

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

% **Date of decision: 17th July, 2017**

+ **RC.REV. No.315/2017 & CM No.24585/2017 (for stay)**

ASHA SAWHNEY AND ORS

..... Petitioners

Through: Mr. Rakesh Tiku, Sr. Adv. with Mr.
P.P. Ahuja, Mr. Sandeep Kumar and
Ms. Disha Ganjor, Advs.

Versus

KAMINI GUPTA & ORS

..... Respondents

Through: Mr. Akshay Makhija and Mr. Vikas
Bhadauria, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

Caveat No.633/2017.

1. The counsel for the Caveator has appeared.
2. The Caveat stands discharged.

RC.REV. No.315/2017 & CM No.24585/2017 (for stay).

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 3rd February, 2017 in E.No.339/14/08 (New No.79410/2016) of the Court of Additional Rent Controller-02, Central District, Tis Hazari Courts, Delhi) of dismissal of the application filed by the petitioners / tenants for leave to defend the petition for eviction filed by the respondents / landlords under Section 14(1)(e) of the Act and the consequent order of eviction of the petitioners / tenants from the ground floor of property no.8539, Plot No.4, Arakashan Road, Ram Nagar, Pahar Ganj, Delhi – 110 055 in the tenancy of the petitioners / their predecessor since 1st June, 1973 at a rent of Rs.94/- per month.

4. The counsels have been heard.

5. The senior counsel for the petitioners / tenants during the hearing has not controverted that the respondents are the owners of the premises in the tenancy of the petitioners and that there exists a relationship of landlord and tenant between the respondents and the petitioners.

6. Shri. V.K. Gupta being the late husband of the respondent no.1 and the father of the respondents no.2&3 sought eviction of the petitioners / tenants from the aforesaid premises pleading (i) that the premises in the tenancy of the petitioners comprised of one shop *ad measuring* 13' 4" x 12' and one godown *ad measuring* 10' 2" x 8' 7"; (ii) that the said V.K. Gupta was a B.Com (Hons.) graduate and a retired Chairman and Managing Director of M/s. NEPA Ltd. (a Government of India Enterprises) and had also done his LL.B and was enrolled as an Advocate; (iii) that the said V.K. Gupta was a business law consultant and carrying on his consultancy office from a small portion *ad measuring* 150 sq. ft. of property no.11, Ram Nagar, New Delhi – 110 055; that the property no.11, Ram Nagar, New Delhi was situated in a narrow lane and was at quite a distance from main Qutub road; (iv) that there was no space for parking of vehicles also near about the property no.11, Ram Nagar, New Delhi and the clients of the said V.K. Gupta could only reach the office of V.K. Gupta with great difficulty and wasting a lot of time and which was resulting in not many clients opting to consult the said V.K. Gupta; (v) that the said V.K. Gupta needed a bigger office to attract more clients; (vi) that the premises in the tenancy of the petitioners were most suitable for the requirement of V.K. Gupta; (vii) the premises in tenancy of petitioners is situated in an uncongested portion near the main Qutub road, with a lot of parking spaces near about it; (viii) that the said V.K. Gupta

required the premises in the tenancy of the petitioners to shift his own office and to help his wife in managing and running the hotel Rama Inn; (ix) that on the ground floor of the property, besides the portion in the tenancy of the petitioners, one portion was occupied by M/s. Indo Arya Central Transport Ltd. (IACTL) and the remaining small portion left was being used as small office, lobby and reception of the Hotel M/s. Rama Inn being run by the wife of the said V.K. Gupta (who after his death is respondent no.1) on the upper floors of the property; (x) though there were 26 rooms available for providing boarding and lodging facilities on the upper floor but only 18 were being utilised for the said purpose as the remaining eight rooms were not allowed to be used for boarding and lodging because of the staircase leading from the ground floor to the upper floor being only one meter wide; (xi) that for profitable and proper running of the Hotel M/s. Rama Inn it was necessary to widen the staircase and for which no space was available on the ground floor; (xii) Hotel M/s. Rama Inn due to paucity of space, was also not having any restaurant, common room, dining hall, cyber cafe and lift; (xiii) that the wife of the said V.K. Gupta i.e. the respondent no.1 herein planned to make a restaurant, common room, dining hall, lift and cyber cafe on the portion of the ground floor in the tenancy of the petitioners; (xiv) providing the aforesaid facilities was essential for the profitable and proper running of the Hotel M/s. Rama Inn; (xv) a large number of prospective customers of Hotel M/s. Rama Inn were not preferring it for the lack of said facilities; and, (xvi) that the said V.K. Gupta for his aforesaid requirements, besides the portion in the tenancy of the petitioners, also required the portion in the tenancy of IACTL.

