

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

% **Date of decision: 28th July, 2017**

+ **RC.REV. No.301/2016, CMNo.20843/2016, CM No.20581/2017 and CM.No.26648/2017 (u/S 151 CPC).**

CHAMAN LAL NAYYAR

.... Petitioner

Through: Mr. K.C. Mittal, Mr. Amit
Prakash Shahi and Ms. Ruchika
Mittal, Advs.

Versus

DAYA CHAND

.....Respondent

Through: Mr. Ramkishan Saini, 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 1st February, 2016 in E No.109/08 of the Court of Additional Rent Controller (South), Saket Courts, New Delhi) of eviction, after full trial, of the petitioner/tenant from shop situated on the ground floor of property bearing Private No.1, forming part of the property bearing Municipal No.1865-A, Ram Lal Asha Ram Market, Opposite Dharam Bhawan, Kotla Mubarakpur, New Delhi, in a petition for eviction filed by the respondent/landlord under Section 14(1)(e) of the Delhi Rent Control Act.

2. This petition was entertained and notice thereof ordered to be issued and Trial Court record requisitioned and vide order dated 27th May, 2016 the execution of the order of eviction was stayed.

3. The matter was listed on 21st July, 2017 when adjournment was sought on behalf of the counsel for the petitioner/tenant; observing that the petitioner/tenant, after obtaining stay of the order of eviction could not avoid hearing, the interim order was vacated and the petition posted for

hearing on 11th December, 2017. The petitioner/tenant has filed CM.No.26648/2017 for restoration of the interim order and which has come up today. The counsel for the respondent/landlord appears on advance notice and with the consent of the counsels, the Rent Control Revision Petition itself is taken up for hearing today. Resultantly the date of 11th December, 2017 is cancelled.

4. The counsels have been heard.

5. The counsel for the petitioner/tenant, during his arguments, has not disputed that the respondent/landlord is the owner of the premises in the tenancy of the petitioner and that there is a relationship of landlord and tenant between the petitioner and the respondent. Thus the discussion hereinafter will be confined to the aspects of, whether the respondent/landlord bona fide requires the shop in the tenancy of the petitioner/tenant and whether the respondent/landlord has any other alternate suitable premises available to him to fulfil his requirement.

6. Before discussing the said aspect, another argument of the counsel for the petitioner/tenant may be taken note of.

7. It is argued that the premises in tenancy of the petitioner was let out to the petitioner by the father of the respondent/landlord decades ago and the petitioner has been carrying on his business therefrom and should not be dispossessed.

8. The aforesaid argument is of no relevance to the adjudication. The Delhi Rent Act does not contain a concept of comparative hardship and the mere fact that the petitioner has been a tenant in the shop for over half a century, paying a meagre rent of Rs.100 per month, would not disentitle the respondent/landlord if a ground of eviction under the proviso to sub-Section (1) of Section 14 of the Rent Act has accrued to him, from evicting the petitioner. Under the Rent Act, the protection of the petitioner from

eviction, notwithstanding a contract or any other law to the contrary, is subject to right of the landlord to claim eviction if the Controller is satisfied of a ground of eviction having accrued.

9. The requirement pleaded by the respondent/landlord in the petition for eviction filed over nine years back in the year 2008 is (i) that the respondent/landlord was working in Northern Regional Power Committee and retired on 31st July, 2006 and after retirement became jobless and without any activity resulting in sickness and disturbance of peace of mind and with a meagre pension of approximately Rs.5000/- per month which is not sufficient to meet the requirement of the respondent / landlord and his family members; (ii) that the respondent/landlord with the assistance of his three sons Mahesh, Sanjay and Neeraj wants to do business in the shop in the tenancy of the petitioner; (iii) that the subject shop is situated in a market place where the shops of various types like upholstery, furniture accessories, electric goods, sanitary goods, rubber pipes, hardware items etc. are situated and the respondent wants to carry on business of electric goods/hardware or some other business which may be suitable to him.

