

\$~J

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

%

Pronounced on: 07.09.2021

+ RC. REV. 146/2020 & CM APPL. 10916/2020 & 13409/2021

BHAWANI SHANKAR

... Petitioner

Through: Mr.J.C.Mahindroo, Ms.Megha Verma
Mahindroo, Mr.Shubham Agarwal and Mr.Cherry
Singh, Advs.

versus

NAND LAL AND ORS.

... Respondents

Through: Mr.Jai Sahai Endlaw, Mr.Ajay Kumar
Gupta, Mr.Subhoday Banerjee and Ms.Surbhi
Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. I may at the outset note that after arguments were heard and judgment was reserved, the respondent moved an application CM No.13409/2021 praying for dismissal of the present petition as having become infructuous as peaceful possession of the demised premises had been taken over on 19.03.2021 by the respondent. The matter was thereafter adjourned on several dates on account of non-availability of either of the learned counsel.
2. Learned counsel for the respondent has in the present application vehemently relied upon various orders passed by this court to hold that once possession has been regained by the respondent/landlord the revision

petition is rendered infructuous.

3. Learned counsel for the petitioner/tenant does not deny that in the Execution Proceedings the respondent/landlord has received physical possession of the property in question. He denies that the present petition is infructuous.

4. Reference may be had to the judgment of a Co-ordinate Bench if this court in *Neelam Sharma vs. Ekant Rekhan*, (2019)256 DLT 750 wherein the court held as follows:-

“15. The possession of the shop in question admittedly is taken over by the respondent on 30.8.2018 in Execution Proceedings, hence, even otherwise, this petition has become infructuous.”

5. Reference may also be had to a similar observation made by another Co-ordinate Bench of this court in RC. REV. 255/2014 *Kuldeep Kumar Meena & Ors. vs. Supreme Motors Ltd*, wherein on 04.02.2016 this court passed a similar order holding that the petition has become infructuous as the petitioner has received possession of the suit property.

6. In view of the aforesaid judgments of the co-ordinate Bench, it is manifest that the present petition is infructuous.

7. However, in the interest of justice, I have also considered the impugned order on merits. Hence, I may deal with the submissions of the petitioner whereby it has been strongly urged that the impugned order passed by the learned ARC is liable to be set aside by this court and possession restored.

8. This petition is filed under Section 25-B of Delhi Rent Control Act (hereinafter referred to as 'The DRC Act'), 1958 seeking to impugn the eviction order dated 15.11.2019 pertaining to property being ground floor

bearing Municipal No. 6449, Katra Baryan, Fatehpuri, Delhi -110006.

9. The respondent/landlord had filed a petition for eviction under Section 14 (1) (e) read with Section 25-B of the Delhi Rent Control Act, 1958 on ground of bona fide requirements.

10. It was pleaded in the petition that the respondents are the co-owners / landlord of the said shop in question and require the same bonafidely for their own use, for the purposes of manufacturing of sweets and for extension of the counter of their shop. It is stated that respondents are running their business of selling sweets and catering (Halwai) by the name and style of M/s Chaina Ram which is very famous in the area of the walled city. The said business is at a stone throwing distance from the premises which is subject matter of this petition, it is further stated that sweets and other eatable items are being manufactured on the upper floors of such property No. 6449 to 6452, Katra Baryan, Fatehpuri, Delhi -110006. It is further stated that every year throughout the festive season i.e. Raksha Bandhan, Teej, Diwali, Bhaiya Dooj, Eid, Holi and Lohri the respondents have to arrange rented accommodation near the halwai shop, M/s Chaina Ram for sale of sweets and storage etc. and have to pay exorbitant rent for the said rented premises. Further, it is stated that manufacturing on the upper floors is costly as it involves loading and unloading for which extra amount has to be paid for upper floors. At present, the manufacturing space is insufficient. The respondents do not own any reasonably suitable accommodation except the premises in question. The respondents are in bona fide need of the premises No. 6449 to 6452, Katra Baryan, Fatehpuri, Delhi -110006 for their personal use for selling and storage of sweets in the suit property.

11. The petitioner / tenant filed an application under Section 25 B (4) of

The DRC Act seeking leave to defend and contest the eviction petition. Following pleas were raised in the application:

I. The respondent/landlord has intentionally and deliberately not disclosed the entire accommodation available with them or their family members. It has been further stated that the respondent has following properties in their possession which are sufficient to do their alleged business. The details of the properties are given below:

- i. 6452, Katra Baryan, Fatehpuri, Delhi-110 006;
- ii. 142, Gali Memwali, Katra Baryan, Fatehpuri, Delhi-110 006.
- iii. 143, Gali Memwali, Katra Baryan, Fatehpuri, Delhi- 110 006.
- iv. 144, Gali Memwali Katra Baryan, Fatehpuri, Delhi- 110 006.
- v. 6398, First floor, Katra Baryan, Fatehpuri, Delhi- 110 006.

