

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

% **Date of decision: 9th November, 2017**

+ **RC REV.No.508/2017**

W.H. BRADY & CO. LTD.

.... Petitioner

Through: Mr. Lalit Gupta & Mr.
Siddharth Arora, Advs. with
Mr. S.M. Mishra, Branch
Manager of the petitioner
company.

Versus

SARITA JAIN

..... Respondent

Through: Mr. Nagender Yadav, Adv.

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, 1958 (Rent Act) impugns order [dated 8th May, 2017 in Eviction Petition No.E-235/2017 of the Pilot Court (Central District), Tis Hazari Courts, Delhi] of dismissal of the application filed by the petitioner for leave to defend the petition for eviction under Section 14(1)(e) of the Rent Act filed by the respondent and the consequent order of eviction of the petitioner from ground floor of property No. 7530-B forming part of property bearing Municipal No. 7530 situated at Tel Mill Street, Ram Nagar, Pahar Ganj, New Delhi.

2. The matter came up first before this Court yesterday when counsel for the respondent / landlady appeared on advance notice and substantial arguments were heard. Further arguments have been heard

today and copies of the Trial Court record annexed to the paper book perused.

3. I have, at the outset, enquired from the counsel for the petitioner / tenant, whether the petitioner / tenant disputes ownership of the respondent / landlady of the premises in the tenancy of the petitioner / tenant from which the petitioner / tenant has been ordered to be evicted and the existence of relationship of landlord and tenant between the parties.

4. The counsel for the petitioner / tenant fairly states that though in the application for leave to defend a dispute in this regard was raised but the petitioner / tenant before this Court is not disputing that the respondent / landlady is the owner of the premises with respect to which the order of eviction has been passed and that the petitioner / tenant was a tenant under the respondent / landlady in the said premises.

5. The respondent / landlady sued for eviction of the petitioner / tenant under Section 14(1)(e) of the Rent Act *inter alia* pleading i) that the premises were let out to the petitioner / tenant by the predecessor-in-interest of the respondent / landlady as far back as in the year 1966 at a rent of Rs.572.65 paise and the petitioner / tenant at the time of institution of the petition for eviction was paying rent of Rs.770/- per month to the respondent / landlady; ii) that though the premises had been let out for commercial purposes but had been lying closed for some time under the lock and key of the petitioner / tenant and the petitioner / tenant had not been paying the electricity and water charges of the premises also which were in arrears of over Rs.1 lacs;

iii) that the respondent / landlady has three growing sons viz. Sajal Jain, Lakshya Jain and Pulkit Jain, aged 22 years, 21 years and 17 years respectively; iv) that the respondent / landlady wants the premises in the tenancy of the petitioner / tenant for settling her son Lakshya Jain who wants to establish gems and diamond polishing and identification etc. business therefrom and in which skill the said son of the respondent / landlady had acquired qualification; v) that the respondent / landlady or her son did not possess any other alternate suitable premises; vi) that the upper floors of the said property were not suitable for setting up the said business; vii) that the petitioner / tenant is a private company having corporate office at Mumbai and having branch offices all over India including at Connaught Place in New Delhi; viii) that the respondent / landlady is also the owner of Ground Floor of property No.7575, Tel Mill Street, Ram Nagar, Pahar Ganj, New Delhi which is in occupation of tenants and generating a rent of Rs.90 lacs per month; ix) that the respondent / landlady, to settle her elder son Sajal Jain, had appointed the said son as attorney of the said property; and, x) that seeking eviction of tenants from the said other property would result in huge financial loss to the elder son of the respondent / landlady.

