

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Judgment: 15.02.2016.

+

RC.REV. 345/2015 & C.M. Nos.12498/2015 & 23221/2015
MADAN MOHAN SINGH

..... Petitioner

Through Mr. Sanjeev Sindhwani, Sr. Adv.
with Mr. Nitin Gupta, Adv.

versus

SUKHPAL SINGH & ANR

..... Respondents

Through Mr. J.P. Sengh, Sr. Adv. with Mr.
Rohit Sharma and Mr. Amit
Sanduja, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1 The eviction petition filed by the landlords Sukhpal Singh and Mahender Kumar under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) had been decreed. The application filed by the petitioner/tenant seeking leave to defend had been dismissed. The petitioner is aggrieved by the impugned order.

2 Record shows that the present eviction petition has been filed qua a property bearing no.2278/68, Gurudwara Road, Karol Bagh, Delhi.

The landlords Sukhpal and Daljit Singh both sons of Surjit Singh, claimed to be the owner and landlord of the suit property. One shop bearing no.1 in the aforementioned property i.e. the property bearing no.2278/68, Gurudwara Road, Karol Bagh, Delhi had been tenanted out to the tenant. The tenanted property has been encircled in red in the site plan. The grounds for eviction have been detailed in para 18 of the eviction petition. Contention of the landlord is that there are seven shops on the ground floor portion of the property; all of them are contiguous and all of them are owned by the petitioners. Out of the seven shops one is in occupation of the petitioners and other six shops are in occupation of six other tenants. Eviction petition has been filed against two tenants and it has been informed to this Court that the petition filed against Satbir Singh under Section 14(1)(b) of the DRCA had been dismissed. The petition filed against another tenant namely Charanjit Singh has been decreed. Possession of the suit property is yet to be obtained by the landlord. No eviction petition has been filed against the other four shops. Contention of the landlord is that the hotel Rama Deluxe of which petitioner no.1 is a partner has got a very small reception area on the ground floor which measures 16 sq. ft. The hotel

has 26 rooms of which 9 rooms are on the first floor, 9 rooms on the second floor and 8 rooms on the third floor. The reception area being small, there is no place for the guests staying in the hotel for either sitting or standing in this area when they come for booking rooms in the hotel. The entry passage leading to the hotel is 4' 8''. The tenanted property which is contiguous and adjacent to the hotel be permitted to be included and used as passage and as the reception area to make it larger and thus more conducive for the running of the aforementioned hotel. (The site plan depicting the reception area has been shown in blue colour.) It is stated that there is no other reasonably suitable accommodation with the petitioners, therefore, they require this accommodation bonafide.

3 Leave to defend has been filed by the tenant. In this application, it is stated that the petitioner has not come to the Court with clean hands. They have sufficient accommodation. The landlord has concealed the fact that earlier there was a restaurant at the ground floor portion of the property (shown in black colour) which has now been closed and the petitioners have carved out shops in the same area and the same have been let out to respective tenants at higher rates of rent, if they required additional accommodation for their reception area they could have used

the same before letting it out to the other tenants. The present petition has been filed malafide. The original space as depicted in the site plan has been deliberately reduced to create grounds for eviction of the present premises. A site plan has also been filed. It is pointed out that the stairs which were initially at point D have now been shifted to point C which has reduced the reception area. The area already in possession of the petitioners is sufficient for a reception as admittedly there is no room on the ground floor; the rooms are all on the first, second and third floors. This is only a case of desire which is not manifest in an act.

4 Reply has been filed to the aforementioned application. Contents of the same have been denied. The averments made in the eviction petition have been reiterated. It is stated that the restaurant which was a part of the ground floor has been absorbed into the hotel. The impugned order calls for no interference.

