

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

% **Date of decision: 31st October, 2017.**

+ **RC.REV. 495/2017**

M/S A.K. WOOLEN INDUSTRIES & ORS Petitioners

Through: Mr. Ratan K. Singh, Mr. Nikhilesh
Krishnan, Mr. Ashwini Kumar & Ms.
Somya Priyadarshini, Advs.

Versus

SHRI NARAIN GUPTA Respondent

Through: Mr. Lalit Gupta with Mr. Siddharth,
Mr. Karan Singh Rajpurohit & Mr.
Harsh Panwar, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

Caveat No.933/2017

1. The counsel for the caveator / respondent has appeared.
2. The caveat stands discharged.

CM No.39137/2017 (for exemption)

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

RC.REV. 495/2017 & CMs No.39135/2017 (for stay) & 39136/2017 (for condonation of 42 days delay in re-filing the petition)

5. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 17th May, 2017 in CIS No.80568/2016 (Old E. No.135/2016) of the Court of Rent Controller (RC), Central District, Tis Hazari Courts, Delhi] of dismissal of the application of the petitioners / tenants for leave to defend the petition for eviction under

Section 14(1)(e) of the Act filed by the respondent / landlord and the consequent order of eviction of the petitioners / tenants from Shop No.602, Ground Floor, Main Road, Sadar Bazar, Delhi-110006.

6. The counsel for the petitioners / tenants has been heard and the copies of the Trial Court record filed with the paper book perused. The counsel for the respondent / landlord has during the course of hearing also handed over a paper book containing the certified copies of the entire Trial Court record.

7. The counsel for the petitioners / tenants, on enquiry, states that the petitioners / tenants are not controverting that the respondent / landlord is the owner of the shop in the tenancy of the petitioners / tenants and that there is a relationship of landlord and tenant between the petitioners / tenants on the one hand and the respondent / landlord on the other hand. Thus the discussion hereinafter will be confined only to the aspect of *bona fide* requirement and availability of alternate suitable accommodation.

8. The respondent / landlord instituted the petition for eviction from which this petition arises, pleading i) that the respondent / landlord is the sole proprietor of M/s J.P. Cotton Mills and is engaged in the business of narrow woven fabrics (Niwar), ropes, hook and loop tapes, cordage etc.; ii) that the office / store of the aforesaid business is situated in property No.4663, Gali Mohar Singh Jat, Pahari Dhiraj, Delhi which is a residential ancestral property; iii) that the respondent / landlord is in possession only of a small portion at the first floor of the said property from where he is carrying on his business aforesaid; iv) that the other portions of the said property No. 4663, Gali Mohar Singh Jat, Pahari Dhiraj, Delhi are in possession of the brother of the respondent / landlord and the sons of another

brother of the respondent / landlord; v) that property No.4663, Gali Mohar Singh Jat, Pahari Dhiraj, Delhi is even otherwise situated in a very narrow lane / gali where there is no vehicular movement and only two wheelers and manual cycles can ply; vi) that the same causes inconvenience to the respondent / landlord in bringing in and taking out the goods; vii) that the respondent / landlord requires the Shop No.602, Ground Floor, Main Road, Sadar Bazar, Delhi in the tenancy of the petitioners / tenants for carrying on his aforesaid business; viii) that Sadar Bazar is even otherwise one of the largest, busy and reputed retail and wholesale market of Asia / India; ix) that the elder son of the respondent / landlord viz. Sanjay Gupta is running his independent and exclusive business in the name and style of M/s J.P. Fibres; x) that the younger son viz. Bharat Gupta of the respondent / landlord is running his independent and exclusive business in the name and style of M/s Jawahar Trading Company; xi) that the younger son of the respondent / landlord viz. Bharat Gupta is carrying on the business of M/s Jawahar Trading Company from Shop No.603, Ground Floor, Main Road, Sadar Bazar, Delhi as also from the godown situated on the first and second floors of the said property; xii) that the sons of the deceased brother of the respondent / landlord are in exclusive and absolute ownership of Shops No.599 and 600 behind the shops No.602 and 603 supra; and, xiii) that 601 is the municipal number of the common staircase from the ground floor where the shops No.602 and 603 are situated, to the upper floors thereof.

9. The petitioners / tenants sought leave to defend pleading i) that the respondent / landlord is carrying on back office operations from Shop No.603, Ground Floor, Main Road, Sadar Bazar, Delhi and is also running a support / back operations office from property No.4663 supra; ii) that for the

