

\$~

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

Reserved on: 22nd September, 2020.

Date of decision: 30th September, 2020.

+ **RC. Rev.176/2020 & CM APPLs. 18113-114/2020**

PREM KUMAR & ORS.

..... Petitioners

Through: Mr. Manish Garg, Mr. Sushant
Sharma & Mr. Inder Pahuja,
Advocates (M-9213415030)

versus

SH. ABHIMANYU ARORA

..... Respondent

Through: Ms. Neeta Bahl, Advocate (M-
9811029887)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present petition challenges the impugned order dated 22nd January, 2020, by which the leave to defend sought by the Tenants i.e. the Petitioners herein, in the Petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (*hereinafter*, 'DRC Act/the Act'), has been rejected by the Id. Additional Rent Controller (*hereinafter*, 'ARC').

2. The facts of the case are that on 3rd August 2009, the Petitioners' father i.e. Shri Ram Sunder Gupta was inducted as a tenant by the Respondent at the ground floor of the property bearing no 855-1A, Tilak Gali, Kashmere Gate, Delhi (*hereinafter*, 'tenanted premises'). The premises is a shop. The current Petitioners are the legal heirs of Late Shri Ram Sunder Gupta.

3. An eviction petition was filed on 24th November, 2018 under Section 14(1)(e) of the DRC Act by the Respondent/Landlord on the ground of requirement of additional space for operating his business of radium and

film rolls. The business is currently being carried on from the adjoining shop to the tenanted shop and the landlord had a shortage of space. The Tenants filed their leave to defend application under Section 25(B) of the Act. After pleadings were completed, the Id. ARC, by the impugned order dated 22nd January, 2020 rejected the leave to defend application made by the Tenants, and gave 6 months' time to them to vacate the suit property i.e. the tenanted premises. The operative portion of the ARC order reads as under:

“16. In view of the discussion made above, the respondents herein have been unable to raise any defence which is substantial or which if proved, would disentitle the petition of the relief of eviction. Merely vague pleas have been taken by the respondents which are not substantiated prima facie. Since no such defence has been raised by the tenant, leave to defend is denied to him.

17. Hence, the application for leave to defend filed by respondents is ordered to be dismissed. Consequently, eviction order is liable to be passed against the respondents u/s Section 25 B (4) of the Act. In view of above, petition is held entitled for recovery of the tenanted premises, i.e. one shop situated on the ground floor of property No.855-1A, Tilak Gali, Kashmere Gate, Delhi as shown in red colour in the site plan annexed with the petition. However, the petitioner would not be entitled to initiate execution proceedings for recovery of possession of the tenanted premises before expiration of six months from today in view of provisions given in Section 14(7) of the Act. Keeping in view the facts & circumstances of the case, no order as to costs.”

Submissions

4. The contention of the Id. counsel for the Tenants - Mr. Manish Garg is threefold:

- a) Firstly, he submits that the Landlord is guilty of concealment of material facts. He submits that the Landlord already has premises at 5, Underhill Lane, Civil Lines, Delhi – 110054, which was not disclosed to the Id. ARC. He submits that the lease deed dated 5th May, 2018 makes it clear that the Landlord has taken the said property on lease, consisting of three bedrooms, three bathrooms, drawing/dining room, kitchen apartment, balcony and one servant quarter, whereas in the eviction petition, the First Floor of the tenanted premises is itself mentioned as the residence of the landlord and his family. The said residential premises at Civil Lines, was not shown to the Id. ARC.
- b) Secondly, Id. counsel submits that the purpose for which the Landlord wishes to use the tenanted premises is contrary to the Master Plan of Delhi, 2021 inasmuch as the operation of radium roll business is a regulated industry by the GNCTD and pollution clearance has to be taken. As per the Master Plan at page 143 of the paperbook, the manufacture of radium rolls would require various permissions from the Government and Pollution Control Authorities. Moreover, he submits that only a single-phase electricity meter has been installed by the Landlord and that cannot be used for commercial purposes. It is also argued that the activity being conducted by the Landlord is not covered by the list of 'Household Industries' and no licence from the government authorities has been placed on record by the Landlord. Hence, it is the submission of the Petitioner that the proposed

requirement by the Landlord, cannot constitute *bonafide* need under the DRC Act.

c) Thirdly, ld. counsel submits that the Landlord has several shops within the same area, which are all remaining locked and thus the Landlord can always use those premises for his business purposes and there is no *bonafide* need for the Landlord to insist on this very shop.

