

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

% **Date of decision: 3rd November, 2017**

+ **RC.REV. 283/2017**

NARESH KUMAR JAIN **Petitioner**

Through Mrs. Inderjeet Saroop, Advocate.

versus

S SHANMUGA SUNDARAM **Respondent**

Through Mr.Prashant Katara and Mr. Soin
Khan, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25-B (8) of the Delhi Rent Control Act impugns the order (dated 28th March, 2017 in E.No. 6394/2016 of the Court of Additional Rent Controller, New Delhi) of grant of leave to the respondent to defend the petition for eviction under Section 14(1) (e) of the Act filed by the petitioner.
2. The petition was entertained and notice thereof ordered to be issued. Respondent has been served and the counsel for the respondent appears. The Counsels have been heard and the copies of the eviction proceedings on record perused.
3. Counsel for the respondent in his argument has not challenged that the petitioner is the owner of the shop with respect to which petition for eviction is filed and the existence of the relationship of landlord and tenant between the parties. Thus the narration hereafter would be confined to the aspect of requirement and availability of alternate suitable accommodation.

4. The petitioner instituted the petition for eviction, from which this petition arises, for eviction of the respondent from one room/store (behind part adjoining shop no.S-25) of shop No. S-26, Ground Floor, Green Park Main Market, New Delhi, in the tenancy of the respondent at a rent of Rs.316/- per month, pleading (i) that the petitioner is the owner in possession of half of shop No.S-26, in front of the room/store in the tenancy of the respondent and is carrying on business from said half shop no.S-26; (ii) that the petitioner and his family are residing on the first and second floors above the said shop; (iii) that the shop No.S-26, was in fact owned by the father of the petitioner, who died leaving the petitioner and his brother as his heirs and the other half portion of shop no.S-26 fell to the share of the brother of the petitioner; (iv) that the respondent, besides being the tenant in the room/store behind the half portion of the shop in possession of the petitioner was also a tenant with respect to the other half portion of the shop which has fallen to the share of the brother of the petitioner; (v) that the brother of the petitioner has sold the said half portion of the shop which had fallen to his share to the respondent; (vi) that the room/store behind half portion of shop from which the petitioner is carrying on his business is required by the petitioner for meeting the requirements of the business being carried on by the petitioner from the said shop; the petitioner is facing crunch of space for selling his goods; (vii) that the petitioner is carrying on business from the said shop of sale of all school, office, computer stationeries, photocopy, spiral binding and lamination etc.; (viii) that the customers of the petitioner have no place to stand and have to adjust at the entrance of the shop which leads to a lot of difficulty and inconvenience; (ix) that the petitioner has to keep all his

stationery, lamination, spiral binding and machine etc to meet the demand and requirement of his customers; (x) that the petitioner has no other portion of the shop in his ownership; (xi) that the wife of the petitioner also assists in the aforesaid business and sits in the shop; and, (xii) that the petitioner has no other alternate accommodation available to him.

5. The respondent sought leave to defend pleading; a) that the petitioner has been residing in the first and second floors above the shop and can also run his business therefrom; b) that the petitioner has no need to expand his business; c) that the petitioner for the last 25 years has been running his business from the same portion of the shop and there is no explanation as to why the petitioner now needs additional space; and, d) that the requirement of the petitioner is not *bona fide*.

6. Besides the aforesaid, the respondent in the application for leave to defend denied the other contents of the petition for eviction and vaguely pleaded that the petitioner has other accommodation available to him, without giving any particulars therefor. However, to be fair to the counsel for the respondent, he has not even urged any such thing in his arguments.

7. The learned Additional Rent Controller, vide the impugned order, has granted leave to defend to the petitioner only for the reason of ***S.M. Mehra Vs. D.D. Malik*** (2001) 1 SCC 256 and judgement of this Court ***S.K. Seth & Sons Vs. Vijay Bhalla*** (2012) 191 DLT 722 following the same, *inter alia* to the fact that leave to defend has to be granted when the requirement is of additional premises/accommodation.