Apart from the above-mentioned properties, it is claimed that the respondents/landlord have several other commercial properties in their possession.

II. It is further pleaded that the respondents are not doing any alleged business of manufacturing sweets rather the business is carried out by M/s Chaina Ram Sindhi Confectioners which is a separate legal entity. Further, the respondents are not proprietors / partners in the above-named firm.

III. It is stressed that the respondents/landlord have wrongly stated

in the petition that they have to arrange rented accommodation for their halwai shop. It is pleaded that the respondent is trying to mislead this court as the respondents have various properties in their possession for the purpose of manufacturing and storage of sweets.

IV. It is further stated that the respondents/landlord have filed three eviction petitions against three other tenants in regard to three different properties including the present petition.

V. It is further stated that the alleged requirement projected by the respondents/landlord in the eviction petition only pertains to additional accommodation required during the festive season for storage and manufacturing of sweets. Hence, the alleged bona fide needs of the respondents/landlord are not continuous and they allegedly require additional accommodation only in festival season. Hence, for a short period requirement of the respondent/landlord present eviction petition is not maintainable.

VI. It is further stated that the respondent/landlord have entered into an agreement with a local builder for the demolition of the entire property being 6449 to 6452, Katra Baryan, Fatehpuri, Delhi -110006, and thereafter they will construct shops and godowns to get huge monetary benefits.

12. The respondent/landlord has filed a reply to the aforesaid application of the petitioner/tenant seeking leave to defend. The respondent has pointed out that the first floor of the property bearing Municipal No.6452 is being used for manufacturing namkeen and sweets by the respondents/landlord. Further, the respondents/landlord has no concern whatsoever with the property bearing No.142 Gali Memwali, Katra Baryan Fatehpuri, Delhi. The

petitioner owns only one small shop on ground floor being property No.143, Gali Memwali, Katra Baryan Fatehpuri, Delhi which is being used by the respondent for manufacturing seasonal items. The property having one small room at first floor bearing No.144 Gali Memwali, Katra Baryan ,Fatehpuri, Delhi and first floor of the property bearing No.6398 Katra Baryan, Fatehpuri, Delhi-110006 is being used by the respondents/landlord as staff accommodation.

It is further denied that the respondents/landlord are not doing any alleged business of manufacturing sweets. Rather, the said business is being carried out by M/s. Chaina Ram Sindhi Confectioners. It is stated that the Firm M/s. Chaina Ram Sindhi Confectioners is a partnership firm having four partners, namely, Shri Nand Lal, Shri Pardeep Gidwani, Shri Harish Gidwani and Shri Hari Gidwani. Out of these, three of the partners, namely, Shri Nand Lal, Shri Pardeep Gidwani and Shri Hari Gidwani are respondents/landlords who have also filed the Eviction Petition.

The respondents/landlords have also denied that they have jointly purchased properties bearing No.6449-6452, Katra Baryan, Fatehpuri, Delhi, as alleged. It has also been denied that the respondents have entered into an agreement with local builders who would demolish the entire property bearing No.6449 to 6452, Katra Baryan, Fatehpuri, Delhi and construct shops and godowns.

13. The Ld. ARC by the impugned order rejected the contentions of the petitioner/tenant. The impugned order notes that there is no dispute raised regarding the ownership of the respondents/landlord. The relationship of landlord and tenant is also not disputed.

Regarding the aforesaid properties mentioned by the petitioner, the

impugned order notes that as far as property No. 6452 is concerned the same is on the first floor and it is already being used for manufacturing of sweets and Namkeen by the respondent /landlord. Respondent/landlord have no concern with property No. 142, Gali Memwali, Katra Baryan, Fatehpuri, Delhi -110006. Further, property no. 143, Gali Memwali, Katra Baryan, Fatehpuri, Delhi -110006 is also being used by the respondent/landlord for manufacturing seasonal items. Property No.144, Gali Memwali, Katra Baryan, Fatehpuri, Delhi -110006 is a small room situated on the first floor and similarly, the first floor of property No. 6398 is being used by the respondents/landlord for staff accommodation. Further, it has been noted in the order that no documents in support of the submissions have been filed by the petitioner/tenant and only bald averments have been made. The impugned order further notes that mere non disclosure of other petitions said to have been filed by the respondents/landlord against other tenants does not raise a triable issue. The impugned order further notes that the petitioner has failed to place on record any document to substantiate its contention about availability of any alternate accommodation with the respondent/landlord which may be called sufficient to meet the bona fide requirements as projected in the Eviction Petition. A bald statement, without any material, it is stated does not give rise to triable issue entitling the tenant for leave to defend. The impugned order further holds that the law is well settled and that the landlord is the best judge of his necessity and he has got complete freedom in the matter. Therefore, a tenant cannot dictate the terms to the landlord regarding his necessity. Hence, the court concluded that no triable issue between the parties arises which entitles the petitioner/tenant for leave to defend the eviction petition. The application for leave to contest was

accordingly dismissed and an eviction order was passed.

