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

% ***Judgment Pronounced on: 20.11.2018***

+ RC.REV. 274/2015

BRIJ MOHAN SINGH Petitioner
Through Mr.Ajay Kr.Tandon, Mr.Lalit Gupta
& Mr.Vinay Pandey, Advs.

Versus

TULSI RAM Respondent
Through Mr.Ashish Mohan and Ms.Manpreet
Kaur, Advocates

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This revision petition is filed under Section 25B (8) of the Delhi Rent Control Act, 1958 (*hereinafter referred to as the 'DRC Act'*) seeking to impugn the order and judgment dated 31.03.2015 passed by the court of Additional Rent Controller (*hereinafter referred to as 'the ARC'*) whereby the eviction petition filed by the petitioner/landlord under Section 14(1)(e) of the DRC Act was dismissed.
2. The petitioner/landlord filed the present eviction petition under Section 14(1)(e) read with Section 25 (B) of the DRC Act seeking eviction of the respondent/tenant from the shop being Ground Floor of the property No. 42, Defence Colony Market, New Delhi- 110024.

3. The case of the petitioner/landlord is that the property in question was purchased by the original petitioner Sh.Brij Mohan Singh alongwith Sh.Gajpal Singh. On the death of Sh.Gajpal Singh, his LR conveyed/transferred their rights in the said property in favour of the original petitioner i.e. Sh.Brij Mohan Singh. The respondent/tenant was inducted in the premises as a tenant on 04.09.1958. He was paying a rent of Rs.2541/- per month. The petitioner Sh.Brij Mohan Singh died on 02.12.2008 after filing of the present eviction petition. The LR of Late Sh.Brij Mohan Singh his wife was impleaded as a petitioner. I may also note that the respondent/tenant also expired on 24.12.2016 and vide order dated 16.02.2017 the legal representative of the respondent/tenant was impleaded in the present proceedings.

4. The case of the original petitioner is that his family comprises of Mrs.Anjana Ahluwalia, widow of Late Sh.Brij Mohan Singh, two sons, namely Sh.Jaspal Singh, Sh.Harjit Singh and one married daughter Ms.Deepika Sawhney. It is stated that the petitioner is having a keen interest in fashion designing and wants to start the said business. The elder son of the petitioner Sh.Jaspal Singh is said to be in private service and younger son Sh.Harjit Singh is working in M/s Shree Cement. However, it is pleaded that the younger son of the petitioner Sh.Harjit Singh also intends to join the petitioner with the business of cloth and readymade garments. It is further stated in the petition by the original petitioner that neither the original petitioner nor the petitioner's family members have any suitable alternative reasonable accommodation available with them for running the said aforesaid business except the tenanted premises.

5. The learned ARC vide order dated 05.09.2011 noted that the respondent has raised several issues which require trial. Hence, the application for leave to defend moved by the respondent was accordingly allowed. Liberty was granted to the parties to lead evidence.

6. The respondent filed his written statement. In the written statement various pleas were raised including that the respondent is not the sole tenant but a partnership firm, namely, M/s Bharat Furnishing Company, is the tenant. The firm comprises of other partners including the respondent. Hence, it is pleaded that the present revision petition is not maintainable and is bad for non-joinder of necessary parties. It was further pleaded that the requirement set up by the petitioner lacks bonafide. It was also pleaded that the petitioner had concealed material facts regarding availability of alternative suitable commercial accommodation on the first and second floor of the property at 42, Defence Colony Market, New Delhi- 110024 with the respondent. It is stated that the said property has been let out/re-let for commercial purposes by charging exorbitant rents. It is also pleaded that the Defence Colony Market has been declared as a Local Shopping Centre and all the floors are being used for commercial/shopping purposes. It is also stated that the petitioner/LR is more than 75 years of age and is not in a position to undertake any business activity. The petitioner/LR has sufficient income from rent and other sources to maintain herself. All the children of the petitioner/LR are married, well settled in life and having their independent source of income for the last more than two decades and not dependent on the petitioner for the purpose of earning their livelihood. Hence, it was pleaded that the eviction petition be dismissed.

7. The parties have led their evidence. Mrs. Anjana Ahluwalia, widow of the deceased petitioner examined herself as PW-1. Her son Sh. Harjit Singh examined himself as PW-2. Late respondent/tenant examined himself as RW-1.

8. (i) The learned ARC by the impugned order on the issue as to whether the original petitioner is the owner/landlord noted that the original petitioner has given a complete chain to prove his title to the property in question. The impugned order also notes that the respondent has admitted in his cross-examination that firstly Sh. Brij Mohan Singh and after his demise, the petitioner/his wife become the owner/landlord of the property. Mutation in MCD in favour of the petitioner was also placed on record. The plea of the petitioner that the tenant was the firm M/s Bharat Furnishing Company was rejected noting the plea of RW-1 that a copy of the partnership deed was never given to the petitioner. Hence, the petitioner was never informed about the creation of the partnership firm. The learned ARC further concluded that the relationship of landlord and tenant is proved between the parties.