7. The petitioners / tenants sought leave to defend pleading (i) that the said V.K. Gupta had executed a registered Lease Deed dated 27th March, 2006 for a period of 25 years commencing from 1st April, 2006 on a monthly rent of Rs.200/- per month in favour of IACTL; (ii) had V.K. Gupta any requirement, he would not have executed the lease deed for the long period of 25 years; (iii) that the said V.K. Gupta was leading a retired life and did not require the premises; (iv) that Hotel M/s. Rama Inn has ample accommodation available on the ground and upper floors of the property; (v) that there was no legal and valid licence for running the business of Hotel M/s. Rama Inn; (vi) that IACTL was earlier a tenant in a larger portion of the ground floor and has, at the time of execution of the lease deed for a period of 25 years in its favour, surrendered possession of part of the portion in its occupation to the said V.K. Gupta and which portion was being utilised as reception and for other purposes of Hotel M/s. Rama Inn; (vii) that V.K. Gupta was not doing any business as a consultant and in any case had ample accommodation available to him in the property for the said purpose; (viii) that the conduct of V.K. Gupta of, execution of the lease deed in favour of IACTL, demonstrated that he had no *bona fide* requirement for any additional portion on the ground floor; (ix) that Section 14(1)(e) of the Rent Act did not permit eviction of tenant on the ground of commercial requirement of the premises in occupation of the tenant; and, (x) that a restaurant or a lift or a cyber cafe were not essential for the business of a hotel.

8. V.K. Gupta who had instituted the petition for eviction, died and was substituted by his widow, son and daughter who are the present respondents.

9. The widow of V.K. Gupta filed a reply to the application for leave to defend *inter alia* stating (i) that IACTL was the tenant in the portion *ad measuring* 1850 sq. ft. of the ground floor and had raised unauthorised construction in the said portion and qua which a suit was filed by V.K. Gupta and which was pending in the High Court of Delhi as CS(OS) No.164/2005; (ii) that during the pendency of the aforesaid suit, IACTL agreed to vacate 1200 sq. ft. portion on the condition that V.K. Gupta executes the lease deed aforesaid for the remaining 650 sq. ft. portion; (iii) V.K. Gupta had no other option but to agree to the aforesaid so as to regain at least 1200 sq. ft. portion out of the entire tenanted premises and thus agreed to the same and against which vacation of 1200 sq. ft. portion the lease deed aforesaid for 25 years for the remaining 650 sq. ft. portion was executed in favour of IACTL; and, (iv) that V.K. Gupta himself and after him the respondents were exploring the legal option available for having the said portion vacated.

10. Though this petition is preferred against the order of refusal of leave to defend and the consequent order of eviction but I may mention that the petition for eviction was filed as far back as on 20th November, 2008 and the decision of the leave to defend application itself took 8½ years. Inference can be drawn that it is only the tenant who is interested in delaying such litigation and the petitioners / tenants thus have to be held responsible for the long time of 8½ years taken for disposal of leave to defend and in which time, if leave had been granted, even trial would have been over. I have in fact in Court expressed my fear that if at all a case for grant of leave to defend were to be made out, how long would the petitioners / tenants be able to delay the trial. It can safely be assumed that if disposal of leave to defend

application can be delayed for 8½ years, the petitioners / tenants would certainly succeed in delaying the trial for at least two decades.

11. The first argument of the senior counsel for the petitioners / tenants is, that on the demise of V.K. Gupta who had instituted the petition for eviction, the requirement pleaded disappeared and the petition for eviction should have been dismissed.