6. The petitioner / tenant applied for leave to defend pleading i) that the premises in the tenancy of the petitioner / tenant are not required *bona fide* by the respondent / landlady for herself or for any members of her family dependent upon her; ii) that the respondent / landlady has been regularly inducting tenants in the other portions of the property and has failed to occupy the said portions in order to

demand more and more rent from the portions which were falling vacant; iii) that in the year 2014, the respondent / landlady issued a notice to the petitioner / tenant to increase rent upto Rs.25,000/- and on the basis of the said notice filed a Civil Suit for recovery of possession of the premises from the petitioner / tenant; iv) that however subsequently on 22nd December, 2016 the said suit was withdrawn; v) that the demand for increase in rent showed that the respondent / landlady had no requirement for the tenancy premises; vi) that Lakshya Jain, son of the respondent / landlady, completed the diamond polish course on 25th August, 2014 and the respondent / landlady had not disclosed as to what the said Lakshya Jain was doing thereafter and from where was he carrying on his diamond polishing business; vii) that when the said Lakshya Jain, son of the respondent / landlady, had waited from 25th August, 2014 onwards for a place to start his diamond polishing business, there was no requirement for the premises; viii) that even otherwise, since the respondent / landlady and her sons are receiving rent of Rs.90 lacs per month, there was no financial crisis for said Lakshya Jain to carry on any business; ix) that the diamond polishing machines do not require any big area for installation thereof and the said business can be carried on from a small but secure place; x) that the said business can also be carried on by Lakshya Jain, son of the respondent / landlady from his residence in Karol Bagh; xi) that even Karol Bagh has a posh jewellery market and is a hub of diamond jewellery; xii) that on the contrary there are no big jewellers around the premises in the tenancy of the petitioner / tenant; xiii) that the premises in the tenancy of the petitioner / landlord

are largely used as a godown for storage of goods and are not feasible for setting up of a diamond polishing business; xiii) that the respondent / landlady has let out a portion of the ground floor of the property No.7575, Tel Mill Street, Ram Nagar, Pahar Ganj, New Delhi to one Sh. Sunil Kumar with effect from 1st April, 2017 i.e. shortly prior to the institution of the petition for eviction from which this petition arises on 10th April, 2017; xiv) that if the respondent / landlady had *bona fide* requirement for any premises, she would not have given the said premises on rent.

7. The respondent / landlady, in her reply to the application aforesaid of the petitioner / tenant, pleaded i) that she is living with her husband and her three matured sons in the house in Karol Bagh constructed over 44 sq. yds. and comprising of two floors and in a purely residential locality and there is no space available therein for her younger son to carry on business therefrom; ii) that the property No.7575, Tel Mill Street, Ram Nagar, Pahar Ganj, New Delhi, ground floor of which is owned by the respondent / landlady, is already occupied by three tenants since the year 2012 and the lease thereof gets renewed from time to time and the said fact has already been disclosed in the petition for eviction; iii) that Lakshya Jain, younger son of the respondent / landlady, after acquiring qualification on 25th August, 2014 joined various organizations, private businesses to acquire experience and practical knowledge of the trade and business; iv) that installation of diamond polishing machines, besides requiring space, require commercial electricity connection, manpower etc.; v) that in comparison to the ground floor of premises No.7530, Tel Mill

Street, Ram Nagar, Pahar Ganj, New Delhi in the tenancy of the petitioner / tenant which opens on two sides and has approximately 26 feet wide road in front, the property No.7575, Tel Mill Street, Ram Nagar, Pahar Ganj, New Delhi is only one side open and having a narrow road in front where even a car or tempo cannot come and go easily; and, vi) that for this reason also the property in the tenancy of the petitioner / tenant is more suitable for the business of diamond polishing required to be set up by Lakshya Jain, son of the respondent / landlord.

8. Before proceeding further, I may record that though the application for leave to defend filed by the petitioner / tenant besides the contents reproduced hereinabove also contains general denials of the contents of the petition for eviction and certain vague pleas but neither has the counsel for the petitioner / tenant argued the same nor is the need to record the same hereinabove has been felt inasmuch as the law is settled that Section 25B(5) of the Rent Act of Delhi requires the tenant to, in the leave to defend application, disclose facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act and mere denials, even if specific of the averments of the landlord in the petition for eviction, as would have sufficed in a written statement, do not suffice in an application for leave to defend and do not disentitle the landlord from an order of eviction under Section 14(1)(e) of the Act.

9. The first ground urged by the counsel for the petitioner / tenant is that the respondent / landlady, vide legal notice dated 13th June, 2014, having demanded market rent from the petitioner / tenant, was

not entitled to in April, 2017 seek eviction of the petitioner / tenant on the ground of requirement of the tenancy premises.