(ii) On the issue as to whether commercial activities were being carried out on first and second floor of the suit property, the learned ARC noted that both PW-1 and PW-2 admitted that commercial activity is being carried out on the first and the second floor of the suit property. The impugned order also notes that PW-1 has admitted renting out the said portion of the property. It is further stated that she is doing the business of fashion designing for the past 15-20 years but when the shop at second floor was lying vacant, no attempt was made by the petitioner to start the business in the said portion but on the contrary the said portion was let out again.

(iii) Regarding the bonafide need, the impugned order notes that the original petitioner retired from service in 1987 and was leading a retired life in 2008. For more than 20 years, he was not engaged in any commercial activity and therefore meeting his expenses from his pension and rental income from the suit property. His wife Mrs. Anjana Ahluwalia (petitioner/LR) claimed to have been doing the business of fashion designing for the past 15-20 years but no details of her clients for which she has done fashion designing have been filed nor a single witness was examined to corroborate the claim of the fashion designing by the petitioner/LR. The learned ARC held that assertion that the petitioner/LR was doing the business of fashion designing is a bald assertion. The impugned order also notes that there are no details whatsoever as to the total monthly expenses of the petitioner/LR and that her current income is insufficient and therefore, the petitioner/LR is required to engaged in commercial activity at the fag end of her life to support her income. The impugned order also notes that in old age the petitioner/LR can do business but whether the petitioner/LR needed to do the same is a question that remained unanswered. Hence, it was concluded that desire of the petitioner/LR to carry out business was not a bonafide requirement.

(iv) Regarding the requirement of younger son Sh. Harjit Singh, the impugned order notes that Sh. Harjit Singh PW-2 has admitted paying rent of Rs. 11,000/- per month and his children are studying in School and College. Sh. Harjit Singh left his job in September, 2013 and is said to be dependent upon his savings for his above expenses. The impugned order notes that passbooks Ex. PW1/R1 and R2 shows negligible balance indicating that Sh. Harjit Singh is earning some money either from some business or some

job. The impugned order notes that non-disclosure of the Source of Income of Harjit Singh in meeting his expenses casts a doubt on his bona fide requirement.

(v) The impugned order also notes that as per Master Plan Delhi 2021 which was filed by the petitioner, the property on upper floor falling in the Defence Colony area is not permissible to be used for commercial purposes. However, the impugned order notes that the petitioner failed to explain that despite this fact the first and second floor were being used by the occupants for commercial purpose and no action is taken against the occupants by the Municipal Corporation. The impugned order also notes that no attempt was made by the petitioner to start the business from the first and the second floor. The impugned order also notes that it is common knowledge that clientail of fashion designing is developed not on the basis of floor but predominantly on the basis of work done by the designer.

(vi) The learned ARC concluded that the requirement of the petitioner was not bonafide and the eviction petition was dismissed.

9. I have heard the learned counsel for the parties.

10. Learned counsel for the petitioner has vehemently argued as follows:-

(i) He submits that the impugned order comes to a conclusion based on the Master Plan Delhi 2021 that the upper floor cannot be used for commercial purposes. The order notes that the existing tenants are using the premises for commercial purpose, and yet the concerned Municipal Authority have not taken any steps. It is pleaded that this cannot be a ground to conclude that the premises can be used for commercial purposes. Reliance is placed on the judgment of the Supreme Court ***M.C.Mehta v. Union of India & Ors., (2006) 2 SCC 399*** to contend that the finding recorded in the

impugned order that the petitioner could have used the upper floors for her business is blatantly erroneous on the face of the order.

(ii) He further submitted that the entire basis of the impugned order is erroneous. He has pleaded that the tenanted premises being the Ground Floor shop in Defence Colony Market, New Delhi, has entry from the main Market and is easily accessible/visible. It has numerous advantages i.e., convenience, visibility, proximity, walk in customers, profitability which would help to enhance the business of the petitioner. In contrast, the upper floors have entry from the rear side/back side, which is admittedly not a part of the market. Further, the petitioner/LR is about 77 years of age and it would be extremely difficult for the petitioner and even for the customers to climb upper floors as there is no lift in the building. These issues were completely ignored in the impugned order though they have a material bearing.

(iii) It has been pointed out that the second floor property is vacant since 2002. However, the petitioner has chosen not to start business from there as it is not legally permissible apart from other reasons noted above.

(iv) He has relied upon the judgment of the Supreme Court in ***Anil Bajaj and Another vs. Vinod Ahuja, AIR 2014 SC 2294***, where the Supreme Court was dealing with a case of similar facts. The Supreme Court noted that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business.

