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

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Reserved on: 13th February, 2019

Pronounced on: 13th March, 2019

+ **RC.REV. 473/2017 & CM APPL No.37734/2017**

DAULAT RAM KAPOOR Petitioner

Through : Mr.C.S.Bhandari, Advocate.

versus

USHMA SHARDA Respondent

Through : Mr.J.P.Sengh, Sr Advocate with
Mr.Ganesh Kumar Sharma,
Ms.Manisha Mehta, Ms.Mrigna
Shekhar and Mr.Zubin Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition assails the order dated 11.05.2017 passed by the learned ARC East, Karkardooma Court, Delhi, in eviction case no.702/2016.
2. Vide the impugned order the application for leave to defend filed by the petitioner was dismissed and an eviction order was passed by the Court.
3. The respondent filed an eviction petition in respect of the shop admeasuring 7'x9' approx. without roof rights in premises no.E-4/24, Krishna Nagar, Delhi-110051 on the plea this property along with an adjoining shop is required by the respondent and her husband to start a tour and travel business, as her husband has been working as a free lancer guide/ tour escort, approved by the Ministry of Tourism, Govt. of India since 1981 and till date he has been travelling in his entire career but for

the last four to five years he is suffering from diabetes, hypertension and joint pains and is unable to travel for more than a day since the last two years. The respondent is also a post graduate, having an experience of about 34 months in travel industry. Apart from suit premises the respondent owns three residential houses, viz B-10/7907, Ground Floor, Vasantkunj, New Delhi; House No.B-1/1483; 1st floor, Vasantkunj, New Delhi; and a DDA flat No.185, 1st Floor, Munirka, New Delhi but the commercial activities are not allowed in these properties. The suit property is situated on a commercial road and the entire front portion is occupied by the three tenants including the petitioner. The respondent is though having some space viz. a room on the back side of the suit premises which opens in a *gali* 25 feet, but the commercial activities are not permitted in the *gali* as per Master Plan 2021 and even otherwise the said property on the back side can only be suitably used once the shops at the front side are got vacated.

4. It is alleged in the business of Tour and Travel Agency at least 5 staff members are required and the respondent would also required one separate office for self and separate space for about three counters, one reception counter to deal with the customers and also a space for toilets and a pantry. It was also alleged the petitioner is residing at Azad Nagar, Delhi and petitioner no.2 has is in possession a shop in the same vicinity of about 100 metres in Krishna Nagar, Delhi where he runs business in the name and style of M/s.Much More Gent Accessories.

5. It is pertinent to mention the respondent had filed yet another eviction petition for eviction of an adjoining shop in which the application for leave to defend has been allowed.

6. Three objections have been raised by the learned counsel for the petitioner herein viz., **a)** allowing of the leave to defend application in one petition and rejecting in another is not appropriate and hence the leave to defend ought to have been allowed in the present case too; **b)** the respondents are residing in Vasant Kunj and it would not be possible for them to travel about 35 kms. to start their travel agencies; and **c)** the respondent can very well operate the tour agency from their residential houses.

7. Besides these three contentions no other contention is raised before me. Before coming to these contentions, let me have a look at the impugned order to see the conclusions of the learned ARC. The owner-tenant relationship has since been admitted and the plea of bonafide requirement is decided in the following manner:

“9.2. Thereby landlord and tenant relationship is admitted between the parties and it is found that petitioner is landlord of the respondent.

10 The said premises are bonafide required by the landlord either for himself or for his family member;

10.1 It is submitted by the petitioner that she has worked as Sales Executive on February 2004 to December 2006 with M/s NAMMS Tours and Travels at Munirka, Delhi and had gained experience in the field of tour and travels industry. The husband of the petitioner has been working as guide/tour escort at India Tourism Delhi since 1981 and having experience of more than 33 years. Since last 4- 5 years, the husband of petitioner is suffering from diabetes, hyper tension and joint pains and not able to travel more than one day. He cannot take long assignments. The tenanted property is already mutated in the name of petitioner in the record of MCD. The entire front portion is in possession of three tenants and the entire back portion cannot be used from main road for doing any kind of business in absence of entrance from main road side. The petitioner does not have enough funds for education of their daughter and they want to earn more income. Petitioner has have to employ minimum five staff and one

separate office space for the petitioner, one separate space for husband of petitioner, three counters to deal with customers and for reception and lobby space alongwith pantry and wash rooms. Respondent is in possession of premises since last more than 35 years.

10.2 It is submitted by the petitioner that she does not have any other proper commercial place to run business which they want to do from the main road side. Petitioner wants to make structural changes in the tenanted portion as per requirement of business.

