

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 569/2015 & C.M. No.24202/2015 (for stay)
OM PRAKASH

..... Petitioner

Through Mr. Amresh Mathur, Adv.

versus

SHRI CHANDER MOHAN & ORS

..... Respondents

Through Ms. Shalini Kapoor and Ms. Kriti Arora,
Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **14.01.2016**

The petitioner is the tenant before this Court. He is aggrieved by the fact that his application seeking leave to defend (filed in the pending proceedings u/s 14 (1)(e) read with Section 25-B of the DRCA) had been declined. Submission is that the triable issue had arisen but the learned ARC had failed to appreciate this in the right context.

The eviction petition filed by the landlord discloses his bonafide need in para 18 which is to the effect that petitioners No. 1 & 2 who are in private jobs have a petty income; petitioner No. 1 is a simple graduate and is employed with M/s CMC Comtrade Ltd. At Pusa Road drawing a salary of Rs.16,500/-; petitioner No. 2 is also a graduate and is also employed with M/s Shaka Electrical at Vikas Puri and is drawing a meagre salary of Rs.4,500/-. Petitioner No. 3 has not been able to get any job inspite of all efforts. Petitioners No. 1 & 2 as such are the only earning members of the family which comprise of 9 members including their aged mother. The petitioners are in constant threat of being throwing out of the jobs as they are

not experienced or well qualified in the field where they are doing their respective jobs. The property i.e. the suit premises which had been tenanted out to the respondent is located in premise No. 4389, Katra Raiji, Pahar Gang which was originally owned by the father of the petitioners. This shop is located on the ground floor. The petitioners are residing on the first floor of the accommodation which is premise No. 4119, Keseru Walan, Pahar Ganj. The suit premise i.e. the entire suit property No. 4384-89 was originally owned by the grandfather of the petitioners and after the death of their grandfather, the property fell to the share of his respective sons; the father of the present petitioners was Ram Rattan who died in the year 1973. The portion shown in the green colour in the site plan had fallen to the share of Om Prakash while the remaining portion shown red in the site plan had fallen to the share of Ram Rattan from whom the petitioners have inherited the estate. The ground floor of the said property is with the legal heirs of Om Prakash. All this had been disclosed in the present petition. Apart from this, the bonafide need of the petitioners is that they want to run a shop and do business from the said shop which is now under the tenancy of the respondent; they having no other commercial property from where this business could be run. In the application seeking leave to defend, learned counsel for the respondent has enlarged his submission stating that there are other properties which are in fact owned by the petitioners and these submissions have been detailed in his application seeking leave to defend wherein in their reply, the landlords have only made a bald denial without any specification. This raises a triable issue and entitled the tenant to seek leave to defend.

The pleadings have been perused. The details of the property disclosed by the tenant in fact already finds mention by the petitioners in their eviction

petition. The petitioners are admittedly the residence of premise No. 4116, Katra Raiji, Pahar Gang. They are residing on the first floor and the second floor. The ground floor has no connection with them and as disclosed in the eviction petition, this ground floor fallen to the share of legal heirs Om Prakash. The suit premises bear municipal number 4389, Katra Raiji, Pahar Ganj. This is a shop on the ground floor. In the eviction petition, the petitioners have disclosed that the other shops which are also a part of the same building (premises No. 4384-89) of which the petitioners are not in possession of any portion of premises No. 4384-89. Premises No. 4384 is the residential and is under the tenancy of Ram Gopal, a very old tenant. They have no concern with shop No. 4385. Qua shop No. 4388, there is a litigation which is pending and this has also been disclosed in the eviction petition. Shop No. 4387 is also a residential property; shop Nos. 4386 and 4387/1 have never been sold by the petitioners. The other properties mentioned by the tenant (in his application seeking leave to defend) relates to premises No. 4093, 5487 and 3930 which are also all residential. The petitioners have no concern with municipal Nos. 3929, 3919, 4091 and 4092. A specific query had been put to the learned counsel for the respondent that he was so sure of the fact that the petitioners have other alternate accommodation and there is a shop on the ground floor in property No. 4116 (the petitioners are residing on the first and second floors), nothing prevented the tenant from taking photograph of the landlord sitting in the said shop. The categorical submission of the learned counsel for the petitioners is that the shop on the ground floor i.e. in premises No. 4116 has fallen to the share of the other legal branch i.e. legal heirs of Om Prakash. The petitioners at the cost of repetition are the legal heirs of Ram Rattan. Qua premises No. 4388, the matter is in litigation.

The bonafide need on the part of the petitioners to run a business from the disputed shop i.e. from shop No. 4389 is well made out. Both petitioners No. 1 & 2 are doing private jobs. Petitioner No. 3 has no job. There are 9 members in their family including their mother. The submission that they can be ousted from the private job at any point of time is a submission noted by the Court and cannot be overlooked especially in view of the fact that they are not as qualified to do the job that they are doing; being simplicitor graduates. The petitioners have been able to satisfy that they have no alternate suitable accommodation from where they can run the business which they proposed to do; even petitioner No. 3 is unemployed. There is no denial to this averment. The Trial Judge had correctly noted that no triable issue has arisen. The whole purpose of summary procedure would be given a go-bye if on some averments made in an application seeking leave to defend, the triable issue is proposed; the application seeking leave to defend, apart from the averment, must be supported by some kind of a prima-facie support; be it in the nature of a document which may even include the photographs and as noted supra, on a query put to the learned counsel for the respondent that even the shop No. 4116 was in possession of the petitioners and their family, nothing prevented the tenant from taking a photograph to the said effect, there was no answer.

In this background, the impugned order calls for no interference. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

JANUARY 14, 2016

A