(v) The learned counsel for the petitioner, on instructions, has stated that the petitioner is ready to exchange the first floor with the respondent/tenant. It is pleaded that on the same terms, the respondent can shift his business to

the first floor and hand over the vacant possession of the shop on the ground floor to the petitioner to enable her to start her own business. This plea was rejected by the learned counsel for the respondent. It is pleaded that it is manifest that the act of the respondent is malafide and illegal. It is also pleaded that RW1 in his cross-examination has accepted that upper floors are not suitable for retail business and therefore, the respondent is not inclined to shift on the upper floors.

(vi) He has pleaded that the respondent/tenant is a rich and established business man and in the cross-examination it has come on record that he owns various immoveable commercial/residential properties, viz. at 138, Arjun Nagar, Kotla Mubarakpur, New Delhi; Property No.25/2, Okhla Industrial Area, Phase-II, New Delhi; and 15/1, Kalkaji, New Delhi.

11. Learned counsel appearing for the respondent has reiterated their contentions spelt out in the written statement as follows:

(i) It has been pleaded that the petitioner/LR admittedly has no experience of running a fashion designing business. It is further pleaded that the petitioner is above 75 years of age and is hardly in a position to commence her own business. Hence, there is no bonafide in the present petition.

(ii) It has been pleaded that in 2008 itself just prior to the filing of the eviction petition, the second floor was let out. Hence, there is no bonafide in the case of petitioner as the petitioner can use the second floor for commercial purposes and hence has an alternative suitable accommodation.

12. I may first deal with the conclusion in the impugned order and the contention stressed by the learned counsel for the respondent in his submissions that the petitioner/landlord has no experience in the field of

fashion designing, that she is above 75 years of age and hence there is no bonafide desire to start any new business as prayed.

13. In my opinion, this conclusion is entirely erroneous.

14. Regarding the contention of the respondent that the petitioner/LR does not have any experience in fashion designing, such a plea cannot be a ground to come to a conclusion that the requirement of the petitioner is not bona fide. Reference may be had to the judgment of this court in ***Puran Chand Aggarwal v. Lekh Raj, 210 (2014) DLT 131*** where this court based on various judgments of the Supreme Court and this Court summarized the legal position as follows:

“26. As far as business is concerned, it is not necessary that the landlord must show some evidence that he has experience of said business. That is not the requirement of law in order to file the eviction petition on the grounds of bonafide requirement.

27. The following judgments do help the case of the respondent:

Start new business/no experience required

(i) In Ram Babu Agarwal vs. Jay Kishan Das: (2010) 1 SCC 164, it was observed that "A person can start a new business even if he has no experience in the new business that does not mean that his claim for starting new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business and sometimes they are successful in the new business also."

(ii) In Tarsem Singh vs. Gurvinder Singh: 173 (2010) DLT 379, it was observed that "If the landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine."

(iii) In *Balwant Singh Chowdhary & Anr. vs. Hindustan Petroleum Corporation Ltd.*, 2004 (1) RCR 487, it was held that "It is not necessary for the landlord to plead and prove the specific business he wants to set up, if the landlord wanted the premises for business purposes."

(iv) In *Gurcharan Lal Kumar vs. Srimati Satyawati & Ors.*: 2013 (2) RCR (Rent) 120 it was observed that "Merely because the exact nature of business has not been described would not take away their bonafide need to carry out a business (when admittedly both the sons are dependent upon petitioner for this need). It was observed that if the business need is not disclosed this would not wipe away the bonafide need of the landlord as has been pressed under Section 14(1)(e) of the DRCA, 1958."

(v) In *Raj Kumar Khaitan & Ors. vs. Bibi Zubaida Khatun & Anr.*: AIR 1995 SC 576, it was observed that "It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody would bind the landlords to start the same business in the premises after it was vacated."

Hence, the plea of the respondent in this regard i.e. that the petitioner has no experience has no merit.

15. Further, in my opinion, age is also not a bar to start own business. Merely because the petitioner is a senior citizen, *per se* cannot knock her out from filing an eviction petition for bonafide need. In fact here PW2 Sh.Harjit Singh, the son of the petitioner is also keen to help his mother in the said business.

16. Hence, the finding in the impugned order that the requirement of the petitioner is not bonafide as she has failed to show that she has been doing the work of fashion designing for the past 15-20 years or that the petitioner

failed to place on record her total monthly expenses and her current income to show that the same is insufficient is a misplaced conclusion and suffers from material illegality. These facts recorded in the impugned order do not justify or warrant the conclusion in the impugned order that the requirement of the petitioner lacks bonafide.

