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

Reserved on: 8th September, 2017
Pronounced on: 21st September, 2017

+ RC REV. 304/2016 & CM No. 21490/2016 (stay)

MOHD. IRFAN & ORS. Appellants
Through: Ms. Zubeda Begum, Ms. Sana
Ansari & Ms. Vaishali Tanwar,
Advts.

versus

ABDUL WAHAB Respondent
Through: Mr. Amit Chadha, Ms. Shaista
Siddiqui & Ms. Urmiljeet Kaur,
Advts.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petition at hand was filed invoking the revisional jurisdiction of this court under Section 25B (8) of the Delhi Rent Control Act, 1958 (for short, "the Act") to assail the order dated 08.02.2016 of the Additional Rent Controller -1 (Central) on eviction petition (case no. E-249/15/13) of the respondent whereby the application of the petitioners seeking leave to defend was dismissed and in the consequence an order of eviction was passed against them in terms of Section 25B (4) of the Act granting right to recover in favour of the respondent in respect of tenanted premises described as one shop admeasuring about 10 x 12 feet at the ground floor level of

property bearing no. 4355, Kucha Pandit, Shah Ganj, Delhi-110006 shown in colour red in the site plan which was submitted as Annexure to the eviction petition invoking the ground of *bonafide* requirement under clause (e) of the proviso to Section 14 (1). The eviction petition from which the present proceedings arise, as mentioned above, related to the permissible ground to seek eviction of protected tenant in terms of clause (e) of proviso to Section 14 (1) of the Act, which reads as under:-

“That the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;

Explanation.- For the purpose of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes; ”

2. From the pleadings of the parties, coupled with documents filed therewith, as indeed the submissions before the Additional Rent Controller, and this Court, it has emerged as undisputed that relationship of tenant and landlord exists between the petitioners on one hand and the respondent on the other *vis-à-vis* the subject premises, the tenancy concededly being one regulated by the provisions of the Act. The petitioners have also not raised the issue and, therefore, fairly concede that the respondent herein, being the

petitioner seeking eviction by petition before the Additional Rent Controller, is the owner of the subject property.

3. The statutory clause quoted above would insist on the premises required *bonafide* by the landlord to have been let out for “residential purpose” but in terms of the ruling of the Supreme Court in *Satyawati Sharma vs. Union of India* (2008) 5 SCC 287, it is conceded by the learned counsel on both sides, an eviction petition on such ground can be maintained even in respect of premises where the tenancy was for non-residential purposes.

4. The petitioners do not assail the case of the respondent that his family includes one of his sons Dr. Mazhar Khan and his wife Dr. Zahida Begum, both of them qualified medical practitioners holding the degrees of BUMS. It has not been the contention of the petitioners that either the said son or the said daughter-in-law own or have available to them any other accommodation similar to the one which is the subject matter of the dispute. It is also not a matter of dispute that the premises are held by the respondent, being the owner of the property, also for the benefit of the said son and his wife.

5. The contentions raised by the petitioners seek to assail the claim of *bona fide* requirement broadly founded on the submissions that in the case at hand where distinction must be drawn between “desire” – or “wishful thinking” – on one hand and “the actual need” on the other, the respondent having been accused, in the process, of being guilty of concealment of facts which, in the submission of the

petitioners, should disentitle him of the relief, this being itself a ground for grant of leave to defend.

6. More for clarity in approach, it may be mentioned here that an eviction petition on the ground of *bona fide* requirement, *inter alia*, under Section 14(1) (e) of the Act attracts special procedure envisaged in Section 25B. The tenant on whom the summons in the specified form is served in terms of Section 25B (2) is not permitted to contest the prayer for eviction except by filing an affidavit within the prescribed period under Section 25B(4) stating the grounds on which he seeks to contest, the omission or default to file such affidavit or to secure leave on such grounds from the Rent Controller deemed in law to be an admission by the tenant of the correctness of the grounds, it resulting in an order for eviction.

7. In the case at hand, simply put, the respondent had pleaded before the Rent Controller that it had been decided by the family that his son Dr. Mazhar Khan and his wife Dr. Zahida Begum shall run a clinic from the tenanted shop and, thus, there was a *bonafide* requirement to secure the possession of the said shop by its recovery from the hands of the tenants. The respondent pleaded that at the time of the filing of the petition Dr. Mazhar Khan was working with Max Neeman Hospital while the daughter-in- law Dr. Zahida Begum was not engaged in any medical practice. It was stated that the respondent herein, assisted by his other son Mansoor Khan, has been running a medical store in the name and style of Hameed Medicos from the adjoining shop in the same property and, further, that all other shops in

the property are small in size occupied by other tenants, none being vacant or available at that point of time.

8. The application for leave to defend was submitted and supplemented later by an additional affidavit, questioning the claim of *bonafide* requirement on the grounds that the decision of the family represented only “wish” of the petitioner; there was no averment as to the financial or other dependency of the son or daughter-in-law, the latter even otherwise being a dependent of her husband; the petitioner himself was an old man of 67 years settled in his own business of medical shop and not in a position to utilize the tenanted shop; particulars of other tenants or the space available with them in the property had not been disclosed; the brother of the petitioner had released his share in respect of the ground floor shops in favour of the petitioner “for consideration” which amounted to “sale” and, thus, the petition could not be maintained in view of inhibition in Section 14 (6); the site plan filed was false as there was a third shop in existence it being in possession of one Abdul Razzaq; the sale of several commercial properties by the respondent in the last three-four years had been concealed; and the said son Dr. Mazhar Khan with his wife having shifted permanently to Hyderabad where he has secured gainful employment.

