

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

% **Date of decision: 10<sup>th</sup> November, 2017.**

+ **RC.REV. 196/2017**

**MOHAN GOEL**

**..... Petitioner**

Through: Mr. Rajesh Yadav, Mr. Sanjay Sehgal  
and Ms. Ruchira, Advs.

Versus

**RADHA RANI**

**..... Respondent**

Through: Mr. Rajeev Saxena, Mr. Rachit  
Sahney and Mr. Manish Khurana,  
Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**CM No.40689/2017 (of petitioner u/S 151 CPC)**

1. The petitioner seeks stay of the order of eviction impugned.
2. The counsel for the respondent appears on advance notice.
3. The hearing of the Rent Control Revision Petition itself is advanced to today.
4. The application is infructuous and disposed of.

**RC.REV. 196/2017**

5. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 3<sup>rd</sup> November, 2016 in E No.77147/2016 (Old No.160/2014) (UID No.02401C0296582014) of the Court of Additional Rent Controller (ARC)-1 (Central), Tis Hazari 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 shop No.904, Ward No.VI, Chawri Bazar, Delhi.

6. The petition was entertained and notice thereof ordered to be issued and the Trial Court record requisitioned. The counsel for the respondent / landlady appeared and the matter stands adjourned to 5<sup>th</sup> April, 2018. The petitioner / tenant filed CM No.40689/2017 as aforesaid. With the consent of the counsels, the petition has been heard today itself.

7. The respondent / landlady filed the petition for eviction from which this petition arises, besides against the petitioner /tenant, also against one Raghubir Chand, pleading (i) that the said Raghubir Chand was tenant in the shop aforesaid and had sublet and parted with possession thereof to the petitioner / tenant herein, without any notice under Section 17 of the Act and without the knowledge and consent of the respondent / landlady and the petitioner / tenant was being impleaded as a party to avoid any delay in adjudication; (ii) that the respondent / landlady required the shop for providing commercial space to her son Sudhir Gupta, who was then carrying on business from his residence on the second floor of property no.357, Kohat Enclave, Pitampura, Delhi, to expand his business; (ii) that the respondent / landlady along with her husband and the said married son Sudhir Gupta, his wife and his two children was residing in house no.357, Kohat Enclave, Pitampura, Delhi; (iv) that Sudhir Gupta, son of the respondent / landlady, was running his business under the name and style of M/s Shiva Polymers dealing with all kinds of adhesives and chemicals, from the said residence only; (v) however with the growing age of her grandchildren, the respondent

/ landlady and her family members were finding paucity of accommodation and business activity being carried on by the son of the respondent / landlady from the residence was resulting in paucity of residential accommodation; (vi) that the son of the respondent / landlady Sudhir Gupta was unable to get a proper commercial exposure and outlet which is essential for enhanced sales, retailing and marketing; (vii) that Sudhir Gupta, son of the respondent / landlady was also unable to expand his business for the reason of carrying on the same from a residential premises; (viii) though the respondent / landlady is also the owner of second floor of 905, Chawri Bazar, Delhi – 110 006, but the said property was occupied by a tenant and was under litigation; (ix) that the respondent / landlady required the shop in the tenancy of petitioner, for use of her son Sudhir Gupta; and, (x) that the husband of the respondent / landlady was running business of sweets from a rented accommodation at Chandni Chowk.

8. The petitioner / tenant applied for leave to defend pleading, (i) that the respondent / landlady had sufficient accommodation with her in property no.3728, Katra Dhoomi Mal, Chawri Bazar, Delhi and 4372, Gali Bhairon Wali, Nai Sarak, Delhi and both of which properties were lying vacant and locked; (ii) that the respondent / landlady was also having property no.902-903 and 905, Ward No.VI Chawri Bazar, Delhi in her possession; (iii) that Sudhir Gupta, son of the respondent / landlady was having his office and factory in Ghaziabad; (iv) that the shop no.904, Ward No.VI, Chawri Bazar, Delhi was taken on rent in the year 1968 by M/s. Sudarshan Paper Mart of which Raghubir Chand and his brother Jai Gopal Geol were partners; (v) the partnership of M/s. Sudarshan Paper Mart was dissolved in the year 1977 and Jai Gopal Goel became the sole proprietor of M/s. Sudarshan Paper Mart

which continues to carry on business from the said shop; (vi) after the retirement of Jai Gopal Goel, the petitioner / tenant being his son became the proprietor of M/s. Sudarshan Paper Mart; (vii) that the respondent / landlady had however been refusing to accept the rent from the petitioner / tenant; and, (viii) that the respondent / landlady is not the sole owner of the shop.

