

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

% **Date of decision: 3rd August, 2017**

+ **RC.REV. No.209/2017, CM No.15909/2017 (for stay), CM No.27407/2017 (under Section 151 CPC) and CM No.27408/2017 (for stay).**

VIRENDER KUMAR & ANR **Petitioners**

Through: Mr. Rajeev Verma, Adv.

Versus

MEENA VERMA & ANR **Respondents**

Through: Mr. J.C. Mahindro, 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 21st November, 2016 in Case No.E-113/15 (New No.78417/16) of the Court of Additional Rent Controller-1 (Central), Tis Hazari Courts, Delhi) of dismissal of the application filed by the petitioners / tenants for leave to defend the petition for eviction filed by the respondent / landlord under Section 14 (1) (e) of the Act and the consequent order of eviction of the petitioner from shop No.1465, Gali Arya Samaj, Bazar Sita Ram, Delhi – 110 006.

2. The petition was entertained and notice thereof issued.

3. The counsels have been heard.

4. The two respondents namely Meena Verma and Gaurav Verma instituted the petition for eviction from which this petition arises, pleading (i) that the petitioners are old tenants at a rent of Rs.275/- per month; (ii) that the respondents are the absolute owner and landlord of the shop in the

tenancy of the petitioners on the basis of registered Will dated 8th September, 1999; (iii) that the respondent no.1 / landlady is aged about 52 years and requires the shop in the tenancy of the petitioners for her *bona fide* need as the respondent no.1 / landlady wants to carry on business of artificial jewellery thereform; (iv) that the respondent no.1 / landlady has been working as sales executive at Shri Ram Hari Ram Jewellers and having experience of more than 25 years in the field of sale and purchase of jewellery; and, (v) that the respondent no.1 / landlady also has liability upon her to maintain her physically retarded daughter aged about 31 years.

5. The petitioners / tenants sought leave to defend pleading (i) that there is no relationship of landlord and tenant between the petitioners on the one hand and respondents on the other hand; (ii) that the petitioners / tenants have never recognised the respondents as landlords at any point of time; (iii) that the respondents are not the owners of the property and the Will produced by the respondents is not a lawful document being ambiguous; (iv) that the site plan filed by the respondents is incorrect and the accommodation available with the respondents has been concealed; (v) that “other portion which is also lying vacant has not been disclosed” by the respondents and there is no explanation why the respondents cannot use the other portion which is lying vacant; (vi) that the shop in the tenancy of the petitioners is not required *bona fide* by the respondents and the respondents simply have a desire and a wish to get an eviction order against the petitioners / tenants; (vii) that the respondents want to convert the property in dispute into a big business complex and want to let out the same on higher prices; (viii) that the petition for eviction filed by the

respondents does not contain the necessary ingredients of Section 14(1)(e); (ix) that the respondents have not come to the Court with clean hands; (x) that the tenancy of the premises was in the name of partnership concern M/s. Praduman Kumar Virender Kumar of the two petitioners; (xi) that the respondent no.1 / landlady is already employed and drawing a handsome salary; and, (xii) denying that the respondent no.1 / landlady wanted to set-up artificial jewellery business.

6. The respondents, in the petition for eviction had shown their residence at B-19, 2nd floor, Gali No.1, Main Market, Shakarpur, Delhi – 110 006. The petitioners / tenants, in their application for leave to defend, do not dispute that the respondents were residing at the said address.

