

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

% **Date of decision: 13th September, 2017**

+ **CM(M) No.248/2017**

PRAVESH JAIN

..... Petitioner

Through: Mr. S.C. Singhal and Mr. B.S. Chauhan, Advs.

versus

OSWAL WOOLLEN MILLS LTD

..... Respondent

Through: Mr. Murari Tiwari, Mr. Rahul Kumar, Ms. Purua Mehta, Ms. Sakshi Bhayana and Mr. Devesh Gupta, Advs.

AND

+ **CM(M) No.771/2017**

OSWAL WOOLLEN MILS LTD

..... Petitioner

Through: Mr. Murari Tiwari, Mr. Rahul Kumar, Ms. Purua Mehta, Ms. Sakshi Bhayana and Mr. Devesh Gupta, Advs.

versus

PRAVESH JAIN

..... Respondent

Through: Mr. S.C. Singhal and Mr. B.S. Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. CM(M) No.248/2017 impugns the order (dated 25th January, 2017 in E-235/15 of the Court of Additional Rent Controller-2 (Central), Tis Hazari Courts) granting leave to defend to the respondent to defend the petition for eviction under Section 14(1)(e) of the Delhi Rent Control Act, 1958 filed by the petitioner.

2. CM(M) No.771/2017 has been preferred impugning the order dated 31st May, 2017 in the same petition for eviction, closing the right to file written statement owing to the written statement having not been filed within

the prescribed time and listing the petition for eviction for evidence on 20th September, 2017.

3. Both petitions were entertained.

4. The counsels were heard on 8th September, 2017 and have been heard further today.

5. If CM(M) No.248/2017 were to be allowed and an order of eviction to be passed against the respondent therein, the need to consider CM(M) No.771/2017 would not arise and the same would become infructuous. Thus counsels have been heard on CM(M) No.248/2017.

6. Before proceeding to adjudicate CM(M) No.248/2017, I may record that the filing thereof as a CM(M) Petition under Article 227 of the Constitution of India is misconceived inasmuch as per the dicta of the Supreme Court in *Vinod Kumar Chowdhry Vs. Narain Devi Taneja* (1980) 2 SCC 120 and of the Division Bench of this Court in *R.S. Bakshi Vs. H.K. Malhari* 2001 SCC OnLine Del 1344, against an order of grant of leave to defend, a petition under Section 25B(8) of the Rent Act lies. However, since the petition was entertained and counsels were heard and both CM(M) as well as Rent Control Revision Petition under Section 25B(8) of the Act are on the Roster of this Bench, this technicality is ignored.

7. The relationship of landlord and tenant between Pravesh Jain as landlord, and Oswal Woollen Mills Ltd. as tenant is not disputed and it is also not in dispute that Pravesh Jain is the owner of the premises in the tenancy of the Oswal Woollen Mills Ltd. Thus parties would be referred to hereinafter as landlord and tenant.

8. The landlord instituted the petition for eviction of the tenant from one godown in property no.5776-77/49, Basti Harphool Singh, Sadar Thana

Road, Sadar Bazar, Delhi – 110 006 on the ground of *bona fide* requirement thereof for use of self and members of the family dependent upon the landlord, pleading (i) that the tenant is the tenant in the said godown for decades @ Rs.268/- per month; (ii) that the landlord has two sons namely Maneet Jain and Rohit Jain who are doing business of pharmaceutical raw material from the remaining portion of the ground floor of property no. 5776-77/49, Basti Harphool Singh, Sadar Thana Road, Sadar Bazar, Delhi adjacent to the godown in the tenancy of the tenant ; (iii) that now the son of Maneet jain namely Aman Jain has recently completed his studies and wishes to join the business; (vi) that the godown in the tenancy of the tenant is required *bona fide* for the use of business; (v) that the son of the landlord maintains stocks of pharmaceutical raw material in the portion of the ground floor of the property in their possession and seven-eight staff persons also sit there; (vi) that now space of an office for the son of Maneet Jain is also required; (vii) additional space is also required for expansion of the business with the induction of the grandson of the landlord therein; and, (viii) that the landlord had no other alternate reasonably suitable accommodation.

9. The tenant, in the application for leave to defend, *inter alia* pleaded (i) that it was a tenant in the premises for over 30 years; (ii) that the landlord, besides being the owner of property no.5776 was also the owner of property no.5777/49, both in Basti Harphool Singh, Sadar Thana Road, Sadar Bazar, Delhi and both adjacent to each other; (iii) that the landlord, “two years back” sold the first and second floors of 5777/49; (iv) that the landlord, if had need for any additional premises, would not have sold the said first and second floors; (v) that the tenant had come to know that the “landlord is having several other properties” and on grant of leave to defend would

furnish details thereof; and, (vi) that the landlord had no *bona fide* requirement for the premises.

10. The site plan filed by the landlord along with the petition for eviction is at page 31 of the paper book and shows the entire ground floor of property bearing municipal No.5776-77/49 Basti Harphool Singh, Sadar Thana Road, Sadar Bazar, Delhi.

11. The counsel for the tenant, on enquiry, confirms that the tenant did not file any site plan.

12. In the absence of the site plan and denial of the site plan filed by the landlord, the site plan filed by the landlord has to be accepted.

