

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

% **Date of decision: 24<sup>th</sup> October, 2017.**

+ **RC.REV. No.123/2017, CM No.10230/2017 (for stay) and CM No.30688/2017 (for correction of order dated 31<sup>st</sup> July, 2017)**

**SHEKHAR & ANR.**

**..... Petitioners**

Through: Mr. R.K. Jain and Mr. Sanjay Gupta,  
Advs.

Versus

**AJAY KUMAR SHARMA**

**..... Respondent**

Through: Mr. R.K. Singh, 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 16<sup>th</sup> November, 2016 in E.No.6/16 (New No.77585/16) of the Court of Additional Rent Controller-02, Central District, Tis Hazari Courts, Delhi) of dismissal of the application filed by the two petitioners for leave to defend the petition for eviction filed by the respondent under Section 14(1)(e) of the Act and the consequent order of eviction of the petitioners from shop no.4508 at ground floor, Main Road, Pahari Dhiraj, Sadar Bazar, Delhi – 110 006 in the tenancy of the petitioners at a rent of Rs.24/- per month since the lifetime of the paternal grandfather of the petitioners/tenants.

2. The petition came up first before this Court on 15<sup>th</sup> March, 2017, when notice thereof was ordered to be issued. Vide subsequent order dated 31<sup>st</sup> July, 2017, subject to the petitioners/tenants depositing in this Court an amount calculated at Rs.50,000/- per month w.e.f. 15<sup>th</sup> May, 2017, execution

of the order of eviction stayed. The counsel for the petitioners/tenants and the counsel for the respondent/landlord have been heard and the copies of the Trial Court record produced perused.

3. The respondent/landlord instituted the petition for eviction under Section 14(1)(e) of the Act, from which this Revision Petition arises, *inter alia* pleading (i) that the subject property no.4506-4510, Main Road, Pahari Dhiraj, Sadar Bazar, Delhi – 110 006 in one shop No.4508 wherein the petitioner is a tenant, was owned by the maternal grandmother of the respondent/landlord who died on 30<sup>th</sup> December, 1997, bequeathing the property to the respondent/landlord; (ii) that the petitioners/tenants attorned to the respondent as landlord; (iii) that the respondent/landlord is residing in the premises no.4509, First Floor, Main Road, Pahari Dhiraj, Sadar Bazar, Delhi – 110 006 along with his mother, wife and son; (iv) that the respondent/landlord wants to establish his son Ritik Vashishtha, aged 21 years and who had completed his education, by starting a business/shop for him but has no reasonable suitable commercial accommodation available therefor save the shop in the tenancy of the petitioner; (v) that though the respondent/landlord under the Will of his maternal grandmother had also acquired 1/6<sup>th</sup> share in property no.1408-1409, Jhajjarwala Mandir, Chandni Chowk, Delhi – 110 006 but the said property is undivided amongst its co-owners and is a temple which is used for worship by general public and the respondent/landlord is not in occupation and possession of any portion of the said property; (vi) that the respondent/landlord is employed in a tea leaf shop at Naya Bans, Khari Baoli, Delhi – 110 006; and, (vii) that the wife of the respondent/landlord also desires to set-up a boutique but has been unable to set-up the same for lack of commercial accommodation.

4. The petitioners/tenants applied for leave to defend, pleading (i) that the respondent/landlord had also filed petitions for eviction in the year 2005 and in the year 2013 against other tenants in the property; (ii) one of the other tenants in another portion of the property had been granted leave to defend; (iii) that the entire ground floor of property no.4506-4510 was commercial and the ground floor of property no.4509 was also commercial and lying locked and was not in use; (iv) that the respondent/landlord has enough accommodation available to him in the property; (v) that the respondent/landlord also had available to him three shops in property no.1408-1409, Chandni Chowk; (vi) that the son of the respondent/landlord was still a student and did not require any premises; and, (vii) that the respondent/landlord has not disclosed the entire accommodation available to him.

5. The respondent/landlord, in his reply to the application for leave to defend, confirmed filing of petitions for eviction against the other tenants for the requirement of himself and his wife and pleaded (i) that in the year 2005-2008 when petitions for eviction against the other tenants were filed, no petition for eviction was filed against the petitioners/tenants as the requirement for the son of the respondent/landlord had accrued only after the said son completed his education and desired to set-up his own business; (ii) that the respondent/landlord does not have any shop in his possession in the property, to carry on any trade/business; (iii) denying that the respondent/landlord has any portion of the ground floor available to him or is in use or the same is locked or has sold any portion of the ground floor of the property; (iv) reiterating that the share of the respondent/landlord in property no.1408-1409, Chandni Chowk is 1/6<sup>th</sup> only and denying that the said

property is commercial or the respondent/landlord has available to him any portion thereof; (v) that on the ground floor of property no.4506-4510, there are three shops of which one is in occupation of the petitioners/tenants and the other two tenants against whom also petition for eviction had been filed are in occupation of the other two shops; (vi) property no.4507 is in occupation of Chand Yadav and his brother, shop no.4510 is in occupation of Kamal Kumar Aggarwal; (vii) that the portion of the property bearing no.4506-4509 are exclusively residential and out of which major portion is in possession of tenant Naveen Aggarwal and Naresh Aggarwal; (viii) that shop no.4511 was sold in the year 2001 to meet the family requirements of the respondent/landlord; and, (ix) denying that the respondent/landlord had not occupied any portion vacated by the tenants or that any such portion had been vacated.