5 In the course of arguments, learned senior counsel for the petitioners has drawn attention of this Court to the sale documents by virtue of which the petitioners have become owners/landlords of the premises. This is a sale deed dated 01.7.1985; the petitioners had purchased this property along with other tenants in the premises. It is

pointed out that as per this sale deed dated 01.7.1985 there were only five shops initially including a back portion which was a residential block. Submission being that it is this part i.e. the residential area which has been converted into shops and thereafter these shops have been let out and had the need of the landlord been genuine they would have used these shops for a reception purpose; they would not have leased out these shops. The landlords have not come to the Court with clean hands as in the eviction petition they had not disclosed about this restaurant which they were admittedly running from the back portion. On this ground alone the petitioners are entitled to leave to defend. Learned counsel for the petitioner in support of his argument that a mere desire on the part of the landlords which has not graduated to a need has placed reliance upon judgments of the Apex Court reported as (2001) 1 SCC 706 Inderjit Singh Vs. Nirpal Singh and (2001) 5 SCC 705 Deena Nath Vs. Pooran Lal. It is pointed out that legislature while engrafting the summary provisions in Section 25 B of the DRCA has envisaged a situation that the statutory mandate requires not a mere whimsical or a fanciful desire but the requirement must be bonafide. This has to be examined in true letter and spirit.

6 Needless to state that these arguments have been refuted. Learned counsel for the landlord submits that it is not for the tenant to dictate terms to him. It was a case of an administrative exigency that the staircase was brought inside and shifted from point D to point C. At point D there is an electric meter which is an absolute necessity because of fire hazards. The impugned order calls for no interference.

7 The petitioner has not challenged the status of the landlord; the fact that there was a landlord-tenant relationship between the parties stands admitted.

8 The bonafide need of the landlord has been explained in para 18 (a) of his eviction petition. His contention is that the reception area of his hotel being run by him i.e. Hotel Rama Delux has an area of 16 square feet (besides being an admitted position is also apparent from the site plan). A reception area of a hotel is a place where guests who have to check-in to the hotel, bring their luggage and for the purpose of checking in, the luggage is also kept in the reception area before the guest finally checks-in. The reception area is also a place in the hotel where incumbent customers check the status of the hotel. The hotel admittedly has 26 rooms all of which are on different floors; 9 on the

R.C.Rev. 345/2015 Page 6 of 14

first floor, 9 on the second floor and 8 on the third floor. The entry passage leading to the hotel is 4' X 8"; it is almost like a gali and this is also evident from the site plan. The submission of the learned senior counsel for the petitioner that this area has deliberately been reduced and the stairs which were initially at point 'D' have now been shifted to point 'C' to reduce the area of the passage and the reception area is a submission bereft of force. Admittedly when this property was purchased which was sometime in the year 1985 (as is evident from the sale deed dated 01.07.1985), the premises were purchased with tenants. It is not the case of the tenant that the hotel was already running in the premises. This business of the landlord was started and then grown over a period of time. The tenant has admitted before the Court that earlier the rooms in the hotel were much lesser and over a period of time, they have now graduated to become 26 rooms. The need of the hotel has obviously increased. A submission has been made by the learned senior counsel for the petitioner that this need of the growing hotel business has not been spelt out in the eviction petition is again a point which is noted to be rejected. The eviction petition has categorically stated that the reception area is very small (at the cost of repetition it is 16 square

feet and the entry passage to the hotel is also very narrow being 4' X 8"); this entry passage and reception area is to be enlarged in order to make the business of the running of the hotel more conducive. This is the exact language which has been used in the eviction petition. While penning a judgment, the words pleaded in the pleadings are not to form the part of the order; it is the meaning which has to be brought out from the pleadings and the meaning given to the pleadings of the parties which has to be adjudged. The landlord's pleadings clearly aver that the passage area and the reception area being very small are not conducive for the efficient running of the business of their hotel and accordingly the shop which is with the tenant and admittedly adjacent to this reception area is the need of the landlord to include it in the reception area and make it larger. The vehement argument of the learned senior counsel for the petitioner that all this is not spelt out in the eviction petition is rejected.

9 The submission of the learned counsel for the petitioner that the stair case which was initially at point 'D' has deliberately been shifted to point 'C' for a malafide reason has been answered by the landlord in his reply wherein this position has been categorically denied. It is stated that

the portion shown at point 'D' is not a passage and in fact is a place where an electricity panel has been fixed. This is depicted likewise in the site plan. Learned senior counsel for the respondents/landlord points out that the electricity panel is at point 'D' and where it is absolutely essential as fire hazards are common in congested areas and the hotel being run in the area of Karol Bagh which is a well known commercial hub is a highly congested area; to ward off the fire hazards, the electricity panel in the interior of the hotel (at point 'D') is an absolutely necessity to ward off any untoward incident. This submission of the learned senior counsel for the respondents/landlord has force. Moreover, from the depiction of the photographs which have been placed on record by the parties it is evident that the staircase which starts from the reception area has to go up three flights i.e. right up to the third floor as admittedly there are rooms not only on the first floor but also on the second and the third floors. The staircase is from the interior of the hotel and the submission of the petitioner that this staircase has deliberately been created to reduce the passage area appears to be incorrect as access to the hotel rooms on the upper floors, is an essentiality for which a staircase is a must.

