

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

% **Date of decision: 17th August, 2017.**

+ **RC.REV. 278/2016 & CM No.18982/2016 (for stay)**

AMBA PRASAD JADAVJEE & CO. AND ANR Petitioners

Through: Mr. C.L. Sachdeva, Ms. Priyam Mehta
and Ms. Garima Sachdeva, Advs.

Versus

RAJESH DHINGRA

..... Respondent

Through: Mr. Ravinder Kumar Yadav and Ms.
Arti Anupriya, Advs.

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 16th February, 2016 in E No.267/2014 UID No.02401C0586582014 of the Court of Additional Rent Controller (ARC)-1 (Central), Tis Hazari Courts, Delhi] of dismissal of the application of the petitioners for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent/landlord and the consequent order of eviction of the petitioners from property bearing No.183, First Floor, Tilak Bazar, Khari Baoli, Delhi-110006 in the tenancy of the petitioners for decades, at a rent of Rs.103/- per month.
2. The petition was entertained and notice thereof ordered to be issued and the counsel for the respondent/landlord who appeared on caveat stated that he will not execute the order of eviction during the pendency of the petition. The Trial Court record has been requisitioned. The counsels for the parties have been heard.

3. The counsel for the two petitioners (it is the plea of the respondent/landlord that it is only the petitioner No.1 who is the tenant and the petitioner No.2 is the illegal unauthorised sub-lettee) on enquiry states that the petitioners/tenants do not controvert that the respondent is the owner of the premises in the tenancy of the petitioners/tenants and that the relationship of landlord and tenant exists between the parties. The counsel for the petitioners/tenants states that the petitioners/tenants however controvert that the respondent/landlord *bona fide* requires the premises in the tenancy of the petitioners or that the respondent/landlord has no other alternate suitable accommodation available to him.

4. The respondent/landlord instituted the petition for eviction *inter alia* pleading (i) that he had acquired the premises in the tenancy of the petitioners vide Sale Deed dated 25th March, 1996; (ii) that the respondent/landlord required the premises in the tenancy of the petitioners for his business needs and for self use of himself and his dependent family members; (iii) that the space available to the respondent/landlord and his family is insufficient and they are in great hardship due to shortage of space; (iv) that the respondent/landlord was in the business of lace trading and was then operating from home; (v) that the daughter of the respondent/landlord was unmarried and was of growing age and the space available “for her also” is insufficient due to operation of business from home; (vi) that the respondent/landlord and his daughter wanted to start a new set-up of business of lace trading and required the premises in the tenancy of the petitioners therefor; and, (vii) that the respondent/landlord had no other alternate accommodation available to him.

5. The counsel for the petitioners/tenants has argued (a) that the Sale Deed dated 25th March, 1996 vide which the respondent/landlord claims to have acquired the premises in the tenancy of the petitioners is not only of property No.183 but of properties No.183 to 187; (b) that it was the plea of the petitioners/tenants that property No.184 had been let out by the respondent/landlord to one Neeraj Gupta; (c) that the respondent/landlord in reply to the application for leave to defend pleaded having sold the property No.184 to Neeraj Gupta; (d) however no sale deed of the said property No.184 has been filed till now; (e) that though before this Court also, time was sought by the respondent/landlord for filing reply but no reply to this Rent Control Revision Petition has been filed; (f) that it was also the plea of the petitioners/tenants that property No.185 is available to the respondent/landlord; (g) that the respondent/landlord claims his brother Pradeep Dhingra and brother's son Saurav Dhingra to be carrying on business from property No.185; (h) that the respondent/landlord has till date not disclosed the right under which the brother and brother's son of the respondent/landlord are in use and occupation of property No.185; (i) that what emerges is that the brother and brother's son of the respondent/landlord are in use and occupation of property No.185 without any right and on the contrary, the petitioners/tenants have title to property No.183 as tenants and the requirement of the respondent/landlord, if any, should be fulfilled by the respondent/landlord by removing his brother and brother's son from property No.185 and not by evicting the petitioners/tenants; (j) that the respondent/landlord himself has filed deed of partition of Kirti Nagar house where the respondent/landlord is residing, between himself and his brother and after the partition, brother and brother's son cannot be allowed to occupy

property No.185 and the petitioners/tenants evicted from property No.183 on the ground of requirement; (k) that the requirement pleaded of the premises in the tenancy of the petitioners is for setting up of the business of the daughter but there are no particulars given of the daughter and the said aspects have to be put to trial; (l) that the requirement pleaded is thus for additional accommodation and the petitioners/tenants are entitled to leave to defend on the said ground also.

