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

% *Decided on: 23.09.2021*

+ **RC.REV. 180/2020 & CM APPL. 19092/2020**

SH. BARINDER JEET SINGH

..... Petitioner

Through: Mr. Manmohan Singh, Advocate.

versus

SMT. AJIT KAUR

..... Respondent

Through: Mr. Atul Ahuja, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (virtual and physical hearing).

1. The learned counsel for the parties have been heard.
2. The petitioner impugns the eviction order dated 20.01.2020 on the ground that one shop is still lying vacant with the landlady; that she is now about 80 years of age and does not have *bona fide* need. Therefore, the impugned order should be set aside.
3. The landlady had sought eviction from shop nos. 2 and 3 bearing no. WZ-217 Gali No. 7, G-Block, Shiv Vihar, Hari Nagar, New Delhi; on the ground that her two sons who are living overseas want to come back to India to start a business. The landlady-tenant relationship is not in dispute.
4. The application for leave to defend which was dismissed, had raised the following grounds that:

(i) the application is *malafide*, (ii) the landlady is receiving a monthly pension of Rs.60,000/- and monthly rental income of Rs.10,000/-, (iii) one of her sons lives comfortably in United Kingdom for the last 15 years and has no intention to come back to India, (iv) the landlady herself is of 76 years of age and it is not possible for a person of her age to run a daily-needs store/shop with her son, who is permanently settled in UK along with his family, (v) if vacated, the shops will merely be rented-out by the landlady at a higher rent, and (vi) she is already in possession of shop no. 2 and has no need of the tenanted premises.

5. The learned Rent Controller has held that none of the aforesaid grounds raise a triable issue. The *bona fide* need of the petitioner-landlady was established inasmuch as both shops nos. 2 and 3 were sought for her own needs and her sons' needs. It is settled law that the landlady's financial condition will not determine the *bona fide* need for accommodation. The impugned eviction order has dealt with the issues as under:-

“ ...

14.10 So far as, first contention of respondent is concerned regarding receiving of handsome pension and rent by the petitioner, the same is refuted by the petitioner in her reply to the application for leave to defend. Even otherwise, it is a settled position of law that high status of a landlord or fact of receiving pension is not an impediment for him/her to work or conduct a business. Reliance may be placed upon the case of Shamshad Ahmad & ors. v. Tilak Raj Bajaj (Deceased) through LRs & Ors, 152 (2008) DLT 301 (SC). Thus, the

objection of respondent that the petitioner does not require the tenanted premises bonafidely to start a daily need store/shop owing to receiving pension or rent, is devoid of merit and cannot be constituted as a triable issue.

14.11 As regards, second contention of respondent that son of the petitioner, who is residing at present in the UK with his family and allegedly leading a lavish and comfortable life, it is averred by the petitioner in her counter affidavit that her son is not an IT professional as alleged and is engaged in temporary jobs on different occasions as a labourer. Further more, his wife is also not well qualified and sells perfume and goggles from roadside stalls. These aspects, though are of little importance as the alleged comfortable lifestyle of son of petitioner cannot be a ground to restrain petitioner, who is admittedly 76 years old, to seek company of her children, who are living abroad and willing to come back to look after her. Also, nothing credible has been brought on record by the respondent to traverse the claim of petitioner that her son wishes to come back to India permanently to settle here, support petitioner, carry out schooling of his daughter in India and open daily needs store/shop along with petitioner for earning his livelihood. It is further well settled that when the landlord shows a prima-facie case it is open to the controller to draw a presumption that the requirement of landlord is bona-fide. Reliance may be placed upon the case of Sarla Ahuja v. United India Insurance Company Ltd. AIR 1999 SC 100, wherein it has been held that,

" ... 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 bona fide. 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 ... "

14.12 Moreover, the expression 'for his own use' has been assigned a wider, liberal and practical meaning by Hon'ble Supreme Court in case of Joginder Pal Singh Vs. Naval Kishore Behal AIR 2002 SC 2256. It recognizes requirement of member of the family or of a person on whom the landlord is dependent or who is dependent on landlord can be considered to be the requirement of landlord for his own use. The relevant extract is reproduced as under:

" ... 24. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. 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 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. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent ..."

14.13 The third contention of the respondent that petitioner does not actually require tenanted premises for herself and her son and need is self-created with mala fide intention to get the premises vacated, is taken care of by Section 19 of DRC Act, which ensures that the landlord utilises the premises for the same purpose for which she sought eviction. Reliance may be placed upon the case of Dipika Arora Vs. S. N. Sehgal & Ors., 58 (1995) DLT 729, wherein Hon'ble Delhi High Court held:

" ... In the facts and circumstances of the case it cannot be said that the petitioner was setting up a false case in order to throw out the tenant and get possession of the premises in suit. To allay any apprehension on the part of the tenant against the landlady in this behalf reference to Section 19 of the Delhi Rent Control Act is enough. The said provision takes care of such mala fide attempt on the part of owners/landlords. Therefore, law has not left the matter to the choice of the owner/landlord nor the tenant has been at the mercy of the owner/landlord in such matters ..."

