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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 17.11.2020

+ RC.REV. 178/2020 & CM Nos.18263/2020, 18265/2020,
25273/2020

NAGENDER SINGH & ANR. Petitioners
Through Mr.Jai Sahai Endlaw,
Mr.Rambhakt Agarwal,
Mr.Subhoday Banerjee, Advs.

versus

KAUSHALYA DEVI Respondent
Through Mr.Pawan Kumar Aggarwal,
Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This hearing has been held by video conferencing.
2. This petition has been filed by the petitioner challenging the order dated 22.11.2019 passed by the learned Rent Controller (Shahdara) in RC/ARC No.134/2019, ***Kaushalya Devi v. Nagender Singh***, dismissing the application of the petitioner filed seeking Leave to Defend against the Eviction Petition filed by the respondent under Section 14(1)(e) of the Delhi Rent Control Act, 1958.

3. There is no dispute on the landlord-tenant relationship between the parties.

4. The respondent had filed the Eviction Petition with respect to the tenanted premises, Shop no. 488/14 forming part of property no. 1534 (Old no. 488/17) situated on Plot no. 173, Main Road, Gandhi Nagar, Delhi-110031, under Section 14(1)(e) of the Delhi Rent Control Act, 1958, inter-alia alleging as under:

“IV) That, out of the remaining two shops, the shop, bearing Shop No. 488/15, admeasuring 7'6" X 17'6", immediately adjoin the tenanted shop and the room behind the same are in use/occupation of one of the sons of the Petitioner, namely, Shri Pradeep Sikri, wherefrom he has been carrying on his business of sale of electrical goods under the name & style of M/s Sikri Trading Co, since prior to the Petitioner purchased the property from its erstwhile owner, which business has now been changed by him to that of readymade garments, being carried on by him under the name & style of M/s. Sikri Fashion. Third shop, bearing Shop No. 488/16, admeasuring 8'6" X 17'6" and the room behind the same are in use/occupation of Petitioner's another grandson, Shri Kunal Sikri, S/o. Shri Pawan Sikri, who has been carrying on his business of fancy electrical goods in the name and style of M/s. Sikri Light.

V) That Petitioner's one of the grandsons, namely, Shri Vipin Sikri, S/o. Shri Pradeep Sikri, got married in the year 2013, who himself and his wife are residing with the Petitioner in her house at A-2/28, Krishna Nagar, Delhi-110051, both of whom are dependent upon the Petitioner for their residence and livelihood.

VI) That the said Shri Vipin Sikri is aged about 32 years and has been sitting idle without any gainful

employment/source of livelihood, despite having completed his graduation.

VII) That the Petitioner is an old lady, aged about 77 years, suffering from knee joint pains and other old age related ailments and require the tenanted shop in occupation of the Respondents as aforesaid for use, occupation and possession by her said grandson, Shri Vipin Sikri, for starting his own business of sale/purchase of mobile phones there from so as to enable him to earn his livelihood.

VIII) That the Petitioner, her said grandson, Shri Vipin Sikri or even his wife, do not own/posses any other reasonably suitable premises/shop anywhere in Delhi.”

5. The petitioner had sought leave to defend primarily alleging that the *bona fide* necessity set up by the respondent for the tenanted premises is false inasmuch as the same is being claimed for her grandson, who cannot be said to be dependent for the business premises on her. It was further averred that the grandson of the respondent is not only engaged in other businesses but is also having alternate accommodation. In this regard some of the averments made in the application seeking Leave to Defend are reproduced herein below:

“GRAND-SON OF THE PETITIONER RUNNING MULTIPLE BUSINESSES

a) M/s Sikri Fashions: The grand-son of petitioner is gainfully employed and is running a Business of Sherwani, Coat Suits, Party Wear etc. in the name and style of M/s Sikri Fashion from shop no.1534, Main Road, Opposite Jain Mandir Gali, Gandhi Nagar, Delhi 110031. The name on the visiting card of Vipin

Sikri, clearly show that he is gainfully employed and is running the said business and the plea of the petitioner that he is sitting idle is false and concocted. The Original Visiting card is annexed herewith as **Annexure-A** for the kind perusal of this Hon'ble Court. The Photograph of the said shop showing Vipin Sikri, the grandson of Petitioner conducting the business are annexed herewith for the kind perusal of this Hon'ble Court as **Annexure- A1 to Annexure A-5**. From the aforesaid it is crystal clear that the Petitioner has not approached the court with clean hands and has rather concealed the fact that her grandson is gainfully employed. The respondent is entitled to leave to defend on this short ground alone and the petitioner is liable for perjury.

b) **M/s Sikri Trading Company** The grandson of the Petitioner namely Vipin Sikri is also the owner of M/s Sikri Trading Company which has been admitted by him on his facebook profile posted by him. The print out of the facebook profile of Vipin Sikri, the grandson of the petitioner is annexed herewith for the kind perusal of this Hon'ble Court as **Annexure B**. The Petitioner has concealed the said facts from this Hon'ble Court. The respondent are entitled to leave to defend on this short ground alone.