7. The learned Additional Rent Controller, in the impugned order, has found / observed / held, (i) that the respondents had placed on record a copy of the Will executed by Shri Jagdish Prasad Verma, being the father-in-law of the respondent no.1 / landlady and paternal grandfather of the respondent no.2, bequeathing the said shop to the respondents; (ii) that the respondents had also placed on record the Death Certificate of Jagdish Prasad Verma; (iii) that the petitioners / tenants admitted the relationship of landlord and tenant and ownership of Jagdish Prasad Verma; (iii) that the respondents being the legal heirs of Jagdish Prasad Verma had become the landlords and owners by operation of law as well as under the Will copy whereof was filed by the respondents before the Court bequeathing the subject shop in favour of the respondents; (iv) that the respondents had also placed on record counterfoils of the rent receipts issued by the respondents in favour of the petitioners / tenant; (v) that the petitioners /

tenants had only vaguely denied the said counterfoils and had otherwise not filed any proof to state that if the respondents are not the owners, then who else is the owner of the shop admittedly in the tenancy of the petitioners; (vi) thus the existence of relationship of landlord and tenant and ownership stood duly proved; (vii) that the respondent no.1 / landlady cannot be forced to continue doing job as sales executive when she wants to start her own independent business of sale and purchase of artificial jewellery; (viii) the petitioners being merely tenants cannot dictate terms to the respondents; reliance was placed on *Aero Traders Pvt. Ltd. Vs. Mohan Singh* 2014 (140) DRJ 560 holding that no experience is required to start a new business if a landlord wants to start his own business in the premises owned by him that by no stretch of imagination it can be said that the requirement of the landlord is not *bona fide* or not genuine; and, (ix) that the averment, in the application for leave to defend, of the respondents having other accommodation with them, were vague and the petitioners / tenants had neither filed any site plan of their own nor given any particulars of other accommodation available to the respondents.

8. The counsel for the petitioners / tenants has in Court handed over a copy of the legal notice dated 8th June, 2012 got sent by the respondents to the petitioners / tenants and wherein the respondents had notified the petitioners / tenants that Anup Kumar Verma has no authority to recover rent from the petitioners / tenants inasmuch as Jagdish Prasad Verma had not authorised Anup Kumar Verma in this regard and after the demise of Jagdish Prasad Verma the said shops had come to the share of the respondents.

9. The counsel for the petitioners / tenants, on enquiry, admits that the shop was let out to the petitioners by Jagdish Prasad Verma and that Jagdish Prasad Verma was the owner of the property in which the shop in tenancy of petitioners / tenants is situated and that the respondent no.1 is the widow of predeceased son of Jagdish Prasad Verma and the respondent no.2 is the son of the said predeceased son of Jagdish Prasad Verma.

10. I have enquired from the counsel for the petitioners / tenants, whether not the respondents, as such, according to the petitioners / tenants also are admittedly co-owners.

11. The counsel for the petitioners / tenants agrees.

12. Once the respondents are admitted to be the co-owners, it is the settled principle in law (See *Vijay Kumar Vs. Nafis Ul Arfin* MANU/DE/1954/2017) that a co-owner is entitled to maintain a petition for eviction under Section 14(1)(e) of the Act.

13. As far as the relationship of landlord and tenant is concerned, the counsel for the petitioners / tenants has during his arguments stated that since 2012 no one has come forward to receive the rent of the shop in the tenancy of the petitioners and has vaguely stated that other heirs of Jagdish Prasad Verma have also been approaching the petitioners / tenants. It is also argued that though the respondents placed on the file of the Additional Rent Controller counterfoil of the rent receipts purportedly issued by the respondents to the petitioners and bearing the signatures of the petitioners / tenants but the petitioners / tenants in their leave to defend application denied their signatures on the counterfoil and the said receipts

have been fabricated by the respondents. It is yet further argued that the petitioners / tenants had never paid the rent and the respondents have never issued rent receipt to the petitioners / tenants.

14. The counsel for the respondents states that the petitioners / tenants along with this petition have not filed copy of the registered Will of Jagdish Prasad Verma as per which the shop in tenancy of petitioners / tenants as also two adjoining shops on the ground floor of the property, as shown in the site plan at page 54 of the paper book have been bequeathed to the respondents. A copy of the said Will (in Hindi) has been handed over in the Court and as per which, Jagdish Prasad Verma has bequeathed the property in a shop, on the ground floor of which the petitioners are tenants to the respondents and to his son Anup Kumar Verma, with the shop in the tenancy of the petitioners and the two adjoining shops bearing no. 1463 and 1466 on the ground floor having been bequeathed to the two respondents and the upper floors which are residential being bequeathed to Anup Kumar Verma. It is also explained that Jagdish Prasad Verma, in his lifetime asked Anup Kumar Verma to receive rent on his behalf from the petitioners / tenants and Jagdish Prasad Verma died on 19th December, 2012 (it is informed that the husband and father of the respondent no.1 and respondent no.2 respectively died on 2nd March, 1988) and the occasion for the notice, copy of which is handed over, was in the said factual context. It is reiterated that the petitioners / tenants have paid rent to the respondents and of which receipt was issued.

