

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

% **Date of decision: 13th September, 2017**

+ **RC.REV. No.337/2017**

RAMA WATI GOEL **.... Petitioner**

Through: Mr. Anil Gera & Mr. Ravinder
Shekhar, Advs.

Versus

NARESH KUMAR NANDWANI & ORS.Respondents

Through: Mr. Harjeet Narang & Mr. K.K.
Pahuja, Advs.

AND

+ **RC.REV. No.338/2017**

DEVENDER LAL PIPIL **.... Petitioner**

Through: Mr. Mohit Bhardwaj, Mr.
Gaurav Seth & Ms. Rashmi
Bhardwaj, Advs.

Versus

DR. RANJANA SAXENA **.....Respondent**

Through: Mr. Deepak Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. RC.REV.No.337/2017 impugns the order [dated 26th December, 2016 in RC ARC No.858/2016 of the Court of Additional Rent Controller (ARC) (East), Karkardooma Courts, Delhi of dismissal of the petition for eviction under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (Rent Act) filed by the petitioner for eviction of the respondents therein at the stage of consideration of the application of the respondents for leave to defend the said petition for eviction.

2. RC.REV. No.338/2017 impugns the order [dated 20th January, 2017 in RC ARC No.789/2016 of the Court of ARC (East),

Karkardooma Courts, Delhi, also of dismissal of the petition for eviction under Section 14(1)(e) read with Section 25B of the Rent Act filed by the petitioner for eviction of the respondent therein, again at the stage of consideration of the application of the respondent for leave to defend the said petition for eviction.

3. Both petitions though between different parties and with respect to different properties came up before this Court first on 26th July, 2017 and notice thereof was ordered to be issued for today. The counsels for the respondents / respondent appear and have been heard.

4. The two petitions are being disposed of by this common order since the orders impugned in each of the petition are by the same ARC and further since the reasoning given by the ARC in the order impugned in each of the petition is verbatim identical.

5. RC.REV. No.337/2017 was filed for eviction of the respondents therein from shop at the Ground Floor of property bearing No.IX/1592, Patel Gali, Gandhi Nagar, Delhi pleading i) that the subject shop was let out to the father of the respondents about 40 years back; ii) that the petitioner is in use of the First and Second Floors of the property in which the said shop in the tenancy of the respondents is situated; iii) that the other portions of the Ground Floor are with the other tenants; iv) that the husband of the petitioner has retired from Excise & Taxation Department; v) that one of the sons of the petitioner has died leaving a widow who is also dependent upon the petitioner and residing with the petitioner in the property; vi) that another son of the petitioner along with his wife and two sons is also

residing with the petitioner in the property – the said son of the petitioner was doing business from another rented property but “now a days” he is hand to mouth; vii) that the shop in the tenancy of the respondents situated in Gandhi Nagar, Delhi area is suitable accommodation for the said son of the petitioner to run his business; and, viii) that the said son of the petitioner is dependent upon the petitioner for accommodation and is even otherwise not doing any work or business and is unemployed.

6. The respondents in RC.REV. No.337/2017 applied for leave to defend *inter alia* pleading i) that besides the shop in the tenancy of the respondents, there are two other shops on the front side on the Ground Floor of the property and three other shops on the other side of the property; ii) that the two other shops on the front side had been let out to one Deepak of Laxmi Trading Company about six months back at a rent of Rs.7,000/- per month; iii) that the said shops were earlier in occupation of other tenants who left from time to time; iv) that the shops at the other side of the property were also let out recently to one Prakash who is running business in the name and style of M/s B.R. Textiles therefrom and paying rent of Rs.15,000/- per month; v) that had the petitioner had any requirement for the premises, she would not have so let out the other shops in the property; vi) that some portions of the First and Second Floors of the property are also lying vacant; vii) that the widow daughter-in-law of the petitioner is employed and earning and is not dependent upon the petitioner; and, viii) that the son of the petitioner continues to carry on his business as he had been doing earlier.

7. The petitioner filed reply to the aforesaid application for leave to defend pleading ii) that the front shop is in possession of Deepak Raja since June, 2012; ii) denying that the shop on the front side had been let out from time to time; and, iii) that the First and Second Floors of the property are being used for residential purposes of the petitioner and her family members only.

