



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

Date of decision: 25th MAY, 2022

IN THE MATTER OF:

+ **RC.REV. 27/2022 & CM APPL. 8799/2022**

MS.JASWINDER KOHLI

..... Petitioner

Through: Mr. Satyapal Singh, Advocate

versus

HARKISHAN

..... Respondent

Through: Mr. Amit Shanker, Ms.Mithila Jain,
Mr.Nikhil Saxena, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant revision petition is directed against the order dated 25.09.2021, passed by the learned Senior Civil Judge-cum-Rent Controller (East), Delhi in RC ARC No.641/16.
2. The facts, in brief, leading to the instant petition are as under:-
 - i. It is stated that the Respondent herein/landlord let out his two shops bearing No.182, Pratap Nagar, Opposite Mayur Vihar, Phase-I, Delhi - 110091, (hereinafter referred to '*the tenanted premises*') admeasuring 9.5x19' and 9.5x16' to the husband of the Petitioner herein/tenant on a monthly rent of Rs.550/- and Rs.450/-, respectively, *vide* agreement cum rent deed dated 28.05.2019.



- ii. It is stated that the husband of the Petitioner herein/tenant passed away on 08.05.2010 and till his death he had been in continuous possession of the tenanted premises and was running his business of food items. It is stated that after the death of the husband of the Petitioner herein/tenant, a mutual renewal agreement cum rent deed dated 25.06.2010 at increased rent of Rs.2500/- per month was executed between the Respondent herein/landlord and the Petitioner/tenant.
- iii. It is stated that the Power of Attorney of the Respondent/landlord, i.e. his son Ravi Chaudhary, filed an eviction petition on the ground of bonafide requirement of the tenanted premises for office space for himself. It is alleged in the eviction petition that the Petitioner/tenant is a chronic defaulter in the matter of payment of rent. It was also alleged in the eviction petition that the Petitioner herein/tenant had misrepresented herself to be the owner of the tenanted premises and had also sub-let the same to one Sarvesh Tiwari in December 2012 who is running a furniture shop under the name and style of 'Furniture Point' without the permission of the Respondent herein/landlord.
- iv. It was stated in the eviction petition that the family of the Respondent herein/landlord consists of himself and his three sons, and out of his three sons, two are settled in their businesses and only his youngest son - Ravi Chaudhary, i.e. his Power of Attorney through whom the eviction petition was filed, is facing problems in setting up his business and for that



purpose he needs the tenanted premises.

- v. It was stated by Ravi Chaudhary in the eviction petition that he is doing the work of a property dealer in a partnership, but due to the dispute between him and his partner, he has now planned to separate from his partner and wants to set up his own property dealing business, for which he needs the tenanted premises. It was further stated by Ravi Chaudhary in the eviction petition that they only have the tenanted premises and no other alternative shop/space/place is available to set up an office. It was further stated that Ravi Chaudhary wants to establish his own business to earn the livelihood for himself and his family and for that purpose they need the tenanted premises.
- vi. An application for leave to defend was filed by the Petitioner herein/tenant. In the application for leave to defend it was contended that by Petitioner herein/tenant that she and her husband are in occupation of the tenanted premises since 1989-90 vide various rent deeds. It was stated that the rent agreement entered into between the Petitioner herein/tenant and the Respondent herein/landlord in the year 2010 was for an unlimited period since there was no period mentioned in the rent agreement as to when the Petitioner/tenant shall be liable to vacate the tenanted premises. It was also stated in the application for leave to defend that the Respondent/landlord is not the true owner of the property and the Respondent/landlord is liable to bring the original documents pertaining to the ownership of the tenanted premises. It was also stated in the



application for leave to defend that the Respondent/landlord and his family are in occupation of various properties in Delhi NCR, which has been concealed by them in the eviction petition. It was stated that apart from a big house in Chilla Village, near Patparganj, Delhi, the Respondent/landlord has many properties, including commercial complex at New Ashok Nagar. It is stated that when the Petitioner/tenant along with her son found out the address of the said premises and visited the same to ascertain it, they were manhandled by the Respondent herein/landlord's son - Ravi Chaudhary. It is stated that an FIR in this respect has also been lodged, and in the Police Station, Ravi Chaudhary confessed that the property bearing No.B-294, New Ashok Nagar, Delhi, besides others, belonged to his father/the Respondent herein. It is, therefore, stated that as the Respondent herein/landlord has other suitable accommodation, he does not need the tenanted premises. It is further stated in the application for leave to defend that the Petitioner herein/tenant is a widow and is living with her son, who is a student. It is further stated that the tenanted premises is being used by the Petitioner/tenant as a food serving outlet and is the only source of income for the Petitioner/tenant and her son.