6. Though the counsel for the petitioners/tenants also attempted to make arguments with respect to properties no.186 & 187 but on pointed query, whether any pleas qua them are contained in the application for leave to defend, fairly stated that the petitioners/tenants in the leave to defend application have not disclosed any facts qua properties No.186 & 187. Once that is so, the petitioners/tenants, in this Revision Petition under Section 25B(8) of the Act, cannot be permitted to argue beyond the scope of their leave to defend. This Court cannot convert itself into a Court of original jurisdiction i.e. of a Rent Controller, to consider for the first time, pleas on which there is no adjudication by the Rent Controller. The scope of jurisdiction under Section 25B(8) is limited to satisfying that the order made by the Rent Controller is in accordance with law. What has been held in ***Dewan Daulat Rai Kapur Vs. R. Chatha Ram*** (1986) 30 DLT 364 and ***Montford Brothers of St. Gabriel Vs. United India Insurance*** (2014) 3 SCC 394 qua Article 227 of Constitution of India, that the jurisdiction thereunder cannot be converted into original jurisdiction, to decide the issue for the first time without any decision thereon by the Court/Tribunal over whom supervisory jurisdiction is exercised, would in my view apply to Section 25B(8) also.

7. Though the counsel for the petitioners/tenants has argued as aforesaid but on perusal of the records, I find the respondent/landlord in reply to the application for leave to defend and in the counter affidavit accompanying the same, qua property No.184 having pleaded (I) that property No.184 is owned by one Neeraj Gupta and Kamlesh Gupta and Neeraj Gupta is doing business in the name and style of Bharat Chemicals Marketing; (II) that Neeraj Gupta had purchased property No.184 vide Sale Deed having registration No.4658, Additional Book No.1, Volume 2616 at pages 78 to 83 on 23rd June, 2008. The respondent/landlord along with the said reply also filed as Annexure-P-3, the photograph of property No.184 showing the trade name thereon of Bharat Chemical Marketing.

8. I have also perused the rejoinder filed by the petitioners/tenants to the aforesaid reply. Though the petitioners/tenants having been furnished the registration particulars of the Sale Deed in favour of Neeraj Gupta, could have obtained certified copy thereof from the Sub-Registrar of documents with which it was registered, but before this Court the argument is being made, of the respondent/landlord having suppressed the Sale Deed. With respect to the said Sale Deed, in the said rejoinder, it was merely stated that the said facts were not disclosed by anyone to the petitioners/tenants. Else, the factum of the sale to Neeraj Gupta was not disclosed.

9. I may also highlight that the petitioners/tenants in their application for leave to defend though pleaded property No.184 to be let out to Neeraj Gupta, did not give the date of letting. It was not their plea that the said letting to Neeraj Gupta was in the recent past or after the requirement pleading which the eviction of the petitioners/tenants was sought, had arisen.

10. What falls for consideration is, whether such a plea with respect to property No.184 constitutes facts which would disentitle the respondent/landlord from an order of eviction under Section 14(1)(e) of the Act within the meaning of Section 25(5) of the Act.

