

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

+ **R. C. Rev. No.342/2018 & CM No. 29526-27/2018**

Judgment reserved on : 06.09.2018

Date of decision : 13.05.2019

Shri Shadab Raza

..... Petitioner

Through: Mr. R. K. Bhardwaj, Advocate
versus

Shri C.P Singh & Anr.

..... Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Shri Shadab Raza assails the impugned order dated 07.04.2018 of the learned ARC, Pilot Court, Central District, Tis Hazari Courts in E-765/2017, CIS No.888/2017, vide which order, the application filed by the respondent nos.1 & 2 to the said eviction petition seeking leave to defend to eviction petition, was allowed and the respondents were granted leave to defend to eviction petition.

2. The Eviction Petition filed by the petitioner herein under Section 14 (1)(e) r/w Section 25-B of the Delhi Rent Control Act, 1958 (as amended) sought the eviction of the respondent nos.1 & 2 from the tenanted premises forming the part of Shop No.7289, Old Rohtak Road, Near Railway Bridge, Azad Market, Delhi-110006 submitting to the effect that the said premises had been let out to the

father of the respondents Shri Jasbeer Singh for commercial purposes/use and after the death of late Jasbeer Singh, the respondents became the statutory tenants and that the petitioner needs the shop bonafidely to run his own business independently for his own survival as well as that of the family.

3. The petitioner has submitted that he got married on 17.04.2015 and after his marriage, his responsibilities have increased towards his wife, family, new born baby as well as towards his unmarried sisters. Thus, the petitioner is in bona fide need and requirement of the shop in question.

4. The petitioner further submitted that his mother Smt. Shehnaz Fatima who died on 27.05.2017 leaving behind the petitioner Shri Shabad Raza and two other married sons and two unmarried daughters and four married daughters, was the registered owner of the shop Nos.7289, 7290, 7291 and 7292, Old Rohtak Road, Near Railway Bridge, Azad Market, Delhi having purchased the same vide a duly registered sale deed registered on 03.09.2003 and that Smt. Shehnaz Fatima had filed a petition under the special provision of Section 40 (D) of the DRC Act, 1958 (as amended), which however became infructuous after her demise.

5. The petitioner has further submitted that he has no other property in Delhi except the property in suit and that the shop in question was required by him for his bona fide requirement for use and occupation of business purposes and that the petitioner is unemployed and needs to run his business for livelihood for him and his family members. *Inter alia* through the present petition, it had been

averred by the petitioner that the respondents have properties at Delhi and outside Delhi, the details of which were submitted as under:

- i) *Shop at 7239, Old Rohtak Road, Azad Market, Delhi.*
- ii) *A running factory at Mohali, Punjab having its address at D-119, Industrial Area, Phase-VII, Mohali Punjab.*
- iii) *Residential-cum-commercial properties/storehouse/godown at Pratap Nagar, Near Pratap Nagar Metro Station, Delhi.*
- iv) *Residence at Rohini, Delhi.*
- v) *One Kothi at Chandigarh, Punjab.*
- vi) *Running factory of manufacturing utensils at Delhi.*
- vii) *Running factory of manufacturing of coffee machines at Gulabi Bagh, Delhi.*

and that the respondents were men of means who could accentuate their businesses even after vacating the shop in question.

6. The petitioner thus submitted that he is aggrieved by the grant of leave to defend the eviction petition to the respondents vide the impugned order dated 07.04.2018 of the learned ARC, Pilot Court, Central District, Tis Hazari Court in as much as the impugned order suffers from erroneous observations and does not take into account that his liabilities have increased and that he was married on 17.04.2015 and is now the father of two children and that the source of income is business from Shop No.36, Masjid Takia Wali, Shivaji Road, Azad Market, Delhi where his elder brother runs a business, where the petitioner is only using the said address for correspondence purposes and wants to do his independent business in the shop in question i.e. 7289, Old Rohtak Road, Near Railway Bridge, Azad Market, Delhi. The petitioner has submitted that there is a paucity of space at Shop No.36, Masjid Takia Wali, Shivaji Road, Azad Market,

Delhi which space is insufficient for his business and that the petitioner bonafidely and genuinely needs the tenanted premises for his own livelihood and that of his family members. It has been submitted on behalf of the petitioner that the learned ARC ought to have disallowed the grant of leave to defend to the respondents in as much as no triable issues arose in the matter.

7. Vide the application seeking leave to defend filed by the respondents before the learned ARC, it was averred to the effect:

“9(a) The petitioner has been doing the business of manufacturing of COFFEE MACHINES, POP CORN MACHINES, SUGAR CANDY MACHINES, AIR COMPRESSORS, etc. under his sole Proprietorship under the name and style of M/s S. R. ENTERPRISES (Brand name 'SONEE') at 7290, 7291 and 7292, Main Road, Old Rohtak Road, Azad Market, Delhi-6, the documents qua this factual position, obtained from the NET and two photographs are enclosed herewith for the kind perusal of this Hon'ble Court.

