

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

% **Date of decision: 20th September, 2017**

+ **RC.REV. 7/2016 & CMs No.640/2016 (for stay), 40508/2016 (for modification of order dated 14th September, 2016), 32168/2017 (of respondent for vacation of stay) & 34641/2017 (u/S 151 CPC)**

JAWAHAR LAL PANDEY

..... Petitioner

Through: Mr. Dinesh Kumar Gupta and Mr. Vidit Gupta, Advs. with petitioner-in-person.

Versus

RAM MURTI

..... Respondent

Through: Mr. O.P. Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 29th October, 2015 in E No.48/2015 (UID No.02402C0175822015) of the Court of Additional Rent Controller (ARC), Shahdara, Karkardooma Courts, Delhi] of dismissal of the application filed by the petitioner for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent and the consequent order of eviction of the petitioner from one shop on the ground floor of property No.1/5052, 60' Road, Gali No.2, Balbir Nagar, Shahdara, Delhi in the tenancy of the petitioner for the last more than forty years.
2. The petition was entertained and notice thereof ordered to be issued and the Trial Court record requisitioned.
3. Vide order dated 14th September, 2016, the petitioner was directed to pay use and occupation charges/compensation @ Rs.6,000/- per month to continue to avail the benefit of the interim order.

4. CM No.32168/2017 was filed by the respondent for vacation of the interim order contending that the use and occupation charges had not been paid. The said application came up before this Court on 4th September, 2017, when Mr. Vidit Gupta, Advocate for the petitioner stated that all amounts had been paid and which was controverted by the respondent. Observing that if the statement of Mr. Vidit Gupta, Advocate were to be false, consequence shall follow, the hearing was adjourned to 13th September, 2017.

5. On 13th September, 2017, again Mr. Vidit Gupta, Advocate insisted on contending that upto date compensation had been paid but only on repeated questioning of this Court admitted to default. Observing that the said conduct of Mr. Vidit Gupta was not becoming of an Advocate, the matter was posted for today.

6. Today, Mr. Dinesh Kumar Gupta, Advocate has appeared and apologises for the past conduct and assures that neither he nor Mr. Vidit Gupta, Advocate would indulge in such exercise in future.

7. Mr. Dinesh Kumar Gupta, Advocate has also been heard on the petition and the Trial Court record perused.

8. Since the ownership of the respondent of the premises in the tenancy of the petitioner and the relationship of landlord and tenant between the parties is not in dispute, the reference hereinafter to respondent as landlady and to the petitioner as tenant be made.

9. The respondent/landlady instituted the petition for eviction from which this petition arises pleading (i) that property No.1/5052, 60' Road, Gali No.2, Balbir Nagar, Shahdara, Delhi is constructed over land admeasuring 250 sq. yds. only and has four shops in front towards the road

on the ground floor and residence behind and on the upper floors; (ii) that one of the four shops is in the tenancy of the petitioner; (iii) that the respondent/landlady along with her four sons and their family members is residing in the residential portion of the property; (iv) that one of the four shops is in occupation of one of the sons namely Rajinder Kumar of the respondent/landlady and from where he is carrying on his tailoring work; (v) that the other three shops including in occupation of the petitioner/tenant are let out; (vi) that Virender Kumar another son of the respondent/landlady used to drive Auto Rikshaw bearing No.DL-7875 but met with an accident on 19th November, 2014 and suffered multiple injuries; (vii) that even otherwise, the Auto Rikshaw bearing No.DL-7875 is more than fifteen years old and cannot ply on the road; (viii) that the said son of the respondent/landlady namely Virender Kumar is thus jobless and without any source of income and the shop in the tenancy of the petitioner/tenant was required by the respondent/landlady for use by the said son Virender Kumar for commencing his business/earning therefrom.

