

\$~32

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

Decided on: 09th January, 2018

+ R.C. REV. 7/2018

SUN N SHADE OPTICIANS & ORS. PETITIONERS

Through: Mr. H.K. Chaturvedi and Mr.
Sagar Chaturvedi, Advocates

versus

SHYAM SUNDER BUDHIRAJA RESPONDENT

Through: Mr. Pradeep K. Bakshi, Mr.
Sachin Setia and Mr. Puneet Khurana,
Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

CAV 13/2018

1. Since the learned counsel for the caveator has entered appearance, the caveat stands discharged.

R.C. REV. 7/2018 and CM 884/2018 (stay) and CM 885/2018 (Exemption)

2. The petitioners are admittedly the tenants in premises described as shop bearing no.6 in property no.13/9, W.E.A. Ajmal Khan Road, Karol Bagh, New Delhi, admeasuring 9 x 25ft. (hereinafter referred to as the demised property), having been let out originally for commercial purposes by late Sh. Chaman Lal Budhiraja, the father of

the respondent, during his lifetime, in favour of Sh. Vidya Sagar Churamani, the father of the second and third petitioners, who stepped into his shoes upon his death. It is not disputed that the respondent has inherited the right, title and interest in the property in question upon the death of the erstwhile owner.

3. The respondent (landlord) had instituted the case (E-416/2017) seeking an order of eviction on the ground of bonafide need invoking clause (e) of sub-section (1) of Section 14 of Delhi Rent Control Act, 1958 primarily on the averments that his son Vineet Bhudhiraja, engaged in legal practice in United Kingdom wanted to come back to India to set up practice here to support his father (respondent / landlord) in his old age, particularly after the demise of his wife on 18.08.2016 and that for purposes of the son setting up his legal practice here, the demised premises was required bonafide, there being no other suitable alternative accommodation available for such purposes. The Additional Rent Controller issued special summons under Sections 25 B of Delhi Rent Control Act, 1958, in response to which the petitioner submitted an application for leave to defend supported by the affidavits of the second and third petitioners. The Additional Rent Controller after securing reply from the respondent / landlord considered the said request but declined it by order dated 23.10.2017 and on such basis passed an eviction order which is assailed through the petition at hand.

4. The petitioners had pleaded in the application seeking leave to contest that there is no relationship of landlord and tenant between the parties as the premises had been let out by the father of the respondent

after whose death the property had devolved on his legal heirs, the respondent being only one of them. It was further stated that property no.13/9, W.E.A. Ajmal Khan Road, Karol Bagh, New Delhi comprised of three floors which had more than 17-18 shops, the other shops also being referred to in the context of the plea that the respondent had suitable alternative accommodation available to him. It was pleaded that besides this property, the respondent was owner of several other properties including 5/18, W.E.A. Ajmal Khan Road, Karol Bagh, New Delhi admeasuring 275 sq.yds.; 16-A/13, W.E.A. Ajmal Khan Road, Karol Bagh, New Delhi, admeasuring 275 sq. yds.; D-4, Prashant Vihar, Rohini built over plot of land admeasuring 400 sq. yds.; another shop in South Delhi; and several other properties which are jointly or individually owned. It was pleaded that the petitioner was in the habit of filing false cases to get the shop vacated by hook or by crook reference being made to another eviction case, it bearing no.79036/16, which was pending before the Additional Rent Controller at the stage of consideration of the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC). The petitioners also submitted in the application for leave to defend that the site plan filed was not correct.