12. The petition for eviction as aforesaid was filed by V.K. Gupta on the ground of requirement of the premises in the tenancy of the petitioners/tenants not only for use by himself as an office but also for use by his wife, who is now the respondent no.1, of the ground floor premises for the business of Hotel M/s. Rama Inn admittedly being run on the upper floors of the property. It is thus not as if the requirement pleading which eviction was sought was only personal of V.K. Gupta. The requirement was also of the wife of V.K. Gupta i.e. the present respondent no.1 and who was pleaded to be dependent on V.K. Gupta for accommodation. Moreover it is not open to the petitioners / tenants to now argue that the respondents / landlords should not have been substituted in place of V.K. Gupta or that the cause of action on which the petition for eviction was filed did not survive to the heirs of V.K. Gupta.

13. The senior counsel for the petitioners / tenants has next argued that the wife and children of V.K. Gupta were not dependent upon V.K. Gupta.

14. Section 14(1)(e) of the Rent Act entitles the landlord to evict the tenant not only for his own requirement but also for the requirement of his family members dependent upon him and which dependency has been consistently held to be not necessarily financial dependency but dependency for accommodation in the context of Indian families and which judgments

the senior counsel for the petitioners / tenants also does not controvert. Reference if any required in this regard can be made to **Joginder Pal Vs. Naval Kishore Behal** (2002) 5 SCC 397, **Dwarkaprasad Vs. Niranjana** (2003) 4 SCC 549, **Ajit Singh Vs. Jit Ram** (2008) 9 SCC 699, **Mahantgovind Dass Vs. Kuldip Singh** (1970) 6 DLT 507 (DB) & **Sushila Devi Vs. Raghunandan Prasad** (1996) 61 DLT 426 (DB). The petitioners / tenants, in their application for leave to defend admitted that the business of Hotel M/s. Rama Inn was being run from the upper floors of the property and did not plead availability of any other accommodation on the ground floor save for that let-out to IACTL. The dependency of wife of V.K. Gupta, who is now the respondent no.1, on V.K. Gupta for accommodation was thus not in dispute in the application for leave to defend.

15. The applications for leave to defend under Section 25B(5) of the Act provides that for leave to defend to be granted, leave to defend application should disclose the facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. The petitioners / tenants were thus required to disclose facts that wife of V.K. Gupta was not dependent upon him for accommodation and which was not done; merely denying that she was not dependent on V.K. Gupta was not sufficient and does not entitle the petitioners / tenants to leave to defend. Moreover now when V.K. Gupta is no more and the respondent no.1 has *inter alia* been substituted in his place, the said argument has disappeared inasmuch as the respondent no.1 along with the respondents no.2&3 has succeeded to the right and title of V.K. Gupta in the property. In **Shantilal Thakordas Vs. Chimanlal Maganlal Telwala** (1976) 4 SCC 417 it was held that if the law permitted the eviction of the tenant for the requirement of the landlord “for

occupation as a residence for himself and members of his family”, then the requirement is both of landlord and of the members of his family and on the death of the landlord, the right to sue survives to the members of the family. Reference can be made to ***Raghunath G. Panhale Vs. Chaganlal Sundarji & Co.*** (1999) 8 SCC 1 and to ***Sheshambal Vs. Chelur Corporation Chelur Building*** (2010) 3 SCC 470.

16. Though the senior counsel for the petitioners / tenants also sought to argue that no need of Hotel M/s. Rama Inn was pleaded in the petition for eviction but upon his attention being invited to the paragraph in the petition for eviction in that regard, did not press the said argument.

17. The senior counsel for the petitioners / tenants next, with reference to pages 247 and 248 of the paper book contended that the petitioners / tenants had under Right to Information Act, 2005 sought to gather information, whether Hotel M/s. Rama Inn had all the requisite permissions but the entire information was not furnished.

18. A perusal of pages 247 and 248 of the paper book being the response dated 27th January, 2016 and 15th February, 2016 of the Public Information Officer (PIO) of the Licensing Unit of Delhi Police shows that permissions have been granted to Hotel M/s. Rama Inn. Moreover the petitioners / tenants themselves in the application for leave to defend have admitted the existence of Hotel M/s. Rama Inn in the premises and the hotel business being carried on. The said contention is thus not relevant for the subject adjudication. In these proceedings we are not to consider whether the respondents / landlords have obtained all the requisite permissions for carrying on the business of Hotel M/s. Rama Inn; rather the said conduct of the petitioners / tenants shows the attempt of the petitioners who are but

tenants in the property to harass the landlords by preventing the landlords from carrying on business in the remaining portion of the property.