10. A perusal of the notice dated 13th June, 2014 shows that the demand of the respondent / landlady for market rent which the respondent / landlady had then assessed at Rs.25,000/- per month was in the wake of the view then prevalent amongst the legal fraternity of Delhi that Sections 6 and 9 of the Rent Act providing for fixation of standard rent having been struck down, the landlord becomes entitled to demand prevalent market rent from old tenants paying old rent. However, ultimately, the Division Bench of this Court in ***Santosh Vaid Vs. Uttam Chand*** (2012) 188 DLT 293 (DB) held the same to be not the correct position and the landlords of premises within the ambit of the Rent Act i.e. which were fetching the rent of upto Rs.3,500/- per month, being not entitled to any increase in rent save as provided under Section 6A of the Act i.e. of 10% every three years by following the procedure therefor, notwithstanding the provisions relating to standard rent having been struck down. Merely, because the advocate of the respondent / landlady also was of the opinion, which was then prevalent, leading to a large number of such suits as the respondent / landlady is claimed to have filed, cannot disentitle the respondent / landlady's claim for eviction on the ground of her requirement being considered in accordance with law.

11. It cannot also be lost sight of that the respondent / landlady has sued for eviction on the ground of requirement of her son Lakshya Jain whose age in the petition for eviction was disclosed as 21 years at the time of filing of the petition in April, 2017 and which fact was not

disputed by the petitioner / tenant in his application for leave to defend. Lakshya Jain, who at the time of filing of the petition in April, 2017 was 21 years of age, in the year 2014 would have been 18 years of age. Even if Lakshay Jain by the year 2014 had acquired qualification in diamond polishing, nothing wrong is found in his not wanting to start his own business immediately on acquiring qualification and instead wanting to gain some experience and practical knowledge in the said business by becoming a apprentice with others carrying in the same business and only after about three years wanting to launch his own business.

12. I have in fact enquired from the counsel for the petitioner / tenant whether not it is the same position in the practice of law and whether not generally a fresh law graduate, before setting up his own office, works in another advocates office to gain experience and practical knowledge of the legal profession.

13. The counsel for the petitioner / tenant has next argued that the respondent / landlady has acquired vacant possession of the floor above the premises in the tenancy of the petitioner / tenant and the requirement of the respondent / landlord can be fulfilled therefrom.

14. I have enquired from the counsel for the petitioner / tenant whether the said argument is open to a tenant and whether the same has not been negated by the Supreme Court in ***Dhannalal Vs. Kalawatibai*** (2002) 6 SCC 16 and in ***Uday Shankar Upadhyay Vs. Naveen Maheshwari*** (2010) 1 SCC 503. Supreme Court in the said judgments has unequivocally held that a accommodation situated on the first floor cannot be said to be an alternative suitable

accommodation for carrying on business, in comparison to the ground floor; a shop on the first floor cannot attract the same number of customers and earn the same as a shop situated on the ground floor would do; it is well known that shops and businesses are usually conducted on the ground floor because the customers can reach there easily; the Court cannot dictate to the landlord which floor he should use for his business – that is for the landlord himself to decide. It was held that the view taken by the High Courts in those cases that the landlord should do business on the first floor was wholly arbitrary and could not be sustained.

15. The counsel for the petitioner / tenant who is well versed in the field of rent laws has argued no further.

16. The counsel for the petitioner / tenant has next argued that the petitioner / tenant is entitled to leave to defend owing to the admitted position that the respondent / landlady is the owner of another property i.e. property No.7575, Tel Mill Street, Ram Nagar, Pahar Ganj, New Delhi and which is stated to be barely 15 / 50 yards away from the premises in the tenancy of the petitioner / tenant which the respondent / landlady has been letting / re-letting. It is argued that the rent fetched by the said premises is in excess of Rs.3,500/- per month and the Rent Act is not applicable thereto and even if the respondent / landlady had let out the ground floor of property No.7575, Tel Mill Street, Ram Nagar, Pahar Ganj, New Delhi in the year 2012, the respondent / landlady ought not to have renewed the lease thereof thereafter when the requirement on the basis of which petition for eviction has been filed accrued.