10. The petitioner/tenant contested the petition for eviction pleading –

- (i) that the respondent/landlord, two months prior to the filing of the petition for eviction, had sold another shop bearing Private Shop No.3 adjoining the shop subject matter of the petition to one Devender Kumar and which showed that the respondent/landlord had no need; there is no change of circumstance in the said two months;
- (ii) that the respondent / landlord had suitable alternative accommodation in his possession in the back of the suit premises and which could be utilized for shops as the said street also had many commercial shops;

- (iii) that the respondent/landlord post his retirement had been gainfully working as Insurance Advisor of Life Insurance Corporation of India and earning handsomely from the said job;
- (iv) that one of the sons of the respondent/landlord namely Mahesh was married and having independent house and independent earning;
- (v) the other son of the respondent/landlord namely Sanjay was gainfully employed with M/s CMS Secodas Ltd., New Delhi and was also married, independent and separate from the respondent/landlord.
- vi) the third son of the respondent/landlord namely Neeraj was also employed gainfully with Rashtriya Sahara Print Media Ltd., New Delhi; and,
- vii denying that the respondent/landlord required the premises in the tenancy of the petitioner/tenant.

11. The Additional Rent Controller, on the basis of the evidence led, has found /observed/held:-

- (i) that from the ration card and election card it stood proved that the respondent/landlord and sons were having common residence;
- (ii) that the sale of the shop bearing Private No.3 to Devender Kumar was in terms of decree of partition between the respondent/landlord and his brother wherein the property in which the shop in tenancy of the petitioner is situated was divided between the respondent/landlord and his brother and the shop No. 3 was ordered to be sold and consideration

thereof distributed to balance the shares of the respondent/landlord and his brother;

- (iii) that the respondent/landlord and his son Mahesh deposed that Mahesh is unemployed and the petitioner/tenant had not placed anything to show that Mahesh was employed anywhere;
- (iv) on the contrary, the suggestions given by the petitioner/tenant to Mahesh in cross-examination, of his working in Axis Bank and ABN Amro Bank were denied and showed that the petitioner / tenant was taking inconsistent stand about employment of Mahesh;
- (v) the petitioner /tenant had also failed to prove any earning of the respondent/landlord from LIC;
- (vi) that though the property No. 1865-A (in which the shop in the tenancy of the petitioner/tenant is situated) also opens on street in the rear but the rear portion could not be used for commercial purposes;
- (vii) that it is not as if shop No.3 which was sold as aforesaid was in use of the respondent/landlord or his sons at any time before being sold; the same, during the pendency of the partition suit between the respondent/landlord and his brother, was lying closed;
- (viii) that the witness of the petitioner/tenant admitted that property No.1865-A in which the shop in the tenancy of petitioner / tenant is situated, had no opening from the Dharam Bhawan Road on the rear side and that rear side has the opening from Basti Ravidas only; and,

- (ix) that the petitioner/tenant has failed to prove that there was any commercial activity in other properties in the street at the rear of the subject property.

12. The counsel for the petitioner/tenant has argued:

- (a) that the respondent/landlord has never carried on any business;
- (b) that the respondent/landlord, in the replication, did not specifically reply to the averments in the written statement amounting to admission;
- (c) that though in the petition it was stated that the respondent/landlord was getting pension of Rs.5000/- per month but in evidence the pension was disclosed to be Rs.8000/- per month;
- (d) that Mahesh, son of the respondent/landlord is 38 years of age and it is unbelievable that he is unemployed;
- (e) that the respondent/landlord, in the petition for eviction, concealed the employment status of his other two sons;
- (f) that the sale of the adjoining shop shortly before the filing of the petition for eviction shows that there was no need of the respondent/landlord for commercial premises;
- (g) that the respondent / landlord had rental income from the rear portion of the property No.1865-A which has been reconstructed by the respondent/landlord.