19. The star argument of the senior counsel for the petitioners / tenants is about the execution of 25 years lease, two years prior to the institution of the petition for eviction from which this petition arises, in favour of IACTL. It is contended that V.K. Gupta in the petition for eviction did not disclose the factum of having executed the long lease and concealed the same and that it was not his case that the requirement pleading which the petition for eviction of the petitioners was filed did not exist in the year 2006 and arose in the year 2008 only. It is contended that all these raise triable issues and the petitioners / tenants, if granted leave to defend, would have an opportunity to cross-examine the respondents / landlords in this respect.

20. Per contra, the counsel for the respondents / landlords has argued (i) that the lease deed aforesaid is of the year 2006; (ii) that V.K. Gupta was in litigation with IACTL since much prior thereto; (iii) the ground of eviction of tenant of requirement by the landlord of commercial premises became available only on pronouncement on 16th April, 2008 of *Satyawati Sharma Vs. Union of India* (2008) 5 SCC 287; (iv) IACTL was a tenant under V.K. Gupta for commercial purpose and though V.K. Gupta / respondents even then had requirement of the premises in the tenancy of the petitioners as well as said IACTL but under the then prevalent law could not have sought eviction on the said ground; and, (v) that it was in these circumstances that V.K. Gupta arrived at a settlement with IACTL whereunder V.K. Gupta, in consideration of IACTL vacating 1200 sq. ft. area out of 1850 sq. ft. area in their possession / tenancy, agreed to execute the lease deed for 25 years for remaining 650 sq. ft.

21. I have considered the aforesaid rival contentions and have wondered, that in the face of the undisputed position of the lease deed in favour of IACTL being of much prior to *Satyawati Sharma* supra, what purpose grant of leave to defend on the said plea would serve. The position, after trial also, would not be different from what it is today. The question, whether the execution of the lease deed aforesaid disentitles the respondents / landlords from an order of eviction under Section 14(1)(e) of the Act has to be decided on these facts only, whether it be done at the stage of leave to defend or after trial.

22. If such is the position, then also, no case for grant of leave to defend is made out. When even if the facts disclosed by the tenant are considered as proved, the landlord would not be disentitled from obtaining an order of eviction under Section 14(1)(e) of the Act, no case for grant of leave to defend is made out.

23. It is not as if V.K. Gupta in the year 2006, inspite of having requirement of the ground floor for self use, for the first time let out any portion of the ground floor. It is not in dispute that IACTL was also an old tenant on the ground floor with no ground being available to V.K. Gupta under the Rent Act to evict them. The action of V.K. Gupta, of recovering possession of at least 1200 sq. ft. area from IACTL and having put the area so recovered to his own use i.e. of Hotel M/s. Rama Inn, does indeed show that from execution of the lease deed for 25 years of the remaining portion of 650 sq. ft. in favour of IACTL, cannot be said to be negating requirement pleaded in the petition for eviction and therefrom it cannot be said that V.K. Gupta having deprived himself of any premises available and which would have met his requirements, does not have *bona fide* requirement for the

premises in the tenancy of the petitioners. The decision to create lease of 25 years of the 1/3rd portion earlier in the tenancy of the IACTL, in lieu of recovering possession of the balance 2/3rd portion, was a prudent decision at the contemporaneous time, in consonance with the requirement pleaded.

24. There is thus no merit in the said ground also.

25. As far as the other arguments of the senior counsel for the petitioners / tenants are concerned, it is well settled in law that a tenant cannot dictate to the landlord to, if requirement of landlord is found, to accommodate himself in a smaller portion and how to accommodate himself in the smaller portion. Once it is established that the respondents are carrying on business of Hotel M/s. Rama Inn from the property, the petitioners / tenants cannot dictate that the respondents / landlords should not expand the said business or continue to carrying it from within the premises in which it was commenced earlier. Supreme Court in **Sarla Ahuja Vs. United India Insurance Co. Ltd.** (1998) 8 SCC 119 held that the Rent Controller shall not proceed on the presumption that the requirement is not *bona fide* and that when the landlord shows a *prima facie* case, a presumption that the requirement is *bona fide* is to be drawn and that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises and that while deciding the question of *bona fide* of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself. Reference in this regard can also be made to **Raghunath G. Panhale** supra, **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta** (1999) 6 SCC 222, **Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal** (2005) 8 SCC 252 and **Anil Bajaj Vs. Vinod Ahuja** (2014) 15 SCC 610.