10. The petitioner/tenant sought leave to defend contending (a) that earlier petitions filed by the respondent/landlady under Section 14D of the Act pleading requirement of the shop in the tenancy of the petitioner/tenant for other reasons were not pursued and were dismissed in default; (b) that the shop which was earlier occupied by tenant Ramesh who was carrying on scooter repair business therefrom was vacated and had been let out and which the respondent/landlady had no requirement thereof; (c) that the respondent/landlady had another house at Harsh Vihar, Delhi; (d) that the four sons of the respondent/landlady were residing in different portions of the residential portion of the property aforesaid and having their independent

kitchens and thus the son Virender Kumar of the respondent/landlady was not dependent upon the respondent/landlady for accommodation.

11. The respondent/landlady in her reply denied that there was any tenant called Ramesh or any of the three shops including that in occupation of the petitioner/tenant had been vacated. It was also denied that the respondent/landlady had any property in Harsh Vihar, Delhi.

12. The counsel for the petitioner/tenant has argued that it is also his plea that Virender Kumar is still running an Auto Rikshaw. It is also argued that Virender Kumar is driving Auto Rikshaw bearing No.DL-1RG 7835.

13. As far as the plea of filing of earlier petitions for eviction also on the ground of requirement of the shop in the tenancy of the petitioner and not pursuing the same is concerned, the same is not such which requires any trial for the leave to be granted. Merely because the respondent/landlady on earlier occasions filed petition for eviction and did not pursue the same cannot disentitle her from obtaining an order of eviction under Section 14(1)(e) of the Act, if a genuine need therefor is demonstrated now. Similarly, the contention, that the requirement pleaded in the earlier petitions for eviction was different has no need for grant of leave to defend, inasmuch as the Rent Laws are dealing with the human beings and their requirements and which keep on changing from time to time. Supreme Court, in ***Surajmal Vs. Radheyshyam*** (1988) 3 SCC 18 held that *bona fide* need must be considered with reference to time when a suit for eviction is filed and it cannot be assumed that once the question of necessity is decided against the plaintiff, it has to be assumed that he will not have *bona fide* and genuine necessity ever in future; the bar of *res judicata* was held not to apply. Similarly, in ***K.S. Sundararaju Chettiar Vs. M.R. Ramachandra Naidu***

(1994) 5 SCC 14 it was held that *bona fide* need is required to be considered objectively, with reference to material on record; if the need is justified, there will be no occasion for the Court to hold that the landlord did not require the premises *bona fide* simply because on a previous occasion the action of the landlord for bringing an eviction case was not *bona fide*. Yet again in *N.R. Narayan Swamy Vs. B. Francis Jagan* (2001) 6 SCC 473 it was held that genuineness of the need is to be decided on the basis of requirement on the date of the suit.

14. The plea, of one Ramesh being a tenant in one of the shops and having vacated the same and the said shop having been let out again is vague and does not merit any ground of leave to defend. If leave to defend were to be granted on such pleas, all tenants with the skilful and astute drafting of their counsels would be able to secure leave to defend, defeating the very legislative purpose of providing summary procedure under Section 25B of the Act only for petitions for eviction of tenant on the ground of requirement of the premises by the landlord for own need. Even otherwise, Section 25B(5) of the Act requires the tenant to in the application for leave to defend disclose facts as would disentitle the landlord from obtaining an order of eviction and disclosure of facts requires full particulars to be given. No date of Ramesh having left the premises, no date since when Ramesh was a tenant, no particulars of the new tenant in the said shop have been given. The counsel for the petitioner/tenant also admits that the petitioner/tenant has not placed anything at all before the Controller to prove that there was any merit in the said plea and which plea on trial can succeed.

15. The purpose of granting leave to defend is to enable trial of only such pleas which call for a trial and not to permit trial, to keep the petition for

eviction pending for long, as owing to the docket burden before the Courts, once leave to defend is granted, the trial cannot be completed before several years.

16. As regards the plea of Auto Rikshaw, the counsel for the petitioner/tenant though had not placed any document on record till now, has in Court handed over a reply dated 19th October, 2016 received from the office of the Motor Licensing Officer, Transport Department, Govt. of NCT of Delhi to a query under the Right to Information Act, 2005 to the effect that Auto Rikshaw bearing No.DL1RU4149 is registered in the name of Virender Kumar at the address of the subject premises.

17. The counsel for the respondent/landlady states that new Auto Rikshaw was allotted in lieu of the old one but the said Virender Kumar owing to his accident, is having difficulty in plying the same.