10 The bonafide need of the landlord to enlarge his reception area and passage area for the growing business of the hotel which he is carrying on since the last 30 years and which has admittedly grown over the passage of time and the rooms which were initially much less in number have now become 26; the customer size has also increased; the hustle and bustle of the hotel has also grown. The reception area thus needs to be enlarged and so also the passage. The shop of the petitioner which is contiguous and adjacent to this reception area (as is evident from the site plan) measuring 11.6' X 18' is the bonafide need of the landlord which need stands established.

11 The next submission of the learned counsel for the petitioner is that the landlord has not come to the Court with clean hands and although as per the sale deed (dated 01.07.1985), there were five shops which have been purchased by the landlord including a back portion (which was residential) the site plan now filed by the landlord shows that there are seven shops which necessarily indicate that more shops have been carved out and the necessity of the landlord could have been fulfilled from these shops; had the landlord wish to increase the reception area, he would have used this portion for the said purpose. The

petition has been filed malafide.

12 To answer this argument, the pleadings and the site plan of the premises become necessary.

13 Admittedly what had been purchased vide the sale deed dated 01.07.1985 by the landlord was five shops; the shop with Ram Lal had a back side residential portion. The terrace right of the first, second and third floors had also been purchased.

14 In the reply filed by the landlord to the plea of the tenant that back portion was a restaurant area has been denied. Relevant would it be to note that that the dates when this restaurant of the landlord stopped running and when he carved out the shops has not been given by the tenant. The landlord has denied this submission. It would also not be out of place to mention that the tenant is a tenant of the same building. As such the dates of the opening and closing of the restaurant are facts not alien to the knowledge of the tenant. The landlord on this count has submitted that this portion has been absorbed in the hotel premises. A perusal of the site plan shows that a cloak room is located on the back portion (measuring 12' X 10.3') of this area. The submission of the learned senior counsel for the petitioner that the landlord has not come

to the Court with clean hand is thus bereft of force. Even otherwise, this area on the back portion of the building cannot form part of the entry passage which is admittedly on the opposite side.

15 The landlord has thus also been able to establish the second ingredient of Section 14 (1) (e) of the DRCA; i.e. that he has no other reasonably suitable alternate accommodation available with him.

16 The twin requirement of a petition under Section 14 (1)(e) of the DRCA stand established. It has been established by the landlord that the entry passage to the hotel and the reception area needs to be enlarged because of the growing business need of the hotel of the landlord; the fact that he has not other reasonably suitable accommodation with him and it is only by adding the shop contiguous and adjacent to the reception area of the tenant that this area can be enlarged. At the cost of repetition it has already been noted supra that no eviction petition against four tenants have been filed. One petition under Section 14 (1)(b) of the DRCA against one tenant stands dismissed. One petition had been decreed for the shop of Charanjit Singh (the other tenant) and the possession of the same has yet to be taken over. However, this shop would also not fulfill the need of the landlord as except the shop of the

R.C.Rev. 345/2015 Page 12 of 14

present petitioner, the site plan indicates that no other shop can fulfill this need of the landlord (as disclosed by him in the eviction petition).

17 The Apex Court in 2008 V AD (SC) 213 Satyawati Sharma (Dead) by LRs Vs. Union of India & Anr, held that the landlord has to prove the following ingredients for obtaining an order of eviction in a petition under Section 14 (1)(e) of DRC Act.

(a) That he is the owner/landlord of the suit property.

(b) That he requires the premises bona fide for himself or for any member of his family dependent on him.

(c) That he has no other reasonably suitable accommodation available with him.

18 Time and again, the Apex Court has reiterated that it is not for the tenant to dictate terms to the landlord. It is for the landlord himself that how and in what manner he wishes to use his property. The submission of the learned senior counsel for the petitioner that this appears to be a desire and whim on the part of the landlord which has not actuated into an actual act (in view of the aforementioned factual matrix) is a submission which is without any merit.

19 The impugned judgment, in this background, calls for no

interference. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

FEBRUARY 15, 2016
Ndn/A