

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

% **Date of decision: 15th March, 2018**

+ **RC.REV. 431/2017**

RAJINDER KAUR BHATIA **Petitioner**

Through: Ms. Naina Kejriwal, Adv.

versus

RAJ KUMAR **Respondent**

Through: Mr. Shyam Singh Sisodia, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 13th November, 2017, the following order was passed in this matter.

"1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 8th June, 2017 in E No.78204/2016 (Old E No.266/2015) of the Court of Additional Rent Controller (ARC)-02 (Central), Tis Hazari Courts, Delhi] of grant of leave to the respondent to defend the petition for eviction under Section 14(1)(e) of the Act filed by the petitioner.

2. Finding the impugned order to be not containing any reasons for granting leave to defend and otherwise on reading the petition for eviction and the application for leave to defend and the reply filed thereto, prima facie finding no case for grant of leave to defend, notice of the petition was ordered to be issued.

3. The respondent is reported to be served and the counsel for the respondent appears.

4. The counsels have been heard and the copies of the Trial Court record perused.

5. The petitioner filed the petition for eviction from which this petition arises for eviction of the respondent from shop No.8568, forming part of Plot No.75, Ground Floor, East Park Road, Model Basti, Filmistan Cinema,

New Delhi in the tenancy of the respondent since the year 1960 i.e. since the time of the grandfather of the respondent and for which the respondent was last paying rent of Rs.250/- per month, pleading (i) that the petitioner, her husband Gurdeep Singh Bhatia and her son Gagandeep Singh Bhatia are the owners/landlords of the property in a shop wherein the respondent is a tenant; (ii) that the said property constructed over 166 sq. yds. was owned by one Bhikam Singh who had inducted the grandfather of the respondent as a tenant in a shop therein; (iii) that on the demise of Bhikam Singh and his wife, their six sons and two daughters namely Laxmi Narain, Ajit Singh, Ranjeet Singh, Ramesh Chand, Jai Singh & Om Parkash and Smt. Laxmi Devi and Smt. Santosh became the owners of the property; (iv) that the aforesaid legal heirs of Bhikam Singh vide seven registered sale deeds executed in May, October, November, 2009 and in February, 2010 sold and conveyed the entire property to the petitioner and her husband Gurdeep Singh Bhatia and her son Gagandeep Singh Bhatia; (v) that thus the petitioner, her husband and her said son are co-owners of the property; (vi) that the said property comprises of ground floor, first floor and terrace; (vii) that ground floor comprises of three shops facing the front road; (viii) that from one of the said shops, the husband of the petitioner namely Gurdeep Singh Bhatia runs a chemist shop and from the second shop of the front side, the son of the petitioner Gagandeep Singh Bhatia runs the business of sale and purchase of medicines in wholesale; (ix) that the third shop is in occupation/tenancy of the respondent; (x) that the back portion of the ground floor is being used as a godown for storing medicines; (xi) that after the demise of the grandfather and father of the respondent, the respondent had become the tenant in the said shop; (xii) that the respondent had filed a civil suit against Jai Bhagwan one of the sons of Bhikam Singh as well as against the husband and the aforesaid son of the

petitioner to restrain them from forcibly dispossessing the respondent from the said shop; (xiii) that the petitioner was working with M/s Creative Clothing, a readymade garment house and was looking after its sale and purchase department and now after leaving the said job, wants to start her own business of readymade garments from the said shop.

6. The respondent sought leave to defend, pleading (a) that the petitioner is neither the owner nor the landlady of the respondent; (b) that the site plan filed by the petitioner is not of the whole property; (c) that the property, on the ground floor, besides comprising of three shops facing front road, also comprises of one more shop at the backside and which has been concealed by the petitioner; (d) that the respondent had paid rent upto December, 2005 to the aforesaid Jai Bhagwan and whereafter the said Jai Bhagwan has been avoiding to receive the rent, compelling the respondent to deposit the rent in the Court; (e) that the shop at the backside is lying vacant and is suitable for the requirement of the petitioner; (f) that the petitioner is having shop/commercial property No.8626, Gaushala Road, DCM Chowk, Kishan Ganj, Delhi and 292, Gaushala Road, Ratan Nagar, Delhi; (g) that the family of the petitioner has other properties also but which are not in the knowledge of the respondent; (h) that the sale deeds referred to in the petition for eviction are forged and fabricated; (i) denying that the petitioner was working with M/s Creative Clothing or required the premises in the tenancy of the petitioner.

7. The petitioner, in the reply to the application for leave to defend, stated (I) that the respondent, in the petition filed for deposit of rent, had made the husband of the petitioner namely Gurdeep Singh who is one of the co-owners as a respondent; (II) denying that there is any shop in the rear side; the area of the ground floor behind the shops is a godown; (III) denying that she or any of her family members are having any connection with

property No.8626, Gaushala Road, DCM Chowk, Kishan Ganj, Delhi or property No.292, Gaushala Road, Ratan Nagar, Delhi.