- vii. Material on record discloses that Ravi Chaudhary filed a reply to the leave to defend application filed by the Petitioner herein/tenant denying the allegations of the Petitioner herein/tenant and reiterating the averments made in the eviction petition. In the said reply, it is stated that the landlord only has a



house in Chilla Village wherein he is residing along with his family. It is further stated that since Ravi Chaudhary is unemployed, he needs a suitable office space from where he can conduct his business. It is further submitted in the reply that an FIR, being FIR No.87/2013, was lodged by the sub-tenant against the Petitioner herein/tenant at Police Station Pandav Nagar for offences under Sections 419/420/468/471/448 IPC wherein the sub-tenant has denied that the Petitioner herein/tenant is carrying on any business on the tenanted premises.

- viii. A rejoinder was filed by the Petitioner herein/tenant contending that the husband of the Petitioner/tenant had given a sum of Rs.1,85,000/- to the Respondent/landlord as *Pagri* and Rs.70,000/- as security on an understanding that the ownership of the tenanted premises would be transferred by the landlord to the tenant in the near future. It was stated that these documents came into light when the Respondent was searching the documents pertaining to the property in April 2016.
- ix. After going through the material on record, the learned RC declined to grant leave to defend to the Petitioner herein/tenant contending that the no triable issue had been raised by the tenant. The learned RC held that nothing had been produced by the tenant to show that the Petitioner was the true owner of the property.
- x. It is this order against which the Petitioner has approached this Court by filing the instant petition.



3. Heard Mr. Satyapal Singh, learned counsel for the Petitioner, Mr. Amit Shanker, learned counsel for the Respondent, and perused the material on record.

4. It is trite law that the purpose of Chapter III to the Rent Control Act is to ensure expeditious disposal of an eviction petition filed by a landlord on the ground that the premises is required by the landlord. Special category of landlords, as mentioned in Section 25(B)(1) of the Delhi Rent Control Act, are entitled to the benefit of summary proceedings for eviction of tenants if the premises is required for their own bonafide use. When any of the category of landlords, as mentioned in Section 25(B)(1) of the Delhi Rent Control Act, files an eviction petition for bonafide requirements, there exists a presumption that the need of the landlord is genuine. It is also well settled that while filing an application seeking leave to defend, if a tenant makes averments intending to disentitle the landlord from invoking the summary provisions, then such statements must be specific and must contain all particulars which would lead to a triable issue for the learned Rent Controller not to give the benefit of summary procedure to the landlord and, therefore, relegate the landlord to go through the usual procedure for evicting the tenant on the ground of bona fide requirement. A tenant has to give all necessary facts supported by documentary material, if available, in the leave to defend application so that the learned Rent Controller is in a position to adjudicate and decide the question as to whether the facts so disclosed would compel the landlord to enter into the witness box and prove his bonafide need.

5. In the instant case, the tenant has herself admitted that the premises were given to her on rent by the Respondent herein/land lord. The tenant,



therefore, cannot now turn around and aver that the landlord does not have the competence to institute the eviction petition. The main contention of the tenant is that the landlord has got several premises and this is no compelling need on the part of the landlord to seek possession of the premises in question. However, other than stating that the tenant has premises in Ashok Nagar, no details have been provided by the tenant substantiating such a claim. In fact, the tenant has herself stated that she could not ascertain the address. Additionally, the landlord has himself admitted that there is a house in Chilla Village which is being used by the entire family for residential purpose and the tenanted premises lies in the market which would be more suitable for the landlord for the purpose of running a property dealing shop.

