sends a notice to Rahul Jain at his address at Ambala Cantt, Haryana while as she fully knows that Rahul Jain is carrying on the business at Delhi in Katra Lachoo Singh Fountain, Chandni Chowk and thirdly, that even before seeking eviction of the present petitioner/tenant from the suit premises, the respondent/landlady had filed an eviction petition on the ground of non-payment of rent which matter had gone upto the Rent Control Tribunal, where the learned Rent Control Tribunal had observed that some mischief was being played by the respondent/landlady in connivance with the officials of the MCD to create a false ground of non-payment of rent in order to seek the eviction of the petitioner from the suit property.

15. So far as the respondent/landlady is concerned, it has been contended by Mr. Sindhvani, the learned senior counsel that it is not in dispute that Rahul Jain is doing the business in electrical goods and has

got registered himself not only with the Electrical Goods Traders Association, Bhagirath Palace but has also obtained necessary Tin number and the sales tax number from the competent authority to deal in electrical goods. Necessary documents in this regard are stated to have already been placed on record. It has been contended that as the beneficiary does not have any independent accommodation available with him other than the one which has been taken on rent from Sarika Jain, the respondent/landlady would like her grandson, Rahul Jain to shift to his own premises for the purpose of carrying out his business activity. It was contended that it is not open to the tenant to dictate the terms to the tenant as to how the landlord is to use the premises for his own benefit. It has also been stated that no specific details with regard to the alternative accommodation available with the respondent/landlady has been given by the petitioner. All that has been said by the petitioner/tenant is that the respondent/landlady has 13 shops available but no details of these shops have been given by him. Therefore, merely on account of the aforesaid reasons, it could not be said that the premises are not required *bona fide* by the respondent/landlady.

16. As regards the existence of relationship of landlord and tenant, Mr. Sindhwani, the learned senior counsel has drawn my attention to the previous litigation wherein the relationship of landlord and tenant between the present petitioner and the respondent is admitted. It has also been stated that it is not in dispute that the husband of the respondent had made a Will in favour of the respondent/landlady, Kusum Lata Jain which is accepted to be as correct by the other legal heirs of the deceased

testator and therefore, it is not open to the petitioner/tenant to raise an objection with regard to the same.

17. I have carefully considered the submissions made by the respective sides and have gone through the judgment. There is no dispute about the proposition of law laid down by the Supreme Court and our own High Court in various judgments which have been relied upon by the respective sides in support of their contention but the question which arises for consideration is as to whether the facts of the present case are such as to be governed by any proposition of law laid down by any of those judgments which have been relied upon by the respondent/landlady. In this regard, my answer at the outset has to be necessarily in negative.

18. The first point which has been urged by the petitioner/tenant in the leave to defend application is denial of existence of relationship of landlord and tenant. There is no dispute about the fact that the relationship of landlord and tenant was in existence between the present petitioner and the previous owner. It is also not in dispute that the property has changed hands and presently the respondent is the owner of the suit property. Apart from the fact that the respondent is the owner of the suit property, it has also come in evidence on record that there was a previous litigation between the present petitioner and the husband of Kusum Lata Jain wherein the factum of relationship of landlord and tenant between the parties was not challenged. That being the position, it cannot be said that there exists no relationship of landlord and tenant between the parties. On the contrary, the present petitioner/tenant is

stopped from racking up an issue of relationship of landlord and tenant because this was established in the previous litigation bearing E. No. 52/88 between the parties.

19. The next question which has been raised by Ms. Acharya is with regard to non-obtaining of probate by Kusum Lata Jain on the basis of the Will dated 14.1.2009 purported to have been made by her husband. This point also, in my considered opinion, does not raise any triable issue. This is because of the fact that in the previous litigation also, the Will was setup by the beneficiary and it was also shown to the court that so far as the other legal heirs of Dhanender Kumar, husband of the respondent/landlady, Kusum Lata Jain, are concerned, they had given their no objection meaning thereby that they have not challenged the Will. It is not necessary that in every case of Will a party is required to obtain a probate more so in Delhi if all the legal heirs of the deceased testator accept the Will to be correct as has been done in the present case. For these reasons, I feel that the plea of the ownership of the suit property in favour of the respondent is clearly established and it does not raise any triable issue.

