

\$~A-

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

% *Date of decision:* 26.09.2016
+ RC.REV. 469/2016

SAROJ & ORS Petitioners
Through Mr.Manoj Kumar, Adv.

versus

BALBIR SINGH Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present Revision Petition filed under Section 25B(8) of the Delhi Rent Control Act, 1958 the petitioner seeks to impugn the order dated 17.3.2016 passed by the Rent Controller dismissing the application for leave to defend filed by the petitioner and passing an Eviction Order for property bearing No.1/2283, Subhash Marg, Mandoli Road, Ram Nagar, Shahdara, Delhi. The petitioner filed the present Eviction Petition under Section 14(1) (e) of the DRC Act read with section 25B seeking eviction of the petitioners from the said shop on the grounds of bona fide requirement. It was averred in the Eviction Petition that the property is required by the respondent for his personal use and that the respondent has no other property to start his own business.

2. The tenancy is stated to have commenced on 1.10.1998 vide written agreement with the father of the respondents. On the death of the father it is urged that the petitioner became statutory tenants.

3. The petitioner filed his application for leave to defend under Section 25B(4) of the DRC Act. Various submissions have been raised in the said application as follows:

- i) The total area of the premises is said to be 206 sq.yds. There are four shops existing. Except for the one tenanted shop, it is stated that other three shops and the entire balance premises are in possession of the respondent. It is also stated that the respondent has clubbed/merged his shop and converted it into another gate to his residence whereas he already has six gates to enter the premises.
- ii) There are only three occupants of the premises, namely the respondent/landlord, his wife and old mother above 90 years old. The respondent has occupied one shop from where he is doing the business of a property dealer in the name of M/s B.R.Property Dealer. His wife is a housewife and looks after the mother. There is another shop which was vacated by the earlier tenant Sh.K.S.Telor. The respondent has recently opened a shop as a general store/business of water supply. Thereafter, the wife of the respondent started looking after the business of the property dealer from the other shop.
- iii) The claim of the respondent that he has adopted one son Sardar Ajit Singh is false as no such person resides with the respondent.

4. The respondent filed reply to the said application. It was stated that the property in question is only 150 sq.yds. and there are three shops only and one entry gate exists. In one shop the businesses of property dealer is being run by the wife of the respondent since a long time and in the second shop of which possession was just received by the respondent, the adopted son Sardar Ajit Singh is doing his own business. Hence, the respondent wants possession of the third shop to run his own business.

5. The ARC by the impugned order rejected the contentions and submission raised by the petitioners. On the issue of landlord tenant relationship, the ARC noted that no dispute has been raised.

On the issue of bonafide requirement and non-availability of reasonable suitable accommodation, the ARC noted the three submissions of the petitioners, namely, conversion of one shop into a gate, the respondent allegedly doing his own business of property dealing and thirdly, the respondent not having adopted any son. On the issue of merger of one shop into a gate, the ARC noted the submission of the respondent that the said gate has existed for many years. In contrast, the petitioners have not been able to mention the year when the shop was converted into a gate. It also noted that as per the photographs filed by the petitioners there is only one main gate installed in the front portion of the property. Hence, in these circumstances, the ARC concluded that the bonafide requirement of the respondent cannot be doubted. The requirement for the tenanted shop arose in 2011 when the respondent retired. On the contentions that the wife of the respondent is a housewife, the ARC noted that the said contention of the petitioner is a bald self serving claim which cannot be a ground to grant leave to defend. It also noted that in the leave to defend application, the respondent has himself held that the wife of the respondent has started

looking after the business of the property dealer from one shop and the respondent is doing the business of water supply from other shop. Hence, the petitioner himself has admitted that on the date of filing of the eviction petition, the wife of the respondent was doing the business of a property dealer.

On the issue of adoption of Sardar Ajit Singh, the ARC noted that Sardar Ajit Singh is son of the sister of the respondent. As the respondent has no child, he has been adopted. The petitioner cannot challenge the adoption in the present eviction petition.

Based on the above, the ARC passed the Eviction Order.

6. Learned counsel appearing for the petitioner has vehemently made two submissions. He firstly submits that in his application for leave to defend it is clearly stated that the respondent knowingly and intentionally mentioned the name of the so-called adopted son Shri Ajit Singh who is neither the adopted son nor residing with the respondent. Hence, it is submitted that the shop allegedly used by Sardar Ajit Singh is actually being run by the respondent. He secondly submits that respondent has deliberately converted one shop into a gate when there are already six gates in the premises. He points out that the premises in question is three way open and there was no need for an additional gate which has been done deliberately to create artificial scarcity. He submits that as per the General Power of Attorney executed in favour of the respondent regarding the shop in 2009 it is clearly stated that the shop is a three way open shop. He also points out that in the impugned order the trial court has noted that there is no mention by the petitioner of the year when the shop was converted into a gate. He submits that in his application for leave to defend he has clearly said that the respondent has merged one shop as a gate about two years ago. Hence, he

submits that the impugned order is erroneous on the face of it and in view of the same there was sufficient ground for the petitioner to be granted leave to defend the present Eviction Petition.