8. The learned ARC, in the impugned order dated 26th December, 2016 in RC.REV. No.337/2017, has observed/found/held; i) that the term 'dependent' is a legal term meaning that the dependent must have a right against the person on whom he is dependent and which right can be enforced in law; ii) examples are given of a married woman having enforceable right of maintenance against her husband, minor children and unmarried daughters being dependent upon their father because they have a right to enforce against such guardian; iii) that in the present case, the son of the petitioner for whose need the present petition for eviction had been brought is married and has his own family – he is not a minor, infirm, old aged or incapacitated; the said son has attained majority and it is also not as if he has just come of age; iv) that such a person loses his character of being dependent on anybody and law cannot be so interpreted to allow the term 'dependent' to be extended so as to permit a major, educated and educationally qualified married son to be included in the definition / meaning of the term 'dependent'; v) that the son of the petitioner has no enforceable right in law to enforce against the petitioner; vi) that the son of the petitioner who is not a minor and who is not incapacitated is himself a guardian and not a dependent; vii) only such

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a dependent can have precedence over immunity of tenant against eviction; viii) that in the absence of the person claiming to be dependent having an enforceable right against the person who files a petition for eviction, the occupancy of the said person even if any in the property of the person seeking eviction remains merely as of a licensee and the immunity of the tenant cannot be destroyed for proposed licensee; ix) that the son of the petitioner could not thus be held to be dependent upon the petitioner and on which ground alone the petition for eviction warranted dismissal; and, x) that the fact pleaded by the respondents, of the petitioner having let out the shops, has not been specifically denied by the petitioner – for this reason the petition for eviction is manifestly an attempt to seek eviction of the tenant without any ground for the false needs of a bogus ‘dependent’. Accordingly, the petition for eviction was dismissed.

9. The petitioner in RC.REV. No.338/2017 sought eviction of the respondent therein from one shop at L-25, Laxmi Nagar, Delhi pleading i) that property No.L-25, Laxmi Nagar, Delhi originally measured 267 sq. yds.; ii) that the said property was owned by the father of the petitioner; iii) that after the demise of the father of the petitioner, the property was divided amongst the petitioner and his three brothers and in the said partition, the petitioner got a 66 sq. yds. portion of the property in his exclusive share; iv) that the shop in the tenancy of the respondent was in the share of the petitioner; v) that the petitioner along with his two sons viz. Pranav Pipil (aged 18+ years) and Vasu Pipil (aged 16 years) and wife is residing on the First Floor and Second Floor of the property; vi) that the petitioner requires the

shop in the tenancy of the respondent for his elder son Pranav Pipil who wants to start a business of sale purchase of small computer related items and mobile related items / devices etc., to become employed and financially independent; vii) that the said son of the petitioner is completely dependent on the petitioner for his financial, residential and commercial needs; viii) that another shop in the said property was in possession of another tenant and yet another shop in the said property is being used by the petitioner for carrying on his own business; ix) that yet another shop in the property was sold by the father of the petitioner in 1990 to one Sarabjeet Singh and out of which shop two shops have been created; and, x) that the petitioner and his elder son do not have any other reasonable, suitable and alternate accommodation.

10. The respondent in RC.REV. No.338/2017 sought leave to defend pleading i) that the mother of the petitioner had earlier filed a petition for eviction of the respondent and which was dismissed in default on 26th May, 1998; ii) that thereafter the father of the petitioner filed another petition for eviction of the respondent on same grounds; that after the demise of the father of the petitioner, the petitioner was substituted in the said petition for eviction and arrived at a compromise with the respondent whereunder the rent was enhanced from Rs.313/- to Rs.485/- per month and the petition for eviction was disposed of; iii) the petitioner is put to proof of the partition of the property with his brothers; iv) that the space from which the petitioner is carrying on his business is in fact of four shops and is more than the requirement of the petitioner; v) that the son Pranav Pipil is feeble

mind, disabled, immature boy and is under constant treatment for his mental and physical rehabilitation; and, vi) that the said son of the petitioner cannot be settled in any business.

11. The petitioner in RC.REV. No.338/2017 filed a reply to the aforesaid application for leave to defend denying that his son Pranav Pipil is feeble minded or handicapped or immature or was under treatment.

