

*

HIGH COURT OF DELHI AT NEW DELHI

+

RC.REV. 180/2015 & CM APPL.7215/2015

Pronounced on: 11th May, 2016

OM PRAKASH

..... Petitioner

Through: Mr. Nishant Datta, Advocate with
Mr. Pradeep Bhardwaj, Adv. along
with Petitioner in person.

versus

SURESH BHARIJA & ANR

..... Respondents

Through: Mr. Rajat Aneja, Advocate with
Ms. Rashmi Verma, Advocate

+

RC.REV. 263/2015 & CM APPL.9651/2015

JASVINDER SINGH HEERA @ SHUNTY

..... Petitioner

Through: Ms. Gaganpreet Chawla, Advocate
with Mr. Kritika Anand, Adv.
along with Petitioner in person.

versus

SURESH BHARIJA & ANR

..... Respondents

Through: Mr. Rajat Aneja, Advocate with
Ms. Rashmi Verma, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. These are two connected revision petitions bearing RCR No.180/2015 titled Om Prakash vs. Suresh Bharija & Anr. and RCR No.263/2015 titled Jasvinder Singh Heera @ Shunty vs.

Suresh Bharija & Anr. The connection in these two revision petitions is that the landlords/owners of the property are the same persons who have filed two separate eviction petitions in respect of the two separate shops in two property bearing No.C-8, Ajay Enclave Extension, New Delhi-110018 and another property in the same locality bearing No.S-20, Front Side, Ajay Enclave Extension, New Delhi-110018.

2. Briefly stated the facts of both the cases are that in RCR No.180/2015 the petitioner/tenant is occupying a shop No.1, measuring 10ft. x 14 ft. in property No.C-8, Ajay Enclave Extension, New Delhi-110018 while as in RCR No.263/2015, the petitioner/tenant is occupying a shop in the front portion of the building and running some manufacturing unit.
3. The case which has been set up by the respondents/landlords are that they are the owners and the landlords in respect of both these tenants. The property originally belonged to their father who has expired. Their mother has also expired and they have inherited the entire property. Both the petitioners are old tenants and presently are paying rent @ Rs.1500/- and Rs.1210/- per month respectively. After the death of their father Shri Bahadur Chand on 22.09.1999 three sons and four daughters apart from widow were left as the legal heirs. Widow Raj Rani also expired on 20.05.2002 intestate and thus leaving behind three brothers and four sisters two of whom are unmarried. All the four sisters and one brother Ramesh Kumar are stated to have executed a Relinquishment Deed in favour of their brothers on 14.09.2005 which was duly registered

with the Sub-Registrar on the same day itself. It has been pleaded by the brothers that so far as property No.C-8 is concerned there are four shops out of which two shops are with the respondents/landlords who are brothers and two shops are with the tenants, though in different properties. The two shops which are with the respondents/landlords are being used by them for doing their business. The two unmarried sisters who are living with them and are aged 38 years and 37 years, namely, Santosh Kumari and Neelam Kumari, want to start their business of beauty saloon and a boutique and therefore, eviction of the two tenants one from C-8 and other from S-20 is sought.

4. At the back of the four shops in C-8 there is some courtyard and a room which is being used by the respondents to carry out his business of sale and purchase of vehicle and therefore it is used for the parking vehicles for sale and purchase of automobiles. As regards the property No.S-20, the shop which is available with the petitioner Jasvinder Pal Singh Heera, he is carrying on business of manufacturing of some metal products and at the back there are two rooms, a *verandah*, one kitchen, bathroom and toilet. The portion at the back in S-20 is being used by the family consisting of three brothers and two unmarried sisters for their residence which they state that even the residential accommodation which is available with them is not sufficient to meet their requirement. Therefore, the respondents/landlords had sought eviction of the tenant from the premises bearing No.S-20 as well as C-8, Ajay Enclave Extension, New Delhi.

5. The eviction of both the petitioners was sought by the respondents/landlords for their bona fide requirement for the benefit of their two unmarried sisters who are living with them and to meet the requirement of commercial/professional space. Further they have also claimed that they do not have any other suitable alternative accommodation available to them.
6. The petitioners in both the cases filed their independent leave to defend applications challenging the bona fides of the respondents/landlords. It was stated by both of them that the respondents have the sufficient alternative suitable accommodation available to them.
7. In RCR No.180/2015 it was contended by the learned counsel that the respondents had commercial accommodation available to them in property No.S-20, Ajay Enclave Extension, New Delhi and it was further the case of the petitioner that the accommodation which is available in C-8 is available to them to meet their requirement. Thus, in both the cases the cross objections in the form of accommodation which was available in other property was set up as a defence for grant of leave. It was also stated that there is some accommodation available at the back of the shops which was considered to be the alternative suitable accommodation available to them. Another ground which was taken almost in both the cases was that the daughters had their share in the suit property and if they wanted to start their independent business then they would have utilized their share in the property, they would not have executed a Relinquishment Deed in favour of their brothers.