7. 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 favour of the landlord against a tenant: Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

.....

(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;”

8. 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..."

9. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent 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 dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

10. In the present case the trial court declined to grant leave to defend to the petitioner. The parameters for granting leave to defend are well known.

11. This court in the case of *Sarwan Dass Bange vs. Ram Prakash*, **MANU/DE/0204/2010** noted 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.”

12. Similarly, this court in *Deepak Gupta vs. Sushma Aggarwal, 2013 102 DLT 121* held as follows:-

“24.From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of Precision Steels (supra), it is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the question as to grant or not grant of the leave to defend but the real question is tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of the grant of the leave to defend by going into the complicated

questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of Charan Dass (supra) and Precision Steel (supra) are holding the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of Inderjit Kaur vs. Nirpal Singh, : 2001 (1) R.C.R. 33 and Tarun Pahwa vs. Pradeep Makin, : 2013 (1) CLJ 801 Del.)”

13. I may hence test the findings recorded by the ARC on the touchstone of the parameters stated above for determining as to whether the trial court rightly refused the leave to defend to the petitioners.

14. In the present case, there is no dispute regarding relationship of landlord tenant.

15. As far as the bona fide requirement is concerned, the stand of the petitioner before this Court was that Shri Ajit Singh is not the adopted son of the respondent. A perusal of the application for leave to defend filed by the petitioner shows that the petitioner has merely denied the factum of adoption and has also stated that the said Ajit Singh does not reside with the respondent. Other than making these bald averments nothing else is placed on record. On the other hand the respondent has in his reply clearly stated that the respondent and his wife do not have any child so they adopted Shri Ajit Singh son of the sister of the respondent. It is urged that the factum of adoption cannot be challenged by the petitioner. There are no reasons to grant leave to defend on this bald allegation of the petitioner. The ARC rightly rejected the said contention.

16. This court in the case of *S.A.Satsangi vs. Prem Kumar 98 (2002) DLT II* held as follows:-

“11. Applying the aforesaid principle of law to the facts of the present case, this Court has no hesitation in agreeing with the learned Trial Judge that the respondent was the landlord/owner of the premises in question. The respondent was under no obligation to plead in the eviction petition that he was an adopted son for the reason that the law does not countenance any distinction between an adopted and a natural son. It is also worth mentioning that in our society, in most of the cases of adoption, the adoption is kept as a guarded secret and under wraps so that the adopted child does not suffer any psychological trauma on learning that he is not natural but an adopted child in the family. Therefore, neither the adoptive parents nor the adopted child are under any obligation to go around and beat drums about adoption and tell the whole world that the child is not a natural but an adopted child only. The pleading required to be made was that the respondent was the owner/landlord of suit premises and it was made. Thus, the absence of pleading in eviction petition that respondent was an adopted son is inconsequential as it was not required to be made.”

17. There is clearly no merit in the contention of the petitioner.

18. Coming to the issue of merger of the shop with the gate, a perusal of the site plan which is filed by the petitioner shows that the main residence is on the rear side. There is no entry to the main residence through the main front road. The bona fide of the respondent wanting to have an entry from the main road cannot be disputed. The only contention raised by the petitioner in the leave to defend application on this fact was that the respondent has merged one shop as a gate to his residence just two years ago while six gates already exist. That is the sum and substance of the contention of the petitioner. As per the respondent the main gate has existed for a long time. Though the petitioner states that the gate was created only about two years ago, he fails to give any details, namely, as to what purpose the alleged shop which has been converted to a gate was being used prior to

its conversion as a gate. If a shop was existing, the petitioner would have known, whether the respondent was using the shop and for what purpose or whether there was a tenant. No such details are forthcoming. In the absence of any material details, the contention of the petitioner lacks bona fide. Even assuming the above contention as correct, namely, that the respondent has other gates available to enter the premises; the desire of the landlord/respondent to have an entry from the main road cannot be disputed. Such a desire of the landlord cannot be said to be whimsical and not bonafide.

19. Keeping in view the facts that the respondent has recently retired from service, the bona fide requirement of the respondent cannot be doubted.

20. As far as the availability of an alternative accommodation is concerned, the ARC has held that there are two other shops available which are being used by the wife of the petitioner and by the adopted son. Keeping in view the fact that the respondent has recently retired from service, his need for the tenanted shop to start his own business cannot be disputed.

21. 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 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.

22. 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.”

23. It is clear that the shop in question is required bona fide by the respondent for his own personal use and he has no other reasonably suitable accommodation.

24. In the light of the above, the requirements of the respondent/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 26, 2016

n