15. As aforesaid, according to the petitioners / tenants also, the respondents are the co-owners of the shop in the tenancy of the

petitioners. From the factum of none including Anup Kumar Verma having come forward to receive rent from the petitioners / tenants since the year 2012 as stated by the counsel for the petitioners / tenants also, it is quite evident that Anup Kumar Verma or any other natural heir of Jagdish Prasad Verma is not asserting any rights contrary to the Will aforesaid propounded by the respondents. In this light of the matter the facts concerning ownership and relationship of landlord and tenant disclosed in the application for leave to defend are not found to be such which for adjudication are required to be put to trial or in which trial the petitioners / tenants have any chance of having the petition for eviction dismissed.

16. With respect to the aspect of *bona fide* requirement, the counsel for the petitioners / tenants has contended that the respondent no.1 / landlady is admittedly working for the last 25 years with Shri Ram Hari Ram Jewellers and there is nothing to show that she will leave the said job or set-up her business in the shop in the tenancy of the petitioners. It is stated that only if the respondent no.1 / landlady quits her job could it have been known that the respondent no.1 / landlady had any such intention as pleaded. Reliance in this regard is placed on a judgment dated 4th October, 2013 of a Co-ordinate Bench of this Court in RC. Rev. No.94/2012 titled ***Anil Kumar Sharma Vs. Kamlesh Bhatnagar***.

17. I may in this regard notice that the Additional Rent Controller has in the impugned order itself referred to ***Aero Traders Pvt. Ltd. Vs. Mohan Singh*** supra and qua which no argument has been raised.

18. I have otherwise enquired from the counsel for the petitioners / tenants, that if he is to put up a notice in his office that he is to retire or stop working after one year, can he expect any clients to entrust their cases to him.

19. No reply has been forthcoming.

20. Rent statutes deal with human beings and human requirement and have to be adjudicated upon in a human way. The respondent no.1 / landlady has pleaded and which is not in dispute, that she has a handicapped daughter aged 31 years to support. The respondent no.1 / landlady has in the petition for eviction further pleaded, and which also is not controverted, that she has for the last 25 years been employed as a sales executive in the shop of Shri Ram Hari Ram Jewellers. The respondent no.1 / landlady cannot be expected to, before filing a petition for eviction, leave her job, depriving her of her source of income and to await the decision of the petition for eviction. The petitioners / tenants have in the application for leave to defend not disclosed any other source of income of the respondent no.1 / landlady from which, before making such argument, the respondent no.1 / landlady can be argued to sustain herself after leaving her job and awaiting the eviction of tenants. No merit is thus found in the said contention either.

21. As far as the reference to *Anil Kumar Sharma* supra is concerned, it cannot be lost sight of that each case has to be decided and the aspects of requirement to be judged in the light of the peculiar facts of each landlord. The facts concerning the respondent no.1 / landlady do not

permit the respondent no.1 / landlady to be able to demonstrate her intention to commence her business by first leaving her job.

22. Rather, I have in this context wondered, as to what purpose trial also will serve. At present, the respondent no.1 / landlady in her affidavit in support of the petition for eviction has pleaded her such intent. In trial, the respondent no.1 / landlady would state so on affidavit by way of examination-in-chief. The cross-examination on the said aspect can be only of challenging the intent and nothing more. If at that stage also, the intent of the landlady is to be accepted, as is settled in a number of judgments, then I fail to see how the bare denial by the petitioners / tenants of the intent of the respondent no.1 / landlady can be said to be such so as to defeat the petition for eviction after trial.

