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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 166/2016 & CM APPL No.9339/2016**
SURESH BHARIJA & ANR

..... Petitioners

Through : Mr.Rajat Aneja, Mr.Sambit Nanda
and Ms.Chandrika Gupta, Advocates.

versus

CHANCHAL DILORI & ANR

..... Respondents

Through : Mr.Mohammad Parvez Dabas,
Advocate.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **07.03.2019**

1. This revision petition is against an order dated 23.12.2015 passed by the learned ACJ/ ARC/ CCJ (West), Tis Hazari Courts, Delhi in eviction petition E-172/2012 whereby the learned Trial Court has allowed an application for leave to defend of the respondent.

2. It is alleged the petition was filed under Section 14(1)(e) of the DRC Act against the respondent in respect of one shop at the ground floor of premises no. C-8, Ajay Enclave Extension, Near Radha Soami Bhawan, New Delhi on the plea the father of the petitioners being an owner of the suit property, died intestate on 22.09.1999 leaving behind his legal heirs viz. his widow Mrs.Rajrani, his three sons Namely Mr.Suresh Bharija, Mr.Rakesh Bharija and Mr.Ramesh Bharija and four daughters. The mother of the petitioner also expired on 22.05.2002 intestate. All the sisters and one brother namely

Mr.Ramesh Kumar then relinquished their rights in the suit property as well as in another property viz. S-20, Ajay Enclave Extension, New Delhi in favour of the petitioners herein by way of registered relinquishment deed dated 14.09.2005, registered with Sub-Registrar-II, Janak Puri, New Delhi.

3. The suit premises was let out to the father of the respondent and on his death the respondent had inherited such tenancy and had sub-let the premises for which a separate petition under Section 14(1)(b) of DRC Act bearing no. E-202/2011 is also filed.

4. It is alleged the petitioners are having two unmarried sisters namely Ms.Santosh and Ms.Neelam who are also dependent upon the petitioners for residential/financial purposes and the tenanted shop is the required bonafide for their sisters to start a business of boutique and beauty parlour separately so that they can earn their livelihood independently. The suit premises is most suitable for their sisters as it lies on the main road.

5. It is alleged the property bearing no.C-8 (supra) consists of four shops, out of which shop no.1 is with the tenant Shri.Omprakash, shop no.2 is occupied by petitioner no.1, shop no.3 is the suit property and the shop no.4 is occupied by petitioner no.2 who is doing his business. Behind these shops, the petitioner no.1 is also doing business of sale and purchase of automobiles and park his vehicles for sale and purchase in the back portion of these four shops and therefore, the inner portion of the property is not suitable for the sisters.

6. The petitioners also own property bearing no.S-20, Ajay

Enclave, New Delhi but the same is used for residential purposes for the family of the petitioners. It is alleged earlier two shops on the front side of S-20 (supra) were given on rent to Mr.Jasvinder Pal Singh Heera for commercial purposes but since the family of the petitioners is large, including two unmarried sisters and since the accommodation for their residence was less, an eviction petition was filed against Mr.Jasvinder Pal Singh Heera in respect of these two shops and such shops were got vacated from the tenant and are now being used by the family of petitioners for their residence and even otherwise, such shops were not suitable for running a boutique or a beauty parlour as were situated in the inner portion of the locality; between industrial units and were not convenient to the customers visiting such property but whereas the subject shop is centrally located, easily approachable and situated on a neat and clean double road.

7. Application for leave to defend was filed by the respondent herein and he primarily agitated upon the alternative accommodation available with the petitioners herein. It is alleged by him there are four rooms inside property no.C-8 (supra) which can be used for the purpose of a Beauty Parlour or for a Boutique and recently the petitioners have inducted a tenant 3-4 months back who is running his business in the name and style of M/s Jasmeet Motors. Further it is stated out of four shops in the front, two are lying vacant and are in possession of petitioners and it give rise to triable issue. However, the respondent lost sight of the fact the shops which he alleged to be vacant are in fact occupied by the petitioners no.1 and 2 for their

business. Even they run their business from the back side of the premises No.C-8(supra) and hence it cannot be said such premises is available with the petitioners for opening shop(s) for their sisters. Qua M/s Jasmeet Motors the respondent has not filed anything on record to support his contention.

8. Secondly in his leave to defend the respondent has alleged the sisters are not dependent upon the petitioners and are not a part of their family and if the premises was required for sisters then why did the sisters execute the relinquishment deed in favour of the petitioners herein and hence now can't claim shops for their use and thus the need is a created one and is malafide.

