

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

% **Date of decision: 28<sup>th</sup> August, 2017**

+ **RC.REV. 281/2017 & CM No.30865/2017 (for stay)**

**NARESH KHANNA**

**..... Petitioner**

Through: Mr. A.K. De, Mr. Rajesh Dwivedi  
& Ms. Ananya De, Advs.

Versus

**SAROJ GUPTA**

**..... Respondent**

Through: Mr. O.P. Aggarwal, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**CM Nos.30866/2017 & 30867/2017 (both for exemptions)**

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

**RC.REV. 281/2017 & CM No.30865/2017 (for stay)**

3. This petition, under Section 25B (8) of the Delhi Rent Control Act, 1958, impugns the order [dated 21<sup>st</sup> January, 2017 in E-25/16 (New No.79739/16) of the Court of Additional Rent Controller-02, Central District, Tis Hazari Courts, Delhi] of dismissal of the application filed by the petitioner / tenant for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent and the resultant order of eviction of the petitioner / tenant from Shop No.1404, Gali Jhajjar Wali, Chandni Chowk, near Central Bank of India, Delhi-110006.
4. Notice of the petition was issued and the trial Court record requisitioned and the counsel for the respondent appeared.
5. CM No.30865/2017 has been filed by the petitioner / tenant for stay of execution of the order of eviction. The counsel for the respondent appears.

6. The counsels have been heard on the Rent Control Revision Petition itself.

7. The counsel for the petitioner / tenant has argued i) that the husband of the respondent viz. Mr. O.P. Aggarwal is an advocate and a practitioner of rent laws and has expertise therein and has made a business of buying property in the name of the respondent and then misusing the Delhi Rent Control Act, 1958 for evicting the old tenants in the property and for profiteering therefrom; ii) that the said husband of the respondent has filed several petitions for eviction on the ground of *bona fide* requirement for some member or other of his family; iii) attention is invited to page 89 of the paper book, being a part of the leave to defend application filed by the petitioner / tenant, and where the petitioner / tenant had pleaded that the respondent and her husband are the owners of built up property No.1699, Dariba Kalan, Delhi-110006; attention is next invited to reply thereto at page 132 of the paper book where it has been pleaded that the respondent or her family members have no concern with property No. No.1699, Dariba Kalan, Delhi-110006 and the petitioner / tenant if so desire can occupy the same and that the husband of the respondent was a tenant on the third floor in the said property and left the same on 30<sup>th</sup> June, 1990 and shifted to property No.A-34-35, Chanderlok, Mandoli Road, Delhi; attention is next invited to page 178 of the paper book being a letter head dated 15<sup>th</sup> November, 2000 of the husband of the respondent where one of the address given is “1699, Kucha Jatmal, Dariba Kalan, Delhi-110006 (On Appointment Seat)” and it is argued that the respondent has indulged in falsity and is disentitled from any relief on this ground alone; iv) that the daughters-in-law of the respondent, pleading whose requirement the

petition for eviction of the petitioner / tenant was filed, are not dependent upon the respondent and the sons of the respondent are carrying on independent business at a different place; v) attention is next invited to page 132 of the paper book, being reply of the respondent to the application for leave to defend, where it is pleaded that property No.A-6/8, Gali No.1, Chanderlok, Mandoli Road, Shahdara, Delhi is in a narrow street and the same is in the area of 28 sq. yds. and owned by the “son of law or petitioner where only Ashu Gupta is doing job work to earn his livelihood.”; attention is next invited to page 423 of the paper book being order dated 23<sup>rd</sup> May, 2017 in Case No.E-212/2017 of the Court of ARC, Central District, Tis Hazari Courts, Delhi in another petition for eviction filed by the respondent against Sh. Sanjay and Sh. Ravi and where five petitions including the petition for eviction from which this petition arises filed by the wife of the respondent are mentioned.

8. Per contra, the counsel for the respondent who is also the husband of the respondent has argued i) that the third floor of property No.1699, Dariba Kalan, Delhi-110006 was in the tenancy of the husband of the respondent and from where the husband of the respondent was having his law practice; ii) that the said tenancy was surrendered on 30<sup>th</sup> June, 1990; iii) that the brother of the husband of the respondent was also residing in the said premises and whose family, after his death continued to reside there till 1998; iv) that since the clients of the husband of the respondent were used to meeting him at Dariba Kalan and found visiting the office at Mandoli, Shahdara inconvenient, the husband of the respondent, whenever any client wanted to meet, was visiting the said premises for the purpose of meeting the client only and which also stopped after the

brother's family moved out from that premises and it is just that the old letter heads continued; v) that the Agreement to Sell at page 195 with respect to the property No.A-6/8, Gali No.1, Chanderlok, Mandoli Road, Shahdara, Delhi in the name of Ashu Gupta son of the respondent was to enable him to obtain a licence; vi) that the respondent and her husband have purchased only two properties and are not in the business of sale and purchase of properties; vii) that the respondent along with her husband, sons and daughters-in-law are residing together.