Indirectly meaning that the sisters both of whom were unmarried on account of their execution of their Relinquishment Deed had forfeited their right to retrieve the possession of the shops for the purpose of doing their business.

8. The third argument which was made in RCR No.180/2015 was that one of the shops after getting it vacated in the recent past had been let out afresh. This was denied by the respondents that No shop had been let out. On the contrary, the respondents/landlords claimed that the possession of the said shop in addition to one shop is with them. Meaning thereby that they had specifically set up a case that they were in possession of the two shops.
9. The learned Rent Controller after hearing the arguments passed a detailed order rejecting the leave to defend of both the petitioners holding that no triable issue was made out from their respective leaves which deserve to be granted to them for the purpose of contesting the eviction petition and accordingly the eviction order was passed.
10. Both the petitioners feeling aggrieved have preferred the present revision petitions against the two separate eviction orders.
11. I have heard the learned counsel for the parties and I have also gone through the impugned judgments.
12. The law regarding scope of intervention by the High Court in exercise of its power under Section 25-B(8) of the Delhi Rent Control Act is limited to the extent to see as to whether there is any illegality, impropriety or jurisdictional error in passing the eviction order after rejecting the leave to defend application.

13. It has been held by the Apex Court in catena of cases what are the principles to be borne in mind while granting the leave to defend to a tenant. To sum up this ground on the basis of which leave to defend can be granted is that the tenant must have a reasonably a good case to show that the premises in question are either not required by the respondents bona fide or that he has an alternative accommodation available to him. This has been interpreted to mean that the tenant must make out a triable issue. A triable issue is an issue which if permitted to be proved by the tenant may result in dismissal of the petition filed by the respondent/landlord.
14. In *Charan Das Duggal vs. Brahma Nand*; (1983) 1 SCC 301, it has been specifically observed by the Court that at the stage of grant of leave, the tenant does not need to show very 'strong case' for grant of leave but it must show a reasonable good case that if leave is permitted to him he may be able to succeed in getting the eviction petition dismissed.
15. Coming back to the facts of the present case, if one goes through the impugned judgment then the points which have been raised by the petitioners are basically three/four in number which have been reasonably dealt with by the learned Additional Rent Controller.
16. The submissions which have been made by the learned counsel for the petitioners in both the cases pertain to the bona fides of the respondents/landlords in seeking eviction and the allegations of their being in possession of alternative suitable accommodation available to them for the purpose of carrying on their commercial

activities in the shape of the shops already available with them or at the back of the said shops in the two properties.

17. I have also seen the site plan which has been filed by the respondents/landlords in both these cases. So far as property No.C-8, Ajay Enclave Extension, New Delhi is concerned in the front there are four shops, two of the shops are available with the respondents/landlords. The respondents/landlords are brothers and they have inherited the property. Each of them is using one shop each in C-8 in order to earn their livelihood. One of the shops is being used by one brother for the purpose of selling of spare motor parts. He has stated that he is using the back courtyard where some place is available to him and a room is available for the benefit of parking is vehicle. Therefore, the factum of occupation of the two shops in the front in property No.C-8, Ajay Enclave Extension, New Delhi, it cannot be said that there is any accommodation which is available to the respondents/landlords which can be utilized by any of the two sisters. As a matter of fact the petitioner had made an allegation that one of the shop out of these four shops was got vacated to re-let. This was emphatically denied by the landlord. They on the contrary admitted that instead of one they are in possession of two shops.
18. So far as back portion of C-8, Ajay Enclave Extension, New Delhi is concerned, it is also occupied by one of the brothers who is doing motor parts business. The premises is utilized for parking of vehicles which are mainly for sale and purchase. Even if it is assumed that motor parts business is not being done by one of the

brothers at best the rooms would be couple of small rooms of less than or approximately 100 sq. ft. which would be available to the respondents/landlords for the benefit of their sisters. The nature of business which the unmarried sisters of the respondents/landlords intent to start is a boutique and a beauty saloon. These are the types of business which need to be having access from the front of the building. These are also display oriented business which are ill-suited to be run from the back portion even if we assume that the back portion is available to them. Moreover there are catena of judgments by Apex Court that it does lie in the mouth of the respondent to arrange his affairs. He is the best judge of his requirement and tenant cannot tell the landlord as to how he is to conduct his affairs. Therefore, I feel that it cannot be said that the back portion of the property No.C-8, Ajay Enclave Extension, New Delhi can be treated to be an alternative suitable accommodation available to them for the purpose of accommodating one of their sisters.

