

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

% **Date of decision: 18th July, 2017**

+ **RC.REV. 300/2017**

SUNIL KUMAR GOYAL

..... Petitioner

Through: Mr. Zakir Hussain, Adv.

Versus

HARBANS SINGH

..... Respondent

Through: Mr. Abhay Dixit, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

Caveat No.602/2017

1. The counsel for the caveator/respondent appears.
2. The caveat stands discharged and disposed of.

CM No.23370/2017 (for exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

RC.REV. 300/2017 & CM No.23369/2017 (for stay)

5. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 24th March, 2017 of the Court of Rent Controller (West), Tis Hazari Courts, Delhi in E No.25615/2016 filed by the respondent/landlord under Section 14(1)(e) of the Act) of dismissal of the application filed by the petitioner/tenant for leave to defend and consequent order of eviction of the petitioner/tenant from shop No.1 in property No.C-147, Clock Tower, Hari Nagar, New Delhi.

6. The counsels have been heard.

7. The counsel for the petitioner/tenant has argued that the respondent/landlord suppressed from the petition for eviction that the

term of the lease of another shop let out by the respondent/landlord in the same property was about to expire two months after the institution of the petition for eviction and the respondent/landlord has re-let the said shop and which falsifies the need/requirement pleading which the eviction of the petitioner/tenant from the shop in his tenancy was sought.

8. The counsel for the respondent/landlord states (i) that the respondent/landlord is the owner/landlord of only two shops i.e. one in the tenancy of the petitioner herein and the other which was let out two years back to one Mr. Naresh Sindhwani at the rate of Rs.10,000/- per month; (ii) that it was a term of the agreement of letting out to Mr. Naresh Sindhwani that the lease after two years shall be renewed for another period of two years; (iii) that the said shop was let out at a rent of Rs.10,000/- per month and the lease thereof in accordance with the agreement at the time of letting has been renewed for a further period of two years at the rate of rent of Rs.12,000/- per month; (iv) that the petitioner/tenant is an old tenant since the year 1987 paying rent of Rs.2,000/- only; (v) that the respondent/landlord is entitled to arrange his affairs to reap maximum return from his property and to seek eviction of a tenant in a low rent yielding shop rather than of a tenant in a high rent yielding shop.

9. The counsel for the petitioner/tenant states that the petitioner/tenant in the application for leave to defend also disputed the *bona fide* requirement pleaded by the respondent/landlord and contends that the respondent/landlord does not need the shop in the tenancy of the petitioner/tenant. It is stated that the act of the

respondent/landlord of letting out / renewing the lease of another shop owned by him nullifies the requirement pleaded. It is further contended that if the respondent/landlord had any *bona fide* need/requirement of a shop for carrying on his own business, the respondent/landlord, instead of bothering about the rate of rent, would have got the other shop vacated and would have commenced his business therefrom. It is further contended that from the suppression of the imminent expiry of the term of the lease of the other shop, the plea of *bona fide* requirement of the shop in tenancy of petitioner / tenant is nullified.

10. I have considered the aforesaid contentions.

11. It cannot be lost sight of that according to the petitioner / tenant also, on the date of institution of the petition for eviction, the other shop was in occupation of another tenant. It is thus not as if the other shop already stood vacated and was concealed from the petition for eviction. The plea of concealment has to be judged in the context of the agreement of the respondent / landlord with the tenant in the other shop for renewal of the term of lease of the other shop. The question for adjudication is whether in such facts, the concealment was such so as to warrant dismissal of the petition for eviction or grant of leave to defend to the petitioner.

12. Supreme Court in ***Bhairab Chandra Nandan Vs Ranadhir Chandra Dutta*** (1988) 1 SCC 383 held that once the facts which are alleged to have been concealed have come before the Court and the Court has had occasion to consider the same and after considering the same finds in favour of the landlord, the petition for eviction cannot be

dismissed on the ground of concealment. Similarly in ***M.L. Prabhakar Vs. Rajiv Singhal*** (2001) 2 SCC 355, qua the plea of concealment / suppression, it was held that the fact that the landlord has another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the Court and case of neither party was prejudiced. Accordingly, it was held that though the landlord in that case had not mentioned about the other premises but the material in respect of the other two premises had come before the Rent Controller as well as before the High Court and no prejudice had been caused and the parties had squarely dealt with the question.