It is submitted with due respect that two shops no.7045(A) & (B), Beriwalla Bagh, Azad Market, Delhi, are being used a GODOWN.

9(b) Also besides above, it is the petitioner, who has been running a factory of manufacturing of AIR COMPRESSORS, etc. under the name and style of M/s STANDARD ENGG. CO. (REGD.) (Brand name 'SECO & MODI') at 36, Masjid Takia-wali, Shivaji Road, Azad Market, Delhi-6

and

9(c) also at 7288, Old Rohtak Road, Azad Market, Delhi-6, by the petitioner, the Visiting Card of said firm and photograph are enclosed herewith for the kind perusal of this Hon'ble Court,

9(d) It is submitted with due respect that the property bearing no.6957/4 & 6959/4, Beriwalla Bagh, Azad Market, Delhi, are being used for manufacturing of parts of Coffee-machines, Air-compressors, etc. by the petitioner, the photograph is enclosed herewith.

9(e) The petitioner has also been allotted a DSIDC plot (100 meters), no. L-142, Sector 3, Bawana, Delhi, and the possession thereof was handed-over on 23.02.2005. He has been running his business there also. The part of List of allottees under re-location, scheme is enclosed herewith for the kind perusal of this Hon'ble Court."

8. Vide the impugned order, the learned ARC has taken into account the essential ingredients for adjudication of petition under Section 14(1)(e) of the DRC Act, 1958 (as amended) to the effect:

- i) Petition is the owner/landlord in respect of the tenanted premises;*
- ii) He requires the premises bonafidely for herself or for family members dependent upon her;*
- iii) He has no other reasonable suitable accommodation.*

9. The learned ARC having taken into account that the factum of existence of a landlord-tenant relationship between the parties was not disputed and holding the petition to be maintainable took into account the averments made in the application seeking leave to defend filed by the respondents in relation to the assertions that the petitioner was doing a business of manufacturing of coffee machines, pop corn Machines, sugar candy machines, air compressors under his sole proprietorship under the name and style of M/s S.R. Enterprises (brand name Sonee) at 7290, 7291 and 7292, Main Road, Old Rohtak Road, Azad Market, Delhi and of the petitioner running a factory of

manufacturing of air compressors under the name and style of M/s Standard Engg. Co. (Regd.) (brand name “Seco & Modi”) at Shop No.36, Masjid Takia Wali, Shivaji Road, Azad Market, Delhi and also at Shop No. 7288, Old Rohtak Road, Azad Market, Delhi.

10. The learned ARC observed thus to the effect that the aspect in relation to the stated business being run by the petitioner at 7290, 7291 and 7292, Main Road, Old Rohtak Road, Azad Market, Delhi was a triable issue. Furthermore, the learned ARC also observed to the effect that the respondents have placed on record the original invoice of M/s Standard Engg. Co. (Regd.) with its GST Number claiming that the said GST Number was issued in the name of the petitioner and that the invoice was signed by the petitioner and that the petitioner has failed to place on record any document to show that his brother was the sole proprietor of the said firm and the said GST Number was issued in the name of his brother Shri Shehzad Raza and that the perusal of the signatures of the petitioner in the present petition and the signatures on the said invoice seemed to be the same and thus it was observed by the learned ARC, Pilot Court, Central District that a triable issue had arisen as to whether the petitioner was unemployed and his needs were bona fide for the tenanted premises.

11. Vide the impugned order, the learned ARC granted leave to defend to the respondents and apparently, in the facts and circumstances of the instant case, the said grant of leave to defend cannot be faulted taking into account the contention raised by the respondent in relation to the petitioner running a business under the name and style of M/s S.R. Enterprises at 7290, 7291 and 7292, Main

Road, Old Rohtak Road, Azad Market, Delhi as also of his running of factory of air compressors at Shop No.36, Masjid Takia Wali, Shivaji Road, Azad Market, Delhi as well as Shop No. 7288, Old Rohtak Road, Azad Market, Delhi.

12. On a consideration of the submissions that have been made and on behalf of the petitioner contending to the effect that no triable issues arose in the matter, on a perusal of the impugned order, it is indicated that it cannot be held prima facie that no triable issues arose in the matter in as much as the petitioner would have to establish in the facts and circumstances of the instant case that he has no other reasonably suitable accommodation available other than the tenanted premises in question for running his business to earn his livelihood and that his petition had been filed bonafide.

13. In the facts and circumstances of the instant case, the petition is declined.

All the pending applications also stand dismissed.

ANU MALHOTRA, J.

MAY , 2019/vm