17. The next aspect on which the impugned order relies to dismiss the petition is the alleged availability of the premises on the second floor for carrying on business activity by the petitioner. The impugned order in para 34 itself notes that as per Master Plan Delhi 2021, upper floors in the Defence Colony area cannot be used for commercial purposes. Merely because some of the tenants have occupied/used the tenanted premises for commercial purposes and the concerned Municipality have not taken any steps cannot be a ground to conclude that the petitioner can also commence her business activity from the said admittedly residential areas.

18. In the course of the last hearing that took place the learned counsel appearing for the petitioner has submitted that the concerned Municipal Corporation in view of the recent steps taken by the concerned monitoring committee have sealed the first and second floor of the premises in question on the ground that they were wrongfully being used for commercial purpose. Hence, he submits that even otherwise it is clear that the upper floors of the property cannot be used for commercial purposes.

19. Regarding the choice of the petitioner to use the ground floor for carrying on business and whether the same is bonafide, the legal position is well settled. In *Ragavendra Kumar v. Firm Prem Machinery and Co., [2000] 1 SCR 77*, the Supreme Court held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has

complete freedom in the matter. In *Prativa Devi (Smt.) v. T.V. Krishnan*, (1996) 5 SCC 353, it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate to the landlord as to how and in what manner he should live.

20. In *G.C. Kapoor Vs. Nand Kumar Bhasin*, AIR 2002 SC 200, the Supreme Court noted as follows:

“It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In *Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Anr.*: [1999] 2 SCR 912, this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.”

21. Hence, a landlord is the best judge of his requirement for business purposes and he has complete freedom in the matter. Courts have no concern to dictate to the landlord as to how and in what manner he should use the property.

22. That apart the impugned order ignores the factual position/situation which is admitted by RW1 in his cross-examination on 27.10.2014, i. e., that entry to the ground floor shop/tenanted premises is from main road/main market. There is no entry to the upper floors from the main market. The only entry to the upper floors is from the back side of the shop which is a *Gali*. It is manifest that upper floors apart being residential would not be appropriate

for carrying on business keeping in view the manner of entry into the said premises.

23. Another aspect, which is noteworthy, is that the learned counsel for the petitioner had offered to the respondent to move to the first floor and hand over possession of the ground floor to the petitioner. The learned counsel for the respondent has refused to accept the said offer. In fact, as noted above, the respondent in his cross-examination on 27.10.2014 has stated as follows:

“My customers enter my shops on the ground floor through the main entry facing the rectangle park. There is no entry to have access to the upper floors, over and above my shop, from the portion in front of the property in question. There exists only one entry to have access to the premises above the shop in question and that entry is from the back side of the shop in question. I cannot run the business from the premises above the shop in question. The premises above the shop in question are neither suitable nor sufficient (covered area wise) for running the business of the shop.”

24. Reference in this context may be had to the judgment of the Supreme court in *Anil Bajaj and Another vs. Vinod Ahuja*(supra). The facts of that case are somewhat similar to the present case. The landlord in that case was running a shop, which was located in a lane 15 ft. in width. In view of the location, the landlord was unable to generate sufficient business and hence needed to have the tenanted premises vacated, which is situated on the main road. The landlord offered the premises in its possession in exchange for the tenanted premises which was situated on the main road, which offer was declined by the tenant. The Supreme Court held as follows:

“6. In the present case it is clear that while the landlord (Appellant No. 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord-Appellant No. 1 does not propose to utilize the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend.”

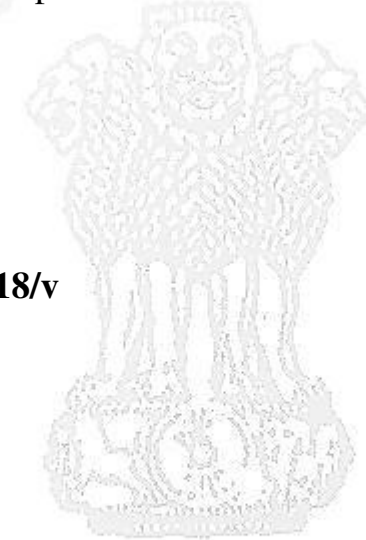
The above judgment squarely applies to the facts of the case. The petitioner/landlord cannot be compelled to go and start her business on the

upper storey especially when premises on the ground floor will be more convenient and have a much better location. The impugned order has erroneously concluded that the petition of the petitioner lacks bonafide as she has not occupied the above floors of the building for her business. The conclusion suffers from material illegality.

25. In view of the above, in my opinion, the impugned order suffers from material illegality and irregularity. The impugned order is quashed. An order of eviction is passed in favour of the petitioner. However, same shall be executed only after a lapse of six months in terms of section 14(7) of the DRC Act.

(JAYANT NATH)
JUDGE

NOVEMBER 20, 2018/v



सत्यमेव जयते