5. Reliance is placed by Mr. Garg, ld. counsel on the judgment of this Court in ***Bharat Glass and Plywood v Sushan Pal Soni [RC Rev. No. 46/2013 dated 21st March 2014]***, to argue that the Landlord is bound to disclose the true position to the ARC and the question as to whether the premises is used for residential or commercial purposes has to be considered by this Court.

6. Mr. Garg, ld. counsel also relies upon the judgment in ***MC Mehta v. Union of India [W.P.(C) 4677/1985 dated 7th May, 2004]*** to submit that as per the said judgment of the Supreme Court, an industry cannot operate in a residential area without the necessary license and consent from the statutory authorities. Similarly, reliance is placed on the order of the Hon'ble Green Tribunal in ***Mayank Manohar & Paras Singh v GNCTD & Ors. [OS No. 601/2018 dated 24th January, 2019]***.

7. Finally, it is submitted by Mr. Garg for the Petitioners that the Tenants have also made a payment of Rs.4,25,000/- to the Landlord and reliance is placed on the receipt at page 168 of the paperbook. It is his submission that the contents and interpretation of the receipt is being disputed by the Landlord and accordingly this was not a matter fit for being decided in a summary manner and instead required evidence to be recorded.

8. On the other hand, Ms. Neeta Bahl, ld. counsel appearing for the

Respondent/Landlord submits that there is no violation of the Master Plan by the Landlord. She submits that the Landlord requires the premises for storing of rolls and not for manufacturing purposes and that no manufacturing unit will be run from the premises. She further submits that the lease deed dated 5th May, 2018, of the Civil lines property, which has been placed on record relates to a premise which is being used by one of the daughters of the Landlord for running a Physiotherapy Clinic with her friends. It is not being used for residential purposes and has no relevance to the present petition.

9. Insofar as the receipt at page 168 is concerned, her submission is that the receipt only shows that Rs.75,000/- has been paid and the remaining amount of Rs.3,50,000/- has not been paid. No trial is required in the matter. Moreover, she submits that the rent for the tenanted premises has been due for a very long time and the same has been adjusted against the sum of Rs.75,000/-.

10. She further submits that the Tenants have been unable to even show to the Court, as to what was the last date when rent was paid by them to the Landlord. She finally relies on the leave to defend application filed by the Tenants to argue that the Master Plan violation has not been raised as a triable issue, and therefore the same cannot be permitted to be raised at this stage. This is controverted by Mr. Garg, on the ground that in the rejoinder filed before the Id. ARC, this issue was clearly raised by the Tenants.

11. Ms. Bahl submits that the Petitioner No.4 before the Court already has a shop called Seeta Traders, just 50 metres away from the tenanted premises. Mr. Garg refutes this and says this plea has not been raised before the Id. ARC.

Analysis and findings

12. The present petition was listed before this Court on 6th August, 2020, on which date certain proposals were discussed during the hearing for amicable resolution. However, settlement did not fructify and the matter has been heard on merits.

13. The tenanted premises was initially owned by the grandfather of the Respondent, and was inherited by the Respondent upon the expiry of his father on 3rd November, 1998. The Respondent/Landlord's name has also been mutated in the records of the Municipal Corporation Department ("MCD") and he has been paying house tax for the property. The ownership of the tenanted premises is not in dispute. A rent agreement dated 3rd August, 2009 was executed in respect of the ground floor shop of the property between the Landlord and the original Tenant i.e. Shri Ram Sunder Gupta, who passed away in 2016. The tenancy was then inherited by his legal heirs i.e. the Petitioners.