14.14 As regards, fourth contention of the respondent that petitioner is 76 years of age and it is not possible for her to run a daily needs store/shop with her son, I hold that this contention is without any merit and failed to raise any triable issue. It is well settled that landlord is best judge of his requirements for residential or business

purpose he has got complete freedom in the matter. The tenant cannot dictate his terms as to how the landlord could use the premises. Reliance may be placed upon the case of Prativa Devi V. T. V. Krishnan (supra).

14.15 As regards, final contention of the respondent that he has been regularly paying the rent, house tax of tenanted premises and has also been increasing the rent from time to time in accordance with provisions of law, clearly it fails to raise any triable issue for grant of leave as desired.

Thus, in view of the observations as above, I have no hesitation to hold that respondent has failed to raise any triable issue qua 'bona-fide requirement' of petitioner.

6. In *Shamshad Ahmad & Ors. v. Tilak Raj Bajaj (Deceased) through LRs & Ors*, (2008) 9 SCC 1, the Supreme Court has held as under:-

“33. In our opinion, the grievance voiced by the learned counsel for the appellants is well founded that the above grounds and reasons were irrelevant and extraneous so far as the requirement of the landlords was concerned. The authority can undoubtedly decide whether the need or requirement of landlords was or was not bona fide. It can record a finding against the landlords if such requirement is not proved. But the authority cannot decline the prayer of the landlords on the ground that they belonged to upper class of society having facilities of car, etc. Similarly, the prescribed authority was wrong in commenting on the experience of the landlords in business of readymade garments. Again, the authority went wrong in stating that if the applicants wanted to do business in readymade garments, they needed "an office" and place of godown for preparation of readymade garments to be exported.

34. The complaint of the learned counsel for the landlords is that the authority was wholly wrong in

holding that for doing business in readymade garments, there must be need and necessity of office or place for preparation of garments or godown. It was equally wrong in coming to the conclusion that for such business "technical education" was necessary. The appellate authority, therefore, rightly set aside the said finding describing the ground that weighed with the authority as "flimsy".

35. The counsel is also right in submitting that admittedly, Matloob Ahmad had retired from service. Even if the tenant was right in submitting that the landlords belonged to a higher strata of society, it did not mean that all throughout his life after retirement, Matloob Ahmad, husband of Applicant 6 should not do any work. If he wanted to get himself engaged in doing some business, it could not be held that he would not be entitled to possession of property for doing business since he was rich and even without doing any business, he could maintain himself."

7. The Supreme Court held that the high economic status of the landlord or the fact of her/ his receiving pension, is not an impediment to her/him to initiate any profitable work or to conduct a business.
8. Surely, a tenant cannot endeavour to limit the aspiration of any landlord/landlady, whatsoever be the latter's age. When one wants to start a business from her/his own premises, even physical incapacity can be overcome by employing people to run the business/enterprise, on behalf of the aspirant landlady/landlord.
9. No triable issue was raised apropos the economic condition of the sons and/or their aspirations and/or their dependency or regarding the availability of an alternate accommodation. One

of the shops which had been vacated, would satisfy only part of the need. The other shop, occupied by the petitioner is also needed by the landlady. Part satisfaction of the bonafide need defeats the very purpose of the eviction proceedings. The objective will be stymied and the bonafide need will not be met, if the accommodation/rented premises sought is not vacated or made available to the landlady. Jurisprudence on rent control law does not contemplate adjustments to be made by the landlord, simply so that the tenancy of the objecting tenant could continue. Such compromise by or 'adjustment' of the landlord's bonafide need would strike at and diminish the statutory right to seek the tenant's eviction. Therefore simply, because one of the two shops has been vacated is not a ground for setting aside the impugned order.

10. At the time of filing of the eviction petition, the landlady was about 76 years of age and the same cannot be a factor to deny her right or prerogative to use the tenanted premises. Her age does not by itself dissipate her needs. In *Prativa Devi vs. T.V. Krishnan*, (1996) 5 SCC 353, the Supreme Court held *inter-alia* as under:

“ ...

2. *The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv Nath Mukherjee, has been staying as a guest with Shri N.C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjang Enclave, New Delhi. There is nothing to show that she has any kind of right*

whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.

... ”

11. Should the vacated premises not be used as per law, it would always be open to the tenant to pursue legal remedies. No triable issue was raised by the tenant, leading to the conclusion that there was a *bona fide* need; there being no alternate accommodation with the landlady, the eviction order was passed.
12. The court finds no reason to interfere with the impugned order.

The tenant has been staying in the premises for almost 21 months after the impugned eviction order.

13.The petition is without merit and is, accordingly dismissed, along with the pending application.

NAJMI WAZIRI, J

SEPTEMBER 23, 2021/RW

