

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 20th March, 2019

Pronounced on: 1st April, 2019

+

RC.REV. 320/2016 & CM APPL No.22898/2016

SARDAR MAHINDER SINGH

..... Petitioner

Through : Mr.S.P.Singh Choudhari and
Mr.Y.R. Sharma, Advocates.

versus

SUKHWANT KAUR

..... Respondent

Through : Mr.Pawan K Bahl and Mr.Bharat
Pankaj, Advocates with respondent
in person.

+

RC.REV. 321/2016 & CM APPL No.22901/2016

SARDAR BALBIR SINGH

..... Petitioner

Through : Mr.S.P.Singh Choudhari and
Mr.Y.R. Sharma, Advocates.

versus

SUKHWANT KAUR

..... Respondent

Through : Mr.Pawan K Bahl and Mr.Bharat
Pankaj, Advocates with respondent
in person.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. These revision petitions are filed for setting aside of the order dated 26.10.2015 passed by the learned Rent Controller (East),

Karkardooma, Delhi whereby the applications for leave to defend of the petitioners in both the eviction petitions were dismissed. The petitioners are brothers and are the tenants of adjoining shops at the ground floor of property no. IX/29, Kailash Nagar, Delhi-31.

2. The eviction petitions were filed against both the brothers under Section 14(1)(e) of the DRC Act alleging the respondent is an owner/landlord of the property, including these two shops admeasuring about 9ft. x 16 ft. each situated on the ground floor. It was alleged respondent is residing with her husband Mr.Trilok Singh in the back side of the property on the ground floor and on the first floor. They have one daughter who is married and lives in Gurugram and visits respondent occasionally. The husband of the respondent got retired in the year 2005 from National Physical Laboratory, Pusa, New Delhi. The respondent alongwith her husband wish to start cloth business in the tenanted shop as her husband is not working since retirement and they have no reasonable or suitable premises, besides these subject shops rented to the two brothers viz. the petitioners. The premises is situated in the biggest readymade cloth market of Asia in Delhi.

3. It is the case of the respondent that after getting both the shops vacated from the petitioners herein they shall amalgamate the shops into one big unit and would run the business of readymade garments/cloth items with the help of workers. It is alleged such business require more space for storage/godown too. Even the petitioners have removed the partition wall in between these two rented shops and have amalgamated into one unit and had fixed a single shutter in these shop but the shops are

lying vacant since 1999. It was also alleged the respondent has no other alternative accommodation in her name to start the business as the first floor and the terrace are purely residential.

4. The application for leave to defend was filed by the tenants viz. the petitioners herein and they raised the following issues viz. **(a)** the respondent is using the first and second floor of her property for manufacturing of paper boxes is in the large scale; **(b)** the respondent had sold the third shop in the property and had not disclosed it in the petition; **(c)** the respondent would re-let the subject shop at a higher rent; **(d)** the respondent's husband is a retired man getting pension and it would not be possible for him to run a garments business as he is already running the business of paper boxes from the two sheds on the upper floor of the property in question; **(e)** the respondent had concealed she had filed a suit in the year 2002 against the petitioner alleging he is trying to dispose of the tenanted shop, wherein the petitioner gave a statement to the contrary on 23.04.2003 and the said suit was dismissed as compromised; the respondent also herein filed an eviction petition under Section 14(1)(a) DRC Act against the petitioners herein in which the benefit under Section 14(2) was granted to the petitioner herein; she filed yet another petition on second default which was dismissed and even an appeal against the said order was also dismissed; she also filed a petition under Section 11 and 12 of the Contempt of Court Act; **(f)** she is not the landlady of the premises and has neither obtained any probate or succession of the Will dated 16.03.2000 of her father; it was a joint tenancy and the shops were let out for running a partnership firm under the name and style of M/s Royal TV Center.

5. The respondent herein filed reply to the applications for leave to defend wherein she denied they are carrying any business of manufacturing paper boxes and had stated the third shop alongwith the entire back portion was sold by the respondent in the year 2002 due to financial crisis and to meet the expenses of the marriage of their daughter and that they would not re-let the premises, per section 19 DRC Act and further no experience is required for running garment business and that she owns no other property except the property in dispute. It was also stated, the petitioners had attorned in favour of the respondent and had started paying rent to her after the death of her father - late Sh.Kartar Singh. The previous litigation is also not denied.

6. Let us see how the learned RC has dealt with these prepositions so raised by the petitioners herein.

“10.1 As can be seen from the grounds taken up by the respondent in his leave application with supporting affidavit, the challenge to the bonafide requirement of the petitioner has been on the following broad grounds:- (A) That petitioner and her husband are engaged in the business of manufacturing of paper box from the other portions of the property in question. (B) That the petitioner sold one shop adjoining to the shop of respondent in the same property in order to create scarcity of accommodation. (C) The petitioner and her husband have no experience in running the business of readymade garments. (D) That there has been a history of litigation between the parties which is nothing but a pointer to the malafide intention of the petitioner and her husband to evict the respondent from the tenanted shop.

10.2 Now, taking up these grounds one by one, the first and foremost challenge of the respondent is

that petitioner and her husband are engaged in the business of manufacturing paper box from the property in question. Admittedly, no document was placed on record by the respondent to substantiate his otherwise bald claim. A photograph was filed to show the extent of the portions otherwise in possession of the petitioner and her husband. Petitioner has vehemently denied the said allegation of the respondent by stating that neither she nor her husband are into any such business and that rather, husband of the petitioner retired from the National Physical Laboratory Pusa, New Delhi in the year 2005 and thereafter is living without any work and dependent on his pension income. The fact that the petitioner's husband was in service and had retired was not disputed by the respondent in his leave application. An issue which the respondent tried to make out was, as already noted, of the petitioner and her husband being already engaged In business. The law is well settled that if the respondent - tenant is allowed to raise such vague pleas unsubstantiated by any material, then the end result would be of granting leave in almost all the cases. As has been noted, the plea of the respondent under consideration is a vague plea unsubstantiated by any material. As such, there is nothing in the plea so as to make it fall In the category of an issue meriting that. As such, this ground as taken up by respondent holds no water and is accordingly rejected.

