

\$~A-40

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

%

Date of decision: 21.09.2016

+ **RC.REV. 453/2016 and CM No. 34699/2016 (stay)**

ANEESH BANSAL & ANR Petitioners
Through Mr.R.K.Saini, Mr.B.S.Rawat and
Ms.Minal Sehgal, Advocates.

versus

VEERENDER KHATRI & ORS Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition, the petitioners seek to impugn the order dated 22.07.2016 by which an order of eviction has been passed against the petitioners regarding plot No. B-6, Model Town-II, Delhi under Section 14(1)(e) of the Delhi Rent Control Act.
2. The respondent filed an application for eviction against the petitioners under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act stating that they are the landlords of the premises. It was stated that the property was initially let out to Sh.Om Prakash/respondent No.3 and Sh.Satish Kumar, the father of the petitioners. After the death of Sh.Satish Kumar, the petitioners are said to have succeeded to the tenancy rights and are using the said premises. It was further stated that respondent No.1 is

working as Zonal Director in Nehru Yuva Kendra Sangthan at Jaipur, Rajasthan and the shop in question is required bona fide by respondent No.1 and his son, for his business of designing, retail and online selling of T-shirts and other commodities from the shop in question. It was stated that the son of respondent No.1, namely, Sh.Aditya Khatri is a BE in Computer Science and MBA and 25 years old and has technical knowledge of business of designing, selling and now, intends to sell T-shirts, sweatshirts, etc. online and that he wants to form his own company and start his own business. He has not been able to do so, on account of no space being available.

3. In the application seeking leave to defend, the petitioners took the plea that other accommodation is available to the respondents being Shop No.1A which is lying locked. It was also denied that the son of respondent No.1-Sh.Aditya Khatri requires the shop premises bona fide for carrying on business of designing, retail and online selling of T-shirts. It was urged that in case there was any such intention, the said son could do the same from their residence on the first and second floor which is situated above the shop or from the vacant Shop No. 1A. It was further urged that the son of respondent No.1-Sh. Aditya Khatri is a partner in a well established business, namely, “Style-us Lifestyles LLP”. The registered office of the said business has been set up in Mumbai and he has no intention to shift to Delhi.

4. The ARC by the impugned order, on the issue of relationship of landlord and tenant noted that the same has not been disputed by the petitioners.

5. On the issue of bona fide requirement, the contention of the petitioners was noted about the availability of Shop No. 1A and Shop No. 5

which had after filing of the eviction petition been vacated by SBI on expiry of their lease. The ARC noted that Shop No.1A which is lying vacant has an area of only 48 sq. ft. and falls on the rear side of the shop. It is also a make shift shop as it was earlier a toilet-cum-bathroom which was later converted into a shop. On the other hand, the area of the tenanted shop is 184 sq.ft. It also noted that the projected requirement of the respondents is 620 sq. ft and hence, Shop No.1A is not suitable. The ARC noted that the landlord is the best judge of his needs and a tenant cannot dictate from where the landlord should start his business. Reliance was placed on the judgment of the Supreme Court in the case of *Prativa Devi vs. T.V.Krishanan, (1996) 5 SCC 353*. On Shop No. 5, it was noted that the shop was not available when the eviction petition was filed. It has now recently been vacated by the tenant SBI who was earlier running an ATM Machine from there. The submission of respondent No.1 was noted that the same was required by the younger son of the respondent, namely, Sh.Sagar Khatri. Noting that respondent No.1 who has another son would also have the responsibility to settle him in business, it was held that the said shop No.5 cannot be termed to be an alternative accommodation available for the elder son.

6. Hence, it was concluded that no alternate accommodation is available to the respondent.

7. On the issue of bona fide requirement, the ARC noted the contention of the petitioners that the son of respondent No.1, Sh.Aditya Khatri is having a flourishing business in Mumbai and that hence, it is a case of an additional accommodation and as a matter of rule, leave to defend ought to be granted. The ARC noted that the petitioners have in support of their contention only placed on record the photographs of Shri Aditya Khatri obtained from the

website which do not show that the said Sh. Aditya Khatri is well established in business. On the other hand, the respondents have placed on record a copy of the balance sheet and profit and loss account of “Style-us Lifestyle LLP” for the financial year 2013-14 which shows that the company has total assets of Rs.27,448/- and the loss of Rs.25,154/-. It also noted that the plan of Sh. Aditya Khatri was to join the said company and to look after the Delhi region so that he could tap customers of Northern India. Delhi is commercially more viable place than Mumbai as the hosiery markets are located in Ludhiana and transporting raw material Ludhiana to Mumbai is expensive proposition. It was held that the premises were required bona fide for his business. The submission of the petitioners that it was a case of additional accommodation was rejected. Based on the above, the ARC declined leave to defend to the petitioner and passed the eviction order.