9. I have considered the rival contentions.

10. No merit is found in the first of the aforesaid contentions.

11. Merely because the landlady is well to do or her husband is a practitioner of law, does not prevent him / her from invoking Section 14(1)(e) of the Act and vague arguments, without any specifics, cannot be considered. Supreme Court in *Bhimanagouda Basanagouda Patil Vs. Mohammad Gudusaheb* (2003) 3 SCC 101 held that the fact that a person has a capacity to purchase the property cannot be the sole ground to hold against him, if has a genuine need for the premises purchased. This Court also, in *Ramesh Kumar Vs. Neelam Dawar* MANU/DE/1751/2014, (SLP (C) No.23911/2014 preferred whereagainst was dismissed on 3<sup>rd</sup> September, 2014) held that although the landlord may be financially well off but in the absence of suitable accommodation for his need, his financial well being cannot deny him the eviction order.

12. With respect to the second argument, I fail to see as to what purpose the trial will serve thereon.

13. Whether it be at this stage or after trial, the question for adjudication is, whether a landlady can seek eviction of the tenant on the

ground of requirement of her daughter-in-law. The said question is no longer *res integra* and it has been settled that the words ‘requirement of the landlord’ within the meaning of Section 14(1)(e) of the Act is not only confined to requirement of the landlord but of all members of the family of the landlord who are dependent upon the landlord for accommodation and with whom landlord is residing as a family or who constitute family of landlord. It is for this reason only that eviction under Section 14(1)(e) of the Act has been ordered for the requirements of financially well off sons as well. In the present case, the plea of the respondent / landlady in the petition for eviction is that the shop in the tenancy of the petitioner / tenant is required to enable her daughters-in-law who have been doing the work of sale of garments from their residence, to set up a boutique.

14. 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 17<sup>th</sup> 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 15<sup>th</sup> January, 2016), both of which were

cases of requirement for financially independent sons and grand children of the landlord.

15. The counsel for the petitioner / tenant has not argued that the relations between the respondent / landlord and her sons and daughters-in-law are strained or that they are not even staying in the same house. At this stage, the counsel for the petitioner / tenant has interrupted and has drawn attention to pages 88 and 90 of the application for leave to defend. At page 88, it is stated that the two sons of the respondent / landlord are living in property No.A-6/8, Gali No.1, Chanderlok, Mandoli Road, Shahdara, Delhi and at page 90, it is stated that the respondent / landlady and her husband are residing at property No.169-170, Gali No.1, Chanderlok Colony, Mandoli Road, Shahdara, Delhi.

16. I have enquired from the counsel for the petitioner / tenant, whether the said addresses, which are both of Gali No.1, Chanderlok Colony, Mandoli Road, Shahdara, Delhi are separate properties and how much is the distance separating them.

17. The counsel for the petitioner / tenant states that they are far off but is unable to show the same from any plea taken. In the absence of the same, it cannot be said that the relations are strained.

18. In the aforesaid state of law, the daughters-in-law of the respondent / landlady would be dependent upon the respondent / landlady for accommodation and the respondent / landlady would be entitled to seek eviction of the tenant for their requirement and cannot be compelled to instead of meeting / fulfilling the requirement of her daughters-in-law keep a tenant in the premises.

19. As far as the other petitions for eviction stated to have been filed

are concerned, merely because a landlord / landlady may have filed more than one petition for eviction, is no ground for grant of leave to defend in any of the petitions for eviction. Each case has to be decided on its own merits and as per the pleas taken in the application for leave to defend and if at all owing to any eviction order and recovery of possession of any premises, the pleaded requirement can be said to be satisfied, only then will the same constitute a plea.

20. I have also drawn attention of the counsel for the petitioner / tenant to Section 19(1) and 19 (2) of the Rent Act which provides the remedy against the landlord misusing the process of the Rent Act by seeking eviction on the ground of requirement and thereafter letting out the premises, by permitting the tenant to apply for repossession thereof. It is thus not as if the petitioner / tenant, if subsequently finds that the respondent / landlady and her husband are guilty of conduct as has been argued, that they would be remediless. Mention in this regard may also be made to Section 14(6) which prohibits a petition for eviction on the ground of personal requirement being filed within five years of acquiring title to the property. The legislature having taken care of the situation of the landlord profiteering from purchase of property and evicting tenants therefrom, no further embargo can be placed on the rights of the landlords.

21. It may also be mentioned that for the requirement pleaded for opening a boutique the premises at Shahdara, Delhi cannot be said to be alternative suitable accommodation. Chandni Chowk, Delhi where the tenancy premises are situated is a well known commercial market including for garments, attracting a large number of purchasers and retailers from other cities also and the potential of business from



Shahdara, Delhi cannot be the same as from Chandni Chowk, Delhi.

22. There is thus no merit in the petition. No error is found in the order of the ARC finding the petitioner / tenant to be not entitled to leave to defend the petition.

23. Dismissed.

No costs.

24. The date earlier given of 26<sup>th</sup> September, 2017 is cancelled.

**RAJIV SAHAI ENDLAW, J**

**AUGUST 28, 2017**

‘gsr’..

*(Corrected and released on 3<sup>rd</sup> October, 2017).*