8. The counsel for the respondent, during the hearing has referred to (i) ***Raj Kumar Khanna Vs. Parduman Singh*** (2013) 204 DLT 312 to, contend that the petitioner, in the petition for eviction, has invoked the principle of comparative hardship which is not applicable to the Delhi Rent Act; (ii) ***Narender Kumar Manchanda Vs. Hemant Kumar Talwar*** (2013) 197 DLT 171; (iii) ***M/s S.K.Seth & Sons*** supra; (iv) ***Ramesh Chander Agarwal & Jagan Nath*** 2012 SCC OnLine Del 5147; and, (v) ***Davinder Pal Singh Vs. M/s Pritam Prakash Dawar & Sons (Huf)*** 2013 SCC OnLine Del 4425.

9. As far as the reason which prevailed with the learned Additional Rent Controller for grant of leave to defend i.e. of the grant of leave to defend being automatic when the requirement is for additional accommodation, is concerned, there is no such principle in law.

10. Supreme Court, in ***Rahabhar Productions Pvt. Ltd. Vs. Rajendra K. Tandon*** (1998) 4 SCC 49 held 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 of the premises in question and upheld the order of refusal of leave to defend. This Court also in ***Krishan Kumar Alag Vs. Jambu Prasad Jain*** (2009) 161 DLT 511 held that the plea of the tenant, that since the landlord had sought additional accommodation, it was a good case for grant of leave to defend, must fail. It was held that once on assessing the requirement of the landlord and the accommodation already available with the landlord, it was found that the landlord requires additional accommodation, leave to defend has

to be denied. SLP(C) No.2207/2009 preferred against the said judgment was dismissed on 13th July, 2009. This Court again in ***Vinod Arora Vs. Deepak Aggarwal*** 2010 (119) DRJ 221 held that the fact that the landlord is in occupation of a part of the ground floor did not entitle the tenant to leave to defend, once the requirement of the landlord for the remaining ground floor in occupation of the tenant was made out. SLP(C) No.028027/2010 preferred thereagainst was also dismissed on 2nd September, 2013. To the same effect are judgments of this Court in ***Budh Singh & Sons Vs. Sangeeta Kedia*** (2011) 185 DLT 580 and ***Megh Raj Roshan Lal Vs. Rashmi Jain*** 2013 SCC OnLine Del 4001. Earlier also, in ***K.D. Gupta Vs. H.L. Malhotra*** 1992 (23) DRJ 234 (SLP(C) No.007073/1992 preferred whereagainst was dismissed on 22nd July, 1992) it was held that it cannot be laid down as a matter of principle that in every case of additional accommodation, leave to defend must necessarily be granted.

11. Even otherwise, no limitation, neither in Section 14(1)(e) nor in Section 25B of the Act to the said effect is to be found. Neither of the said provisions carve out a difference between requirement of tenanted premises when the landlord is not in possession of any accommodation and requirement of tenanted premises when the landlord is in possession of some accommodation and needs more or additional accommodation. No difference in law can be made in the two situations and to create a difference between the two situations would amount to arbitrary discrimination. Requirement of tenanted premises, whether it be on account of no accommodation or for additional accommodation have thus to be treated at par. It cannot be said that the summary procedure under

Section 25B of the Act is available only when the landlord is literally on the road, with no accommodation available to him and is not available when the landlord has some accommodation, even though it may be insufficient for his requirement. Supreme Court, in ***Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde*** (1999) 4 SCC 1 held that the phrase “reasonably and *bona fide* required by the landlord” is not to be tested on par with “dire need” of a landlord because the latter is a much greater need. Similarly, in ***Raghunath G. Panhale Vs. Chaganlal Sundarji & Co.*** (1999) 8 SCC 1 it was held that the word “reasonable” connotes that the requirement or the need is not fanciful or unreasonable but need not also be a “compelling” or “absolute” or “dire necessity”. A reasonable and *bona fide* requirement was held to be something in between a mere desire or wish on the one hand and a compelling or dire or absolute necessity on the other hand.