13. I have drawn attention of the counsel for the tenant to the recent dicta of the Supreme Court in *Anil Bajaj Vs. Vinod Ahuja* (2014) 15 SCC 610, *Faruk Ilahi Tamboli Vs. B.S. Shankarrao Kokate* (2016) 15 SCC 431, *Bhupinder Singh Bawa Vs. Asha Devi* (2016) 10 SCC 209, *Dina Nath Vs. Subhash Chand Saini* (2014) 11 SCC 20 and to the recent judgment of this Court dated 6th September, 2017 in R.C. Rev. No.422/2017 titled *Vijay Sharma Vs. Namita Aggarwal* holding that merely because a landlord is in possession of several other premises from where he is carrying on business and / or is carrying on some other businesses along with other family members, is no ground for grant of leave to defend to the tenant in another premises belonging to the landlord and if the landlord has expressed a need therefor also for his business. It has been held that even after trial, such grounds do not disentitle the landlord to an order of eviction.

14. Once that is the position, then the mere fact that the landlord here is admittedly in possession of remaining ground floor of the property, save the godown in the tenancy of the tenant, is not a “fact” within the meaning of

Section 25B(5) of the Act which can disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act and / or on disclosure whereof the tenant becomes entitled to an order of grant of leave to defend.

15. Supreme Court in (i) *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222; (ii) *Prativa Devi Vs. T.V. Krishnan* (1996) 5 SCC 353; and, (iii) *Dhannalal Vs. Kalawatibai* (2002) 6 SCC 16 has also held that if the Court is convinced about the genuineness of the need of the landlord, then it is not for the Court to dictate to the landlord or for the tenant to give advice to the landlord as to how the landlord should conduct his affairs from the premises already in his possession or otherwise arrange his affairs.

16. Applying the aforesaid law, it will be seen that the need expressed by the landlord, who it is not disputed is carrying on business of pharmaceutical products through his two sons in the remaining ground floor of the property and has a staff of seven-eight persons, is found to be genuine.

17. The only argument of the counsel for the tenant is, that the godown in the tenancy of the tenant constitutes only about 10% of the total area of the ground floor, remaining portion whereof is already with the landlord.

18. Though the total area of the property is not on record but as per the dimensions given in the site plan, the entire ground floor is over an area of 40' x 50' i.e about 200 sq. yds. and total covered area cannot be more than 2000 sq. ft. and an area of 2000 sq. ft. cannot be said to be such which would not be required by the two sons of the landlord to carry on their pharmaceutical business which requires storage of pharmaceutical products, especially with the grandson of the landlord also joining the said business. Judicial notice can be taken of the fact that the younger generation, on

joining family business, likes to turn them around and to furnish the premises, which the earlier generations have been using, in a modern way, to make it suitable for them to carry on business therefrom.

19. A perusal of the impugned order shows the learned Additional Rent Controller to have granted leave to defend merely observing as under:-

“It is pertinent to mention here that the petitioner in her reply to the application under consideration (para 5) did not deny the factum either of the belonging of the property no.5777/49 or to the sale of the first and second floor of the same nor there is any denial whether it was sold out 2-3 years back as alleged by the respondent.”

20. The learned Additional Rent Controller did not consider that the tenant had not filed any site plan and had not disputed that the municipal number of the entire property was 5776-5777/49 as was common in earlier times when a staircase and different floors of the same property even were given different municipal numbers and the plea of property no.5777/49 being a different property was of no avail. With respect to the sale by the landlord of the first and second floors and which the counsel for the tenant here also has argued was not disputed, all that can be observed is that the first and second floors cannot be alternate suitable accommodation for the ground floor. Supreme Court in ***Dhannalal*** supra and in ***Uday Shankar Upadhyay Vs. Naveen Maheshwari*** (2010) 1 SCC 503 has taken judicial notice of the fact that the profitability with which business can be carried on from the ground floor cannot be so carried on from the upper floors. Moreover, it is not pleaded that vacant possession of first and second floor was available to the landlord or that the landlord had the same requirement as pleaded now, then also. I have in judgment dated 2nd August, 2017 in RC.Rev. No.352/2017

titled *Lalta Prasad Gupta Vs. Sita Ram* dealt in detail in this respect.

21. The order of the Additional Rent Controller is thus not only found to be contrary to the settled position in law but also found to be against the grain of other orders of the same Additional Rent Controller which have come up before this Roster in the last three months and for which reason I am constrained to observe that the impugned order qualifies as perverse and not in accordance with law within the meaning of Section 25B(8).

22. CM(M) No.248/2017 thus succeeds. The order dated 25th January, 2017 granting leave to defend to the tenant is set aside. The application of the tenant for leave to defend is found to be not disclosing any ground within the meaning of Section 25B(5) which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act and is dismissed.

23. Resultantly, an order of eviction is passed in favour of the landlord and against the tenant, of eviction of the tenant from the premises as described in paras 1,2 & 8 of the petition for eviction and as shown in the site plan filed with the petition for eviction. However, in accordance with Section 14(7) of the Act, the tenant is granted six months' time to vacate the premises.

24. Axiomatically, CM(M) No.771/2017 has become infructuous and is dismissed as such.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 13, 2017

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(Corrected and released on 29th September, 2017).