14. The family of the Landlord resides on the first and second floors of the property. The ground floor of the property is commercial in nature. The Landlord is using one portion of the ground floor of the property of 8.5 x 9.5 feet, which is adjoining the tenanted shop, for carrying out his business. He is engaged in the business of selling radium rolls, after cutting the same. These rolls are stated to be utilized for various applications such as car accessories, for glasses, bathroom cubicles etc. However, the adjoining shop being merely 9.5 x 8.5 feet, proved to be insufficient for the Landlord's business, and the landlord wished to expand the business by using the tenanted shop for storage of the radium/film rolls, and to make a place for his own sitting. Details as to how the Landlord needs the tenanted premises

have been set out in the eviction petition. The same being a commercial property, the Landlord filed the petition under Section 14(1)(e) of the Act in November 2018, seeking eviction of the Tenants/Petitioners from the tenanted premises on the ground of *bonafide* need. The rent which was being paid by the Tenants was Rs.300/- per month, exclusive of other charges.

15. In the leave to defend application filed under Section 25B of the DRC Act, the Tenants took the following defences:

- i) That there are other tenants in the suit property against whom no eviction petition has been filed. The Tenant claims that there are also other rooms in the property, which can be used for storage purposes by the Landlord – including a vacant store room on the ground floor, which the Landlord claims to be a toilet;
- ii) That the Landlord does not reside in the first and second floors of the suit property. The Tenant claims that they are lying vacant and can be used to carry out the business;
- iii) That the original Tenant had paid a sum of Rs.4,25,000/- as security to the Landlord, which fact has been concealed;
- iv) That the Landlord has another property in Civil Lines, where the family is residing;
- v) That rent is being regularly paid by the Tenants, along with the electricity and other consumption bills;
- vi) That the Landlord has no real need for the property and that he has sufficient alternative accommodation;
- vii) That triable issues have been raised and therefore, leave to defend ought to be granted to the Tenants.

16. In reply, however, the Landlord reiterated his position. The existence

of a store room on the ground floor was denied and photographs of the toilet were placed on record, which showed that there was no store room on the ground floor, contrary to what was claimed in the leave to defend application. Photographs were also placed on record to show the residence of the Landlord on the first and second floor. The Landlord admitted payment of security to the tune of Rs.75,000/- as per the receipt placed on record and not Rs.4,25,000/-. It was claimed that even otherwise, the amount was adjusted towards the rent. Insofar as the Civil Lines property is concerned, the Landlord placed the rent agreement on record to show that the said property was taken on rent by his daughter, who is pursuing her Ph.D. and also working at the Sant Parmanand Hospital in Civil Lines, as a Physiotherapist. The Landlord contends that the daughter was initially residing therein and working in the Sant Parmanand hospital where she had to work late night shifts. Ld. Counsel submits that the said premises is now being used for a Physiotherapy clinic which has been opened along with her friend after her studies were completed.

17. In rejoinder, for the first time, the Tenant raised the plea that the purpose for which the premises are being sought by the Landlord, is an 'industry' and since no license for carrying out the work from the tenanted premises has been placed on record, the plea for *bonafide* need cannot be accepted by the Court. The Tenant claimed that in the absence of a license or permission from the governmental authorities and clearance from the Pollution Control Authorities, the *bonafide* requirement cannot be accepted by the Court.

