

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

% **Date of decision: 11th September, 2017**

+ **RC.REV. 312/2017, CM No.24292/2017 (for stay) & CM No.24294/2017 (for condonation of 106 days delay in re-filing)**

SHYAM SUNDER AHUJA

..... Petitioner

Through: Mr. Sumit Bansal & Mr. Prateek Kohli, Advs.

Versus

SHUSHIL KUMAR

..... Respondent

Through: None.

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 23rd December, 2016 in RC/ARC No.172/2016 of the Court of Senior Civil Judge-cum-Rent Controller (Shahdara), Karkardooma 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.1A in property No.1712 forming part of Plot No.15 in Khasra No.1309/1049/638 in village Chandrawali @ Shahdara in abadi of Rama Block, Bhola Nath Nagar, Shahdara Delhi-110032 in which the petitioner is an old tenant since several decades.

2. The counsel for the petitioner, in furtherance of the earlier order dated 22nd August, 2017, has in Court handed over a complete certified copy of the trial court record and which is taken on record.

3. The counsel for the petitioner has been heard and the record perused.

4. The respondent instituted the petition for eviction, pleading i) that he had acquired the shop in the tenancy of the petitioner vide registered deed dated 6th November, 2009; ii) that the respondent is aged about 42 years and married, having minor children; iii) that the respondent has no permanent business of his own and the wife of the respondent is also a housewife and not working or earning livelihood; iv) that the respondent requires the shop in the tenancy of the petitioner for running his own business therefrom and which the respondent is not being able to run owing to non availability of a commercial shop.

5. The petitioner, though applied for leave to defend raising all sorts of pleas, including of denial of ownership of the respondent and denial of existence of relationship of landlord and tenant but the counsel for the petitioner, before this Court, acting fairly, has not urged any of the said aspects and has drawn attention only to paras no.19 to 21 of the application for leave to defend where the petitioner / tenant has pleaded i) that the respondent / landlord sold one shop in property No.MPL No.1712, Plot No.15, Rama Block, Bhola Nath Nagar, Shahdara, Delhi in the year 2011 to one Sh. Pawan Kumar Bhasin; ii) that the respondent / landlord sold out one shop in the year 2010 to Dr. Vinod Kumar Goel; iii) that the respondent / landlord also sold another shop forming part of “aforesaid property” and which shop is lying locked; iv) that had the respondent / landlord *bona fide* required the shop in the tenancy of the petitioner / tenant, he would not have disposed of / sold out the said shops; v) that the respondent / landlord is also owner of property ad-measuring 200 sq. yds. bearing No.27/2, Gali No.14, Vishwas Nagar, Shahdara, Delhi; vi) that the respondent had demolished the entire old construction on the aforesaid property “and now will raise new

construction over the same and will construct various shops in the aforesaid property since the aforesaid property is situated on main road”; vii) that the respondent / landlord is a builder and engaged in the business of sale and purchase of property; viii) that the respondent / landlord is also owner of property situated at Pandav Road, Daksh Road, Vishwas Nagar, Shahdara, Delhi; ix) that the respondent / landlord is owner of several other properties.

6. The respondent / landlord in his reply to the application for leave to defend, with respect to the aforesaid i) did not dispute the sale of the three shops in the year 2010-11 but stated that the shop in the tenancy of the petitioner / tenant was the only shop available to the respondent / landlord and further pleaded that the shops as pleaded by the petitioner / tenant were sold much before the filing of the petition for eviction in October, 2015 and at which time the shop in the tenancy of the petitioner / tenant was only shop available to the respondent / landlord; ii) denied that he was the sole owner of property No.27/2, Gali No.14, Vishwas Nagar, Shahdara, Delhi and pleaded that the said property was owned by the mother of the respondent / landlord and the respondent / landlord was residing therein as a member of her family; iii) denied that the respondent / landlord had any property at Pandav Road or Daksh Road or Vishwas Nagar or at Shahdara, Delhi; iv) denied that the respondent / landlord had any commercial shop available in property No.27/2, Gali No.14, Vishwas Nagar, Shahdara, Delhi.

7. The counsel for the petitioner / tenant has referred to *Santosh Devi Son Vs. Chand Kiran* JT 2000 (3) SC 397, *Siddalingamma Vs. Mamtha Shenoy* (2001) 8 SCC 561 and *Deepak Gupta Vs. Sushma Aggarwal* (2013) 202 DLT 121.

