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HIGH COURT OF DELHI AT NEW DELHI

+ **R.C. Rev. No.19/2015 & C.M. Nos.572/2015, 8473/2015, 8475/2015**

Decided on : 11th March, 2016

RISHAL SINGH & ORS.

..... Petitioners

Through: Mr. Pramod Ahuja, Mr. Ritesh Khatri &
Mr. Abhishek Mishra, Advocates.

Versus

BOHAT RAM

..... Respondent

Through: Mr. Jitender Kumar Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a Revision Petition filed under Section 25 (8) of the Delhi Rent Control Act, 1958 against the order dated 30.07.2014 passed by the learned Commercial Civil Judge-Cum-Additional Rent Controller (West), Tis Hazari Courts, Delhi in Eviction Petition No. 289/2011 titled *Bohat Ram vs. Rishal Singh and Ors.* by virtue of which the leave to defend application of the petitioners/tenants was rejected and an eviction order was passed.

2. Briefly stated the facts of the case are that an eviction petition was filed by the respondent No.1/landlord under Section 14 (1) (e) against petitioner Nos.1 & 2 in respect of shop No.WZ-1A/19 village Tatarpur, New Delhi-27, on the ground of *bona fide* requirement of the respondent No.1's elder son Pratap Singh for commercial purpose. The respondent

Nos. 2 & 3 are the proforma parties and are brothers of respondent No.1 and no relief is prayed against them.

3. It was stated by respondent No.1 that the property in which suit property is situated is an ancestral property and there is another property bearing No.WZ-8 in the same village. It was further stated that these properties were mutually divided amongst the respondent No.1 and his four brothers in the year 1997 and the partition was duly acted upon. Moreover, there is another shop bearing No.WZ-1A/18 which is occupied by petitioner No.1, Rishal Singh and the other property No.WZ-5 has already been sold by the respondent No.1/landlord and there is no other vacant suitable premises to meet the requirement of the respondent No.1 to settle his eldest son, who wants to open a grocery shop in the said suit premises.

4. It was stated in the leave to defend application and affidavit by the petitioners that respondents/landlord are not the owners of the suit property and as no such document of ownership has been placed on record by them. Further, it was stated by the petitioner that the son of respondent No.1 is well settled and do not require the tenanted premises *bona fide* and further, it was stated that the respondents/landlord have concealed the material facts regarding availability of suitable accommodation to satisfy his *bona fide* requirement and they have got 19 other shops in their possession and out of which 2 shops fell vacant. Further, it was contended that respondent No.1 has concealed that he had recently sold the property to Jiya Band, Sharma Band and Sai Band and to one Arjun.

5. It was stated by the respondent No.1/landlord in his reply that there is a *bona fide* requirement of the suit shop for his son and that the possession of other two shops was stated to be retrieved during the pendency of eviction proceedings in respect of present suit premises for the use of respondent No.1's grandson and this eviction was upheld by the High Court in separate revision petition.

6. The learned ARC by virtue of order dated 30.07.2014 dismissed the leave to defend application of petitioners/tenants for the reason that he could not disclose a triable issue which would disentitle the landlord from obtaining the eviction order.

7. With regard to the issue of ownership, the learned ARC was of the view that bald averments were made by the petitioners as no supporting documents were provided in support of this contention. It was observed by him that the petitioners/tenant did not disclose as to who was their landlord if not respondent No.1.

8. With regard to the issue of *bona fide* requirement, the learned ARC was of the view that the requirement of respondent No.1 for his son is *bona fide*. Further, no alternate/correct site plan was filed by the petitioners and in the absence of such site plans, the site plan filed by respondent No.1 was accepted. Further, in regard to the contention of the petitioners that respondent No.1 has concealed the recent sale of property, the learned ARC held that the property was sold about 2 ½ years ago and the same is not relevant for deciding the petition. Therefore, the petitioners were not able to show availability of any alternate suitable accommodation with respondent no.1.

9. I have heard Mr. Pramod Ahuja, the learned counsel for the petitioners as well as the learned counsel for the respondent. The contention of Mr. Ahuja in assailing the order of rejection of leave to defend and passing an eviction order essentially is based on challenge to the *bona fide* requirement of the petitioner and the availability of an alternative accommodation. It has been contended by the learned counsel for the petitioner that respondent No.1 is in possession of 15 shops out of which four shops were sold by him almost 2 ½ years back which clearly indicated that he did not require the shop in question for the purpose of his *bona fide* requirement. The second submission of the learned counsel for the petitioner is that the land in question on which the shop is situated belongs to DDA and is an encroached land. The respondent No.1 herein could not claim himself to be the owner of the land and therefore, he cannot claim eviction of the petitioner from the said premises. Mr. Ahuja has also given photocopies of as many as 17 judgments in support of his submissions and it has been contended that the petitioner has been able to make out a *prima facie* case for grant of leave to defend which has been denied to him by the learned ARC.

10. The learned counsel for respondent No.1 has disputed that the respondent is in possession of 15 shops. He has stated that four shops which are stated to have been sold by respondent No.1, were actually sold on account of family necessity almost 2 ½ years back. The quantum of period which has elapsed between sale of the shop and filing of the present petition is considerable and therefore, not much importance could be attached to the said sale of the shop by respondent No.1.

11. It has also been stated by the learned counsel for the respondent that the order of rejection of leave to defend passed by the learned ARC and the order of eviction is a reasoned and correct order which is legally sustainable and does not call for any interference by this court.