18. On a perusal of the pleadings and the submissions made, the Id. ARC rejected the leave to defend and directed the Tenants to vacate the premises

within a period of 6 months. The Id. ARC after considering the settled law on the subject arrived at the following findings:

- i) Even though there may be multiple tenants, it is the Landlord's prerogative to seek eviction of the property against any of the specific tenants;
- ii) The photographs placed on record show that there is no storage space on the ground floor;
- iii) That the premises with the Landlord of 8.5 x 9.5 feet is not sufficient for the business activity to be conducted by the Landlord and the Tenant cannot dictate as to how the Landlord needs to use the premises available with him, for the purpose of his business of cutting and rolling of radium rolls;
- iv) That the hardship of the Tenant cannot be the sole determinative factor, when giving a decree of eviction in favour of the landlord.
- v) Insofar as the payment of security is concerned, the Id. ARC holds that even if the payment is taken to be correct, the same cannot bar the Landlord from seeking eviction of the Tenant from the suit premises, if there is a *bonafide* need for the tenanted premises;
- vi) The Id. ARC holds that the ownership of the Landlord is not in doubt as absolute ownership need not be proved under the DRC Act;
- vii) The Id. ARC relied upon the photographs placed on record that show that the Landlord is forced to keep the radium/film rolls outside his shop, to hold that, that itself proves the *bonafide* need for the tenanted premises;

viii) That there is no availability of alternative suitable accommodation as the Landlord is carrying on his business from the neighbouring shop itself and the tenanted premises are commercial premises.

Accordingly, the leave to defend application filed by the Tenant was dismissed.

19. The Court has perused the pleadings and the impugned order and also heard the Id. counsels for the parties. As captured herein above, on behalf of the Tenants, there are primarily 3 pleas which have been raised.

20. The first plea on which enormous emphasis is placed is that there is an alternative premises with the Landlord at 5 Underhill Lane, Civil Lines, Delhi. A perusal of the lease deed for the said premises itself shows that the lease deed is executed between the landlady of the Civil Line premises Mrs. Chitra Bahadur and Ms. Vandana Arora – the daughter of the Landlord. The explanation given by the Landlord that the daughter is a Physiotherapist who is running a physiotherapy clinic is clearly not liable to be rejected. Moreover a residential flat taken by the Landlord's daughter cannot prove to be detrimental to the Landlord in the present case where he is seeking eviction of the tenant from the commercial shop for expansion of his business, already being conducted from the adjoining shop. In any event, the premises in Civil Lines is a residential flat, which cannot be used for commercial purposes. Thus, the plea of alternative accommodation is not liable to be accepted.

21. Insofar as the second plea is concerned i.e. that under the Master Plan, the Landlord does not have any license to conduct the business of radium rolls etc. is concerned, there is no doubt that the Landlord is already conducting the said business from the neighbouring shop. The question as to

whether the business is duly licensed or not is not the subject matter of this case. The need of the premises for natural growth and expansion of the Landlord's business has been accepted by the Id. ARC on the basis of the photographs on record. Moreover, even if for any reason a license would be required, the Landlord cannot be expected to obtain a license in advance. In ***Mattulal v. Radhelal [C.A. No. 2180 of 1970, decided on 23rd April 1974]***, the Supreme Court was dealing with a similar situation, wherein the Landlord had sought eviction for *bonafide* need and it was found that a permit was required from the Iron and Steel Controller to conduct steel business from the tenanted premises. The Supreme Court clearly held that the landlord cannot make preparations in advance and that it would be "*foolish on his part to make arrangements for investment of capital and obtaining of permits*" with the expectation of obtaining eviction of the suit premises. The relevant extract of ***Mattulal (supra)*** is set out below:

"It is difficult to imagine how the respondent could be expected to make preparations for starting the new business unless there was a reasonable prospect of his being able to obtain possession of the Lohia Bazar shop in the near future. It is a common but unfortunate falling of our judicial system that a litigation takes an inordinately long time in reaching a final conclusion and then also it is uncertain as to how it will end and with what result and unless the respondent could be reasonably sure that he would within a short time be able to obtain possession of the Lohia Bazar shop and start a new business, it would be too much to expect from him that he should make preparations for starting the new business. Indeed, from a commercial and practical point of view, it would be foolish on his part to make arrangements for investment of capital, obtaining of permits and receipt of stock of iron and

steel materials when he would not know whether he would at all be able to get possession of the Lohia Bazar shop, and if so, when and after how many years.”

