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HIGH COURT OF DELHI AT NEW DELHI

+ **RC. REV. 318/2015 & CM Nos.11784-785/2015, 17261/2015,
5275-76/2016**

Pronounced on: 9th May, 2016

RAJINDER KUMAR GOYAL & ANR. Petitioners
Through: Mr. Rajesh Yadav, Ms. Ruchira Arora &
Mr. Dhananjay Mehlawat, Advocates

versus

RAJHANS REALTORS PRIVATE LIMITED Respondent
Through: Mr. S.P. Kalra, Senior Advocate with
Ms. Reeta Kaul, Advocates

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

V.K. SHALI, J.

1. This is revision petition filed under Section 25B(8) of the Delhi Rent Control Act, 1958 ('DRC Act') against the order dated 28th January, 2015 passed by Ms. Pooja Talwar, learned Additional Rent Controller ('ARC'), Saket Courts, New Delhi, whereby the leave to defend application filed by the petitioners was rejected and an eviction order was passed. Further, a time of six months was given to the petitioners to vacate the premises. The petitioners have felt aggrieved by the rejection of their leave to defend application and consequent passing of the eviction order, because of which the present revision petition was filed by the petitioners/tenants.

2. I have heard both Mr. Rajesh Yadav and Mr. S.P. Kalra, learned Senior Advocate for the petitioners and the respondent respectively and gone through the record, including the impugned judgment.

3. Before dealing with the submissions, which are worth consideration, it may be pertinent here to give brief facts of the case. The respondent/landlord filed an eviction petition against the petitioner/tenant under Section 14(1)(e) of the DRC Act, claiming that it is a company dealing in the business of real estate and selling of handicraft, object of art, precious metal, gold, silver, diamond stones, jewellery etc. It has been stated that the respondent/landlord is occupying an area of 169 sq. feet at the backside of the property bearing No.M-2, Greater Kailash-I, main market, New Delhi, wherefrom it is running the office of the real estate business as well as using the same for jewellery business, which is unsuitable for proper functioning of a showroom. It has been stated that the respondent/landlord is having a **flourishing** business of jewellery, and it being display oriented business, there is no sufficient space for proper displaying of objects, which it intends to sell, being at the back of the *varandah* in Greater Kailash Market. It is also stated that the most of the employees, especially female employees working with the respondent/landlord are finding it difficult to work, as there is no washroom facility. This also puts the customers to inconvenience. It was also stated that, apart from the aforesaid commercial property, the respondent/landlord, does not have any other commercial property available to it for the purpose of carrying its business.

4. It is not in dispute that the respondent/landlord purchased the property in the year 2002 and a part of the property in the front was sold by the respondent/landlord to its occupant in 2005. It was stated that the respondent/landlord now requires the premises for its bonafide commercial business.

5. The present petitioners, on being served, filed the leave to defend application raising various objections, which are enumerated hereunder –

- (i) It has been stated that the petitioners have already available to it 169 sq. feet. of area at the back, which has abutting a lane which is much wider than the lane in the front, and, therefore, it can do a good business even from the back shop. It is stated that there are 40-45 jewellery shops, some of them which are much more branded than the petitioners and the customers go to them also and, therefore, this is only a ploy to either let out the suit property at a higher rent or sell it off, as has been done in the past. It is also alleged that the respondent/landlord had agreed to sell the portion under its occupation to it for a sum of Rs.46,00,000/- and taken an advance but the deal fell through. It was stated that the respondent/landlord also has an accommodation of 9x4”, which is reflected in the site plan, which has not been acknowledged by the landlord/respondent. In addition to this, there is a room available to it on the first floor, which has also not been acknowledged;
- (ii) It was contended that the respondent/landlord is a private company in which most of the close family members are the directors, who

are having alternative accommodation and business available to them at different places, the details of which are as under:

- (a) *Preet Jain and Surender Gupta, Aneesh Jewellers, Shop No.12, Diamond Mall, Ground Floor, Gurudwara Road, Karol Bagh, Delhi*
 - (b) *Mohan Lal Gupta, 6, LSC, Okhla, Phase-II, New Delhi.*
 - (c) *Gaurav Gupta, M/s Jain Department Store, C-3, SDA Market, New Delhi.*
- (iii) It was contended that this accommodation is sufficient by way of an alternative suitable accommodation available to them.
- (iv) It was next contended that the premises in question are not required bona fide by the respondent/landlord because it is claimed that, it is doing flourishing business but, as a matter of fact, Income Tax Returns and the Sales Tax Returns, which have been filed, clearly show that, practically, no business is being transacted. In this regard, learned counsel for the petitioners has drawn attention of the Court to the stock-in-trade, which is just the value of Rs.4,00,000/-. The Income-Tax Returns showing return for a particular year one & half lacs only. Similarly Sales Tax Returns, which is being paid, is awfully low.
- (v) It has been contended that the plea taken by the respondent/landlord of doing a flourishing business is totally false in comparison to the actual business being done by the respondent/landlord. It is also stated that the accommodation at the

backside of the property is sufficient to meet the requirement of the respondent/landlord

(vi) It was also contended that before filing the present petition for eviction on the ground of bonafide requirement, the respondent/landlord had filed an eviction petition on the ground of sub-letting as well as, under one more ground, one of which was withdrawn and the other was dismissed and thereafter the present petition has been filed, indicating thereby that the respondent/landlord is inclined to dislodge the tenant from the suit premises.

6. The learned ARC did not find any ground urged by the petitioners/tenants in the leave to defend to be sufficient enough or good enough to grant leave to defend on the assumption that no triable issue is made out and accordingly passed an eviction order.