8. Though the counsel for the respondent today also, on enquiry, whether he is disputing the ownership of the petitioner and/or the existence of the relationship of landlord and tenant replies in the affirmative but could not dispute that the payment of rent to Jai Bhagwan, one of the heirs of Bhikam Singh, was of a date prior to the dates of the sale deeds in favour of the petitioner and her husband and son and could not also tell as to who else is demanding the rent from the respondent or who else is claiming to be the owner of the property. Once the petitioner has given the particulars of registered sale deeds of the property, in a shop wherein the respondent is a tenant, in favour of herself, her husband and her son, a mere denial by the respondent of ownership will not suffice. From the factum of the respondent also impleading the husband and son of the petitioner who are co-owners with the petitioner as defendants in the suit for permanent injunction and impleading the husband of the petitioner who is co-owner with the petitioner as a respondent in the petition for deposit of rent, it is quite evident that the respondent is aware of the rights asserted by the petitioner. No case thus for grant of leave to defend on the ground of element of ownership and relationship of landlord and tenant is made out.

9. As far as the aspect of requirement is concerned, the thrust of the argument of the counsel for the respondent is on the existence of fourth shop in the property and which is stated to have been concealed.

10. The counsel for the petitioner at the time when the petition had come up for admission on 18th September, 2017, on enquiry, had stated that the respondent had not filed any site plan along with the application for leave to defend.

11. The counsel for the respondent, on enquiry, states that he along with his application for leave to defend filed

photographs and has handed over the same in the Court and which are taken on record. However, the said photographs also show the three shops in the property in front and as claimed by the petitioner.

12. The counsel for the respondent has in Court also handed over a copy of the site plan annexed to the sale deeds aforesaid in favour of the petitioner and her husband and son and which site plan the counsel for the respondent states was filed along with the application for leave to defend. The said site plan also shows only three shops in the front on the ground floor.

13. The only difference between the site plan filed by the petitioner along with the petition for eviction and the site plan so handed over by the counsel for the respondent is that on the rear side of the three shops, while in the site plan of the petitioner, the area is described as godown, in the site plan handed over by the counsel for the respondent, the said rear part is divided in two parts and of which one does not have opening towards the gali on the rear and one has an opening. The argument of the counsel for the respondent is that part of the rear portion having an opening in the gali is the fourth shop.

14. I have considered whether the aforesaid plea of the respondent entitles the respondent to leave to defend.

*15. Supreme Court in **Dhannalal Vs. Kalawatibai** (2002) 6 SCC 16 held that the availability of an accommodation suitable and convenient in all respects as the premises in occupation of the tenant may have an adverse bearing on the finding as to bona fides of the landlord, if he unreasonably refuses to occupy the available premises, to satisfy his alleged need; the bona fides of the need of the landlord has to be determined by the Court by applying objective standards and once the Court is satisfied of such bona fides, then in the matter of choosing more accommodation than one available to the landlord, his subjective choice shall be respected by the Court. It was further held that an accommodation*

*situated in the first floor cannot be said to be an alternate suitable accommodation in comparison with the shops situated on the ground floor; a shop on the first floor cannot attract the same number of customers and earn the same business as a shop situated on the ground floor would do. Again in **Uday Shankar Upadhyay Vs. Naveen Maheshwari** (2010) 1 SCC 503, it was so reiterated and it was held that the Court cannot dictate to the landlord which floor he should use for his business.*

16. What has been held in the judgments aforesaid qua the ground floor and the first floor, will apply equally to a shop opening on the front road and a shop opening in the rear street. Just like it has been held that a shop on the first floor cannot attract as many customers as a shop on the ground floor, so will a shop on the rear side not attract as many customers as a shop on the front side.

17. Thus, it does not lie in the mouth of the tenant to dictate to his landlord that the landlord should not carry on business from a more advantageous location and should carry on business from a less advantageous position. Once the position in law is clear, there is no trial required on the said aspect.

18. The next argument of the counsel for the respondent is that the petitioner has concealed the accommodations at property No.8626, Gaushala Road, DCM Chowk, Kishan Ganj, Delhi and property No.292, Gaushala Road, Ratan Nagar, Delhi available to her.

19. The petitioner in the reply to the leave to defend application has denied any interest of herself or any of her family members in either of the aforesaid two properties.

20. The counsel for the respondent states that the respondent along with the application for leave to defend has filed before the ARC, electricity bill of the said property, which is either in the name of Gurdeep Singh Bhatia, husband of the petitioner or in the name of Gagandeep Singh Bhatia, son of the petitioner.

21. Neither does the counsel for the respondent has copies of those documents nor has the petitioner bothered to file the same.

22. Let the Trial Court record be requisitioned by a Special Messenger before the next date of hearing.

23. List on 4th December, 2017.”

2. Thereafter on 11th January, 2018, the following order was passed:-

“1. This order is in continuation of the earlier order dated 13th November, 2017.

2. Trial Court record has been received.

3. The counsel for the petitioner/landlady states that the electricity bill referred is of the property of the husband of the petitioner/landlady and the petitioner/landlady has no right or share in the said property.

4. The counsel for the respondent/tenant has contended that the petitioner/landlady has not filed any documents to show use of the three shops mentioned in para 18(a)(vi) at page 27 of the petition for the purposes pleaded.