22. Similarly, in ***Rishi Kumar Govil v. Maqsoodan and Ors. [Civil Appeal No. 1601 of 2007, decided on 28th March, 2007]***, where the shop was required by the Landlord for the purpose of preparing firearms, the Supreme Court held that the license could only be obtained after the vacant shop was available. The observation of the Supreme Court is as under:

“The bona fide personal need is a question of fact and should not be normally interfered with. The High Court noted that when the Prescribed Authority passed the order son of the respondent-landlady was 20 years old and the shop was sought to be released for the purpose of settling him in business. More than 20 years have elapsed and the son has become more than 40 years of age and she has not been able to establish him as she has still to get the possession of the shop and the litigation of the dispute is still subsisting. The licence for repairing fire arms can only be obtained when there is a vacant shop available and in the absence of any vacant shop, licence cannot be obtained by him. Therefore, the High Court came to the conclusion concurring with that of the Prescribed Authority and Appellate Authority that the need of the landlady is bona fide and genuine. Considering the factual findings recorded by the Prescribed Authority, Appellate Authority and analysed by the High Court, there is no scope for any interference in this appeal which is accordingly dismissed.”

23. On the other hand, the judgment cited by Mr. Garg, ld. counsel i.e. ***Bharat Glass and Plywood Co (supra)*** is easily distinguishable as in the said case, the Court was dealing with a premises located on the first floor,

and it was disputed whether the floor could be used for non-residential purposes at all. In any event, the case is clearly distinguishable, as there was no *prima facie* evidence on behalf of the landlord therein to show a real need and the only ground taken by the landlord was that his son, who was a Canadian citizen, was 'likely' to join the business. This was not considered sufficient by the Court.

24. In the present case, however, the Landlord is already running the radium roll business. He needs more space for his business. The Tenant cannot dictate to the Landlord as to how the Landlord is to conduct his business. Moreover, the Landlord's reasonable prospect of expansion of his business should be taken into consideration, while considering *bonafide* need for the tenanted premises. Here it is not just future expansion of business but even as on date, the photographs shown on record, according to the Id. ARC, showed that the Landlord needs the premises. Thus, this finding is not liable to be interfered with. Moreover, it is relevant to note that the question about a license being required to run the business from the tenanted premises, was not taken in the original leave to defend application but was only pleaded in the rejoinder.

25. The third plea of the Tenant is that the other shops are lying under lock and the Landlord has not filed any eviction against the said tenants. It is not in dispute that the Landlord is carrying out business from the adjoining shop to the tenanted premises. Thus, it may be very natural for the Landlord to seek eviction of the present Tenant as he may then be able to expand his business. Moreover, the Landlord's prerogative to seek eviction against whichever tenant cannot be challenged inasmuch as it is nigh possible that there may be no dispute between those tenants and the Landlord.

Accordingly, this plea also does not stand to merit.

26. Finally, a perusal of the receipt which has been placed on record by the Tenant to argue that a sum of Rs.4,25,000/- has been paid to the Landlord by the original tenant clearly shows that only Rs.75,000 was given as on 1st July 2009 and the remaining amount of Rs.3,50,000/- was to be paid on 1st August, 2009. The Tenant argues that this amount was paid, on the basis of one signature at the end of the text of the receipt. Whether the amount paid was Rs.75,000/- or Rs.4,25,000/- would not tilt the balance in favour of the Tenant in as much as the said document clearly mentions that the original Tenant took the premises on “*kirayadaari*” which translates to tenancy. Thus, even on the basis of the document filed by the Tenant, the status of the tenants being *kirayadaar* or tenants cannot be disputed, irrespective of the amount paid.

27. In view of the above, the present petition is liable to be dismissed. Ordered accordingly. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 30, 2020
Rahul/A