7. The law regarding the grant of leave to defend is no more *res interga* and has been the subject-matter of various court pronouncements by the Apex Court, starting from *Precision Steel & Engg. Works and Anr. v. Prem Deva Niranjana Deva Tayal*; AIR 2003 SC 650 to *Charan Das Duggal v. Brahma Nand*; (1983) 1 SCC 301. The most important aspect, which I feel is laid down in *Charan Das Duggal's* case (*supra*) is that, while granting leave to defend to the tenant, the Court does not have to consider as to whether the plea on the basis of which the leave to defend is sought need not be a plea which is so strong that will or must result in dismissal of the eviction petition. According to *Charan Das Duggal's*

case (*supra*), the triable issue would mean that, while considering grant of leave to defend to the tenant, the Court has to see whether the tenant is raising any defence which, if permitted to be proved, may result in dismissal of the suit. If this is the yardstick, then probably in such cases where leave is granted, the petition may result in dismissal.

8. The second aspect in *Charan Das Duggal's* case (*supra*) is that the order of rejection of leave to defend does not have to be a long order as if the Court is dealing with the merits of the matter. If a Court is required to pass a long order at the stage of rejection of leave to defend application, then I feel that it is a fit case where leave to defend deserves to be granted. These two broad parameters seem to have been erroneously skipped by the learned ARC. She has practically discarded all the pleas raised by the petitioners/tenants for grant of leave to defend, out of which at least two are such which, by a credible documentary evidence, show that if permitted to be proved, it would oust the respondent/landlord from claiming eviction. I intend to deal with only these two points – the first point is that the claim of the respondent/landlord is that it is doing **flourishing** jewellery business from the back portion measuring 169 sq. feet. I have put emphasis on the word 'flourishing'. The petitioners/tenants have placed on record the Income-Tax Returns, Sales Tax Returns documents of the respondent/landlord, which show awfully low return from the jewellery business, in the range of 1-1 ½ lacs and stock-in-trade Rs.4,00,000/-. Now, if a person is doing jewellery business and his stock-in-trade is Rs.4,00,000/-, this cannot be said to be a flourishing jewellery shop, keeping in view the gold prices, which are

almost touching Rs.30,000/- for 10 gms., the maximum quantum of gold jewellery which would be available with him would of 150 gms. or so. A jeweller who has 150 gms or 200 gms. of gold jewellery in his stock and claiming himself to be doing flourishing business is a joke. Therefore, this is one such ground which is having a mismatch, so far as averments and the facts which are available by way of documents on record and this one ground in itself is good enough to permit the tenant to defend his position.

9. Coupled with this is the fact that, in 2005, the respondent/landlord, after having purchased the property in 2002, had sold a portion of the front of the building adjoining to the shop in question, which is occupied by the petitioners to the existing tenants. Similarly, an agreement was arrived at with regard to the portion under the occupation of the petitioners for sale at Rs.46 lacs, but somehow or the other the deal did not go through. This was almost nine years earlier than the filing of the eviction petition. Therefore, that is understandable that in nine years time, there has been a sea change and a landlord is well within its rights to have a rethink and start a new business. But, simultaneously, if we take couple of other facts into consideration, namely, the factum of two eviction petitions having been filed against the present petitioners/tenants – one under Section 14(1)(b) and the other under different ground- one having been withdrawn and the other being dismissed. The fact that the respondent is a private company having only family members as directors and doing a real estate business, then it ought to have given the details of the directors and their holdings, notwithstanding the fact that, in law, a

private limited company is a separate juristic entity. But, since eviction can be obtained only for bonafide purposes, which means good faith, they ought to have pleaded and shown to the Court that the directors of the company did not have any. This is another ground which impinges on the bonafides of the respondent/landlord and this aspect has also not been considered by the learned trial Court in this correct perspective. On the contrary, erroneously it has accepted the plea of the respondent and passed an eviction order. I feel that these two grounds, both with regard to the bonafide requirement of the space which is available with the respondent/landlord deserve to be established only during the trial. The third point which has been taken by the respondent is that the accommodation, which is available to it, is not good enough to meet its requirements, nor is it good enough to deal with its jewellery business. As against this, the petitioners/tenants have stated that it is a case of additional accommodation, inasmuch as the respondent is already having 169 sq. feet of area available with them and they need additional accommodation in the front in order to do their business of jewellery and, therefore, in case a party needs an additional accommodation, then invariably leave to defend deserves to be given. I find substance in this contention of the petitioners and also that it is not a case of insufficiency of accommodation as contended by Mr. S.P. Kalra, since insufficiency would arise in the backdrop of the quantum of business, but it is a case of additional accommodation which is needed by the respondent, though it has not been able to establish on record that they have a flourishing business, despite the fact that the averments in this regard have been

made by them. Therefore, this is an additional ground, on the basis of which leave to defend ought to be granted to the petitioners.

10. For the abovementioned reasons, I feel that the learned trial Court has fallen into error by rejecting leave to defend application of the petitioners. The said order is illegal, improper and without considering the law on the subject. I, accordingly, set aside the order dated 28th January, 2015, by virtue of which the leave to defend application of the petitioners was rejected. I accordingly grant leave to defend to the petitioners to contest.

11. Let the parties appear before the learned ARC, Saket Courts on 7th July, 2016. The petitioners shall file their written statements within four weeks from today, with an advance copy to the respondent/landlord, who may file its replication within two weeks thereafter.

12. The petition stands disposed off. All the pending applications also stand disposed of and stay stands vacated.

V.K. SHALI, J.

MAY 09, 2016

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