19. Same logic and reasoning would be applied in the case with respect to property No.S-20, Ajay Enclave Extension, New Delhi so far as the back portion is concerned, though in the back portion of S-20, the entire family is living. As a matter of fact the respondents are five in number that is three brothers and two sisters and they need at least five rooms while as they have only two rooms. Further only the back portion of S-20, Ajay Enclave Extension, New Delhi is being used for residence by them and the premises will be used for office or business purposes by the tenants, where are the

respondents going to live. Under these circumstances, I feel that this plea of the alternative accommodation being available to the respondents/landlords is totally illusory submission only to put them to trouble of not starting the business or a ploy to get a leave which is bound to fail.

20. The second argument which has been commonly raised by the counsels appearing for the petitioners in both these petitions is that the respondents sisters, Santosh Kumari and Neelam Kumari had on account of death of their mother in the year 2005 executed Relinquishment Deed in favour of their brothers. Similarly, two other married sisters had also executed a Relinquishment Deed in favour of their brothers. It was contended that in case the sisters were unmarried and they intended to start their independent business then in such case they ought not to have executed the Relinquishment Deed. Further, it was contended that the sisters are not dependent on the respondents
21. This argument of the learned counsel for the petitioners that so far as the unmarried sisters of the respondents are not dependent on the respondents themselves for the purpose of accommodation is bereft of any logic or reasoning. The fact of the matter is that even before the death of the parents of the respondents the two unmarried sisters were all along living with the respondents themselves at property No.S-20. Now when the parents of the parties are no more, it cannot be said that the sisters are not dependent on their brothers for the purpose of accommodation, although they may be financially independent.

22. Even the Apex Court has held in number of cases that a person may be financially independent but he may be dependent on parents for purpose of accommodation. In the instant case also the unmarried sisters have been living all along with their brothers and now that their parents are not alive they still continue to be a part of their family and are dependent on their brother for the purpose of accommodation and they constitute a part of their dependent family member. Also, it cannot be said that if the respondents intended to start an independent business then they ought to have not executed the Relinquishment Deed. The Relinquishment Deed was executed by both of these unmarried sisters and the other two married sisters out of natural love and affection. Having done so, the respondents were also like good brothers taking care of their unmarried sisters by providing them food, shelter and love and affection which is needed to a sister from her brother. If now the sisters require accommodation who are intending to start their independent business, who are ordinarily living with the respondents only, it cannot be said that the requirement of the respondents/landlords is totally unjustified.
23. As a matter of fact the execution of the Relinquishment Deed by the sisters in favour of their brothers goes to show that they are living as a well knit unit together and there is no love loss amongst them. Further, so far as the execution of the Relinquishment Deed by the sisters in favour of their brother is concerned, this was too much distant in point of time that it cannot be set up as a defence by the tenant to contend that if the unmarried sisters wanted to do

the business then they ought not to have executed the Relinquishment Deed. It is well possible that at the time when the Relinquishment Deed was executed the sisters never wanted to do any business and they were comfortable sitting at home and being attended to by their brothers who had the moral obligation to do so in the absence of their parents. If the wisdom has dawned on the two unmarried sisters now to start their own independent business in order to supplement their financial conditions, it cannot be taken against them that they ought not to have executed the Relinquishment Deed. This argument seems to be bereft of any logic or reasoning. The question of requirement is to be seen at the time when it is being claimed and not in the context of what has happened in the past which has no relevance. Therefore, I feel that the bona fides of the respondents/landlords brothers in filing the eviction petition in respect of the two shops cannot be considered to be mala fide.

24. The other two grounds with regard to respondents being the landlords and the owners of the property or that the purpose of letting is concerned, they are not in dispute in the instant case.
25. As I have stated hereinabove that I have gone through the impugned judgments, the learned ARC has returned a detailed reasoned order and has taken the help of the case law in order to justify the same. I fully agree with the view taken by the learned ARC holding that the grounds which have been taken in the leave to defend which has been filed by the petitioners does not show any mala fides and can be attributed to the respondents that they

have alternative suitable accommodation available with them and therefore, they do not deserves to be granted leave.

26. For the foregoing reasons, I feel that there is no merit in the revision petitions as the learned counsel for the petitioners have failed to point out any illegality, impropriety or jurisdiction error or any violation of any substance so as to result in setting aside the order of eviction. Accordingly, both the revision petitions are dismissed.
27. However, keeping in view the fact that the eviction orders were passed on 23.12.2014, the petitioners have already enjoyed more than six months in vacating the premises, the petitioners are given another three months time for the purpose of relocating themselves after handing over the possession to the respondents.
28. Pending applications also stand disposed of.

MAY 11, 2016
vk

V.K. SHALI, J.