10.3 The other ground as taken up by respondent is that petitioner sold off an adjoining shop so as to create an artificial scarcity of accommodation. When the adjoining shop was sold and to whom it was sold, respondent's leave application was a complete silent. Contrary thereto, petitioner in her reply with supporting counter affidavit categorically stated that It was in the year 2002 that the petitioner owing to her financial crisis and

to meet the expenses on the marriage of her daughter, was constrained to sell off the third shop with its entire back portion. This fact of the matter was not controverted to by the respondent except by again a vague denial. Even otherwise, if it is presumed that the third shop was sold off by the petitioner, that alone in itself would not be a ground to challenge the bonafide requirement of the petitioner. Ld. Counsel for the petitioner rightly relied upon the judgment cited as Anil Kumar Verma V. Shiv Rani & Ors. (supra), wherein Hon'ble High Court of Delhi observed that selling of a shop by the landlord about one year prior to the filing of eviction petition because of financial crunch and debt reasonably justifies the sale and is no impediment in the claim of the tenanted premises on the grounds of bonafide requirement. As is to be noted, in the present case as well, petitioner sufficiently explained of the sale of third shop by her way back in the year 2002 to meet out expenses of the marriage of her daughter. The present eviction petition has been filed much later in the year 2014 and the occasion therefore was inter alia of the retirement of the petitioner's husband from his job in the year 2005. Thus, this ground again as taken up by respondent raises no triable issue and is rejected accordingly.

10.4 The other two grounds as taken up by the respondent are concerning the lack of experience of the petitioner and her husband in starting the business as claimed and history of previous litigation between the parties. So far as the lack of experience is concerned, the law stands well settled that petitioner or his I her dependent need not have any experience to start the business. An exception may be of requirement of some professional skill depending upon the nature of work to be started, in the present case, petitioner along with her husband wants to start a

readymade garment business from the tenanted shop and the adjoining shop in the possession of other tenant, it is not in dispute that the locality where the tenanted shop is situated is famously known for its cloth business. The nature of business which the petitioner wants to start along with her husband is not such which requires any specialized skill and as such, no past experience of the petitioner or her husband would have any bearing on their otherwise bonafide requirement.

10.5 So far as the previous litigation is concerned, whereas one of the litigation was concerning the apprehension of the petitioner of respondent creating any third party interest in the tenanted shop, the other two litigations were u/s. 14 (1) (a) of the DRC Act, one of which of first default was decided in favour of the petitioner herein. These allegations in no manner are suggestive of any malafide on the part of petitioner or her husband. Again, on both these grounds, respondent fails to raise any triable issue.”

7. Qua bonafide requirement, the learned RC had noted the respondent has denied she is not doing any business of boxes and her husband is a pensioner. Even the sale of the third shop in the year 2002 is not relevant in respect of an eviction petition filed in 2014, per *Anil Kumar Verma vs. Shiv Rani & Ors.* 190 (2012) DLT 130; further the lack of experience cannot come in the way to start a new business of the like of sale of readymade garments.

8. Admittedly in the previous litigation especially in the petition under Section 14(1)(a) of the DRC Act, the relationship of landlord and tenant between the parties stood decided vide judgment dated 11.09.2006 and the petitioners were given the benefit under Section 14(2) of the

DRC Act. The non-disclosure of the previous eviction petitions under Section 14(1)(e) of the DRC Act or grant of benefit under Section 14(2) of the Act is not material enough to dislodge the claim of the respondent. Admittedly, the respondent claims her ownership by virtue of a Will dated 16.03.2020. It is a settled law in a petition under Section 14(1)(e) of the DRC Act a landlord is not supposed to prove the ownership as is required by the Transfer of Property Act.

9. Before me only two contentions are raised **(a)** there is concealment on the part of the respondent as she has not disclosed the sale of the shop in the year 2002. Admittedly the eviction petition was filed in the year 2014 hence sale of third shop in the property and that too in distress and for genuine reasons to meet expenses incurred in the marriage of her only daughter, would not amount to any material concealment. Per settled law if the concealment is material only then it would be relevant to dislodge the petition; **(b)** the second issue raised before me is qua her bonafide necessity. It was argued the age of the husband of the respondent is about 73 years and at this age it cannot be expected of a person to start a new business. I disagree with this preposition as there exists no age bar to start any business afresh so long as a person is healthy and imaginative. The respondent further say these shops are lying vacant since 1999 and have shown me recent photographs of the said two shops which depict even the shutter is broken and it do appear it has not been opened for quite sometime.

10. It is the case of respondent she require both these shops for readymade garments business and she require much space for storage of

the cloth and sitting space for workers etc., hence it cannot be said her need for two shops to start her business of readymade garments is malafide when, admittedly, the petitioner themselves had removed the wall in between and made it a single unit.

11. In the circumstances I find no illegality or perversity in the impugned orders passed by the learned RC and hence both the revision petitions being devoid of merits are dismissed. Pending applications if, any, also stands disposed of.

YOGESH KHANNA, J.

APRIL 01, 2019

DV