8. Learned counsel appearing for the petitioners has vehemently argued that it is a clear case of expansion of business and a triable issue is raised on the face of it. Reliance is placed on the judgment of the Supreme Court in the case of *Shanti Devi vs. Rajesh Kumar Jain & Anr., IX (2014) SLT 61* and the judgments of this court in R.C.Rev. No. 102/2012 dated 21.12.2012 titled as *Prahalad Rai Mittal vs. Smt. Rita Devi* and in R.C.Rev. No. 100/2013 dated 06.01.2014 titled as *Sanjay Chug vs. Opendar Nath Ahuja & Anr.* to contend that in the case of additional accommodation, leave to defend should be granted. It is secondly urged that whether the said son of respondent No.1, namely, Sh. Aditya Khatri has a requirement of the shop or not is a question of trial. It is urged that the business that is sought to be opened in Delhi is only a proposed business. Various projections of space are sought to be made saying that the area of 620 sq. ft is required etc. These

issues would require evidence. It is thirdly stressed that the said son is settled in Mumbai and he has no intention to come to Delhi and the stated intention is to expand his business. Other miscellaneous submissions have also been made about the capital requirement, etc. which would have to be proved by the respondents. Hence, it is urged that this was a fit case to grant leave to defend to the petitioner.

9. 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...”

10. 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:-

xxx

(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;”

11. 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 dependant upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

12. As far as the issue of landlord and tenant relationship is concerned, there is no dispute raised here regarding the same.

13. On the issue of bona fide requirement, in my opinion the contention of the petitioners that the premises are required for expansion of business in

the form of additional accommodation is entirely misplaced. It is not the case of the petitioners that respondent No.1 or his son Sh.Aditya Khatri own any business premises in Mumbai from where they are carrying on their business. The respondent does not own any place in Mumbai. Further no material averment is made to show that if evidence is led, the petitioners would be able to prove about a flourishing business of the respondents. Sh.Aditya Khatri is 25 years old. The balance sheet for the year 2013-14 of the business shows that it is a mere start up having assets of Rs. 24,448/- and a loss of Rs.25,154/-. Mere description of the company by itself shows that there is no flourishing business which is sought to be expanded by opening a Delhi Office as is sought to be argued. It is clearly a case of a young man aged 25 years old who wishes to start his own business from Delhi. The fact is that the said Sh.Aditya Khatri has experience in running the business. He does not own any premises in Mumbai. He wishes to start a set up in Delhi from his own premises. It is a clear case of bona fide requirement.

14. The reliance of the learned counsel for the petitioners on the judgment of the Supreme Court in the case of ***Shanti Devi vs. Rajesh Kumar Jain & Anr. (supra)*** is misplaced. In that case, the Supreme Court was dealing with a case where the landlord needed the property to expand his business as the space currently available with them was insufficient. Without going into the merits of the rival contention, the Supreme Court held that a triable issue has been raised. In the facts of the present case, it is significant that there is no accommodation available with the respondents from where he is carrying on said business.

15. Reference may be had to the judgment of this court in the case of ***Sanjay Chug vs. Opendar Nath Ahuja & Anr. (supra)***. That was a case

where the court came to the conclusion that the sons of the landlord were in possession of commercial accommodation from where they were operating their own business and that they needed an additional accommodation for setting up a new business or expanding the existing business. The judgment would not help the petitioners.

16. 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.”

In view of the above, there are no reasons to interfere with the conclusion of the ARC about the premises being required bona fide by the respondent.

17. I will deal now with the availability of alternative accommodation. As far as the contention that Shop No.1A is lying vacant is concerned, admittedly, the shop is only of 48 sq.ft and on the rear side of the premises. The argument that the petitioner can utilise the said shop for his business has no merit.

18. Regarding the other shop i.e. Shop No. 5 which fell vacant after filing of the eviction petition, the respondent has satisfactorily explained that the

same is to be used for his other son, namely, Sh. Sagar Khatri. The respondent would have the responsibility of settling both his sons.

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 the landlord as to how and in what manner he should live. There are no grounds to show that the respondent has suitable alternative accommodation available.

20. 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, J

SEPTEMBER 21, 2016

rb