Attention was drawn to the cross examination of the respondent/landlord recorded on 30th March, 2011 where the respondent/landlord has admitted that property No.1865-A is open from two sides.

13. Per contra, the counsel for the respondent/landlord has argued that the petitioner/tenant in his cross examination admitted that the respondent/landlord and his sons were living jointly and that the one of the

sons of the respondent was unemployed. Attention was invited to the decree in suit for partition between the respondent/landlord and his brother wherein the husband of the sister of the respondent/landlord was authorised to sell shop No.3 and the respondent/landlord and his brother were only to sign the sale deed in favour of the purchaser so identified by their sister; it is argued that the sister of the respondent/landlord and his brother also had a share in the property and was, in the partition, not given any share in the property as the sale proceeds of the said shop No.3 were to be received by the sister.

14. I have considered the rival contentions.

15. The scope of interference in exercise of powers under Section 25B(8) of the Act is limited as defined in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 and *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh* (2014) 9 SCC 78.

16. The Trial court record has thus been scrutinized within the said limit.

17. What stands proved is, (i) that the respondent/landlord though earlier in Government Service has retired and has a pension of Rs.8000/- per month; (ii) the family of the respondent/landlord comprises of his three sons and their respective families and which sons of the respondent/landlord are dependent upon the respondent/landlord for accommodation; (iii) that one of the sons of the respondent/landlord namely Mahesh is unemployed; (iv) the respondent/landlord and his sons have deposed that they intend to commence their business of hardware from the shop in the tenancy of the petitioner; (v) the respondent/landlord and his son Mahesh are not having any other vocation; (vi) that no other alternative / suitable accommodation to commence the said business is available to the respondent/landlord; (vii) the rear portion of the property, even if capable of being used for commercial purposes, would not have as much commercial value as the shop in the tenancy of the petitioner/tenant in front, in the market area.

18. It has been held in *Raghunath G. Panhale Vs. Chaganlal Sundarji & Co.* (1999) 8 SCC 1, *Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde* (1999) 4 SCC 1, *Mohinder Prasad Jain Vs. Manohar Lal Jain* (2006) 2 SCC 724, *Shamshad Ahmad Vs. Tilak Raj Bajaj* (2008) 9 SCC 1 and *Ram Babu Agarwal Vs. Jay Kishan Das* (2010) 1 SCC 164 that when a landlord expresses a desire to commence business from the premises earlier let out by him, his said desire cannot be disbelieved for the reason of his having not carried on any business till then.

19. Nothing has come on record which would show that the intent of the respondent/landlord and his son Mahesh, deposed on oath, is not to be believed. It is not as if they do not have the resources to commence business. The counsel for the petitioner/tenant himself repeatedly argued that the respondent/landlord is well off. Even otherwise it has been held in *Mattulal Vs. Radhe Lal* (1974) 2 SCC 365 that litigation in India takes a long time in reaching final conclusion and then also it is uncertain as to how it will end and with that result, unless the landlord could be reasonably sure that he would, within a short time be able to recover possession and start business therefrom, it would be too much to expect from him that he should make preparations for starting new business—it would be foolish to make arrangements and make investments in capital and obtain permissions required when the landlord does not know whether he will ultimately succeed in the litigation and after how many years. In *Raghunath G. Panhale* supra also, it was held that it is not necessary for the landlord to adduce evidence that he had money in deposit in a bank nor proof of funds to prove his readiness and willingness, as required in a suit for specific performance.

20. The factum of the respondent/landlord and his sons having not carried on any business cannot also be said to be a ground for disbelieving

the intent deposed by the respondent/landlord and his son. The respondent/landlord was in Government employment till the year 2006. The employment of the respondent/landlord does not appear to be such to make the Court doubt that he would not become a shopkeeper. Same is the position of the respondent/landlord's son Mahesh.