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d) **M/s Elegant Garments**: The petitioner is having a possession of commercial property bearing no. 9/1574, Cinema Gali, Gandhi Nagar, Delhi. The Ground floor of the said property has been rented out to M/s K.K

*Textile, whereas on the first floor Mr. Vipin Sikri, the grandson of the petitioner is running a factory/ business of readymade and garments by the name and style of M/s Elegant Garments. The Photograph of the said premises are annexed as **Annexure- C** to the present application. The said fact has been cleverly concealed by the petitioner.”*

6. As far as the alternate accommodation is concerned, the petitioner had averred as under:

“5. CONCEALMENT OF ALTERNATIVE ACCOMMODATION AND VARIOUS BUSINESS AND PROPERTIES BY THE PETITIONER:

a) That the petitioner has concealed the material fact that she has got various numbers of alternative business accommodations and shops from where the grandson of the petitioner is doing multiple business along with his father Sh. Pradeep Sikri.

*b) The petitioner is having a possession of commercial property bearing no. 9/1574, Cinema Gali, Gandhi Nagar, Delhi. The Ground floor of the said property has been rented out to M/s K.K Textile, whereas on the first floor Mr. Vipin Sikri, the grandson of the petitioner is running a factory/ business of readymade and garments by the name and style of M/s Elegant Garments. The Photograph of the said premises are already annexed as **Annexure-C** to the present application.*

The said fact has been cleverly concealed by the petitioner.

c) That the petitioner has further concealed that she is the owner of property no. 1556, Mukesh Market, Gandhi Nagar, Delhi-110031 from where her sons are running the business of Electrical Goods in the name and style of M/s Sikri Electric. The Photograph of the said Property are

already annexed as Annexure-E to the present application.

d) That without admitting that the requirement of the petitioner is Bonafide, it is submitted that the aforesaid commercial properties and shops are more suitable for the alleged business of the grandson of the petitioner. Furthermore, there are number of alternative accommodations available which have been concealed by the petitioner as aforesaid. Thus the respondent is entitled for leave to defend on this ground.”

7. The petitioner alongwith the present petition has also filed an application, being CM No.18265/2020, praying for leave to place on record certain additional documents. These documents are the printouts from “Delhi Online Registration Information System” to show that not only the respondent and her children, but also the grandchild, that is, Mr.Vipin Sikri, on whose necessity the eviction petition was premised, has been dealing in sale and purchase of properties in the last ten years. The most relevant one relied upon by the learned counsel for the petitioner are the property transactions of 04.06.2019 (by the father of Mr.Vipin Sikri); 03.08.2019 (brother of Mr.Vipin Sikri) and 18.02.2020 (Step mother of Mr.Vipin Sikri).

8. Relying upon the judgment of the Supreme Court in **Joginder Pal v. Naval Kishore Behal** (2002) 5 SCC 397, and of this court in **Manju Devi v. Partap Singh** (2015) 219 DLT 260 and **Jag Mohan Sharma v. Gurcharan Kaur and others**, MANU/DE/4402/2019, the learned counsel for the petitioners submits that Mr.Vipin Sikri cannot

be said to be dependent upon the respondent for the purposes of commercial space and, at least at the stage of consideration of leave to defend application, the same could not have been accepted without a trial.

9. On the other hand, the learned counsel for the respondent has vehemently submitted that upon the second marriage of the son of the respondent, Mr.Pradeep Sikri, Mr.Vipin Sikri, her grandson, was estranged from his father and has been living with the respondent alongwith his family. He submits that the grandson is therefore dependent upon the respondent for purposes of business premises. He further submits that as far as the other businesses of Mr.Vipin Sikri as alleged by the petitioner are concerned, the respondent had placed on record the proof to show that these businesses did not belong to Mr.Vipin Sikri, the grandson of the respondent. He submits that certain property transactions of the other family members could also not entitle the petitioner to grant of leave to defend.

10. As far as the property transactions of Mr.Vipin Sikri is concerned, he submits that the property was jointly purchased by Mr.Vipin Sikri alongwith two others and he was having an area of only 4.57 sq. mts., even this was sold by him on 11.11.2013, while the Eviction Petition was filed in the year 2019. He submits that the learned Additional Rent Controller has therefore rightly refused to grant Leave to Defend to the petitioner. He further submits that in any case, the petitioner has not been paying the rent and is even otherwise not entitled to the occupation of the tenanted property.