9. The respondent / landlady, in her reply to the averments in the application for leave to defend, has pleaded (i) that the petitioner being not a tenant was not entitled to apply for leave to defend; (ii) the respondent / landlady did not own property no.3728, Katra Dhumimal, Chawri Bazar, Delhi or property no.4372, Gali Bhaironwali, Nai Sarak, Delhi; (iii) property no.3728, Katra Dhumimal, Chawri Bazar, Delhi was the tenanted residential premises of the family of the husband of the respondent / landlady by virtue of inheritance and the husband of the respondent / landlady surrendered possession of his portion of the said property to the landlord as far back as on 30<sup>th</sup> November, 2010; (iv) the property no.4372, Gali Bhaironwali, Nai Sadak, Delhi was the parental ancestral property of the respondent / landlady but the respondent / landlady did not get any share in the said property; (v) shops no.902-903, Ward VI, Chawri Bazar, Delhi belonged to Amit Gupta and Sumit Kumar Gupta sons of Ram Kishore residents of 48, Darya Ganj, Delhi and the respondent / landlady had no right, title or interest therein; (vi) shop no.905, Ward No.VI, Chawri Bazar Delhi though owned by the respondent / landlady is in occupation of a tenant and under litigation; (vii) that Sudhir Gupta, son of the respondent / landlady, does not have any factory or office at Ghaziabad and is not doing any business there; and, (viii) that all the said pleas of the petitioner / tenant in the application for leave to defend were patently false and without any basis.

10. On the basis of the aforesaid material, the learned Additional Rent Controller has declined leave to defend to the petitioner / tenant, finding/observing/holding/reasoning (i) that the petitioner / tenant had admitted payment and tender of rent to the respondent / landlady and was thus estopped from denying the title of the respondent / landlady as owner; (ii) that since Raghubir Chand who was claimed by the respondent / landlady to be the tenant had not filed any leave to defend application, the petition for eviction was entitled to be allowed for this reason alone; (iii) even if the petitioner / tenant herein were to be accepted as a tenant and the leave to defend application filed by him were to be decided on merits, the petitioner / tenant had not disclosed any such facts which would disentitle the respondent / landlady from obtaining an order of eviction under Section 14(1)(e) of the Act; (iv) that the Sales Tax Returns of the business in the name and style of M/s. Shiva Polymers being carried on by Sudhir Gupta son of the respondent / landlady from the address of 357, Kohat Enclave, Pitampura, Delhi showed that the son of the respondent / landlady was carrying on the said business from the residence; (v) the mere fact that the Returns showed zero turnover was of no avail; (vi) that the son of the respondent / landlady has a right to start his business from an independent shop situated in commercial area as compared to the space in a residential accommodation; (vii) the shop in the commercial market will enable the son of the respondent / landlady to get huge turnover in his business of chemicals and adhesive in the name and style of M/s. Shiva Polymers; (viii) that the respondent / landlady could not be forced to make her family members adjust in a smaller accommodation for the sake of continuing with the petitioner as a tenant; (ix) though the petitioner / tenant in his application for

leave to defend had pleaded other accommodation available to the respondent / landlady, but the respondent / landlady in her reply has given complete explanation with respect thereto and the petitioner / tenant was unable to place anything before the Court to show availability of the said accommodation or the control and possession of the respondent / landlady of the said accommodations; and, (x) the petitioner / tenant had thus failed to raise any triable issues.

11. The counsel for the petitioner / tenant has contended (i) that though the pleaded case of the respondent / landlady was that the shop in the tenancy of the petitioner is required for expansion of business but the learned Additional Rent Controller in the impugned order has held that the son of the respondent / landlady is entitled to start his business from an independent shop; the learned Additional Rent Controller could not have made out a case for the respondent / landlady; (ii) that the learned Additional Rent Controller has in the impugned order not discussed the plea of the petitioner / tenant that the son of the respondent / landlady was not doing any business from 357, Kohat Enclave, Pitampura, Delhi as evident from Sales Tax Returns of zero turnover; (iii) that since according to the respondent / landlady the petitioner was not a tenant, the eviction petition ought not to have been entertained under Section 25B of the Act; (iv) that Raghubir Chand died much prior to the filing of the petition for eviction; (v) merely because M/s. Shiva Polymers, firm of the son of the respondent / landlady was registered on paper, did not entitle the respondent / landlady to seek eviction of the petitioner / tenant on the ground of expansion of business; (vi) there can be no question of expansion of business when there was no business; (vii) reliance in this regard was placed on ***Bachhaj Nahar Vs. Nilima Mandal***

