

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

% **Date of decision: 27th September, 2017**

+ **RC. REV.676/2015**

PROMILA CHOPRA & ANR. Petitioners

Through: Mr. Atul Ahuja, Adv.

versus

GUPTA ELECTRICALS Respondent

Through: Mr. Rishi Manchanda and Mr. Anil Prakhra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 16th October, 2015 in E-101/2015 of the Additional Rent Controller-2 (Central), Tis Hazari Courts, Delhi] granting leave to the respondent to defend the petition for eviction under Section 14(1)(e) read with Section 25B of the Act filed by the petitioners for eviction of the respondent from one shop in property no.53/27, Ramjas Road, Karol Bagh, New Delhi – 110 005.

2. Notice of the petition was ordered to be issued and the Trial Court record requisitioned. The counsel for the respondent appeared and the matter was adjourned from time to time. The counsel for the petitioners and the counsel for the respondent have been heard and the Trial Court record perused.

3. The two petitioners, namely Promila Chopra and Narinder Chopra filed the petition for eviction from which this Revision Petition arises, pleading (i) that the two petitioners are owners of part of property no.53/27, Ramjas Road, Karol Bagh, New Delhi; (ii) that the respondent is an old tenant in the shop aforesaid, in the part of the property in

ownership of petitioners paying rent of Rs.334/- per month to the petitioners; (iii) that the petitioners are the owners of the shop in the tenancy of the respondent; (iv) that the family of the petitioner no.1 consists of two married sons, with the eldest son namely Dharminder Chopra also having two children aged 14 years and 10 years; (v) that the accommodation in possession of the petitioner no.1 on the ground floor of property no.53/27, Ramjas Road, Karol Bagh, New Delhi comprises of one drawing room, two bed rooms, one small room which is used as a room for petitioner no.1, kitchen, bathroom and toilet, covered verandah and passage for entry and exit in the premises; (vi) that the family of the petitioner no.2 Narinder Chopra comprises of himself and his wife and they were having one drawing/living room and one bed room only on the first floor of property no.53/27, Ramjas Road, Karol Bagh, Delhi besides kitchen and bathroom; (vii) that the accommodation available to the two petitioners in the property was insufficient and the petitioner no.1 requires the premises in the tenancy of the respondent for utilising the same for separate study room for her grandson who was studying in 10th class; and, (viii) that the petitioners or their family members do not own any other property in Delhi; (ix) that both the sons of the petitioner no.1 are employed drawing salary of Rs.12,000/- per month and Rs.50,000/- per month respectively and the daughters-in-laws of the petitioner no.1 are also employed drawing salary of Rs.14,000/- per month each.

4. The respondent sought leave to defend, stating (i) that the petitioner no.1, in or about the year 2005, had filed a petition for eviction against another tenant in the same property, on the ground of her requirement of the premises in possession of that tenant and had about a year prior to the

institution of the petition for eviction against the respondent, recovered possession of the portion of the property in possession of that tenant namely Ram Nath Madan; (ii) that the requirement of the petitioners had been taken into consideration in the aforesaid petition for eviction against the other tenant; (iii) that thus the petition for eviction against the respondent was being filed for additional accommodation; (iv) at the time of filing of the petition for eviction against Ram Nath Madan aforesaid, another brother of the husband of the petitioner no.1 (besides the petitioner no.2) namely Mahinder Chopra was also alive and who has since died and the space occupied by him in the house has also become available to the petitioners; (v) that the site plan filed by the petitioners along with the petition for eviction was false; the drawing room on the first floor shown in the site plan was in fact not being used as a drawing room but as a living room by the petitioner no.2 and his wife and the living room on the first floor shown in the site plan is not being used as living room but is lying vacant and was earlier in use of Mahinder Chopra; (vi) that the family of the petitioners has seven members and the petitioners had four bed rooms/living rooms, two drawing rooms, apart from two kitchens, two bathroom, two latrines, available to them and there was no requirement for additional accommodation; (vii) that the grandson of the petitioner no.1 studying in class 10th does not require a study room; (viii) the requirements as pleaded in the petition for eviction against the respondent were not pleaded in the earlier petition for eviction filed against the other tenant Ram Nath Madan; and, (ix) that if the petitioners required any additional accommodation, they could have raised further construction on the property.