11. The answer in accordance with the settled principle of law has to be No.

12. Merely because the landlord, six years earlier had let out or sold a property cannot entitle the tenant to leave to defend the petition for eviction on ground of requirement for accommodation, which has arisen subsequently. The respondent/landlord in the present case has pleaded requirement for premises in tenancy of petitioners pleading need to shift his business from home to a separate premises owing to growing age of his daughter. The petitioners/tenants have not pleaded that property No.184, prior to letting/sale thereof to Neeraj Gupta was in possession of respondent/landlord or that the respondent/landlord then also had the same requirement. Six years is a long time in the growth of a child, with the child transforming into an adult and the need for privacy etc. may change in that time. It cannot also be lost sight of that prior to the pronouncement on 16th April, 2008 of *Satyawati Sharma Vs. Union of India* (2008) 5 SCC 287, it was not possible for a landlord in Delhi to evict a tenant in commercial premises or who was let out premises for purposes other than residential on the ground of self-requirement. Thus, letting/sale of property No.184 cannot disentitle the respondent/landlord from an order of eviction under Section 14(1)(e).

13. I have also wondered, what purpose grant of leave to defend or consequent trial would serve when thereafter also, the effect of aforesaid undisputed facts is to be adjudicated. The counsel for the petitioners/tenants has been unable to state as to what purpose grant of leave to defend on the said ground would serve in such a situation.

14. As far as property No.185 is concerned, I have enquired from the counsel for the petitioners/tenants that even if it were to be believed that the respondent/landlord has allowed his brother and brother's son to carry on business from property No.185, without their having any right, is the landlord required, under the law to, for his own requirement, give preference to throwing out his siblings from the premises rather than to evict the tenant. This Court in *Pawan Kumar Vs. Paramjit Singh Gill* MANU/DE/0914/2015 and in *Om Prakash Bajaj Vs. Chander Shekhar* 2003 (67) DRJ 674 has held that the landlord, once has a requirement, has a choice of which of the more than one accommodation if available, he occupies

15. Though the counsel for the petitioners/tenants keeps on insisting that since the brother and brother's son of the respondent/landlord are not disclosed to have any right, the said premises should be deemed to be available but once the occupation of property No.185 by the brother and brother's son is not disputed, in my view, again, no purpose would be served in grant of leave to defend, inasmuch as the question to be adjudicated after trial also would be, whether between the brother and the old tenant, the landlord is required to first throw out the brother before being entitled to plead the need for the premises for self use. In my view, once the Courts have in *Prativa Devi Vs. T.V. Krishnan* (1996) 5 SCC 353 and *Shiv Sarup*

Gupta Vs. Dr. Mahesh Chand Gupta (1999) 6 SCC 222 held that with the choice of the landlord, the tenant cannot interfere, it does not lie in the mouth of the tenant to state that the landlord should first fulfil his requirement for the premises by straining the relationship with his siblings rather than evicting a tenant.

16. I have enquired from the counsels, whether the respondent/landlord and his brother aforesaid are residing in the same house in Kirti Nagar.

17. The counsel for the respondent/landlord answers in the affirmative.

18. The counsel for the petitioners/tenants also answers in the affirmative but states that they are residing in separate portions.

19. Merely because the respondent/landlord and his brother have separate portions and/or merely because they have formally executed a deed of partition does not lead to any inference of acrimony between the brothers. Even brothers living in separate houses or removed from each other are known to come to the aid and rescue of each other in the time of need. At least this much the counsel for the petitioners/tenants also is not able to refute. Once that is so, the respondent/landlord cannot be deprived of the order of eviction, if he has made out a case for requirement of the premises in the tenancy of the petitioners/tenants, only for the reason of having allowed his brother to occupy some portion of his premises and from which his need could have been fulfilled, particularly when it is not the plea that the brother has been allowed into the premises shortly before filing of petition for eviction and to create paucity of accommodation.

20. Though the counsel for the petitioners/tenants his arguments has attempted to give the colour to the requirement as only of the daughter of the

respondent/landlord but a perusal of the petition for eviction shows otherwise. The respondent/landlord is found to have pleaded therein the requirement of the premises for his self-use also; sub para 4 of para 18(a) of the petition for eviction is as under:

“4. That the petitioner requires the tenanted premises bonafide for his business needs. The petitioner needs the premises bona-fide for his own use as well as for bona-fide use and requirement of his dependant family members. The space available to petitioner and his family is insufficient and they are in great hardship due to shortage of space. That the petitioner is in business of Lace trading and is presently operating from home. That the daughter of the petitioner is unmarried and is in growing age, space available for her is also insufficient due to operation of business from home and for enhancement of family income, to start a new setup of business of lace trading, the petitioner requires the tenanted premises on account of above mentioned bona-fide requirement, as the petitioner has no other alternate suitable premises available from where he can effectively run his business. The petitioner requires the tenanted premises to meet the bonafide need and requirement of the petitioner and his dependants to run his business from the tenanted premises. The necessity is grave and dire.”