14. I have heard learned counsel for the parties.

15. Learned counsel for the petitioner has reiterated that the abovenoted five shops have been mentioned in the application for leave to defend which are available to the respondent/landlord. He has also further stated that he has denied the need for additional accommodation in his application for leave to defend. Hence, it is pleaded that this denial itself would be a ground for grant of leave to defend as it raises a triable issue.

16. Learned counsel for the respondents/landlord has pointed out that the properties mentioned in the application for leave to defend have been duly explained by the respondents in their reply to the application seeking leave to defend. It is also pleaded that the partnership deed between the landlords which is placed on record gives details of the properties based on which the averments are being made by the petitioner.

17. I may first see the scope of the present petition. The Supreme Court in *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, (1999) 6 SCC 222 described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The

revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or reappraisal of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available...”

18. Hence, this court is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.

19. Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction.-

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

XXXXX

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable

residential accommodation.”

The essential ingredients which a landlord is required to show for the purpose of getting an eviction order for bona fide needs are (i) the petitioner is the owner/landlady of the suit premises (ii) the suit premises are required bona fide by the landlord for himself/herself and any of his/her family members dependent upon him/her. (iii) the landlord/landlady or such other family members have no other reasonable suitable accommodation.

20. As noted above, there is no dispute regarding the relationship of tenant and landlord between the parties.

21. Essentially, what the petitioner is pleading is that there are five other properties available to the respondent/landlord which are sufficient for their alleged business. The respondent deny the said submission, they have very clearly spelt out that the accommodation available with them falls short of carrying out their business of sweets. The properties mentioned by the petitioner are already being used by the respondent.

22. Reference may also be had to the judgment of the Supreme Court in the case of ***G.C. Kapoor Vs. Nand Kumar Bhasin, AIR 2002 SC 200***, where the Supreme Court noted as follows:-

“9. It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In *Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde* [1999] 2 SCR 912, this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide

requirement, it is for the landlord to clear such doubt.”

23. Similarly, in *Prativa Devi (Smt.) v. T.V. Krishnan*, (1996) 5 SCC 353, it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate to the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with.

24. The respondent has repeatedly relied upon the properties mentioned in the leave to defend application, namely, 6452, Gali Memwali, Katra Baryan Fatehpuri, Delhi; property No.142, 143, 144 Gali Memwali, Katra Baryan Fatehpuri, Delhi and property No. 6398, First Floor, Katra Baryan Fatehpuri, Delhi to claim that alternate accommodation is available with the respondents/landlord and there is no bona fide requirement. Allegations are also made repeatedly that the respondents/landlord have entered into an agreement with a local builder for demolition of the entire property being 6449 to 6452, Gali Memwali, Katra Baryan, Fatehpuri, Delhi and thereafter they will construct shops and godowns and get monetary benefits. All these allegations have been stoutly denied/explained by the respondents/landlord in their reply to the application for leave to defend.

25. The impugned order rightly holds that other than making bald averments without filing any documents, the petitioner/tenant has failed to plead any fact which would throw doubt on the bona fide requirement of the respondents/landlord.

26. In the present case, it is manifest that the requirement spelt out by the respondents/landlord is a bona fide requirement. It is an honest requirement and not tainted with any oblique motive and is not a mere wish or desire.

The petitioner has made bald averments stating that five properties are available with the respondents/landlord but has failed to give details in regard to them whatsoever.

27. Another plea that was raised by the petitioner is that the respondents are not in the business of manufacturing sweets and that the business is being carried on by the enterprise M/s Chaina Ram Sindhi Confectioners. This plea is contradictory as different pleas are taken in the eviction petition which are contrary. Further, the respondents have placed on record the partnership deed which clearly shows that it is the respondents who are working under the name and style of M/s Chaina Ram Sindhi Confectioners.

28. It is manifest that the petitioner has failed to make out any triable issue; the impugned order has rightly dismissed the application for leave to defend of the petitioner.

29. There are no reasons to interfere in the finding made by Ld. ARC. Petition is dismissed. All other pending applications, if any, are also dismissed.

JAYANT NATH, J

SEPTEMBER 07, 2021/n