17. I have at the outset enquired from the counsel for the petitioner / tenant that what is the need for trial on the said aspect, for leave to defend to be granted. The facts are not in dispute. Though the respondent / landlady is possessed as owner of another property i.e. property No.7575, Tel Mill Street, Ram Nagar, Pahar Ganj, New Delhi in the vicinity of the premises in the tenancy of the petitioner / tenant but has let out the same in the year 2012 and has shortly before or after the requirement, pleading which the petition for eviction has been filed, has renewed the said lease. What has to be decided is, whether the said fact disentitles the respondent / landlady from obtaining an order of eviction of the petitioner / tenant.

18. The criteria as aforesaid, prescribed in Section 25B(5) of the Rent Act for grant of leave to defend is whether the leave to defend application of the tenant discloses facts which would disentitle the landlord from an order of eviction under Section 14(1)(e). If facts so disclosed are disputed by the landlord, the same have to be adjudicated by trial. However, if the facts which are disclosed are not in dispute, the decision whether they disentitle the landlord from an order of eviction under Section 14(1)(e) of the Rent Act or not is to be taken at the stage of leave to defend only and there is no need for grant of leave to defend which leads to filing of written statement, examination and cross-examination of witnesses. Owing to the docket explosion even before the Rent Controllers, once a petition for eviction is put to trial, it generally takes years, if not decades to decide.

19. I have in this context further enquired from the counsel for the petitioner / tenant that once it has been held in *Shiv Sarup Gupta Vs.*

Dr. Mahesh Chand Gupta (1999) 6 SCC 222, ***Ragavendra Kumar Vs. Firm Prem Machinery & Co.*** (2000) 1 SCC 679 and ***Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal*** (2005) 8 SCC 252 that the landlord has an absolute choice of the premises with which to fulfill his requirement, whether not it is open to such a landlord to, instead of fulfilling the requirement from a premises yielding high rent and forming the bread and butter of the landlord and his family members, fulfill the said requirement from a low rent yielding property. The test, to be applied at the stage of granting leave to defend, is of genuineness of the need/requirement. A need to fulfill the requirement for premises from low rent yielding property and not from a high rent yielding property cannot in my view be said to be not genuine. It is in this context only that Supreme Court in ***Anil Bajaj Vs. Vinod Ahuja*** (2014) 15 SCC 610 has held that even where the landlord is carrying on business from other premises, as long as there is nothing to suggest that the landlord will after eviction of the tenant not carry on business from the premises in the tenancy of the tenant, the landlord cannot be deprived of an order of eviction.

20. The counsel for the petitioner / tenant in response has referred to my order dated 20th September, 2017 in RC.REV. No.439/2017 titled ***Sushma Khanna Vs. Rajwant Kaur*** and to ***Vijay Kumar Ahluwalia Vs. Bishan Chand Maheshwari*** (2017) 3 SCC 189.

21. In ***Sushma Khanna*** supra, I allowed the Revision Petition of the tenant against the order of refusal of leave to defend, finding the landlord to have in response to the plea in the application for leave to defend of other shops being available to the landlady, pleaded the said

shops to have been transferred to the son of the respondent and without giving any particulars of the Sale Deed vide which the said shops had been transferred. The facts thereof are not comparable to the present case. The petitioner / tenant in the present case has admitted rather than disputed that Lakshya Jain, son of the respondent / landlady had acquired qualification of diamond polishing and had not disclosed that the said Lakshya Jain is doing any other business or from any other place. Thus the requirement of premises for Lakshya Jain to set up his business is not in dispute. In this view of the matter, I am unable to entertain any doubt as to the genuineness of the requirement pleaded by the respondent / landlady and once it is so, the dismissal of application for leave to defend and consequent order of eviction have to follow.

22. In ***Vijay Kumar Ahluwalia*** supra, Supreme Court granted leave to defend finding i) the claim of ownership of the premises and which was disputed by the tenant, to be based on alleged adoption deed set up after 17 years; ii) the facts disclosed by the tenant in the application for leave to defend *prima facie* causing a doubt as to the *bona fide* requirement of the person who had filed the petition for eviction and availability of alternative accommodation; and, iii) that the tenant had not even attorned to the person who had filed the petition for eviction as the landlord and there being no other evidence of the existence of relationship of landlord and tenant between the parties.