21. The respondent/landlord and his sons are residing in Kotla Mubarakpur only. The property earlier belonged to the father of the respondent/landlord and after the death of the father of the respondent/landlord, it was jointly owned by the respondent / landlord, his brother and sister; neither the respondent/landlord nor any of his sons could be expected to commence their business using any part thereof without the consent of the other owners of the property; the need to carry on business was expressed soon after the property was partitioned and the respondent/landlord became the exclusive owner of the shop in the tenancy of the petitioner/tenant.

22. As far back as in *C.L. Davar Vs. Amar Nath Kapur* MANU/PH/0327/1962 it was held that the meaning of the word "dependent" cannot be construed as meaning nothing but wholly dependent in the sense of not earning anything at all and being entirely dependent for boarding, lodging and food. It was held that the term must be construed as meaning somebody not wholly independent or self supporting and in a position to set up a separate residence. It was yet further held that dependence may not in all circumstances be entirely a matter of finance. Again in *J.L. Mehta Vs. Hira Devi* (1970) 6 DLT 484 it was held that what constitutes a family in a particular society depends upon the habits and ideas of persons constituting that society and the religious and socio religious customs of the community to which such persons may belong. It was thus held that the requirement of the family of the brother of the

landlord residing with the landlord would also be the requirement of the landlord. It was further held that the requirement of the landlord “himself” cannot be considered by excluding the requirement of other persons with whom the landlord is habituated to residing as a family. To the same effect is the judgment of the Division Bench of this Court in **Gobind Dass Vs. Kuldip Singh** ILR (1970) I Delhi 585. Supreme Court in **Joginder Pal Vs. Naval Kishore Behal** (2002) 5 SCC 397 approved of the view taken in **J.L. Mehta** supra as well as in **Krishna Devi Vs. Parmeshwari Devi** (1977) 2 RCJ 529 where requirement of the family of the married daughter was also considered as requirement of the landlady. It was further held that the words “for his own use” cannot be construed narrowly. Again, in **Kailash Chand Vs. Dharam Das** (2005) 5 SCC 375 it was held that the expression “his own occupation” has to be liberally construed and given a practical meaning and does not mean occupation by the landlord himself only. Recently in **Bhupinder Singh Bawa Vs. Asha Devi** (2016) 10 SCC 209 also the requirement of premises for the business of the son already engaged in some other business was held to be the requirement of the landlord. Reference in this regard may also be made to my judgment dated 17th July, 2017 in RC. Rev. No.315/2017 titled **Asha Sawhney Vs. Kamini Gupta** and to **Anil Kumar Gupta Vs. Deepika Verma** (224) 2015 DLT 473 and **Labhu Lal Vs. Sandhya Gupta** (2010) 119 DRJ 599. The latter two were also cases of requirement of the daughter-in-law residing with the mother-in-law. Mention may also be made of **M/s. Jhalani Tools (India) Pvt. Ltd. Vs. B.K. Soni** AIR 1994 Del 167 and **Santosh Kumari Mehra Vs. Om Prakash** (2015) 221 DLT 578 (SLP (C) No.20970/2015 preferred whereagainst was dismissed on 15th January, 2016), both of which were cases of requirement for financially independent sons and grand children of the landlord.

23. I am therefore satisfied that the findings of the Additional Rent Controller of the respondent/landlord having established that he bona fide requires the shop in the tenancy of the petitioner and that the respondent/landlord has no other alternate/suitable accommodation is in accordance with law and do not require any interference in exercise of power under Section 25B(8).

24. As far as the contention of the counsel for the petitioner/tenant qua suppression of employment of sons from the petition for eviction is concerned, the same, after full trial, loses relevance. I have recently in *Sunil Kumar Goyal Vs. Harbans Singh* 2017 SCC OnLine Del 9289, relying on *Bhairab Chandra Nandan Vs Ranadhir Chandra Dutta* (1988) 1 SCC 383, *M.L. Prabhakar Vs. Rajiv Singhal* (2001) 2 SCC 355 and *Harbant Singh Vs. Vinod Sikari* 189 (2012) DLT 215, held so.