8. I have considered, whether on the aforesaid grounds a case for grant of leave to defend to the petitioner / tenant was made out or that the order of the Additional Rent Controller refusing leave to defend to the petitioner / tenant can be held to be not in accordance with law within the meaning of Section 25B(8) of the Act as interpreted in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 and reiterated in *Chandrika Prasad Vs. Umesh Kumar Verma* (2002) 1 SCC 531 and *Atma S. Berar Vs. Mukhtiar Singh* (2003) 2 SCC 3 i.e., whether the conclusions in the impugned order are wholly unreasonable or such which no reasonable person acting with objectivity could have reached on the material available.

9. The counsel for the petitioner has also sought to hand over in the Court a copy of the application to place on record certain new facts along with documents.

10. Not only can the petitioner / tenant, by taking successive adjournments in this Revision Petition, as has been done in the present case, and by so keeping it alive, be permitted to add to the grounds on which leave to defend is sought, long after the time prescribed by law for filing of application for leave to defend but even otherwise, a cursory look at the documents filed along with application aforesaid do not show the respondent / landlord to be the exclusive owner of property No.27/2, Gali No.14, Vishwas Nagar, Shahdara but rather show the same to be owned by the respondent / landlord along with his brother Lalit Kumar.

11. Thus no ground for entertaining the said application otherwise also presented in a manner not acceptable in law, is made out.

12. In my view, the sale by the respondent / landlord of three shops in the year 2010-11 cannot be a ground to disentitle the respondent / landlord from obtaining an order of eviction, now in the year 2017, when according to the petitioner / tenant also the said three shops are now not available to the respondent / landlord.

13. If the facts as disclosed in the application for leave to defend would not disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act per Section 25(5) of the Rent Act, the tenant is not entitled to leave to defend. The legislature, in the summary procedure prescribed in Section 25B of the Rent Act for petitions for eviction of tenant on the ground of requirement of premises by landlord for self use, has placed the onus on the tenant to plead why the landlord, on proof of facts pleaded, would be disentitled from obtaining an order of eviction on ground of self requirement of premises. If the tenant, in the application for leave to defend, does not disclose such facts, he / she cannot be granted leave to defend for the reason of, the landlord having not explained 'this or that' in the petition for eviction.

14. It is the accommodation available to the landlord at the time of filing of the petition for eviction which ordinarily has to be considered.

15. Though in some situations, the action of the landlord, of shortly before the filing of the petition for eviction of arranging his affairs in a manner so as to deprive himself of the suitable alternative premises may constitute a ground to disentitle the landlord from an order of eviction under Section 14(1)(e) of the Act but it cannot be said that the facts disclosed by the petitioner / tenant in the leave to defend application were such. The

petitioner / tenant though pleaded sale by the respondent / tenant in the year 2010-11 but shied from pleading that the shops at the time of sale were vacant. Without pleading so, it cannot be said that mere sale of the shop about 4/5 years prior to the institution of the petition for eviction, if was already in possession of a tenant or someone else, would be a fact which would disentitle the respondent / landlord from an order of eviction under Section 14(1)(e) of the Act.

16. Not only so, the petitioner / tenant also did not state that there was no change in the requirement of the respondent / landlord since then. Merely taking a plea that the respondent / landlord has in the past sold some property or let out some property has in ***Narender Kumar Shah Proprietor M/s Jay Bharat Steels Vs. Malti Narang*** 2014 SCC OnLine Del 3839 and ***Anil Kumar Bagania Vs. Shiv Rani*** 2014 SCC OnLine Del 6645 been held to be not a ground for denying order of eviction to landlord on the ground of self requirement of premises.

17. The sale of other shops by the respondent / landlord, nearly five years prior to the institution of the petition for eviction, can be for diverse reasons. It is the case of the respondent / landlord that he has no vocation. If he was subsisting, by sale from time to time of his properties and has now, when left with the last one, realised that it will be literally like killing the fabled hen which laid the golden eggs, and has decided to commence business therefrom, it certainly cannot be said, even after trial if leave to defend were to be granted, that the landlord has no requirement of premises.

18. As far as the property No.27/2, Gali No.14, Vishwas Nagar, Shahdara is concerned, the petitioner / tenant himself, in the leave to defend

application, stated that the entire construction on the said property had been demolished and that the respondent / landlord “will raise new construction over the same and will construct various shops”. Thus, on the date of filing of the application for leave to defend also the said property or any part thereof was not available.

19. Even otherwise, the further plea of the petitioner / tenant in the application for leave to defend was that the respondent was a builder and if that be so, the action of the respondent of demolishing old construction of property No.27/2, Gali No.14, Vishwas Nagar, Shahdara and intending to raise construction thereon cannot be said to be availability of the said property to the respondent / landlord for his own use.