(emphasis added)

The aforesaid conveys that the requirement of the premises in the tenancy of the petitioners is on account of the daughter of the respondent/landlord having come of age and required to join the business which hitherto before was being carried on from the residence of the respondent/landlord.

21. I may in this regard mention that though sub para 4 supra could have been better worded but English remains a foreign language even for

Advocates and the principle laid down in British time of mofussil pleadings continues to apply.

22. The petitioners/tenants in the application for leave to defend did not say that the respondent/landlord does not have a daughter or that the said daughter is not of an age to carry on business or for any other reason is incapable of carrying on business. What was pleaded was that she had never done any business till then. However, the said plea in *Ram Babu Agarwal Vs. Jay Kishan Das* (2010) 1 SCC 164, *Shanti Devi Vs. Raksha Ahluwalia* 2017 SCC OnLine Del 7165 and *Puran Chand Aggarwal Vs. Lekh Raj* 2014 SCC OnLine 1506 has been held by the Supreme Court to be not a ground for grant of leave to defend. It was reasoned that once an intention has been expressed, the grant of leave to defend would not serve any purpose, inasmuch as even in evidence, if led were to be examined, it would be the same intention which would be reiterated and it has already been expressed on affidavit in the petition for eviction.

23. The respondent/landlord in reply to the application for leave to defend has further elaborated that his daughter had taken her final year examination in B.A. (Hons.) Economics and that the wife of the respondent/landlord is employed as an officer with the World Bank and documents in this regard are also on record. It was also pleaded that the respondent/landlord had been carrying on business of lace trading from his residence in the name of M/s Sawera House and was over the period of time facing hardship on account of carrying on business from the residence and business from the residence was also affecting the privacy of the residents. It was yet further pleaded that while the house in which the respondent/landlord is residing is located in a

residential colony, the premises in the tenancy of the petitioners are in a commercial locality and more suitable for business. The petitioners/tenants in their rejoinder have again not controverted any of the said pleas and have in fact admitted the carrying on of business from the residence of the respondent/landlord.

24. A landlord is always entitled in law to choose to carry on his business activities from a commercial premises which had been let out ages back to a tenant instead of continuing to carry on the said business from his residence and neither the tenant nor the Court can interfere with the said choice of the landlord.

25. As far as the argument, of the petitioners/tenants being entitled to leave to defend for the reason of the requirement being 'of additional accommodation' is concerned, the same has been negated in ***Rahabhar Productions Pvt. Ltd. Vs. Rajender K. Tandon*** (1998) 4 SCC 49 and (i) ***K.D. Gupta Vs. H.L. Malhotra*** (1992) 23 DRJ 234; (ii) ***Krishan Kumar Alag Vs. Jambu Prasad Jain*** (2009) 161 DLT 511; (iii) ***Vinod Arora Vs. Deepak Aggarwal*** 2010 (119) DRJ 221; (iv) ***Budh Singh & Sons Vs. Sangeeta Kedia*** (2011) 185 DLT 580; and, (v) ***Megh Raj Roshan Lal Vs. Rashmi Jain*** (2013) SCC OnLine Del 4001 holding that the plea that the landlord was already in occupation of sufficient accommodation and was seeking additional accommodation by evicting the tenant does not disentitle the landlord from recovering possession and upheld the order of refusal of leave to defend.

26. I am therefore of the view that whichever way one looks at, no purpose will be served in grant of leave to defend leading to examination and cross-examination of witnesses inasmuch as facts disclosed by the petitioners/tenants do not disentitle the respondent/landlord from an order of eviction under Section 14(1)(e) of the Act.

27. There is thus no merit in the petition.

28. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 17, 2017

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(Corrected and released on 28th September, 2017).

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