9. It may be added here that while responding to the additional affidavit, the respondent herein conceded that Dr. Mazhar Khan and his wife had shifted, within six months of the filing of the eviction petition, to Hyderabad where the said son had taken up employment as

medical officer in a private hospital namely, PRA Health Sciences/Novartis, but insisted on the plea of *bonafide* requirement of the tenanted premises for use by the said son and his wife for their medical practice as per the family decision. The respondent also explained that the third shop in the tenancy of Abdul Razzaq was of very small size, it being in use as a *pan* shop, wholly unsuitable for purposes of a medical clinic.

10. The Rent Controller found no merit in any of the contentions of the petitioners herein urged to seek leave to defend and, thus, dismissed the prayer to such effect and granted the eviction order.

11. At the hearing on the revision petition, the above noted contention concerning the shifting of Dr. Mazhar Khan and his wife to Hyderabad has been reiterated to argue that the requirement cannot be treated as “*bonafide*” and that the truth requires to be tested by putting the case to trial. The petitioners also accuse the respondent landlord of concealment of facts respecting the third shop admitted to be in tenancy of Abdul Razzaq.

12. The plea respecting the third shop, indisputably in the tenancy of Abdul Razzaq who runs a *pan* shop, has been considered by the Rent Controller but it was noted that it is too small a premises for being suitably put to use for running a medical clinic which is the purpose for which eviction of the petitioners has been sought. It may be that the existence of this small portion was not reflected in the site plan but in the pleadings the respondent had clearly averred that the other portions in the property are in occupation of tenants. Had this

portion been suitable for purposes of a medical clinic, the arguments of the petitioners could be of some substance. But since the portion in the tenancy of Abdul Razzaq can hardly be said to be a “suitable” alternative accommodation, the omission of specific mention of facts in such regard cannot be taken to the level of deliberate suppression of facts so as to non-suit the respondent. In this view, the reliance of the petitioners on the decision in the case of *Munna @ Manoj vs. Ram Narain, RC. REV. 142/2011*, decided on 02.11.2011 is misplaced.

13. The shift of Dr. Mazhar Khan with his wife Dr. Zahida Begum to Hyderabad during the pendency of the proceedings arising out of eviction petition before the Rent Controller has been properly explained. The learned Rent Controller has correctly appreciated the facts while observing that the said son could not be expected to sit idle at Delhi awaiting the judicial process to conclude and for the eviction of the petitioners to be secured before he could put to use his educational qualifications to earn his livelihood. The joining of an employment in a private hospital at Hyderabad by the said son cannot be construed as abandoning by him of the follow- up on the decision of the family in terms of which he and his wife, both qualified medical practitioners, would be in Delhi and have their own independent medical practice from the premises which could be made available to them in the property by their father.

14. Since the move to Hyderabad was a subsequent development, omission of any fact concerning it from the pleadings in the eviction petition originally presented is inconsequential. Since there cannot be

any certainty of the period within which the eviction proceeding would bear fruit, the shift of the son with his wife to Hyderabad during the interregnum cannot be treated as facts which extinguish the *bona fide* need presented to seek eviction. [See: *Raghunath G. Panhale vs. M/s. Chaganlal Sunderjee And. Co.*, AIR 1999 SC 3864; *Vijay Kumar & Ors. vs. District Judge, Ghazipur & Ors.*, (1995) Suppl. 2 SCC 586; *Gaya Prasad vs. Pradeep Srivastava*, 2001 (2) SCC 604; *G.C. Kapoor vs. Nand Kumar Bhasia & Ors.*, AIR 2002 SC 200; *Harminder Singh Koghar vs. Ramnath Exports Private Limited*, 2015 (4) CLJ 321 Delhi; and *Ravi Kumar Garg vs. Seema Gupta*, 2016 LRC Online 540 (Delhi).]

15. The arguments of the petitioners that it is merely a case of “wish” (or desire) as against actual “requirement” of the landlord/owner of the premises does not appeal to this court. It is trite that the landlord is the best Judge to take decisions on affairs that affect him or members of his family for whose benefit he holds the property. It does not lie in the mouth of the tenant to question his decisions branding them as mere wish or sets standards for him vis-à-vis appropriate use of the property, more so when it concerns settlement of his children in the avocation of their choice. The objections raised in the application for leave to defend lack substance and, therefore, pleadings of the landlord (respondent) of his genuine requirement cannot be questioned. In this fact-situation reference to the cases of *Mattulal vs. Radhe Lal*, AIR 1974 SC 1596; and *Deena Nath vs. Pooran Lal*, (2001) 5 SCC 705, does not assist the petitioners.

16. No other point was pressed at the hearing.
17. The revision petition is found devoid of substance and is dismissed.
18. The interim order inhibiting the respondent from pressing the execution of the eviction order stands vacated.
19. This disposes of the revision petition as well as pending applications.

R.K.GAUBA, J.

SEPTEMBER 21, 2017
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