20. From the arguments today of the counsel for the petitioner / tenant and the documents sought to be handed over, it has as aforesaid also emerged that in any case the respondent / landlord is not the sole and exclusive owner of the said property and for this reason also, a joint property cannot be said to be alternative accommodation for respondent / landlord to commence his exclusive business. A joint property is always fraught with risks of disruption of business commenced therefrom. Supreme Court in *Anil Bajaj Vs. Vinod Ahuja* (2014) 15 SCC 610, *Bhupinder Singh Bawa Vs. Asha Devi* (2016) 10 SCC 209, *Dina Nath Vs. Subhash Chand Saini* (2014) 11 SCC 20 and *Faruk Ilahi Tamboli Vs. B.S. Shankarrao Kokate* (2016) 15 SCC 431 has held that merely because a landlord has been carrying on business jointly with others from some premises cannot be a ground for grant of leave to defend to a tenant in a petition filed by the landlord for eviction

of a tenant to commence his exclusive business from the premises in occupation of the tenant.

21. The averments with respect to other properties at Pandav Road, Daksh Road, Vishwas Nagar, Shahdara are vague and cannot be counted as disclosing facts as would disentitle the landlord from obtaining an order of eviction.

22. The only other argument of the counsel for the petitioner / tenant is that the respondent / landlord had earlier filed a suit for recovery of possession of the shop from the petitioner in the Civil Court and a petition under Section 14(1)(e) of the Act and which were dismissed / dismissed in default respectively.

23. However no copy of the plaint in the suit was filed.

24. It is however stated that the suit for possession was filed treating the rent to be Rs.5,000/- per month.

25. The counsel for the petitioner / tenant on enquiry states that the petitioner / tenant does not admit the rent to be Rs.5,000/- per month and claims to be a tenant within the ambit of the Delhi Rent Control Act.

26. Once it is so, the factum of filing of the suit earlier cannot disentitle the respondent / landlord from an order of eviction. Rather, the same shows the intent of the respondent to have the shop vacated since the purchase by the respondent / landlord.

27. The same, rather than disentitling the respondent from obtaining an order of eviction, entitles the respondent to an order of eviction. Supreme Court recently in *Farukh Ilahi Tamboli* supra has held that when a person

buys a tenanted property fetching very low rent, the presumption is that he has purchased the same, not for investment purpose or to earn rent therefrom but to have the tenant evicted and to use the same for own purpose after evicting the tenant.

28. As far as Rent Act of Delhi is concerned, it takes care of creation of documents of transfer of property in favour of one who can get tenant evicted on ground of self-requirement by, in Section 14(6) thereof prohibiting filing a petition for eviction on the ground of self-requirement within five years of the date of purchase. Thus the intent of the respondent / landlord alleged, supports the case of the respondent / landlord rather than negates the same.

29. As far as the judgments cited are concerned, Supreme Court again in 2014 in ***Dina Nath*** supra has noticed the shift in the interpretation of the Rent Act and the fact that while earlier the Rent Act was only for the protection of the tenant now it is interpreted as concerning the interest of both landlord and tenant and has held that a plea of *bona fide* requirement is not to be treated with suspicion. Again in ***Nidhi Vs. Ram Kripal Sharma*** (2017) 5 SCC 640 it has been held that legislations made for dealing with landlord-tenant disputes were pro-tenant but in the process of doing justice the Court cannot be overzealous and forget its duty towards the landlord as ultimately, it is the landlord who owns the property and is entitled to the same when has requirement therefor.

30. Supreme Court, in ***Raghunath G. Panhale Vs. Chaganlal Sunderji & Co.*** (1999) 8 SCC 1 and in ***Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde*** (1999) 4 SCC 1 held that the term '*bona fide* required by

the landlord' though means that the requirement of landlord must be genuine but genuineness is not to be tested on par with 'dire need'

31. There is thus no merit in the petition.

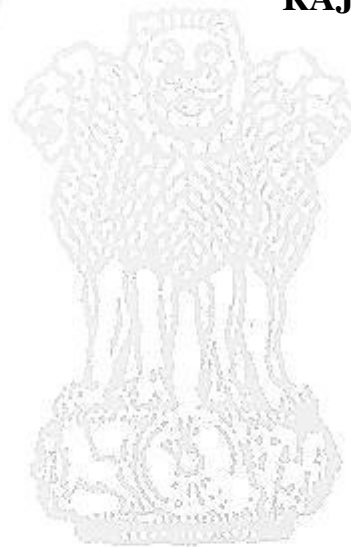
Dismissed.

No costs.

SEPTEMBER 11, 2017

'gsr'..

RAJIV SAHAI ENDLAW, J.



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