13. This Court also in ***Harbant Singh Vs. Vinod Sikari*** 189 (2012) DLT 215 held that unless there is concealment of fact which is so vital to the bearing of the petition in issue, it would not amount to concealment. It was reiterated that concealment of accommodation which was not available or suitable cannot be a ground for non-suiting the landlord or granting leave to defend.

14. It is in the aforesaid context that it becomes relevant that the other shop, on the date of the institution of the petition for eviction, was admittedly let out. Once the same is admittedly not available today also, the petitioner / tenant cannot draw any mileage from concealment.

15. The next question to be considered is, whether the respondent / landlord can be denied an order of eviction against the petitioner / tenant paying a rent of Rs.2,000/- per month for the reason of having

renewed the lease of another shop by enhancement of rent thereof from Rs.10,000/- to Rs.12,000/- per month.

16. The premises, rent whereof is in excess of Rs.3,500/- per month, are not within the ambit of Rent Act and occupation by the tenant thereof is a matter of contract with the landlord. Thus, it was open to the respondent / landlord to have the other shop let out at a rent of Rs.10,000/- per month vacated after the term of lease thereof expired after the institution of the petition for eviction.

17. The question however for adjudication is, whether for the reason of having not done so, the respondent / landlord can be said to have had “other reasonably suitable accommodation” within the meaning of Section 14(1)(e), of which the respondent / landlord had not availed of.

18. Supreme Court in *Prativa Devi Vs. T.V. Krishnan* 1996 (5) SCC 353 held that the landlord is the best judge of his requirement; he has a complete freedom in the matter, it is no concern of the Courts to dictate to the landlord how and in what manner he should live or to prescribe for him a standard of their own. Similarly in *M.L. Prabhakar* (supra) it was held that suitability has to be seen from the convenience of the landlord and his family members and on the basis of the totality of the circumstances including their profession, vocation, style of living, habits and background.

19. Mention may also be made of *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 laying down that the term *bona fide* refers to a state of mind and a requirement in the sense of felt need which is an outcome of a sincere, honest desire, in

contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of his family. It was held that the Court should place itself in the armchair of the landlord and then ask the question to itself whether in the given facts substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest and that if the answer is in the positive, the need is *bona fide*. It was further held that the Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his need. The concept of *bona fide* need was held to require a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. It was yet further held that wherever another accommodation is shown to exist as available, then the Court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need; if the landlord convinces the Court that the alternative accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist, then the petition for eviction under Section 14(1)(e) has to succeed. Convenience and safety of the landlord and his family members were held to be relevant factors. It was held that the Court must keep in mind the profession or vocation of the landlord and his

family members, their style of living, their habits and background wherefrom they come.

20. Applying the aforesaid principles, I have wondered i) whether the choice of the respondent / landlord in the present case to satisfy his requirement for commercial premises by evicting the petitioner / tenant paying a rent of Rs.2,000/- per month and not the tenant in the other shop paying a rent of Rs.10,000/- per month and which other tenant has promised to increase the rent to Rs.12,000/- per month can be interdicted by the Court; and, ii) whether the other shop fetching a rent of Rs.10,000/- / Rs.12,000/- per month as against the rent of Rs.2,000/- per month being paid by the petitioner / tenant can be held to be reasonably suitable alternative accommodation within the meaning of Section 14(1)(e) of the Act for it to be said that the respondent / landlord is not entitled to an order of eviction against the petitioner / tenant paying Rs.2,000/- per month for the reason of having option to evict the tenant in the other shop paying Rs.10,000/- / Rs.12,000/- per month.

21. Applying the aforesaid dicta, of the comparatively recent times, of the Supreme Court, in my opinion both the questions aforesaid have to be answered in favour of the respondent / landlord and against the petitioner / tenant.

22. If the Courts have been held to be not entitled to interfere with the choice of the landlord as to which of the two tenants he wants to evict and if it has been held that the tenant cannot be heard to say that the landlord instead of evicting him should evict the other tenant, then I fail to see how the law can be different when the choice of the

landlord is guided by economic / monetary considerations as in the present case than when the choice is guided by choice of the premises as in the aforesaid cases. The factors of convenience and safety of the landlord and his family members, profession or vocation of the landlord and his family members, their style of living, their habits and background wherefrom they come, on the anvil of which the Courts in the dicta aforesaid have held as aforesaid, would in my opinion equally apply to a choice guided by monetary / economic considerations.