12. The learned ARC vide order impugned in RC.REV. No.338/2017 has observed/found/held i) that the term 'dependent' is a legal term meaning that the dependent must have a right against the person on whom he is dependent and which right can be enforced in law; ii) examples are given of a married woman having enforceable right of maintenance against her husband, minor children and unmarried daughters being dependent upon their father because they have a right to enforce against such guardian; iii) that in the present case, the son of the petitioner for whose need the present petition for eviction had been brought has attained majority and it is also not as if he has just come of age; iv) that such a person loses his character of being dependent on anybody and law cannot be so interpreted to allow the term 'dependent' to be extended so as to permit a major son to be included in the definition / meaning of the term 'dependent'; v) that the son of the petitioner has no enforceable right in law to enforce against the petitioner; vi) that the son of the petitioner is not a minor and is not incapacitated and not a dependent; vii) only a minor, incapacitated dependent can have precedence over immunity of tenant

against eviction; viii) that in the absence of the person claiming to be dependent having an enforceable right against the person who files a petition for eviction, the occupancy of the said person even if any in the property of the person seeking eviction remains merely as of a licensee and the immunity of the tenant cannot be destroyed for proposed licensee; ix) that the son of the petitioner could not thus be held to be dependent upon the petitioner and on which ground alone the petition for eviction warranted dismissal; x) that if Pranav Pipil does not suffer from ailments, then he is not dependent upon the petitioner; and, xi) that on the contrary if Pranav Pipil suffers from such ailments, then he can by no stretch of imagination be said to be competent to manage the business. Accordingly, the petition for eviction was dismissed.

13. It would thus be seen that the learned ARC has given identical logic for dismissal at the threshold of both the petitions for eviction.

14. Both orders of the learned ARC are bereft of any case law. Instead, the ARC, in both impugned orders, has drawn the following tabulation to fortify the reasoning given:

“Right (stricto Liberty Sensu) Duty No-right	Power Immunity Liability Disability”
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15. I am constrained to observe that the learned ARC, while giving the aforesaid reasoning for dismissing the petitions for eviction at the threshold, has failed to show any knowledge lest study of precedents on the subject.

16. As far back as in *C.L. Davar Vs. Amar Nath Kapur* MANU/PH/0327/1962, Falshaw, C.J. was concerned with the question, whether the son (employed with the Army), daughter-in-law and granddaughter of the landlord as also another son who was 24 years of age and running his own shop, of the landlord are persons for whose requirement, tenant can be evicted. Opining on the meaning of the word 'dependent' in Section 14(1)(e) of the Rent Act, it was held that it cannot be construed as meaning nothing but wholly dependent in the sense of not earning anything at all and being entirely dependant on the father for board, 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 further observed that dependence may not in all circumstances be entirely a matter of finance.

17. Rajinder Sachar, J. of this Court, again in *J.L. Mehta Vs. Hira Devi* (1970) 6 DLT 484 rejected the contention that unless it is shown that the grown up son who is earning is not in a position to set up an independent house or that because of some serious illness, it is necessary for him to live with the father or the mother, the requirement of such a son could not be taken into account as a part of the requirement of the landlord. The word "himself" in Section

14(1)(e) of the Rent Act was held to be not restricted to the landlord or the landlady alone. It was held that it would make the Rent Act completely unworkable, if one was to restrict it in the grammatical sense. It was held that Rent Act cannot be interpreted as requiring a family consisting of father, mother and minor sons, occupying a premises part of which is with the tenant, upon the sons getting married and becoming independent, either being required to continue living in discomfort or face the alternative of splitting up of the family. It was yet further held that if a landlord has sons, married and earning, then the landlord is entitled to seek eviction of the tenant for requirement of the family. It was also noticed that our social system has not yet reached a stage where parents and married sons do not live together if it is possible to do so. It was yet yet further held that if the sons who are grown up and are married and are in a position to set up residence for themselves were asked to go out of the premises, it would be giving a big blow to the relationship between the parents and the children.

18. A Division Bench of this Court, in ***Gobind Dass Vs. Kuldip Singh*** ILR (1970) I Delhi 585, again interpreting the word 'dependant' in Section 14(1)(e) of the Rent Act, held that in the socio-religious structure of Hindu society, it is common for all the members of a family of brothers to live together, while some men folk in the family may go out of town to earn a livelihood and even remit their earnings to the family; one cannot shut one's eyes to this structure of our society and so to give a restricted meaning to the word 'dependant' would be to provide a definition of this word which the

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legislature has advisedly chosen not to do so; accordingly, the wives of the brothers of the landlord were held to be dependant on the landlord.