11. I have considered the submissions made by the learned counsels for the parties.

12. At the stage of consideration of the leave to defend application, it is only the *prima facie* case of the tenant that needs to be considered. As held by the Supreme Court in ***Inderjeet Kaur v. Nirpal Singh, (2001) 1 SCC 706***, the burden placed on the tenant at this stage is light and limited. It was further held as under:-

“13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25-B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter III-A of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival

contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance, a wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend, but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25-B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing

of the application as early as practicable. Section 25-B(7) speaks of the procedure to be followed in such cases. Section 25-B(8) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Sections 25-B(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for a long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.”

13. In the present case, the defence set up by the petitioner has been noted hereinabove. The learned Additional Rent Controller in his Impugned Order has rejected the said defence observing as under:

“A2. The business enterprise 'Sikri Fashions' is owned by Sh. Pradeep Kumar Sikri and it is Sh. Pradeep Kumar Sikri who conducts business under the said name. As evidence/material In proof of the fact that 'Sikri Fashions' is owned by Sh. Pradeep Kumar Sikri and none other, the petitioner has provided the GST registration number of the said entity and which is 07AXHPS1584MIZT. This number is allotted to 'Sikri Fashions' and Sh. Pradeep Kumar Sikri as proprietor thereof. The said fact is thus in public domain and sufficiently explained by the petitioner to the effect that Sh. Vipin Sikri does not own this business. Thus this issue can not be accepted to be triable issue. Inasmuch as visiting card is concerned, the argument by petitioner that visiting card is no proof of ownership is accepted. The publicity of mobile number of Sh. Vipin

Sikri on the visiting card is a natural consequence of family structure of Indian people as Sh. Vipin Sikri is the son of Sh. Pradeep Kumar Sikri and providing of son's mobile number as alternate mobile number is a normal occurrence.

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B2. The business enterprise 'Sikri Trading Company' is owned by Sh. Pradeep Kumar Sikri and it is Sh. Pradeep Kumar Sikri who conducts business under the said name. As evidence/material in proof of the fact that 'Sikri Trading Company' is owned by Sh. Pradeep Kumar Sikri and none other, the petitioner has provided the GST registration number of the said entity and which is 07AXHPS1587MIZT. This number is allotted to 'Sikri Trading Company' and to Sh. Pradeep Kumar Sikri as owner thereof. The said fact is thus in public domain and sufficiently explained by the petitioner to the effect that Sh. Vipin Sikri Is not owner of this business. Thus this issue can not be accepted to be triable Issue.”

(Emphasis supplied)

14. Clearly, the learned Additional Rent Controller has brushed aside the documents filed by the petitioner on an incorrect premise. The question before the learned Additional Rent Controller was not whether the grandson has a stake in the above business but whether he can be said to be dependent on the respondent for commercial premises, especially when his father himself was admittedly not so

dependent on the respondent and also whether the grandson was otherwise gainfully employed in such business.

15. The fact whether the grandson of the respondent could be said to be dependent upon her for purposes of business accommodation would be a triable issue. It is important to note that the respondent had not alleged estrangement of the grandson from his father in the Eviction Petition. Further, the Visiting Card of the grandson, photographs filed by the petitioner showing the presence of the grandson at the business premises of the father, and the Facebook profile of the grandson, were documents that needed to be at least explained during the trial by the respondent/her grandson.

16. In *Joginder Pal (supra)*, the Supreme Court has held that though the requirement of a family member who is dependent on the landlord, can be considered as requirement of the landlord for his own use, but if the requirement is of actual user of the premises by a person other than the landlord himself, the Court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query.

17. Applying the above test, at least at the stage of considering grant of Leave to Defend to the petitioner, it could not be said that the respondent had discharged her burden of proving that her grandson was dependent upon her for the commercial premises and not on his father, who admittedly was not himself dependent on the respondent.

18. In my opinion, therefore, the petitioner has made out sufficient case for grant of leave to defend and the Impugned Order cannot be sustained.

19. Accordingly, the Impugned Order is set aside. The petitioner shall file his written statement within the time granted by law. The parties shall appear before the learned Additional Rent Controller for further directions on 21.12.2020. The learned Additional Rent Controller shall make an endeavor to complete the trial expeditiously.

20. The petition is disposed of with the above direction. There shall be no order as to cost.

NOVEMBER 17, 2020/Arya

NAVIN CHAWLA, J