23. Merely because Supreme Court in the facts of that case held a case for grant of leave to defend to have been made out, cannot be a precedent for all tenants against whom petitions for eviction on the

ground of requirement have been filed, being granted leave to defend. Cases of requirement deal with human beings and each human being is different and his needs / requirements and circumstances are different. A judgment in such case cannot be applied as precedent without considering the facts.

24. The counsel for the petitioner / tenant has lastly handed over a compilation of orders of Supreme Court in Special Leave Petitions (SLPs) filed and tagging the same with an earlier SLP in which notice was issued. It is argued that the Supreme Court in the said bunch of petitions is re-considering the dicta of the Supreme Court in ***Satyawati Sharma Vs. Union of India*** 2008 (5) SCC 287.

25. Neither of the orders handed over contain any indication of ***Satyawati Sharma*** supra as being re-considered. Moreover, the said orders are of Benches of strength of two Hon'ble Judges as the Bench which pronounced ***Satyawati Sharma*** supra. The matter is not found to have been referred to a larger Bench. I am therefore unable to even *prima facie* form an opinion of the dicta of the Supreme Court in ***Satyawati Sharma*** supra being not binding on me and cannot entertain this petition on that ground.

26. No other arguments have been urged.

27. Before parting, I may record that the petitioner / tenant indeed is found to be a large public limited company, shares whereof trade at a high value in the Stock Exchange. Supreme Court in ***Malpe Vishwanath Acharya Vs. State of Maharashtra*** (1998) 2 SCC 1, while dealing with determination and fixation of rent under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947,

held that one of the reasons for enacting the rent control legislation is to prevent exploitation of the tenants by the landlords, it is true that whenever a special provision, like the Rent Control Act, is made for a section of the Society it may be at the cost of another section, but the making of such a provision or enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued results in increasing injustice to one section of the society and an unwarranted largess or windfall to another, without appropriate corresponding relief, then the continuation of such a law becomes arbitrary. The provisions in the Act relating to standard rent were found to be archaic and held to be arbitrary and unreasonable. In ***Prabhakaran Nair Vs. State of Tamil Nadu*** (1987) 4 SCC 238, the Supreme Court stressed the need for rationalizing the rent legislations and the need for striking a balance between rival interests of rent and demand in the prevalent economic and social scenario. The Division Bench of this Court in ***Raghunandan Saran Ashok Saran (HUF) Vs. Union of India*** (2002) 95 DLT 508 (DB) also noted that it is not uncommon that commercial properties rented long back are fetching very meager rents, while the tenants running their trades in those properties are earning huge profits; this is an unjust and unreasonable situation. The present is found to be a case where a large corporate is found to be holding on to a property of which it *fortuitously* became a tenant half a century ago.

28. While in the said half a century, the share price of the said petitioner / tenant company has multiplied hundreds of times, the petitioner / tenant company is choosing to exploit the rent laws by

continuing to pay to the owner of the property the same rent at which it had taken the premises more than half a century ago.

29. The Act, as it exists, also provides for fixation of standard rent of the tenancy premises. The Division Bench of this Court in ***Raghunandan Saran Ashok Saran (HUF)*** supra was concerned with a challenge to the provisions in the Act relating to standard rent on the ground of same being violative of Articles 14(1)(g) and 21 of the Constitution of India. It was found that Rs. 229.59 paise of 1998 had a value equivalent to Rs. 2.97 of 1939 and therefore the landlord, owing to the provisions of the standard rent, in terms of actual money value gets only Rs. 2.97 instead of Rs. 229.59 paise. It was held that the control of rents and evictions which initiated in the wake of the partition and population explosion in Delhi served a salutary purpose in the then prevailing situation but over the years the restrictions and limitations imposed and continued by various Rent Control Legislations had curtailed the growth of housing in general and rental housing in particular; even the amendments with effect from 1st December, 1988 had failed to provide solutions to the problem.

30. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 09, 2017

‘gsr’..

(Corrected & released on 4th January, 2018)