(2008) 17 SCC 491 and *Rajinder Kumar Goyal Vs Rajhans Realtors Private Limited* 2016 (159) DRJ 680; (viii) whether the son of the respondent / landlady was dependent on the respondent / landlady for accommodation also raised a triable issue; (ix) similarly, the pleas taken by the petitioner / tenant in his application for leave to defend with respect to other properties available to the respondent / landlady also raised a triable issue. Reliance was placed on *Charan Dass Duggal Vs. Brahma nand* (1983) 1 SCC 301, *Inderjeet Kaur Vs. Nirpal Singh* (2001) 1 SCC 706, *Liaq Ahmed Vs. Habeeb-Ur-rehman* (2000) 5 SCC 708 and *M.M. Quasim Vs. Manohar Lal Sharma* (1981) 3 SCC 36 on the principles applicable to grant of leave to defend.

12. The counsel for the respondent / landlady has supported the order of eviction.

13. I have considered the controversy and perused the Trial Court record.

14. I may at the outset record that though the petitioner / tenant, in leave to defend application and in written arguments handed over, has taken the pleas of the respondent / landlady being not the only owner and of the respondent / landlady having not admitted the petitioner to be a tenant being not entitled to an order of eviction against the petitioner / tenant under Section 14(1)(e) of the Act, but the counsel for the petitioner / tenant during the hearing has not raised the same or pressed the same and the hearing has proceeded on merits.

15. The mainstay of the argument of the counsel for the petitioner / tenant is that the Sales Tax Returns on record do not show any business being carried on by Sudhir Gupta son of the respondent / landlady in the name and

style of M/s. Shiva Polymers. It is argued that though the learned Additional Rent Controller allowed the petitioner / tenant to place the said documents on record but has not given due weightage thereto.

16. I have perused the documents on the Trial Court record. The same show (i) M/s. Shiva Polymers to be registered with the said departments at least since the year 1999 and to be dealing in adhesive, fevicol, vemicol, all kinds of chemical, rubber chemicals, oils since 30<sup>th</sup> April, 2006 at the address of 357, Kohat Enclave, Pitampura, Delhi and Sudhir Gupta to be its proprietor; (ii) the gross turnover, central turnover as well as local turnover of M/s. Shiva Polymers to be nil for the period from 1<sup>st</sup> April, 2015 to 30<sup>th</sup> June, 2015, 1<sup>st</sup> July, 2015 to 30<sup>th</sup> September, 2015, 1<sup>st</sup> October, 2015 to 31<sup>st</sup> December, 2015 and 1<sup>st</sup> January, 2016 to 31<sup>st</sup> March, 2016.

17. Mr. Sudhir Gupta son of the respondent / landlady, from his photograph on the aforesaid documents, does not appear to be of such an age as to have closed and retired from his business.

18. Though the petitioner / tenant in the application for leave to defend pleaded that the said Sudhir Gupta was having his factory and office at Ghaziabad, but neither placed any document before this Court to show existence of such a business of Sudhir Gupta at Ghaziabad nor stated any particulars or from where he gained knowledge of the said fact. It is inconceivable that if Sudhir Gupta son of the respondent / landlady is in fact carrying on any business from Ghaziabad, it would not be possible for the petitioner / tenant to place anything before the Additional Rent Controller or before this Court to inspire faith in such plea, for the Additional Rent

Controller or this Court to, on the basis thereof, grant leave to defend to the petitioner / tenant.

19. The question which arises for consideration is, whether any fictional, farfetched, totally false plea taken by a tenant in an application for leave to defend, of other accommodation being available to the landlord and of other businesses being carried on by the landlord or the member of the family of the landlord pleading whose requirement petition is filed, leave to defend has to be granted.

20. The Advocates for the tenants, with their legal acumen, will certainly be able to make such pleas.

21. If it were to be held that any such plea would entitle the tenant to grant of leave to defend, it would not only sound the death knell for the summary procedure prescribed by the legislature for such petitions for eviction but would make the decision of such petitions lengthier than that of the petitions for eviction on other grounds, inasmuch as first, time will be spent on the stage of leave to defend and thereafter only, will the stage of filing written statement arise.