purpose of filing the petition for eviction, the respondent / landlord has falsely pleaded that his younger son Bharat Gupta is in possession of the entire shop No.603, Ground Floor, Main Road, Sadar Bazar, Delhi and the upper floors of property in which Shops No.602 and 603 are situated; iii) that with the aforesaid motive, the respondent / landlord had obtained sales tax / VAT registration of M/s Jawahar Trading Company in the name of his younger son Bharat Gupta; iv) that in fact, it is the respondent / landlord who is carrying on business in the name and style of M/s Jawahar Trading Company as well as in the name and style of J.P. Cotton Mills, from Shop No.603 and from property No.4663 supra; v) that the respondent / landlord sits and operates his business from Shop No.603, Ground Floor, Main Road, Sadar Bazar, Delhi; vi) that the petitioners / tenants along with leave to defend application were filing documents to show that it was the respondent / landlord who had been carrying on business of M/s Jawahar Trading Company and which in the petition for eviction was falsely alleged to be of the son of the respondent / landlord; vii) that the respondent / landlord was also the Chairperson of the Welfare Association / Market Association viz. Sadar Bazaar Gali Bajajan Katra Mithan Lal Association (Regd.) and which the respondent / landlord could not have been, if had not been carrying on business from Shop No.603, Ground Floor, Main Road, Sadar Bazar, Delhi inasmuch as property No.4663, Gali Mohar Singh Jat, Pahari Dhiraj, Delhi is not within the area where the said association operates; viii) that the petitioners / tenants along with the application for leave to defend were also filing telephone directory of the Main Sadar Bazar Traders Association, Delhi to show that the respondent/landlord is in fact carrying on his business of M/s Jawahar Trading Company from Shop No. 603, Ground Floor, Main

Road, Sadar Bazar, Delhi and not from property No.4663, Gali Mohar Singh Jat, Pahari Dhiraj, Delhi; and, ix) that thus the entire edifice of the petition for eviction, of property No.4663, Gali Mohar Singh Jat, Pahari Dhiraj, Delhi from which the respondent / landlord was carrying on business being unsuitable for the respondent / landlord, thus did not survive.

10. The respondent / landlord, in the reply to the leave to defend application, referred to a large number of other documents filed by the respondent / landlord to show that it was Bharat Gupta, the younger son of the respondent / landlord who was carrying on business of M/s Jawahar Trading Company from Shop No. 603, Ground Floor, Main Road, Sadar Bazar, Delhi. It was also explained that the respondent / landlord was a member of Main Sadar Bazar Traders Association, Delhi and Sadar Bazar Gali Bajajan Katra Mithan Lal Association (Regd.), by pleading that the respondent / landlord by way of ownership of Shops No.602 and 603 supra, is the member and was office bearer of the said associations.

11. The contention of the counsel for the petitioners / tenants before this Court only is also, that Shop No. 603, Ground Floor, Main Road, Sadar Bazar, Delhi is available to the respondent/landlord.

12. The counsel for the petitioners / tenants has contended that it requires trial, whether the respondent / landlord is carrying on business from Shop No. 603, Ground Floor, Main Road, Sadar Bazar, Delhi or from property No.4663, Gali Mohar Singh Jat, Pahari Dhiraj, Delhi and whether the business in the name and style of M/s Jawahar Trading Company is of the respondent / landlord or of Bharat Gupta, the younger son of the respondent / landlord.

13. It is also contended that in the Memorandum of Family Settlement between the respondent / landlord and his brothers, the respondent / landlord was described to be in possession of Shop No. 603, Ground Floor, Main Road, Sadar Bazar, Delhi.

14. It is not in dispute in the pleadings that the area of Shop No.602, Ground Floor, Main Road, Sadar Bazar, Delhi in the tenancy of the petitioners / tenants is 253 sq. ft. Though from the site plan which is not disputed, the area of Shop No. 603, Ground Floor, Main Road, Sadar Bazar, Delhi is not evident but this much is evident that the area of Shop No. 603, Ground Floor, Main Road, Sadar Bazar, Delhi is much less than the area of Shop No.602, Ground Floor, Main Road, Sadar Bazar, Delhi.

15. The site plan also shows the frontage of the shops to be very narrow and area thereof being only in the length of the shop.

16. The petitioners / tenants in their application for leave to defend have not disclosed what the younger son viz. Bharat Gupta of the respondent / landlord is doing. It is not stated anywhere in the application for leave to defend that Bharat Gupta is not involved in or carrying on business of M/s Jawahar Trading Company and / or carrying on any other business from anywhere else. It is also not disputed that the said younger son viz. Bharat Gupta of the respondent is of age of carrying business. It is not the case of the petitioners / tenants that Bharat Gupta is very young or is studying. Another significant thing is, that in the leave to defend application, it is admitted that business of M/s Jawahar Trading Company as well as M/s J.P. Cotton Mills are being carried on from property No.4663, Gali Mohar Singh Jat, Pahari Dhiraj, Delhi as well as from Shop No. 603, Ground Floor, Main

Road, Sadar Bazar, Delhi.

17. The position which thus emerges is that, while according to the respondent / landlord, he and his son Bharat Gupta are owners / proprietors of separate businesses, with the respondent / landlord carrying on his business from property No.4663, Gali Mohar Singh Jat, Pahari Dhiraj, Delhi and is his younger son Bharat Gupta carrying on business from Shop No. 603, Ground Floor, Main Road, Sadar Bazar, Delhi, according to the petitioners / tenants, the respondent / landlord as well as his younger son Bharat Gupta are carrying on both the businesses together and from both properties.