9. I have also gone through the impugned order dated 23.12.2015 wherein the issue of alternative accommodation has been dealt with by the learned ARC in para 18 in the following manner:

“18) The respondent has averred that the petitioners are having other properties to fulfill their requirement. This Court can take judicial notice of the fact that in other eviction petitions bearing no, E. 65/13 and E. 173/12, eviction orders were passed by this Court against other tenants of the petitioners and the tenants were evicted vide order dated 23.12.2014 and 24.12.2014 respectively. While, the petitioners have relied upon various judgments to say that eviction petitions can be filed against two shops simultaneously, the respondent has contended that the petitioners already possess alternative accommodation for their requirement. This raises a disputed question of fact which can only be decided by way of evidence. This raises a doubt before the Court regarding the petitioners' requirement As if the submissions of the respondent are correct then the present case would be a case of requirement of additional accommodation for business. It goes without saying that in cases of requirement of additional accommodation leave to defend should be granted as has been held in the case of Santosh Devi Soni

Vs. Chanel Kiran (2000) ISCC 255. Even otherwise, the absence of reasonably suitable accommodation is an essential ingredient of Section 14 (l).(e) of DRC Act and a triable issue has arisen in the present case regarding the existence thereof or otherwise.”

10. A bare perusal of the above would show the learned ARC has not dealt with the pleas of the petitioners in a proper manner. He has not considered the bonafide requirement of the petitioners as a family but has stressed on the allowing of two eviction petitions filed by the petitioners. It is pertinent to note the eviction petition has fairly described about pendency of other eviction petitions and the petitioners has set up a case that besides the eviction of other two tenants, they would still require the premises in dispute. This fact was never considered by the learned ARC and he rather passed the order only on the fact of additional accommodation now being available with the petitioner on allowing of the said eviction petitions. The petitioners have categorically stated the two shops in S-20(supra) are being used only for residential purposes, for which purpose they had filed the eviction petition No.E-65/2013 and para 14.4 of the order dated 23.12.2014 passed in the said petition notes :-

“14.4 In the present case, it is not for the respondent to judge the suitability of the shops in question with respect to the requirement of residence put forth by the petitioners and it is hereby held that the defence being deliberated upon does not raise any triable issue.”

11. I may also like to refer to an order dated 11.05.2016 in RC.REV. 180/2015 and RC.REV. 263/2015 passed by this Court, specially paras nos. 17 to 23. These two revision petitions were against the eviction of the tenants of shop no.1 of C-8 (supra) as also

of two shops in S-20 (supra). Paras 17 to 23 are as under:

“17. I have also seen the site plan which has been filed by the respondents/landlords in both these cases. So far as property No.C-8, Ajay Enclave Extension, New Delhi is concerned in the front there are four shops, two of the shops are available with the respondents/landlords. The respondents/landlords are brothers and they have inherited the property. Each of them is using one shop each in C-8 in order to earn their livelihood. One of the shops is being used by one brother for the purpose of selling of spare motor parts. He has stated that he is using the back courtyard where some place is available to him and a room is available for the benefit of parking is vehicle. Therefore, the factum of occupation of the two shops in the front in property No.C-8, Ajay Enclave Extension, New Delhi, it cannot be said that there is any accommodation which is available to the respondents/landlords which can be utilized by any of the two sisters. As a matter of fact the petitioner had made an allegation that one of the shop out of these four shops was got vacated to re-let. This was emphatically denied by the landlord. They on the contrary admitted that instead of one they are in possession of two shops.

18. So far as back portion of C-8, Ajay Enclave Extension, New Delhi is concerned, it is also occupied by one of the brothers who is doing motor parts business. The premises is utilized for parking of vehicles which are mainly for sale and purchase. Even if it is assumed that motor parts business is not being done by one of the brothers at best the rooms would be couple of small rooms of less than or approximately 100 sq. ft. which would be available to the respondents/landlords for the benefit of their sisters. The nature of business which the unmarried sisters of the respondents/landlords intent to start is a boutique and a beauty saloon. These are the types of business which need to be having access from the front of the building. These are also display oriented business which are ill suited to be run from the back portion even if we assume that the back portion is available to them. Moreover there are catena of judgments by Apex Court that it does lie in the mouth of the respondent to arrange his affairs. He is the best judge of his requirement and tenant cannot tell the landlord as to how he is to conduct his affairs. Therefore, I feel that it

cannot be said that the back portion of the property No.C-8, Ajay Enclave Extension, New Delhi can be treated to be an alternative suitable accommodation available to them for the purpose of accommodating one of their sisters.

19. Same logic and reasoning would be applied in the case with respect to property No.S-20, Ajay Enclave Extension, New Delhi so far as the back portion is concerned, though in the back portion of S-20, the entire family is living. As a matter of fact the respondents are five in number that is three brothers and two sisters and they need at least five rooms while as they have only two rooms. Further only the back portion of S-20, Ajay Enclave Extension, New Delhi is being used for residence by them and the premises will be used for office or business purposes by the tenants, where are the respondents going to live. Under these circumstances, I feel that this plea of the alternative accommodation being available to the respondents/landlords is totally illusory submission only to put them to trouble of not starting the business or a ploy to get a leave which is bound to fail.