22. Section 25B(5) of the Act entitles the tenant to grant of leave to defend if the tenant in the affidavit discloses such facts as would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. The requirement to disclose facts on affidavit certainly cannot be interpreted as making any pleas. I have, in ***Ram Saroop Vs. Viney Kumar Mahajan*** MANU/DE/3530/2017, held as under on the said aspect:-

*“18. If leave to defend were to be granted on such vague pleas, the same would defeat the legislative intent of inserting*

*Section 25B in the Rent Act as summary procedure for dealing with petitions for eviction on the ground of requirement of the premises by the landlord for his own use. A tenant, to be entitled to leave to defend has to disclose facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. It is only such facts which when proved would so disentitle the landlord which can entitle the tenant to leave to defend. Evidence in proof of such facts has to be confined to the pleas and cannot be beyond the pleas. If the tenant is unable to make specific pleas, the Court cannot grant leave to defend on the premise that he will improve his case during trial. Leave to defend is not to be granted to allow to the tenant time to improve his case.*

19. Supreme Court in **Baldev Singh Bajwa Vs. Monish Saini** (2005) 12 SCC 778, in the context of summary procedure under the East Punjab Urban Rent Restriction Act, 1949 held that a heavy burden lies on the tenant and the tenant is called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant was held to be not sufficient. Similarly, in **Rajender Kumar Sharma Vs. Leela Wati** (2008) 155 DLT 383 it was held that Section 25B was inserted as a special provision for eviction of the tenants in respect of specified category of cases as provided therein; where a landlord seeks eviction on the basis of bona fide necessity, a summary procedure is provided and the tenant has to seek leave to defend disclosing such facts which disentitle the landlord from seeking eviction; where a tenant, in leave to defend, pleads preposterous propositions and makes such averments which are palpably false and the landlord in his reply to leave to defend is able to show the said falsity, the Controller is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it. Again, in **Ramesh Chand Vs. Uganti Devi** (2009) 157 DLT 450, it was held that mere assertions do not raise any triable issue and if these bald assertions were

*entertained, then every tenant would get away with leave to defend, defeating the intent of legislature. It was further held that only in those cases leave to defend can be granted where Controller finds some substance in the issues raised by the tenant. I have also taken the same view in **Sarwan Das Bange Vs. Ram Prakash** (2010) 167 DLT 80.*

20. Supreme Court in **Busching Schmitz Private Limited Vs. P.T. Menghani** (1977) 2 SCC 835 held that Controller's power to give leave to contest is cribbed by the condition that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in Section 14(1)(e) of the Act; disclosure of facts is a sine qua non for grant of leave. It was further held in **Kewal Singh Vs. Lajwanti** (1980) 1 SCC 290 that it is a salutary provision in order to prevent frivolous pleas taken by the tenants to avoid eviction. In **Precision Steel & Engineering Works Vs. Prem Deva Niranjan Deva Tayal** (1982) 3 SCC 270 it was further expanded that while browsing through the affidavit, if there emerges averment of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted; however leave to contest should not be granted unless the affidavit discloses such facts. Ultimately in **Prithipal Singh Vs. Satpal Singh** (2010) 2 SCC 15 it was held that the dominant object of insertion of Section 25B is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated inter alia by Section 14(1)(e) and for avoiding unusual dilatory process provided otherwise by the Rent Act and the application of Order XXXVII Rule 4 of the Code of Civil Procedure, 1908 (CPC) to Section 25B in force till prior thereto, was held to be bad.

21. *I am afraid making of vague pleas in the application for leave to defend and affidavit accompanying the same, without giving any particulars, cannot be said to be disclosing facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act."*

23. The application of the petitioner / tenant for leave to defend in the present case, instead of disclosing any facts, comprises only of averments and pleas and of which neither any basis nor source of information is disclosed nor are the same supported by any document to show semblance of truth therein, to qualify the same as a 'fact'. The petitioner / tenant has failed to disclose any facts on affidavit.

24. No error requiring interference can thus be found with the order of the Additional Rent Controller.

Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**NOVEMBER 10, 2017**

bs/pp

*(corrected & released on 27<sup>th</sup> January, 2018)*



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