26. Comparatively, recently in *Uday Shankar Upadhyay Vs. Naveen Maheshwari* (2010) 1 SCC 503, it was also held that it is not for the Court to say that the landlord should shift to the first floor or any higher floor. It was also held to be well known that shops and businesses are usually conducted on the ground floor because customers can reach there easily and that the Court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Such reasoning on the part of the Court for denying the order of eviction to the landlord, earlier also in *Prativa Devi Vs. T.V. Krishnan* (1996) 5 SCC 353 was held to be ‘rather solicitous’, ‘gratuitous uncalled for advice’ to the landlord and being not the ‘lookout of the Court’.

27. The senior counsel for the petitioners / tenants then drew attention to page 154 of the paper book, where the description of Hotel M/s. Rama Inn on the website of www.makemytrip.com given is as of also having a restaurant. It is thus contended that there already exists a restaurant and the requirement pleaded of the premises in the tenancy of the petitioners, for having a restaurant, is false.

28. I have enquired from the senior counsel for the petitioners / tenants, whether not the description given by the respondents / landlords on the website aforesaid of their hotel with an intent to attract customers thereto is but a marketing talk and qua which, in judgments relating to disparaging advertising it has been held that the tendency is to puff up their products. The senior counsel for the petitioners / tenants agrees. I have next enquired from the senior counsel for the petitioners / tenants, whether the petitioners / tenants / he have also checked the reviews of the customers of Hotel M/s. Rama Inn which are also published on such websites and which indeed show

the true picture. It is from such review that one can determine whether the various facilities described are indeed available or not.

29. The senior counsel for the petitioners / tenants states that he has not.

30. No reliance can thus be placed on such marketing talk.

31. The site plan of the property handed over during the course of hearing shows that on the ground floor of the property, besides the portion in occupation of IACTL on one side, the petitioners / tenants occupy the front portion of the other side, with the respondents / landlords only having the middle portion and from which the staircase to the upper floor also goes. The said site plan is not in dispute. The said site plan also shows the total area of the property to be 254 sq. yds. only. The front portion of the ground floor in the premises in the tenancy of the petitioners / tenants is certainly found to be apposite for business of Hotel M/s. Rama Inn and the respondents / landlords cannot be compelled to continue with the petitioners / tenants, once a ground of eviction under the Rent Act has accrued to the respondents / landlords.

32. The senior counsel for the petitioners / tenants has generally also stated that the Ram Nagar property has also fallen vacant but himself states that the same is also being used by the respondents / landlords for keeping the paying guests.

33. The respondents / landlords are admittedly carrying on business of Hotel M/s. Rama Inn from the subject property and additional requirement of premises for the said business cannot be fulfilled by a availability, even if any, of another floor of property.

34. The senior counsel for the petitioners / tenants has next drawn attention to ***Vijay Kumar Ahluwalia Vs. Bishan Chand Maheshwari*** (2017)

3 SCC 189 where the Supreme Court in the facts of that case granted leave to defend.

35. On a reading of the judgment it is found that the leave to defend was granted in that case for the reason of the tenant having disputed the ownership and admittedly having never paid rent and / or never attorned as landlord to the person who had filed the petition for eviction and for the reason of the tenant having shown alternative accommodation available to the landlord to satisfy the need.

36. Requirement is a state of mind and differs from person to person and in the context of the social standing and needs of the person. It thus cannot be said that because in the facts of one case leave to defend has been granted, leave to defend should always be granted even where the facts are such which even if accepted would still not disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. If it were to be held so, the same would be contrary to the legislative intent contained in Section 25B of the Act.

37. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 17, 2017

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(corrected & released on 9th September, 2017)