10.3 It is submitted by the respondent that the medical certificate reports filed are from a private agency and not from government authorities and therefore they are manufactured documents for ill motives from the date of gift executed in the year 2009. It is submitted on behalf of petitioner in reply that husband of the petitioner is earning satisfactorily to afford private medical treatment who is suffering from diabetes and cholesterol problem. The documents are genuine. After hearing both the parties, the plea of the respondent that the document of private medical agency cannot be relied upon because it is a private agency, it is not a tenable plea. There are so many private hospitals and agencies taking care of health system and supporting the health system of the State. They are working under guidelines and supervision of government authority only. Their documents cannot be brushed aside only because they are private agency. In such view of the matter, the above plea of the respondent is rejected.

10.4 It is submitted by the respondent that a false and frivolous experience certificate is obtained by husband of the petitioner in the business of tour and travels by India Tourism Delhi and the same requires trial because respondent knows that the petitioner is a house lady. In reply to the same, it is submitted by the petitioner that her certificate are correct and relied on citation titled Ram Babu Aggarwal vs. Jai Kishan Dass (2010 1 SCC 164) wherein it was laid down that a person can start a new business even if he has no experience in the new business. After hearing both the parties, it is found that respondent has failed to disclose that how he found the experience certificate dated 02.01.2007 of the petitioner as forged and fabricated. In absence of any averment to the effect that such circumstances make the said certificate as suspicious to have been forged makes the plea of the respondent merely a bald plea and therefore it is not a tenable plea. Further, it is settled law that the landlord does not need to

have prior experience to open a new business and there is no requirement of having prior experience in law.

In case titled Ram Babu Agarwal vs Jay Kishan Das (2010) 1 SCC 164 at para no. 7 it was held as under:-

However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion 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 the 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. Hence the above plea of the respondent is rejected.

10.5 It is submitted by the respondent that the husband of petitioner is claimed to be suffering from many diseases and thereby he cannot travel long distance from Vasant Kunj to Krishna Nagar which takes about 2 hours time. In reply to the same, it is submitted that the husband of the petitioner will do business with the petitioner and he needs not to go outside Delhi for business purpose which will save them cost in terms of travelling and also the husband of the petitioner needs to travel less. After hearing both the parties, it is found that the respondent has not challenged that the husband of the petitioner is doing business of tours and travels and going outside for such business. When the husband of the petitioner has to go outside for the business of tour and travels as a guide then definitely it is going to be travelling far more multiple times than travelling from Vasant Kunj to Krishna Nagar. Thereby he said distance from Vasant Kunj to Krishna Nagar on the face of it will cause less hardship to the husband of the petitioner. It is settled law that the tenant cannot dictate the terms to the landlord how he has to satisfy his bona fide need. When the landlord is feeling convenient to do business at a particular place than it is for the landlord to decide.

In case titled Sarla Ahuja vs. United India Insurance Co Ltd AIR 1999 SC 100 wherein it was held as under:-

The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for

occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bonafide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

10.6. Hence the petitioner has successfully established her bonafide need of the tenanted premises.”

8. Now coming to contention *a*) the learned counsel for the petitioner cited *Sudershan Kumar vs. Harish Chand Garg* RC.REV. 109/2013 decided on 13.06.2014, but the facts of the cited case are totally different as in the cited case the landlord had in his possession various commercial space(s) for his clinic(s) viz., at Kamla Nagar, Tirath Ram Shah Hospital at Civil lines, Sunder Lal Jain Hospital at Ashok Vihar and Pentamed Hospital at Model Town, besides various clinics mentioned in the affidavit of the respondent/tenant and it was never the case of the landlord that he intends to abandon and/or give up his professional practice at his various other clinics and hospitals to devote full time to the proposed super specialty hospital that too after carrying the extensive additions/alterations and constructions in the half share of the suit property purchased by him. Rather, in the present case the respondent does not occupy any other commercial premises, except the premises in dispute, hence the cited law would not be applicable.

9. The learned trial Court had dismissed the application for leave to defend considering if the shop is made available to the respondent on the

front road then it can be used in a better manner by joining it with the back portion from where the respondent can run an office of tour and travel operator. The application for leave to defend in the another eviction petition was disallowed by the learned ARC, probably because of the fact if in this petition a shop is made available to the respondent then the second eviction petition for another shop would be a case of an additional accommodation. Hence the facts so stated in the petition do not call for an interference in the impugned order.

10. Qua contention *b)* viz., the respondent may operate the tour agency from her residential accommodations is also without any force. Admittedly the DDA flats are residential flats and commercial activities are not permissible from there and such user may lead to cancellation of perpetual lease(s) and levy of penalties under the law. This issue has been dealt aptly by the learned ARC.

11. Qua contention *c)* if the respondent could travel 35 Kms for her business is yet another issue which is only for the respondent to consider. Neither the Court nor the petitioner could interfere in her decision.

12. No other grounds is urged before me. I see no illegality or perversity in the impugned order passed by the learned ARC, hence, there is no reason to differ from the order of the learned ARC. The petition is thus dismissed. Pending applications, if any, also stands disposed of.

YOGESH KHANNA, J.

MARCH 13, 2019

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