6. The Supreme Court has already opined on how vague assertions by the tenant are not sufficient for the Ld. RC to grant leave to defend, the Apex Court in its judgment dated 07.04.2022 in **Civil Appeal No.9444/2016** titled as Abid-ul-Islam v. Inder Sain Dua, **2022 SCC OnLine SC 419** has held as under:

"22. Learned Rent Controller passed a detailed speaking order. On undertaking such an exercise, he found that the bona fide need is satisfied; the averments of the respondent regarding alternative accommodation are vague; the title of the appellant cannot be questioned; and the embargo under the Enemy Property Act does not get attracted. Thus, having found that the defense set up by the respondent is only a moonshine, the application filed seeking leave to defend was accordingly rejected.

24. The High Court, while ignoring the aforesaid conduct of the respondent, as noted by the learned Rent Controller, proceeded to allow the revision by treating



it like an appeal. It did not even reverse the findings of the learned Rent Controller, but proceeded to hold that the denials of the appellant in his reply to the application seeking leave to defend are vague, qua the plea of alternative accommodation, notwithstanding the rejection of the contention of the respondent that he cannot question the title. This approach, in our considered view, cannot be sustained in the eye of law.

26. We have already discussed the scope of Section 14(1)(e) vis a vis Section 25B(8) of the Act. Therefore, the mere existence of the other properties which are, in fact, denied by the appellant would not enure to the benefit of the respondent in the absence of any pleadings and supporting material before the learned Rent Controller to the effect that they are reasonably suitable for accommodation." (emphasis supplied)

7. Similarly, this Court in Rajender Kumar Sharma & Ors. v. Smt. Leela Wati & Ors., MANU/DE/1386/2008, has observed as under:

"11. Only those averments in the affidavit are to be considered by the rent Controller which have same substance in it and are supported by some material. Mere assertions made by a tenant in respect of landlord's ownership of other buildings and in respect alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed. the whole purpose of Section 25-B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence defeating the very purpose of the statute. The Rent Controller is thus not precluded from considering the material placed before it by the landlord in response to leave to defend to show that the tenant's assertions and averments were totally false. "
(emphasis supplied)



8. In the present case, other than vague denial of the title of the landlord and vague statements that there are alternate accommodations available for the landlord, no particulars have been given by the tenant. In the application for leave to defend, in paragraph No.6, it has been stated by the Petitioner/tenant that the Land-lord has other alternate accommodation. Paragraph No.6 of the application for leave to defend reads as under:

"6. I state that petitioner and his family are in occupation of various properties in Delhi NCR, which has been concealed by them in the petition. Apartment from a big house in Chilla Village, near Patparganj Delhi, petitioner is having many properties, including Commercial complex at New Ashok Nagar. When I, along with my son found out the address of the said premises and visited to further find out the same, we were manhandled by the petitioner's son Ravi, who created a scene, at the premises. It was only after intervention of the police that the said nuisance was stopped. The FIR in this respect was lodged. However, at the police station also Mr. Ravi confessed that the property no. B-294, New Ashok Nagar, Delhi besides others, belonged to his father and family. Thus, there is No question of their bonafide need of the said property. The said FIR is annexed as Annexure 2."

9. A perusal of the said averment shows that the Petitioner/tenant has not given any details of the commercial complex other than stating that when she went to ascertain the premises, she was threatened by the Land-lord. The statement of the Petitioner/tenant that in the Police Station, son of the Respondent/land-lord, i.e. Ravi Chaudhary, has confessed that he owns property No. B-294, New Ashok Nagar, Delhi, cannot be taken into account as it is only a confession and it cannot be ascertained as to whether such confession was ever made by Ravi Chaudhary in the Police Station or not



and, therefore, it cannot be taken into account by the learned Rent Controller while deciding the application of the Petitioner/tenant for leave to defend.

10. Furthermore, no particulars have been provided by the Petitioner/tenant to show availability of an alternate accommodation or whether the nature of premises would be fit for the landlord to run the business of property dealing.

11. In light of the above, this Court does not find any perversity in the order dated 25.09.2021, passed by the learned Senior Civil Judge-cum-Rent Controller (East), Delhi in RC ARC No.641/16. The findings in the Order dated 25.09.2021 are legally firm and do not warrant the interference of this Court.

12. Accordingly, the petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

MAY 25, 2022

Rahul