5. The petitioners filed a reply to the application aforesaid of the respondent for leave to defend, pleading (i) that with the passage of time and growing needs of the family it has become necessary for the petitioner no.1 to get the portion of the premises in the tenancy of the respondent also vacated for the requirement of her family; (ii) that the portion of the property which was earlier in the tenancy of Ram Nath Madan and from which has been evicted has been duly described in the petition for eviction and shown in the site plan filed with the petition for eviction; (iii) it was held in the judgment in the petition for eviction against the other tenant Ram Nath Madan, that the other son Naveen Chopra of the petitioner no.1 was also residing with the petitioner no.1; (iv) that whatever accommodation is available to the petitioners on the ground and first floors of the property has been explained in the petition for eviction and shown in the site plan filed with the petition for eviction; (v) though the respondent had also filed a site plan along with his application for leave to defend but there was no difference in the site plan filed by the petitioners and the respondent and the only difference in the site plan filed by the respondent was of use to which available rooms were being put; (vi) there are only two rooms on the first floor and of which one is being used by the petitioner no.2 and his wife as their bed room and the other as drawing room; and, (vii) that the younger son Naveen Chopra of the petitioner no.1 was also married and his wife Deepti Chopra was also residing in the house.

6. Though the respondent filed a rejoinder to the aforesaid reply but the need to refer thereto is not felt.

7. The petitioners/landlords are found to have placed on the Trial

Court record the documents to show residence in the premises of both sons and daughters-in-law of the petitioner no.1 along with the petitioner no.1.

8. A perusal of the said plan filed by the petitioners and the site plan filed by the respondent does indeed show that (i) there is no dispute of the accommodation available to the petitioners in the property and the only difference in the site plan filed by the petitioners and site plan filed by the respondent being of description/use of the available accommodation; (ii) the site plan of the respondent also to be admitting that the petitioners are owners only of part of the property no.53/27, Ramjas Road, Karol Bagh, New Delhi with the remaining part of the property being owned by others; (iii) the portion in the tenancy of the respondent though described as a shop and opening in the front lane, is otherwise part of the residential portion surrounding the same where the petitioners are residing; and, (iv) the sizes of the rooms being barely 100 sq. ft., save that of drawing and dining.

9. Notwithstanding the same, the learned Additional Rent Controller, vide the impugned order has granted leave to defend in the following fashion:-

“E-101/15

16.10.2015

Present: Petitioner no.1 in person.

Ld. Counsel for the respondent.

Arguments on the leave to defend application have already been heard.

Record perused.

It is the contention of the respondent that the petition filed by

the petitioner is motivated by the malafide consideration. That the petitioners have already filed a similar petition no.E-432/04/05 and the same was decreed wide order dated 03.05.2013 and even the said decree has already been executed. That the third petitioner has already been expired and the space occupied by him in the suit property is now available to the petitioners and the total number of the family members of the petitioner has been reduced. That the drawing room as shown by the petitioner in his site plan in fact is not being used as a drawing room but the same is being used as living room by the petitioner no.2 and his wife. That the living room which was being used by Sh. Mahender Chopra is now lying vacant. That there are 7 members in the family of the petitioners and the accommodation available with them comprise 4 bed rooms/living rooms, two drawing rooms apart from two kitchens and two bath rooms. That the petitioners are having sufficient accommodation for all the family members and that the site plan filed by the petitioners is false.

The petitioners in their reply to the leave to defend application of the respondent reiterated the contents of the petition and denied the allegations of the respondent.

On careful perusal of the record, I am of the view that the respondent is able to raise the triable issue regarding the availability of sufficient accommodation with them in the property itself by filing his own site plan. In these circumstances, the evidence is required on the aspect whether the requirement of the petitioner is of additional accommodation in the property or not.

In light of the abovesaid, there are triable issues between the parties. Therefore, the leave to defend application of the respondent is allowed and he is directed to file the WS within 30 days from today with advance copy to the opposite side.

Be listed on 16.11.2015.

*(Rajinder Kumar)
ARC-2/Central/THC
16.1.2015”*

10. Some of the other orders of the same Additional Rent Controller coming before this Bench are indeed not found to be dealing with the matter of grant of leave to defend in such a casual and cursory manner, as has been done in this case. The Additional Rent Controller is indeed found to have not dealt with the matter applying the principles of law evolved over the years for consideration of leave to defend application.