18. The counsel for the petitioner/tenant states that no medical record has been placed.

19. I am of the view that there is no need to grant leave to defend on the said aspect also, inasmuch as there are no facts which are to emerge from the trial pursuant to leave to defend. The question has to be decided on the basis of the facts aforesaid and which are not in dispute.

20. The situation as it emerges is that the respondent/landlady has pleaded requirement of the shop in the tenancy of the petitioner for her son who is residing with her to carry on business therefrom. Even if it were to be believed that the said son is still driving an Auto Rikshaw, the settled position in law as enunciated in *Bhupinder Singh Bawa Vs. Asha Devi* (2016) 10 SCC 209, *Anil Bajaj Vs. Vinod Ahuja* (2014) 14 SCC 610, *Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal* (2005) 8 SCC

252 and *Sarla Ahuja Vs. United India Insurance Co. Ltd.* (1998) 8 SCC 119 is that the wish and desire of the landlord if genuine is to be respected and the tenant, and more so the petitioner in the present case who is in occupation of the premises for more than forty years, cannot dictate to the respondent/landlady or her family members, as to what they should continue to do. Supreme Court in *Raghunath G. Panhale Vs. Chaganlal Sundarji & Co.* (1999) 8 SCC 1 and *Dattatraya Laxman Kamde Vs. Abdul Rasul Monlali Kothunde* (1999) 4 SCC 1 has held that the concept of requirement under the Rent Laws is not of dire necessity and all that the Controller and the High Court is required to examine is, whether there is genuineness and *bona fide* on the part of the landlord. I am in the facts of the case satisfied in this respect.

21. As far as the argument, of the sons of the respondent/landlady, though living in the same house as the respondent/landlady having independent kitchens is concerned, I have in judgment dated 28th August, 2017 in RC.REV. 281/2017 titled *Naresh Khanna Vs. Saroj Gupta*, referring to earlier judgments have reiterated that dependency under the Rent Laws is in the context of Indian families and not financial dependence.

22. The counsel for the petitioner/tenant has of course referred to the judgments of Yester years in *Precision Steel & Engineering Works Vs. Prem Deva Niranjan Deva Tayal* (1982) 3 SCC 270, *Inderjeet Kaur Vs. Nirpal Singh* (2001) 1 SCC 706, *Manoj Kumar Vs. Bihari Lal* (2001) 4 SCC 655 and *Rachpal Singh Vs. Gurmit Kaur* (2009) 15 SCC 88. In the recent years, the Supreme Court in *Nidhi Vs. Ram Kripal Sharma* (2017) 5 SCC 640, *Dina Nath Vs. Subhash Chand Saini* (2014) 11 SCC 20 and *State of Maharashtra Vs. Super Max International Private Limited* (2009) 9

SCC 772 has noticed the shift in interpretation of Rent Statutes and have held that though Rent Laws enacted for protection of tenants were earlier interpreted in favour of the tenants but the time has come that interest of the landlord cannot be ignored because after all the landlord is the owner of the property and entitled to use of his own property and cannot be forced to keep a tenant once intends to use the premises for his own purpose.

23. I may in this regard also notice that Section 19(2) of the Rent Act also protects the tenant against abuse of such ground of eviction by the landlord by entitling the tenant to apply for re-possession, if the landlord after obtaining possession does not use the premises for the self-use.

24. The counsel for the petitioner/tenant has also referred to *Vijay Kumar Ahluwalia Vs. Bishan Chand Maheshwari* (2017) 3 SCC 189 which though of recent vintage and granting leave to defend in that matter but for the reason of there being a serious dispute as to the ownership of the landlord and as to the existence of relationship of landlord and tenant and the tenant in the application for leave to defend having demonstrated ample alternate accommodation available to the landlord. Merely because in such facts, leave to defend has been granted does not entitle all tenants to grant of leave to defend.

25. There is thus no merit in the petition.

26. Dismissed.

27. The date of 23rd January, 2018 is cancelled.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 20, 2017/bs

(corrected and released on 16th October, 2017).