23. The respondent / landlord in the present case has been found to be in requirement of the premises for the reason of being unemployed for the past few years and having no source of income and requiring a commercial premises to set up his own business. Such a landlord, for the benefit of himself and his family members, is certainly entitled to choose to file a petition for eviction against a tenant paying rent of Rs.2,000/- per month and not against a tenant paying rent of Rs.10,000/- / Rs.12,000/- per month.

24. I find that this Court as far back as in ***Freddy Fernandes Vs. P.L. Mehra*** ILR 1973 Delhi 682 noticed that the landlord had an economic reason why he did not want to occupy the Jangpura house in preference to the Nizamuddin house. The desire to seek economic gain was held to be legitimate and not amounting to making the need of the landlord *mala fide*.

25. I would be failing in my duty if do not mention ***Amarjit Singh Vs. Smt. Khatoon Quamarain*** (1986) 4 SCC 736 holding that if the landlady could have reasonable accommodation after her need arose

and she by her own conduct disentitled herself to that property by letting it out for higher rent, she would be disentitled to evict her tenant on ground of her need.

26. However it cannot be lost sight of that the Rent Acts are statutes enacted in a different era and govern human relationships and have to necessarily evolve with the times. There indeed has been a perceptible shift in the interpretation of the various provisions of the Rent Acts in the last about 20/30 years, so much so that in *Satyawati Sharma Vs. Union of India* (2008) 5 SCC 287, Section 14(1)(e) of the Act which as per its express language permitted order of eviction to be passed thereunder only with respect to the premises let out for residential purposes, has been held to be violative of doctrine of equality embedded in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non residential purpose when the same are required *bona fide* by the landlord for occupation for himself or for any of his family members dependent upon him and the words 'let for residential purposes' have been struck down therefrom. Reference in this regard can also be made to *Raghunandan Saran Ashok Saran (HUF) Vs. Union of India* (2002) 95 DLT 508 striking down Section 6 of the Rent Act. Civil Appeal no.6183/2002 titled *Vishwant Kumar Vs. Union of India* was dismissed as abated on 22nd April, 2009. In the same vein, I am of the opinion that the dicta in *Shiv Sarup Gupta* supra of the year 1999 will prevail over the dicta of the year 1987 in *Amarjit Singh* supra. Following the dicta in *Shiv Sarup Gupta* supra while

construing the suitability of the alternative premises for the landlord, economic considerations will also have to be taken into consideration.

27. I find that this Court in *Om Prakash Bajaj Vs. Chander Shekhar* (2003) 67 DRJ 674 to have held that suitability of the alternative premises cannot be determined by mere counting the rooms but has to be determined keeping in view the totality of the facts, the nature of need pleaded by the landlord, his and his family's standard and style of life and the purpose to which the landlord wants to actually put it after coming it into possession thereof. The respondent / landlord who it is not disputed has no other source of income cannot be compelled to deprive himself of the rent being earned from the other shop of Rs.10,000/- / Rs.12,000/- per month and to starve himself and his family members. It is well known fact of life that establishing a business and earning handsomely from it has a gestation time and it cannot be expected that the respondent / landlord after evicting the tenant paying Rs.10,000/- / Rs.12,000/- per month and establishing his business from the other shop would immediately start earning an equivalent amount.

28. As far as the challenge to the requirement pleaded is concerned, the learned Rent Controller has for reasons stated found that the denial by the petitioner/tenant in the application for leave to defend of the requirement of the respondent/landlord to earn from the shop in the tenancy of the petitioner by commencing the business of selling Patanjali products therefrom was without any basis and the petitioner/tenant has been held to be not entitled to interfere with the said requirement of the respondent/landlord.

29. The counsel for the petitioner/tenant has also argued that the petitioner/tenant is a protected tenant and the protection should continue.

30. The protection from eviction afforded under the Delhi Rent Control Act is subject to grounds for eviction as stipulated therein being made out. Once, ground for eviction in accordance with the procedure prescribed is found to have been made out, the tenant cannot thereafter be heard to state that he is still entitled to protection from eviction. The legislature itself has provided for the summary consideration of the grounds of eviction of the requirement of the tenancy premises for own use and applying the principles of consideration of leave to defend the order of the learned Rent Controller of dismissal of the application for leave to defend is found to be in accordance with law.

31. No ground for interference with the order of eviction is thus made out.

32. The petition is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 18, 2017

‘bs/gsr’..