20. The petitioner has next contended that the respondent has nearly 13 shops available to him on the ground floor of the suit property, any one of which can be utilized for the purpose of running the electric goods shop at such premises. The respondent/landlady in her reply to the leave to defend has categorically denied that they are not in possession of any of the shops in the suit property nor has the petitioner/tenant given any

specific numbers of shops which are lying vacant and are under the custody of the respondent. The Will is not challenged by other beneficiaries and therefore, this aspect does not raise any triable issue.

21. The last issue with regard to the *bona fide* requirement of the petitioner, Ms. Acharya has raised 3-4 points which strike at the root of the *bona fide* requirement of the respondent.

22. I find some merit in these submissions of Ms. Acharya which raise a triable issue with regard to the *bona fide* requirement. In the first instance, it is not in dispute that the respondent's grandson, Rahul Jain, was originally doing the business of dealing in electrical goods with the entire family at Ambala Cantt, Haryana. He has only shifted his business to Delhi by taking a shop in Katra Lachoo Singh Fountain, Chandni Chowk on rent and that too on second floor. In order to lend credence to this business being carried in Delhi, Rahul Jain has got himself registered with Electrical Traders Association, Bhagirath Palace. He has also got Tin number and sales tax number. In order to lend further credence to his carrying on the business in Delhi, the lease deed of the property in question has been signed in writing and got notarized which is also not in dispute but the whole thing of shifting the business to Delhi *prima facie* seems only a make-believe situation to have the eviction of the petitioner/tenant summarily without permitting them to adduce evidence. This is so because of the fact that in the first instance, no person would take commercial premises in an area of Chandni Chowk by an agreement in writing and that too for a short period of eleven months only because

when a person starts his business, be that of electrical goods or any other material from a shop, over a period of time he develops some kind of goodwill attached to the premises in question and he would not like to be dislocated within a short span of time of eleven months from the said premises which has been precisely done in the instant case. In addition to this, the fact of Sarika Jain being granddaughter of Kusum Lata Jain has not at all been disclosed in the eviction petition or in the reply to the leave to defend. This is a very vital fact which has been hidden from the court. A person who comes to court must come with clean hands. It has been left to the petitioner/tenant to do some homework in order to establish this linkage between the parties, that is, the respondent/landlady and Sarika Jain, which relationship has not been denied. Anybody approaching the Court is expected to disclose all the relevant facts so that the Court in an unhindered manner take a view in the matter be that at an interim or at the final stage. Conversely meaning any party who withholds any vital information or conceals facts should be denied the relief on this short ground itself. Courts are supposed to administer justice which is possible when both the parties lay the complete material facts before it. The respondent in the instant case has not discharged this obligation in full measure and therefore it becomes a ground for granting leave to contest.

23. Further the document of tenancy will never be notarized in an area of Chandni Chowk. In order to given a semblance of an ordinary transaction, further it is really very strange when Sarika Jain knows that she is letting out her premises situated in Chandni Chowk to Rahul Jain, that she would issue a letter to Rahul Jain at Ambala Cantt, Haryana

address for the purpose of reminding him that his tenancy period has come to an end and he must vacate the premises. All these factors clearly cast *prima facie* a doubt on the genuineness of the transaction between Rahul Jain and Sarika Jain and gives an impression that this entire exercise was being done only as a make-believe transaction to temporarily open the shop of electrical goods in the premises belonging to Sarika Jain and thereafter use this as a platform for the purpose of eviction of the petitioner/tenant. This feeling gets further fortified by the fact that Ms. Acharya has brought to the attention of this court the previous litigation which was initiated by the respondent/landlady or her predecessor-in-interest on the ground of non-payment of rent where an adverse order was passed against the petitioner/tenant which was assailed by them before the Additional Rent Control Tribunal and the Tribunal was constrained to observe as under :-