25. Another argument of the counsel for the petitioner is that the respondent/landlord did not file the correct site plan as “shop Nos. 1 and 2 had been merged and become one unit and shop No.1 does not exists.” It is stated that the petitioner/tenant has placed the correct site plan on record. It is further submitted that the respondent/landlord in his cross examination admitted that the wall between the two shops had been demolished. It is argued that this also amounts to concealment of an important and relevant fact and since the respondent/landlord is seeking eviction from shop No.1 which comprises of erstwhile shop Nos. 1 and 2, order of eviction cannot be passed.

26. I am unable to understand the purport of the said contention. It is not in dispute that in the site plan filed by the respondent/landlord alongwith the petition for eviction, as required by the Delhi Rent Control Rule 1959, shows the entire shop in the tenancy and occupation of the petitioner. It is thus not as if the petition for eviction is for part of the shop in the tenancy

of the petitioner. The only plea is that the shop now in tenancy and occupation of the petitioner earlier comprised of two separate shops which were merged. However the petitioner / tenant in his cross-examination has admitted that the tenancy is one. Thus it matters not that the respondent/landlord in the petition for eviction has described the shop in the tenancy of the petitioner as shop No.1 instead of as shops No. 1 and 2. It may not be lost sight of that these numbers are not municipal numbers but private numbers. When there were two separate shops, they were called shops No. 1 and 2 but after their merger into one, description of the shop as private No.1 cannot be said to be making the petition for eviction for partial eviction. The argument is totally misconceived.

There is thus no merit in the petition.

Dismissed.

27. The order dated 27th May, 2016, of stay of the order of eviction was subject to the payment by the petitioner/tenant of use and occupation charges at the prevalent rate, which was left to be determined. The respondent/landlord has filed CM.No.20581/2017 annexing thereto a lease deed of another shop at a rent of Rs.45000/- per month and seeks use and occupation charges w.e.f. 1st August, 2016 at the said rate as a condition for stay of the order of eviction enjoyed by the petitioner/tenant.

28. The petitioner/tenant has not placed any document to show the prevalent rent; however the counsel for the petitioner/tenant states that the petitioner has been paying rent of Rs.100/- per month and the prevalent rent would be Rs.1000 per month. However the counsel for the petitioner, on being offered that the respondent/landlord would compensate the petitioner/tenant with the rent of Rs.1000/- per month, if the petitioner/tenant agrees to vacate the premises, is not agreeable thereto showing the falsity of the stand taken. Even otherwise judicial notice can

be taken of the fact that no shop in a commercial market is available at a rent of Rs.1000/- per month. The counsel for the petitioner admits that the rate of rent of Rs.100 per month was fixed prior to the year 1972 i.e. nearly 45 years ago and on the basis thereof it cannot be said that the rent today would not be more than Rs.1000/- per month. the Division Bench of this Court in ***Raghunandan Saran Ashok Saran (HUF) Vs. Union of India*** (2002) 95 DLT 508 found buying capacity of Rs.2.97 paise of 1939 to be equivalent to Rs.229.59 paise of 1998 or, Rs.229.59 paise of 1998 to be having value equivalent to Rs.2.97 paise of 1939.

29. Considering the lease deed filed by the respondent/landlord and judicial notice of the prevalent rents, the amount payable by the petitioner/tenant to the respondent/landlord for enjoying stay of the order of eviction from this Court is fixed at Rs.25000/- per month.

30. The petitioner / tenant is directed to pay to the respondent/landlord a sum computed at the rate of Rs.25000/- per month w.e.f. 1st August, 2016 till the date of delivery of possession which amount if not paid would be recoverable as a money decree from the petitioner/tenant.

The petitioner is also burdened with costs of this petition of Rs.30,000/-.

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RAJIV SAHAI ENDLAW, J.

JULY 28, 2017

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(Corrected & released on 6th October, 2017)