23. During the course of hearing the counsel for the respondents has also informed that the respondent no.1 / landlady, besides the son respondent no.2 and one handicapped daughter, has two other daughters of whom one is already married.

24. The counsel for the petitioners / tenants now, during the hearing, though it is not so pleaded in the application for leave to defend, states that the respondent no.1 / landlady, besides the shop in the tenancy of the petitioners, has two adjoining shops also and the requirement can be satisfied therefrom.

25. I may in this regard notice that the order of eviction obtained by the respondents with respect to another shop, being shop no.1466, is subject matter of RC.Rev. No.265/2017 also listed today and the counsel for the

respondents states that a petition for eviction has also been filed against the tenant of shop no.1464 and which is pending consideration.

26. A perusal of the site plan shows the dimensions of each shop to be 10' 6''x 6'' 10'. Thus the shop in the tenancy of the petitioners as also the two adjoining shops bequeathed to the respondents *ad measure* about 60 sq. ft. and which is less than the minimum habitable space of 100 sq. ft. prescribed under the Building Bye Laws applicable to the city.

27. The counsel for the respondents has informed that in the petitions for eviction against the tenants in the other two shops, the requirement of the respondent no.2 and of another daughter of the respondent no.1 / landlady has been pleaded.

28. I have already observed above that the petitioners / tenants did not even take any such ground in the application for leave to defend, as has been urged today for the first time.

29. I have otherwise gone through the record and am satisfied that the order of eviction of the petitioners is in accordance with law within the meaning of Section 25B(5) of the Rent Act.

30. No merit is also found in the other contentions of the petitioners / tenants as recorded above viz., of the respondents in the petition for eviction having not pleaded the full ingredients or having not given any other particulars including of the adjoining shops. The procedure prescribed under Section 25B of the Rent Act requires the tenants to disclose the facts which if proved during trial would disentitle the landlord from an order of eviction. The application for leave to defend filed by the petitioners / tenants in the present case does not disclose any facts and

merely denies the contents of the petition. Leave to defend cannot be obtained by putting landlord to proof of each and every averment in the petition for eviction and without disclosing the facts as to disentitle the landlord. It was thus for the petitioners / tenants to plead the alternate suitable accommodation if any available or as to what ingredients were lacking and neither of which was done. The plea, of the tenancy being of partnership firm of the two petitioners / tenants and not of petitioners / tenants individually, is also not such as to deprive the respondents from an order of eviction under Section 14(1)(e). The pleas, of respondents / landlords wanting to reconstruct and re-let at higher rent, of incorrectness of site plan, the respondents having mere desire and not requirement are vague. Neither has any site plan of own been filed nor has any reason for which respondent no.1 will not carry on own business been pleaded.

31. There is thus no merit in the petition.

32. Dismissed.

33. The time, within which the petitioners / tenants were to vacate the tenancy premises has expired on 21st May, 2017 and the petitioners / tenants have enjoyed protection from eviction under order of this Court. The petitioners / tenants are liable to compensate the respondents with *mesne* profits at the rate of prevalent letting value, w.e.f. 21st May, 2017 till delivery of possession.

34. The counsel for the petitioners / tenants states that the prevalent letting out value is Rs.4,000/- to 5,000/- per month.

35. The counsel for the respondents states that the prevalent letting value is Rs.8,000/- to 9,000/- per month.

36. Notice can be taken of the fact that both parties have a tendency to exaggerate in such situations.

37. Accordingly, the petitioners / tenants are directed to pay the respondents / landlords *mesne* profits / damages for use and occupation @ Rs.7,500/- per month w.e.f. 22nd May, 2017 till the date of delivery of possession and which amounts shall also be recoverable by the respondents, if not paid, in execution of the order of eviction.

No costs.

AUGUST 03, 2017
'pp'

RAJIV SAHAI ENDLAW, J