*“8. The rent was being paid in advance by the appellant. According to the notice served on MCD rent only for the month of December had fallen due. Notice has been issued within 4 days. **This itself reflects that some mischievous plan was working in the mind of landlord respondent to make out a ground of eviction. Were the Act of the landlord itself is suggestive of the mischief, the controller should refrain from exercising the discretion in favour of the landlord. Instead the Controller should refuse the relief in accordance with the policy of social welfare of the state as envisaged by the Constitution and as intended by Delhi Rent Control Act a legislation for achieving social justice.** It was a case of a primary school where children of poor strata of society study. There is a directive on state under the Constitution to provide free education to the children. This aspect of the matter must also have weighed with the controller in the matter of*

exercise of discretion and on this score also the discretion ought not to have been exercised in favour of respondent.

9. Thus, from whatever angle, I consider the matter it is held that there was no cause of action for the respondent to prefer the petition. There was no case under Section 14 (1) (a) of the DRC Act. Therefore, there was no question of eviction. The impugned order of the court below which has been passed without considering the vital aspect of the matter cannot be maintained. The impugned order is set aside. The appeal is accordingly allowed. The petition under Section 14 (1) (a) is dismissed.”

24. All these facts, if seen in isolation, may seem to be innocuous but in case they are seen cumulatively then in that event the only irresistible conclusion *prima facie* which any reasonable person would draw is that the petitioner has been able to raise a triable issue with regard to the *bona fide* requirement of the respondent which should have been considered as a ground for grant of leave to defend to the petitioner. But curiously these aspects have not been considered by the learned Rent Controller and to that extent, the order of eviction passed by him is erroneous.

25. So far as the availability of alternative accommodation to the respondent/landlady is concerned, no doubt the petitioner has contended that the respondent has 13 shops available with her on the ground floor but that does not cut any ice because of the reasons that no details are given and the respondent/landlady has herself denied having possession of any of these shops and has stated that all these shops are under the tenancy of different tenants and therefore, that does not in any case raise

any triable issue. The aforesaid finding returned by the learned ARC does not, in any manner, violate the principles of law which have been laid down by the Apex Court or the Delhi High Court in any of the judgments relied upon by the respondent/landlady. The notable amongst them being that the tenant cannot dictate the terms as to how the landlord is to carry on or utilize his premises but this is not a case where the tenant is dictating the terms. The tenant, in the instant case, has been only able to create a hole in the *bona fide* requirement of the respondent/landlady which if permitted to be proved by the petitioner/tenant, may disentitle retrieval of the possession of the suit premises.

26. The judgments which have been relied upon by the learned senior counsel for the respondent in cases of *Anil Bajaj*, *Smt Lado*, *Sh. Anil Jain* or even in *Kishan Swaroop (supra)* are not applicable to the present case because it is not a case where a tenant is dictating the terms to landlord or where the High Court is substituting its finding in place of the finding of the trial Court. It is a case of erroneous exercise of jurisdiction by the trial Court by denying the leave to defend to the petitioner where it has been able to raise a triable issue. Similarly, other judgments which are relied upon are also not of any help.

27. For the reasons mentioned above, I feel that the petitioner/tenant has been able to raise a triable issue only with regard to the *bona fide* requirement of the respondent/landlady and therefore, limited leave to defend is granted to the petitioner/tenant confined only to the question of *bona fide* requirement of the respondent. So far as the availability of

alternative accommodation and existence of relationship of landlord and tenant including the petitioner being the owner of the suit property is concerned, that is established by the respondent and no evidence with regard to the same shall be produced by the petitioner.

28. In view of the aforesaid, the petition stands allowed and the leave to defend is granted to the petitioner limited to the extent of *bona fide* requirement of the respondent/landlady. The parties are directed to appear before the learned RC/ARC on 19.2.2016 at 2 p.m. to be dealt with in accordance with law. A copy of this order be sent to the learned trial court and a copy be given *dasti* to the learned counsel for the parties.

29. Expression hereinbefore shall not be treated as an expression on the merits of the case.

V.K. SHALI, J.

FEBRUARY 03, 2016
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