12. As far as the reference in the impugned order to ***S.M.Mehra*** (supra) and to ***Santosh Devi Soni Vs. Chand Kiran*** (2001) 1 SCC 255 is concerned, I may notice that these decisions though reported are merely orders and in the facts of the respective cases before the Supreme Court for grant of leave to defend.

13. I have in this respect in judgment ***S. Kesar Singh Vs. S. Paramjeet Singh*** 2017 SCC OnLine Del 10747 held as under:-

“11. The counsel for the petitioner has drawn attention to ***Santosh Devi Soni Vs. Chand Kiran*** (2001) 1 SCC 255 and ***S.M. Mehra Vs. D.D. Mallik*** (2001) 1 SCC 256 where it has been observed “there is no need to take a summary procedure since it is a case of additional accommodation”.

12. Both the aforesaid are without discussing any facts and without discussing any law and in fact are not even judgments and are reported as orders only. Supreme Court recently in **Pratap Kishore Panda Vs. Agni Charan Das** (2015) 17 SCC 789 held that with exponential increase in the decisions delivered by it, it has become an imperative for Advocates to distinguish between orders and judgments and to correctly cull out the ratio of the judgments. It was held that the decision being relied upon by the counsel before it was an order of the Supreme Court which decided the dispute before it and did not even attempt to or intend to expound the law and was therefore not in the nature of a binding precedent. I may in this regard notice that this Court in **K.D. Gupta** supra also held that **S.M. Mehra** supra did not give the facts in detail and leave to contest in that case was granted in peculiar facts and circumstances of that case and it cannot be held as laying down as a matter of principle that in every case of additional accommodation, leave to defend must necessarily be granted. **Santosh Devi Soni** and **S.M. Mehra** supra, in **Budh Singh & Sons** supra also were not treated as laying down any such ratio.

13. For the same reasons, the reference to **S.K. Seth Vs. Vijay Bhalla** 191 (2012) DLT 722, relying on the orders aforesaid of the Supreme Court is of no avail.”

14. The next question to be considered is, whether on the mere denial of the respondent of the facts pleaded by the petitioner in the petition for eviction, a case for grant of leave to defend is made out.

15. As would be obvious from the narration above, the respondent, in the leave to defend application, except for denying the requirement of the petitioner/landlord has not disclosed any facts of his own which would disentitle the petitioner from obtaining of order of eviction under Section 14(1) (e) within the meaning of Section 25 (B)(5) of the Act. If it were to be held that a tenant, in the application for leave to defend, merely by

denying the averments in the petition for eviction, without any basis and without disclosing the requisite particulars, is entitled to leave to defend, then the same would defeat the legislative intent in providing for summary procedure with respect to petitions for eviction on the ground of personal requirement of the landlord as then in all cases leave to defend will have to be granted and the stage of leave to defend would merely serve the purpose of delaying the filing of the written statement by the tenant and the trial to follow, thereby making the procedure for eviction on the ground of requirement of self use longer than the procedure prescribed for adjudication of the petition for eviction on other grounds of eviction prescribed in the Act. I have in **Ram Saroop Vs. Viney Kumar Mahajan** MANU/DE/3530/2017 discussed in detail on the said aspect and which is as under:-

“18. If leave to defend were to be granted on such vague pleas, the same would defeat the legislative intent of inserting Section 25B in the Rent Act as summary procedure for dealing with petitions for eviction on the ground of requirement of the premises by the landlord for his own use. A tenant, to be entitled to leave to defend has to disclose facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. It is only such facts which when proved would so disentitle the landlord which can entitle the tenant to leave to defend. Evidence in proof of such facts has to be confined to the pleas and cannot be beyond the pleas. If the tenant is unable to make specific pleas, the Court cannot grant leave to defend on the premise that he will improve his case during trial. Leave to defend is not to be granted to allow to the tenant time to improve his case.