20. The second argument which has been commonly raised by the counsels appearing for the petitioners in both these petitions is that the respondents sisters, Santosh Kumari and Neelam Kumari had on account of death of their mother in the year 2005 executed Relinquishment Deed in favour of their brothers. Similarly, two other married sisters had also executed a Relinquishment Deed in favour of their brothers. It was contended that in case the sisters were unmarried and they intended to start their independent business then in such case they ought not to have executed the Relinquishment Deed. Further, it was contended that the sisters are not dependent on the respondents

21. This argument of the learned counsel for the petitioners that so far as the unmarried sisters of the respondents are not dependent on the respondents themselves for the purpose of accommodation is bereft of any logic or reasoning. The fact of the matter is that even before the death of the parents of the respondents the two unmarried sisters were all along living with the respondents themselves at property No.S-20. Now when the parents of the parties are no more, it cannot be said that the sisters

are not dependent on their brothers for the purpose of accommodation, although they may be financially independent.

22. Even the Apex Court has held in number of cases that a person may be financially independent but he may be dependent on parents for purpose of accommodation. In the instant case also the unmarried sisters have been living all along with their brothers and now that their parents are not alive they still continue to be a part of their family and are dependent on their brother for the purpose of accommodation and they constitute a part of their dependent family member. Also, it cannot be said that if the respondents intended to start an independent business then they ought to have not executed the Relinquishment Deed. The Relinquishment Deed was executed by both of these unmarried sisters and the other two married sisters out of natural love and affection. Having done so, the respondents were also like good brothers taking care of their unmarried sisters by providing them food, shelter and love and affection which is needed to a sister from her brother. If now the sisters require accommodation who are intending to start their independent business, who are ordinarily living with the respondents only, it cannot be said that the requirement of the respondents/landlords is totally unjustified.

23. As a matter of fact the execution of the Relinquishment Deed by the sisters in favour of their brothers goes to show that they are living as a well knit unit together and there is no love loss amongst them. Further, so far as the execution of the Relinquishment Deed by the sisters in favour of their brother is concerned, this was too much distant in point of time that it cannot be set up as a defence by the tenant to contend that if the unmarried sisters wanted to do the business then they ought not to have executed the Relinquishment Deed. It is well possible that at the time when the Relinquishment Deed was executed the sisters never wanted to do any business and they were comfortable sitting at home and being attended to by their brothers who had the moral obligation to do so in the absence of their parents. If the wisdom has dawned on the two unmarried sisters now to start their own independent business in order to supplement their financial conditions, it cannot be taken against them that they ought not to have executed the

Relinquishment Deed. This argument seems to bereft of any logic or reasoning. The question of requirement is to be seen at the time when it is being claimed and not in the context of what has happened in the past which has no relevance. Therefore, I feel that the bona fides of the respondents/landlords brothers in filing the eviction petition in respect of the two shops cannot be considered to be mala fide”

12. There is no need for me to differ from the findings of this Court in RC.REV. 180/2015 and in RC.REV. 263/2015. The learned counsel for the respondent though have relied upon *Kishore & Anr. vs. Prabodh Kumar & Ors.* 2012 (132) DRJ 562 to say wherever the requirement is for extension of the business or is for the son or other family member of the landlord, the leave to contest be granted as a matter of routine. This argument cannot be accepted. In the cited case the son of the landlord was a school going child. It was never the case of the landlord that his son would stop studying and would engage himself in full time business; secondly the eviction was sought in the *cited* case for expansion of the business by the landlord but whereas in the present case the eviction is sought for independent business of two grown up unmarried sisters of the petitioners, aged about 40 years, dependent for accommodation upon the petitioners. The fact that once these sisters were co-owners of these property also cannot be lost sight of. This is thus not a case of mere expansion of the business. The judgment relied upon differs on facts.

13. The impugned order dated 23.12.2015 hence is set aside. The leave to defend filed by the respondent is accordingly dismissed and eviction order is passed in respect of the shop premises no.-3 in property C-8, Ajay Enclave Extension, New Delhi-110018

admeasuring about 10'x 14'shown as red color in the site plan attached to the eviction petition. Per Section 14(7) of the DRC Act this eviction order be not enforced for a period of six months from today.

14. The revision petition is disposed of in terms of above, pending application, if any, also stands disposed of.

15. Copy of this order be communicated to the learned Trial Court/Successor Court for compliance.

16. No orders as to costs.

YOGESH KHANNA, J.

MARCH 07, 2019

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