11. It is not in dispute, (i) that the petitioners are the owners of the premises in the tenancy of the respondent; (ii) the petitioners are the landlords of the respondent; (iii) the petitioners are residing in the remaining portion of the property in their ownership; (iv) the family of the petitioners residing in the property comprising of petitioner no.1, her son, Dharminder Chopra, his wife and his two children who must be now 16 and 12 years of age and the petitioner no.2 and his wife; (v) the accommodation available to the petitioners on the ground floor being of one room *ad measuring* 10'-7" x 15'-6", described as drawing room and the one room *ad measuring* 7'-0" x 16'-5", one room *ad measuring* 10'-2" x 9'-6", one room *ad measuring* 11'-3" x 9'-1" besides lobby open above, one latrine, one bath and kitchen; and, (vi) the accommodation available to the petitioners on the first floor being of one room *ad measuring* 10'-7" x 15'-6", one room *ad measuring* 7'-4" x 12'-4" described as a drawing room, and kitchen, latrine, bathroom.

12. The petitioners, in the petition for eviction have pleaded residence of the younger son of the petitioner no.1 and his wife also in the property. Though the respondent, in the application for leave to defend created a facade of denying that the said younger son Naveen Chopra is residing in the property but a careful reading of the leave to defend application shows

the respondent to be not disputing so. The respondent has also not pleaded, where else if not along with the petitioner no.1 are the younger son Naveen Chopra and his wife are residing.

13. I have thus, during the hearing, enquired from the counsel for the respondent as to how the requirement of the petitioners can be disputed.

14. No cogent answer has been coming.

15. On the basis of admitted accommodation available to the petitioners in the property and the admitted members of family of the petitioners, the requirement of the petitioners for the premises in tenancy of the respondent is writ large.

16. The requirement of the petitioners, as per the number of their family members, is of (i) five bed rooms for the petitioner no.1, each of two sons and each of her two growing grandchildren of adolescent age; (ii) one drawing room and one dining room for petitioner no.1 and her family members; (iii) one bed room for petitioner no.2 and his wife; and, (iv) one drawing room and one dining room for petitioner no.2 and his wife, i.e. of nine rooms. As against this, the petitioners have only six rooms. Hence the requirement for the premises/room in tenancy of respondent. The said room though used by the respondent as shop, is just like other rooms being used by the petitioners for residence. Even after evicting the respondent, the requirement of the petitioners will not be satisfied but the petitioners will have to make do, having no other portion in their ownership.

17. The plea of the respondent, of the petitioners having earlier sought eviction of another tenant namely Ram Nath Madan, instead of entitling respondent to leave to defend support the case of petitioners. The earlier

petition was filed ten years prior to the petition for eviction against the respondent and in the said ten years, though one member of family i.e. Mahinder Chopra, brother of husband of petitioner no.1 and brother of petitioner no.2, has died but the second son Naveen Chopra of petitioner no.1 has married and the grandchildren of petitioner no.1 have grown. It is not the case of the respondent that the petitioners, after evicting other tenant, have not used the portion of which possession has been recovered, for their residence.

18. Merely because the requirement pleaded is of additional accommodation, does not entitle the respondent / tenant to grant of leave to defend as held recently in *S. Kesar Singh Vs. Paramjeet Singh* 2017 SCC OnLine 10747 and need to reiterate which is not felt.

19. The learned Additional Rent Controller is thus factually incorrect in holding that the leave to defend application of the respondent raised any triable issue.

20. The law otherwise is clear. The landlord is the best Judge of his requirement and the tenant cannot dictate to the landlord to segregate his family or to build additional accommodation as has been suggested by the respondent in the application for leave to defend. Reference in this regard can be made to *Prativa Devi Vs. T.V. Krishnan* (1996) 5 SCC 353, *Sarla Ahuja Vs. United India Insurance Company Ltd.*(1998) 8 SCC 119, *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 and *M.L. Prabhakar Vs. Rajiv Singal* (2001) 2 SCC 355.

21. The impugned order thus cannot be sustained and is set aside.

22. Resultantly, the application of the respondent for leave to defend is dismissed and an order of eviction is passed in favour of the petitioners

and against the respondent with respect to the entire premises in his occupation in property no.53/27, Ramjas Road, Karol Bagh, New Delhi and as also shown in the site plan filed with the petition for eviction. However in accordance with Section 14(7) of the Act, the order of eviction is made inexecutable for a period of six months from today.

No costs.

Trial Court record be returned forthwith.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 27, 2017

‘pp’..

(Corrected and released on 23rd January, 2018).