6. Before proceeding further, I may state that the leave to defend application filed by the petitioners/tenants is found to be long winded, repetitive and intentionally confusing. The petitioners/tenants have used long sentences and in several paragraphs of the application for leave to defend stated what the other tenants in their applications for leave to defend filed by them have pleaded.

7. Be that as it may, as would be obvious from above, leave to defend is sought by pleading availability of commercial premises to the respondent/landlord in property no.4506 – 4511 itself. However a perusal of the site plan filed by the respondent/landlord with the petition for eviction (the petitioners/tenants have not filed any site plan of their own) shows that there is no basis for the pleas of the petitioners/tenants. The property, though

bearing several municipal numbers, is one property. The ground floor of the property comprises of four shops in the front, opening on the main road and with residential rooms behind. The same is the norm in the locality. The site plan shows only four shops i.e. shops no.4507, 4508, 4510 and shop no.4511. Municipal no.4509 has been given to the staircase, also opening in the front lane and going to the upper floors. Municipal no.4506 has been given to the passage, also opening in the front lane and going to the rear portion of the ground floor. The site plan which is not disputed, thus depicts the correct picture, of the respondent/landlord having four shops only in the property and of which shop no.4511 as aforesaid was sold in the year 2001. Of the remaining three shops, one is in the possession of the petitioners/tenants and the possession of the other tenants of the other two shops is admitted by the petitioners/tenants themselves in the leave to defend application.

8. Merely because behind the shops, some rooms exist, cannot permit the petitioners/tenants to dictate the respondent/landlord to, while allowing the petitioners/tenants to carry on their business from the front shop, carry on his own business or the business of his wife and son from the rear portion. Even if it were to be held that the rear portion is commercial and can also be used for commercial purposes, the same can never be alternate suitable accommodation to the front shops. The customers of any business are likely to be attracted more to the shop opening on the front road than to shops in the rear, accessible only through a narrow passage.

9. Supreme Court in *Dhannalal Vs. Kalawatibai* (2002) 6 SCC 16 held that ‘an alternative accommodation’, to entail denial of the claim of the

landlord, must be 'reasonably suitable', obviously in comparison with the accommodation wherefrom the landlord is seeking eviction. It was further held that the availability of another accommodation suitable and convenient in all respects as the accommodation from which the landlord is seeking eviction may have an adverse bearing on the finding as to *bona fides* of the landlord, if he unreasonably refuses to occupy the available premises to satisfy his alleged need. It was yet further held that the *bona fides* of the need of the landlord for the premises or additional premises have to be determined by the Court by applying objective standards and once the Court is satisfied of such *bona fides*, then in the matter of choosing out of more accommodation than one available to the landlord, his subjective choice shall be respected by the Court. It was yet yet further held that for the business which the landlord proposes to start, an accommodation situated on the first floor cannot be said to be an alternative suitable accommodation in comparison with the shops situated on the ground floor; a shop on the first floor cannot attract the same number of customers and earn the same business, as a shop situated on the ground floor would do. Again, in ***Uday Shankar Upadhyay Vs. Naveen Maheshwari*** (2010) 1 SCC 503, it was held that it is not for the Courts to say that the landlord should shift to the first floor or any higher floor as it is well known that shops and businesses are usually conducted on the ground floor, because the customers can reach there easily. It was reiterated that the Court cannot dictate to the landlord which floor he should use for his business and that is for the landlord himself to decide. Accordingly, the reasoning of the Courts below that the landlord should do business on the first floor was held to be wholly arbitrary and not sustainable.

10. What has been held in the judgments aforesaid qua the ground floor and the first floor, will apply equally to a shop opening on the front road and a shop in the rear. Even if accommodation on the upper floors is available to the respondent/landlord, the same cannot also be alternative suitable accommodation to the shops on the ground floor in the front.

11. In this view of the matter, it cannot be said that the order of the Additional Rent Controller impugned in this petition, holding the petitioners/tenants to be not entitled to leave to defend, is not in accordance with law. I have otherwise also on perusal of the records satisfied myself of the same being in accordance with law.

12. As far as the requirement pleaded by the respondent/landlord is concerned, the plea of the landlord of requirement is not to be judged by considering the possibility by which the tenant may be allowed to continue in the premises. The requirement is to be judged on the basis of the property as it stands and not by commanding the landlord to make do therein or shift somewhere else, to somehow or the other accommodate the tenant. Supreme Court in *Siddalingamma Vs. Mamtha Shenoy* (2001) 8 SCC 561 held that the concept of *bona fide* need or genuine requirement needs a practical approach instructed by the realities of life; an approach either too liberal or too conservative or pedantic must be guarded against; if the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises, so as to protect the tenant's continued occupation in tenancy premises.

13. The counsel for the petitioners/tenants has then handed over copies of orders in the petitions for eviction filed by the respondent/landlord against other tenants.

14. I am unable to understand the purport of the said orders. Leave to defend applications are decided on the basis of pleas taken therein and the pleas taken by the petitioners/tenants herein in the leave to defend application are not found to be entitling the petitioners/tenants to leave to defend.

15. There is thus no merit in the petition.

Dismissed.

No costs.

16. The monies deposited in this Court in pursuance to earlier orders be released to the respondent/landlord.

**RAJIV SAHAI ENDLAW, J.**

**OCTOBER 24, 2017**

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*(corrected & released on 1<sup>st</sup> February, 2018)*