5. All the above contentions have been considered by the Additional Rent Controller and rejected. It has been noted in the impugned order that the petitioners had admitted that the respondent is one of the legal heirs of Chaman Lal Budhiraja, who had inducted them as tenant in the demised premises. Referring to the rulings of the Supreme Court in *Kanta Goel V. B.P. Pathak*, (1977) 2 SCC 814; and

Mohinder Prasad Jain v. Manohar Lal Jain, (2006) 2 SCC 724, the Additional Rent Controller has repelled the objection on the ground that one of the co-owners can also maintain a petition under Section 14(1)(e) of the Delhi Rent Control Act. She has also noted that the respondent had placed on record copies of the relinquishment deed dated 07.02.2001 executed by his father and a gift deed dated 22.07.2010 executed by his brother Ashok Budhiraja, by virtue of which he had acquired the title over the entire property, having become the sole owner. She also noted that the petitioners had tendered rent in favour of the respondent and his brother at one stage and thereby having attorned in their favour, he consequently being estopped in terms of Section 116 of Indian Evidence Act from denying the title of the respondent qua the subject property.

6. The respondent has explained by the averments in the eviction petition and in reply to the application for leave to defend that though the property bearing no.13/9, W.E.A. Ajmal Khan Road, Karol Bagh, comprised of three floors, there are only two shops at the ground floor one being the demised premises in possession of the petitioners herein and the other, smaller in size under the occupation of a different tenant (Metro Watch Company). The petitioners were unable to show any other vacant portion in possession of the respondent / landlord which could be considered as suitable alternative accommodation. The respondent had explained by way of reply that property no.5/18, W.E.A. Ajmal Khan Road, Karol Bagh, New Delhi is a residential premises in use and occupation for such purposes of the respondent / landlord, though presently under renovation. The respondent has

denied having any connection with the other properties referred to in the leave to defend application. The petitioners were unable to bring on record to even prima facie show any connection between such other properties and the respondent / landlord or existence of any commercial space in the property no.5/18, W.E.A. Ajmal Khan Road, Karol Bagh, New Delhi. No site plan was filed by the petitioners to demonstrate as to how the site plan filed by the respondent with the eviction petition was wrong or fallacious and, thus, the said plea was also found not to be giving rise to any triable issue.

7. The Additional Rent Controller accepted the case of the respondent that after the demise of his wife on 18.08.2016, his only son Vineet Budhiraja wants to shift from United Kingdom to India to set up his legal practice here and be by his side in his old age.

8. In bringing a challenge by the revision at hand to the order dated 23.10.2017, the petitioners have pressed only one of the above mentioned grounds taken in the application for leave to defend viz. that the son of the respondent has a roaring legal practice in United Kingdom and has been well settled there for the last ten years with his family and, therefore, it is inconceivable that he would like to shift base to India. Reliance is placed on *Charan Dass Duggal Vs. Brahma Nand, (1983) 1 SCC 301* to contend that mere expression of desire to shift cannot be accepted on its face value and that the landlord must be called upon to prove the necessary facts at the trial.

9. Having heard the learned counsel on both sides and having gone through the record, this court finds no substance in the revision petition. There cannot be any thumb or unexceptional rule that a

person who is well settled abroad would never wish to come back to India. The son of the respondent may have pursued the course of study leading to the degree of Bachelor of Law in United Kingdom and he may have set up practice and been there with his family for the last ten years. But, as the facts narrated in the eviction petition, and in the reply to the leave to defend application show, the circumstances have undergone change. Vineet Budhiraja is the only son of the respondent /landlord and his wife having died on 18.08.2016, it is quite natural that he needs the company of his child, the only son, alongwith his immediate family, to be beside him in the evening of his life. If the son is ready and willing to fulfil the desires and needs of his aged father at this stage of his life where he is without a companion, the same ought not be doubted. Obviously, in order to shift his base from United Kingdom to India, the son would need suitable commercial space for setting up his office as a legal practitioner. For meeting such needs of the son for his legal practice, it is the obligation of the landlord to provide the necessary space. After all, he holds the property for the benefit of self and the family. In these circumstances, the conclusion reached by the Additional Rent Controller that the respondent / landlord bonafide requires the demised premises cannot be faulted.

10. Thus, the petition is found devoid of substance and is dismissed. The pending application also stands dismissed.

R.K.GAUBA, J.

JANUARY 09, 2018//yg