19. Supreme Court in **Baldev Singh Bajwa Vs. Monish Saini** (2005) 12 SCC 778, in the context of summary procedure under the East Punjab Urban Rent Restriction Act, 1949 held that a heavy burden lies on the tenant and the tenant is called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant was held to be not sufficient. Similarly, in **Rajender Kumar Sharma Vs. Leela Wati** (2008) 155 DLT 383 it was held that Section 25B was inserted as a special provision for eviction of the tenants in respect of specified category of cases as provided therein; where a landlord seeks eviction on the basis of bona fide necessity, a summary procedure is provided and the tenant has to seek leave to defend disclosing such facts which disentitle the landlord from seeking eviction; where a tenant, in leave to defend, pleads preposterous propositions and makes such averments which are palpably false and the landlord in his reply to leave to defend is able to show the said falsity, the Controller is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it. Again, in **Ramesh Chand Vs. Uganti Devi** (2009) 157 DLT 450, it was held that mere assertions do not raise any triable issue and if these bald assertions were entertained, then every tenant would get away with leave to defend, defeating the intent of legislature. It was further held that only in those cases leave to defend can be granted where Controller finds some substance in the issues raised by the tenant. I have also taken the same view in **Sarwan Das Bange Vs. Ram Prakash** (2010) 167 DLT 80.

20. Supreme Court in **Busching Schmitz Private Limited Vs. P.T. Menghani** (1977) 2 SCC 835 held that Controller's power to give leave to contest is cribbed by

*the condition that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in Section 14(1)(e) of the Act; disclosure of facts is a sine qua non for grant of leave. It was further held in **Kewal Singh Vs. Lajwanti** (1980) 1 SCC 290 that it is a salutary provision in order to prevent frivolous pleas taken by the tenants to avoid eviction. In **Precision Steel & Engineering Works Vs. Prem Deva Niranjana Deva Tayal** (1982) 3 SCC 270 it was further expanded that while browsing through the affidavit, if there emerges averment of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted; however leave to contest should not be granted unless the affidavit discloses such facts. Ultimately in **Prithipal Singh Vs. Satpal Singh** (2010) 2 SCC 15 it was held that the dominant object of insertion of Section 25B is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated inter alia by Section 14(1)(e) and for avoiding unusual dilatory process provided otherwise by the Rent Act and the application of Order XXXVII Rule 4 of the Code of Civil Procedure, 1908 (CPC) to Section 25B in force till prior thereto, was held to be bad.*

21. I am afraid making of vague pleas in the application for leave to defend and affidavit accompanying the same, without giving any particulars, cannot be said to be disclosing facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act.”

16. In a leave to defend application, per Section 25B(5) of the Act, facts which when proved, would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act, have to be disclosed. Contents of leave to defend thus have to be materially different from contents of a written statement. While in a written statement, the

defendant, by specific denial can put the plaintiff to proof of any fact on the basis of which relief is claimed, it is not so in the case of leave to defend application. An application merely denying each and every averment in the petition for eviction and putting the landlord to proof thereof, without disclosing any facts as aforesaid would not entitle the tenant to leave to defend.

17. I have wondered that where the leave to defend application does not disclose any facts and the question for adjudication only is as in the present case, whether the landlord already having portion of the shop requires balance area of the shop, what purpose would the grant of leave to defend serve. The respondent, in his leave to defend application, has not disputed the factum of the petitioner and his wife carrying on business in the items as detailed above from the shop.

18. Just like the petitioner at present, in the petition for eviction duly verified and supported by affidavit and in the reply filed to the application for leave to defend has claimed that he requires the balance part of the shop, the petitioner so would in his affidavit by way of examination-in-chief state so. I have also wondered as to what cross examination, the counsel for the respondent can do of the petitioner save for suggesting that the requirement which he has deposed for additional accommodation is false.