12. I have carefully considered the submission of the learned counsel for the parties and have also gone through the judgments which have been relied upon by Mr. Ahuja. At the outset, I must point out that the question of grant of leave to defend to a tenant under the DRC Act is no more *res integra*. The aforesaid aspect has been dealt with in a number of judgments and the proposition of law has been crystallized in three-four cases at best which could have been referred by the petitioner. The legal position is that while deciding the grant of leave to defend to the tenant, all that the court is required to see is as to whether the petitioner has been able to make out a '*prima facie* case' only and not a 'strong case' or a fool proof case where in case the leave to defend is granted to the tenant then he will be able to produce evidence to non-suit the landlord/petitioner on the ground of *bona fide* requirement seeking eviction of the tenant. It has also been held in some of the judgments that the order deciding the leave to defend does not have to be a very long order as if the court is deciding the eviction petition or the appeal itself. The court has to see whether the leave to defend, if permitted to be granted, would disentitle the tenant from retrieving the possession of the suit premises. On the basis of these broad propositions of law, I intend to refer to few passages of 2-3 judgments which have been also relied upon by the learned counsel for the petitioner. So far as the other judgments are concerned, most of these judgments are delivered by our own High

Court depending on the application of the aforesaid law in the facts and circumstances of each case. Therefore, it is not necessary that each and every judgment which has been relied upon by the petitioner must be reproduced. On the contrary, it seems that the attempt of Mr. Ahuja instead of citing of judgment for elucidating proposition of law has been to complicate the matter by giving a large number of authorities so that lot of time of the court is consumed in dictating the judgment. Such a practice is to be deprecated. I am tempted to refer to the judgment of the Apex Court in *Inderjeet Kaur vs. Nirpal Singh*; (2000) 1 SCC 706 wherein it has been observed as under :-

“We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of [Section 25B\(5\)](#). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of [Section 14](#), when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend parties rely on affidavits in support of the rival contentions. Assertions and counter assertions made in affidavits may not

afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable.”

13. In *Charan Dass Duggal vs. Brahma Nand*; (1983) 1 SCC 301, it has been held as under :-

“5. What should be the approach when leave to defend is sought? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action.”

14. Applying the aforesaid principle to the facts of the present case, so far as the plea of the learned counsel for the petitioner that the respondent is in possession of 15 shops is concerned, no credible evidence has been produced by the petitioner to show that respondent No.1 is in possession of 15 shops, therefore, this plea of the petitioner is without any basis and cannot be said to be a plea which would warrant the grant of leave as disentitling the respondent from retrieving the possession of the premises in question. It has been contended that respondent No.1 is in possession of another shop which had fallen vacant during the pendency of the present petition. This fact has been admitted by respondent No.1 that during the pendency of the present petition before the learned ARC, a shop had fallen vacant; however, that was occupied by the grandson of

the respondent where he is running his own business. Moreover, so far as the requirement of the present shop in question is concerned, it has been stated by the learned counsel for the respondent that the same is required for his eldest son, who admittedly does not have any shop. The learned ARC has referred to the judgment of the Apex Court in *Joginder Pal vs. Naval Kishore Behal*; AIR 2002 SC 2256 and stated that the facts of the present case are akin to *Joginder Pal's* case (*supra*) and on the basis of the same analogy, so far as the *bona fide* need of the respondent for having a shop for his eldest son is concerned, that cannot be denied to him. In the said case also, the requirement of the owner was considered to be *bona fide* requirement. In the present case also, the shop in question is required for the benefit of the eldest son, who has retired from the Government job in the year 2010 and a person has every right to keep himself engaged gainfully even after retirement.

15. One of the plea which has been taken and vociferously urged before this court is that the respondent had sold shops 2 ½ years back to certain organizations, who used to play a band on marriage ceremonies. The names of these organizations have also been given as Jiya Band, Sharma Band and Sai Band, etc. This fact is also admitted by the learned counsel for the respondent; however, it has been contended that this entire exercise has been done by the respondent almost 2 ½ years back and the said exercise is so distance away in time from the date of filing of the petition that the requirement of the respondent has arisen and therefore, no nexus between the two can be found out and certainly it cannot be a ground on the basis of which the respondent can be denied the eviction of the tenant. Moreover, even if it is assumed that the respondent is granted

the permission to retrieve the possession of the shop in question from the present petitioner that will not automatically mean that the respondent is authorized to sell, let out or create third party interest in the shop in question. This interest of the petitioner is sufficiently taken care of by Section 19 of the DRC Act which prohibits the tenant from transacting the property for a period of three years. As a matter of fact, the said Section enjoins that once the premises are vacated, the landlord must come to occupy the said premises within a period of two months from the date of seeking eviction. Therefore, this plea of the respondent also, in my view, does not raise any such issue which deserves to be adjudicated upon through a regular trial.

16. The respondent has also denied the availability of 15 shops with him. He has filed a site plan showing the shops fallen to his share which are under the occupation of the tenants. The petitioner has not filed any plan to contradict the plan filed by respondent No.1. Simply saying the landlord has sufficient accommodation, is neither here nor there.

17. On the contrary, the entire effort of the learned counsel for the petitioner seems to seek the leave to defend so as to enable him to prolong the matter for almost a decade. This cannot be permitted to be done. This will tantamount to gross abuse of the processes of law.

18. For the above mentioned reasons, the present petition is dismissed and the order passed by the learned Rent Controller is held to be perfectly legal, valid and not suffering from any illegality or irregularity.

V.K. SHALI, J.

MARCH 11, 2016/‘AA’