5. The counsel for the petitioner/landlady states that the photographs filed by the respondent/tenant itself shows use of the shops as pleaded.

6. Hearing concluded.

7. Order reserved.”

3. I have perused the Trial Court record and find the respondent/tenant to have, though not along with the leave to defend application filed on 9th October, 2015 but along with the rejoinder to the reply to the leave to defend application, having filed a photocopy of the electricity bill dated 19th October, 2015 in the name of Gurdeep Singh Bhatia of Shop No.8608, Ground Floor, Kishan Ganj, Delhi – 110007.

The counsel for the petitioner/landlady, on 11th January, 2018, as aforesaid, has admitted that her husband is the owner of the said property.

4. The only question which remains for consideration is, whether the respondent/tenant is entitled to leave to defend for the reason of the petitioner/landlady, on 11th January, 2018, having admitted ownership of her husband of Shop No.8608, Ground Floor, Kishan Ganj, Delhi.

5. Undoubtedly the petitioner/landlady in the petition for eviction did not disclose the said shop. However at the same time, the petitioner/landlady did not anywhere in the petition for eviction represent that her husband was not the owner of any other property. The respondent/tenant, in his application for leave to defend also did not mention the said shop and thus the occasion for the petitioner/landlady to take a stand with respect thereto in the reply to leave to defend application did not arise.

6. Significantly, the respondent/tenant, in the leave to defend application, does not dispute that the husband of the petitioner/landlady who is now disclosed to be the owner of the aforesaid shop, was carrying on his business from one of the three shops on the front side of the property, in a shop wherein the respondent is a tenant.

7. The question which thus arises for consideration is, whether the factum of the husband of the petitioner/landlady, who is a co-owner along with the petitioner/landlady and his son of the property with respect to a shop wherein the petition for eviction from which this Revision Petition arises was filed, owning Shop No.8608, Ground Floor,

Kishan Ganj, Delhi disentitles the petitioner/landlady from obtaining an order or eviction of the respondent/tenant.

8. I reiterate, that it is not in dispute that the husband of the petitioner/landlady though owning Shop No.8608, Ground Floor, Kishan Ganj, Delhi is carrying on business from one of the three shops in the front of the property from a shop wherein the respondent/tenant is sought to be evicted. It has been held in ***Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal*** (2005) 8 SCC 252 that merely because the landlords have their business at another place cannot be a ground for denying the landlord eviction of tenant from another premises. It was held that it is always the prerogative of the landlord and if he requires the premises in question for his *bona fide* use for expansion of his business, it is not open to the tenant or the Court to say that the landlords are already having their business and their need is not genuine. It was yet further held that it is not the tenant who can dictate the terms to the landlords and advise him what he should do and what he should not and it is always the privilege of the landlord to choose the nature and the place of business.

9. Applying the said ratio, as long as it is not in dispute that the husband of the petitioner/landlady is occupying one of the three shops in front in the property, from a shop wherein eviction of the respondent/tenant is sought, making the said shop unavailable to the petitioner/landlady, the petitioner/landlady cannot be denied her requirement which is otherwise abundantly made out and is not disputed.

10. Mention may also be made of ***Anil Bajaj Vs . Vinod Ahuja*** (2014)

15 SCC 610 holding that 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.

11. Here it is not the petitioner/landlady but her husband who is stated to have another place of business besides the shop in front in the property from a shop wherein the eviction of the respondent/tenant is sought.

12. Once the said fact does not disentitle the petitioner/landlady to an order of eviction, Section 25B(5) of the Delhi Rent Control Act, 1958 does not allow leave to defend to be granted on account thereof.

13. The counsel for the respondent/tenant has referred to (i) ***Inderjeet Kaur Vs. Nirpal Singh*** 2000 (1) SCC 706; (ii) ***Mohd. Illyas Vs. Nooruddin*** 184 (2011) DLT 590; and, (iii) ***Shanti Devi Vs. Rajesh Kumar Jain*** 2015 (2) SCC 158 but which are found to turn on their own facts and are not found to have any application to the controversy as is for adjudication herein.

14. The petition thus succeeds and is allowed.

15. The impugned order granting leave to the respondent/tenant to defend the petition for eviction under Section 14(1)(e) of the Act filed by the petitioner/landlady is set aside.

16. The leave to defend application filed by the respondent/tenant is not found to disclose any facts as would disentitle the petitioner/landlady from an order of eviction.

17. The application for leave to defend is thus dismissed.

18. Axiomatically, an order is passed in favour of the petitioner/landlady, of eviction of the respondent/tenant from Shop No.8568 forming part of Plot No.75, Ground Floor, East Park Road, Model Basti, Filmistan Cinema, New Delhi – 110 005 as described in paras 1, 2 and 8 of the petition for eviction from which this Rent Control Revision Petition arises and as shown in red in the site plan filed with the petition for eviction.

19. However, in accordance with Section 14(7) of the Act, the order of eviction shall be inexecutable for a period of six months.

20. In the circumstances, no costs.

21. The Trial Court file requisitioned in this Court be returned forthwith.

RAJIV SAHAI ENDLAW, J.

MARCH 15, 2018

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