19. Supreme Court, in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 and *Anil Bajaj Vs. Vinod Ahuja* (2014) 15 SCC 610 has held that it is not for the tenant or the court to tell the landlord as to how much space is good enough for the landlord and

whether the landlord should carry on his business or live out of one room or out of two rooms. I have in this context enquired from the counsel for the respondent present as to where his law office is. The counsel for the respondent states that his law office is in Safdarjung Area over an area about 1000 sq. feet. On asking as to why the counsel cannot carry on his law practice from 200 sq. feet as is the size of Chambers in the Courts from which a large number of lawyers are doing, the counsel has no response.

20. Counsel for the respondent at this stage states that the landlord has to continue carrying on his business from the same premises from which he chose to carry on the same at the time of letting out the portion to the respondent.

21. In the present case, the respondent was inducted as a tenant in 1964, by the father of the petitioner and when the father of the petitioner was the owner of the entire shop. In the last over half a century, the father of the petitioner has died and now the petitioner is the owner of half of shop inherited by him. Though the petitioner as a son could not have objected to his father, who was then the owner, letting out any portion to respondent and allow the petitioner to carry on business only from the portion presently with petitioner but the petitioner today has a right to make himself comfortable. Over the years the way businesses are done has also changed. The legislature also by providing a ground of eviction for self requirement accepted that needs and requirements of landlord can change. The said contention is directly contrary to the dicta of the Supreme Court in *Prativa Devi Vs. T.V. Krishnan* (1996) 5 SCC 353,

Sarla Ahuja Vs. United India Insurance Company Ltd. (1998) 8 SCC 119, ***Ragavendra Kumar Vs. Firm Machinery & Co.*** (2000) 1 SCC 679 and ***Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal*** (2005) 8 SCC 252 which prohibit the tenant from dictating to the landlord.

22. Supreme Court, in ***Shiv Sarup Gupta*** supra, ***Siddalingamma Vs. Mamtha Shenoy*** (2001) 8 SCC 561 and ***M.L. Prabhakar Vs. Rajiv Singal*** (2001) 2 SCC 355 has held that the purport of the Rent Act is not to compel the landlord who is the owner of the property to continue in lesser premises in spite of being in a position to enjoy more and for the sake of continuing with an old tenant.

23. As far as the judgments referred to by counsel for the respondent are concerned, not only do they turn on their own respective facts and do not consider the judgments aforesaid of the Supreme Court, even otherwise Supreme Court in ***State of Maharashtra Vs. Super Max International Private Limited*** (2009) 9 SCC 772, ***Dina Nath (Dead) by LRs. Vs. Subhash Chand Saini*** (2014) 11 SCC 20 and ***Nidhi Vs. Ram Kripal Sharma*** (2017) 5 SCC 640 has held that though in the earlier years, the rent laws of the country were interpreted in favour of the tenant but there has been a shift in their interpretation in the recent years and now laws are to be interpreted without any bias in favour of the either the landlord or the tenant.

24. It is interesting to note that the respondent who is carrying on his business from besides the room/store aforesaid, the entire other half of the shop as well as rear covered courtyard, is contending that petitioner

should carry on his business only from front half of half portion of the shop. The respondent cannot ask the petitioner landlord to squeeze himself.

25. In the light of aforesaid, the order impugned cannot be sustained and is set aside.

26. The application filed by the respondent for leave to defend is not found to be disclosing any facts which would disentitle the petitioner from obtaining an order of eviction under Section 14(1) (e) of the Act. Hence the application of the respondent for leave to defend is dismissed.

27. Resultantly, an order of eviction is passed in favour of the petitioner and against the respondent with respect to the premises described in paras 1,2 & 8 of the petition for eviction and as shown in red in the site plan filed by the petition for eviction and on which for the purpose of identification Ex.A-1 be put on the trial court record. The order of eviction in accordance with Section 14(7) of the Act shall not be executed for a period of six months.

28. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

NOVEMBER 03, 2017

Mw..

(Corrected and released on 3rd January, 2018).