19. Mention may next be made of ***Joginder Pal Vs. Naval Kishore Behal*** (2002) 5 SCC 397 approving aforesaid judgments of this Court and holding, that it is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. It was further reasoned that the landlord is not going to let out the premises to his son and though the son would run his office in the premises, the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself.

20. In ***Dwarkaprasad Vs. Niranjana*** (2003) 4 SCC 549, it was held that marriage does not sever the blood relationship of son or daughter with the father and where in pursuance of moral obligations, a father affords support to his son or daughter, the need of the son or daughter becomes the need of the father. It was reiterated that the need of the landlord encompasses the need of all persons whose responsibility the landlord has accepted.

21. I have recently in judgment dated 28th August, 2017 in RC.REV. No.281/2017 titled ***Naresh Khanna Vs. Saroj Gupta*** referred certain other judgments on this aspect.

22. The learned ARC, even if new to the subject of Rent Act, is required to, before commencing pronouncing judgments affecting the rights of the parties, read the law and the past precedents interpreting

the said law. The learned ARC has on the contrary proceeded to decide the matter coloured completely by his own personal biases and prejudices, without even making an attempt to see whether the judgments in the working of the Rent Act of over half a century, share the beliefs as held by the learned ARC. Supreme Court in ***Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited*** (1999) 6 SCC 82, held that personal views of the Judge presiding over the Courts cannot be stretched to authorize them to interpret law in such a manner. The learned ARC has thereby given a go by to the Rule of *stare decisis*.

23. Supreme Court, in ***Narinder Singh Vs. State of Punjab*** (2014) 6 SCC 466 held that law declared by it in form of judgments becomes binding precedent to follow under Article 141 of Constitution of India and that *stare decisis* is the fundamental principle of judicial decision making which requires certainty too in law so that in a given set of facts the course of action which law shall take is discernible and predictable. The related objective of doctrine of *stare decisis* was held to be, to put a curb on the personal preferences and priors of individual judges. It was further held that the doctrine of *stare decisis* achieves equality of treatment as well inasmuch as two different persons faced with similar circumstances would be given identical treatment at the hands of law. Precedents which enuntiate rules of law, in ***Sub-Inspector Rooplal Vs. Lt. Governor, through Chief Secretary, Delhi*** (2000) 1 SCC 644, were held to form the foundation of administration of justice under our system. It was held that consistency in interpretation of law alone can lead to public confidence in our judicial system.

24. Not only so, the learned ARC, in dismissing the petitions in *limine*, at the threshold, has also displayed ignorance of Section 37 of the Rent Act which prohibits the Controller from making any order prejudicially affecting any person without giving him reasonable opportunity of showing cause against the order proposed to be made and until his objection, if any, and evidence such person may want to produce in support of the same, has been considered by the Controller. The ARC, if had entertained any doubts as to the very maintainability of the petition for eviction, ought to have expressed his said doubts to the counsel for the petitioners/petitioner who may then have shown the aforesaid law to the ARC. The counsels are otherwise entitled to presume the ARC to be knowing the law and the past precedents and are not expected to otherwise demonstrate interpretation of law which has been settled for decades.

25. The orders of dismissal of the petitions for eviction cannot thus be sustained.

26. Though the learned ARC in the order impugned in RC.REV.No.337/2017 has also observed that there is no specific denial of the landlord in that case of the averment in the application for leave to defend about the re-letting of the property but as detailed above, the landlord has indeed denied the said fact also. However, I am refraining from making any further observation at this stage.

27. The learned ARC, for the reason of having dismissed the petitions for eviction as not disclosing a cause of action therefor, has

not considered the application for leave to defend in the correct perspective.

28. The petitions are thus allowed. The orders impugned in the petitions are set aside.

29. Resultantly, the petitions for eviction from which these petitions arise are restored to their original position.

30. The parties to appear before the ARC on 26th October, 2017.

31. The ARC to proceed to hear the parties on the applications for leave to defend and if entertains any doubt as to the principles thereof, to express the same to the counsels so that the counsels have opportunity to show the law.

32. The petitions are disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 13, 2017

‘gsr’..

(corrected & released on 24th October, 2017)