18. I have wondered that if that be the undisputed position, what purpose the grant of leave to defend and resultant recording of evidence would serve. The Court, ultimately also, even if the petitioners / tenants were able to prove that the respondent / landlord is also involved in the business of M/s Jawahar Trading Company even though in documents and on paper the said business is of his younger son Bharat Gupta, will have to take a call whether the said fact disentitles the respondent / landlord from obtaining an order of eviction under Section 14(1)(e) of the Act.

19. The law to be applied in this regard has been laid down by the Supreme Court in ***Ragavendra Kumar Vs. Firm Prem Machinery & Co.*** (2000) 1 SCC 679, ***Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal*** (2005) 8 SCC 252 and ***Anil Bajaj Vs. Vinod Ahuja*** (2014) 15 SCC 610. It has been held that even if the landlord has other commercial premises available to him and even if the landlord is carrying on other businesses, if it is found that the landlord intends to use the premises in

occupation of the tenant for carrying on his business therefrom, the landlord is entitled to an order of eviction and the Courts cannot intervene in the same.

20. Considering the size of Shop No. 603, Ground Floor, Main Road, Sadar Bazar, Delhi, as evident from the site plan not in dispute, the said shop is not alternate suitable accommodation to shop No.602 in tenancy of petitioners/tenants, for both, respondent / landlord and his son Bharat Gupta to carry on businesses therefrom. After all the younger son of the respondent / landlord has come of age and the intent of the respondent / landlord to let his son take a flight on his own, cannot be said to be not genuine and which is only criteria which to be applied, as held in the dicta aforesaid. It is natural for a father to, in initial years help/assist the son in learning the ropes of business. Merely because a father is found to be doing so does not convert the independent venture of the son, even if set up with the assistance of father, into a business of the father.

21. I may in this regard also notice that Section 19(2) of the Rent Act of Delhi provides a remedy to the tenant of repossession, if finds landlord to be not in use of the premises after obtaining an order of eviction against the tenant on the ground of the requirement of the premises for own use. The same acts as a valve, to ensure that the landlord, after evicting the tenant, does not put the premises to any other use.

22. As far as the property No.4663, Gali Mohar Singh Jat, Pahari Dhiraj, Delhi is concerned, the petitioners / tenants in the application for leave to defend have not controverted that the same are residential in nature and that the approach road thereto does not permit even a four wheeler vehicle to

access the said premises. The petitioners / tenants have also admitted use by the respondent / landlord of the said property for the purpose of both businesses. The landlord cannot be compelled to carry on business activity from a commercially unviable location, for the sake of continuing with a tenant in a more commercially viable premises.

23. The counsel for the petitioners / tenants has contended that besides the Shop No.603, Ground Floor, Main Road, Sadar Bazar, Delhi, the upper floors above the shops No.602 & 603 are also available to the respondent / landlord.

24. Supreme Court, in *Dhannalal Vs. Kalawatibai* (2002) 6 SCC 16 and in *Uday Shankar Upadhyay Vs. Naveen Maheshwari* (2010) 1 SCC 503 held that judicial notice can be taken of the fact that the upper floors are generally not commercially viable and consumers and patrons of the market are reluctant to walk into the same and are more prone to walk into a shop on the ground floor. Thus availability of the upper floors above the shop Nos.602 and 603 supra on the ground floor cannot be said to be alternate suitable accommodation.

25. The counsel for the petitioners / tenants has also referred to *Vijay Kumar Ahluwalia Vs. Bishan Chand Maheshwari* 2017 (3) SCC 189. A reading of the said judgment shows that what prevailed with the Supreme Court in granting leave to defend in that case was the fact that there was a doubt with respect to the ownership of the person who had filed the petition for eviction of the premises in occupation of the tenant, coupled with the fact that the tenant had admittedly never paid rent to the said person and there was no relationship of landlord and tenant. Merely because in one set of

facts, leave to defend has been granted to the tenant, does not entitle all tenants to grant of leave to defend, whatsoever the facts pertaining to their landlords may be. For the same reason, the order in *Shanti Devi Vs. Rajesh Kumar Jain* 2015 (2) SCC 158 and the order dated 23rd October, 2009 in CM(M) No.1164/2009 titled *Nitin Garg Vs. Naresh Kumar Arora* are of no avail.

26. There is thus no merit in the petition.

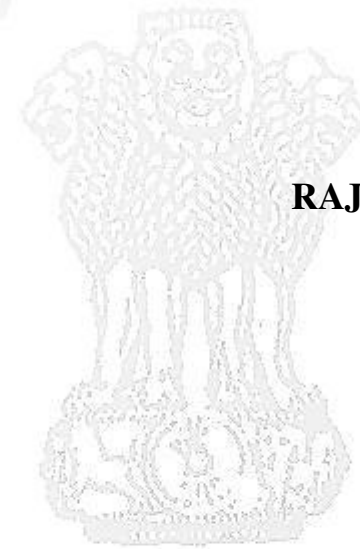
Dismissed.

No costs.

OCTOBER 31, 2017

‘gsr’

RAJIV SAHAI ENDLAW, J.



न्यायमेव जयते