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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **R.C. REV. 270/2022**

IQBAL SINGH

..... Petitioner

Through: Mr. K.B. Shankar & Mr. Aaftab
Husain, Advocates.

versus

DEEPAK JAIN

..... Respondent

Through: None.

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Date of Decision: 01st December, 2022

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present Revision Petition has been filed by the Petitioner, tenant, impugning the order dated 26.05.2022, passed by the Senior Civil Judge cum Rent Controller, (Shahdara) Karkardooma Courts, Delhi ('Trial Court'), in RC ARC 161/2019 *vide* which the Petitioner's application seeking leave to defend has been dismissed and he has been directed to vacate the property bearing no. 1449/15-B, Durga Puri, Delhi - 93 ('tenanted premises').

2. The eviction petition was instituted by the Respondent, owner and landlord, who sought vacation of the tenanted premises on the ground of his '*bona fide* need'. The Respondent in the eviction proceedings had disclosed that he is the owner of three shops, out of



which one is the tenanted premises, one shop is occupied by the Respondent's wife who is running a beauty parlor in the 1st shop and one shop is occupied by the Respondent along with his mother and the mother is running a business of selling cosmetics in the 2nd shop. The Respondent in the eviction proceedings had stated that he has a *bona fide* need and requires the possession of the tenanted premises to run and operate a garment shop, in order to support his family and cover the education expenses of his two minor sons. The said eviction petition was opposed by the Petitioner, tenant herein, who had filed an application seeking leave to defend and opposed the Respondent's prayer.

3. While before the Trial Court, the Petitioner, tenant, herein had raised issues with respect to tenancy relationship between the parties and whether the Respondent was liable to be recognized as owner of the tenanted premises, however, before this Court the learned counsel for the Petitioner, has restricted his submissions to the findings as returned by the Trial Court with respect to *bona fide* need and dismissal of the application seeking leave to defend.

4. The Petitioner herein, while controverting the Respondent's claim of *bona fide* need and lack of an alternative accommodation, contended that the Respondent, landlord, is carrying on the business of selling cosmetics in lieu of his mother, who is an aged lady and allegedly, not in a position of running the shop.

5. Learned counsel for the Petitioner states that the aforesaid defense taken by the Petitioner gives rise to a triable issue and the



Trial Court ought to have afforded an opportunity to the Petitioner to lead evidence to prove the said fact. He states that the Petitioner's application seeking leave to defend cannot be refused, since the Respondent had filed the eviction petition on a mere 'desire' to recover the possession of the tenanted premises and there was in fact no '*bona fide* need' of the tenanted premises by the Respondent, landlord. He thus, states that the assertion of the Respondent that he needs the tenanted premises to open a garment shop does not qualify as a 'need' and is only an expression of the 'desire' of the landlord and therefore it fails to meet the test of *bona fide* need as required under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('the Act').

6. The Trial Court, while examining the issue of *bona fide* need took specific note of the plea taken by the landlord that he requires the possession of the tenanted premises to run a garment business and thus concluded that the need of the landlord is genuine.

7. The Trial Court while making a note of the pleas raised by the Petitioner, tenant, in its application for leave to defend, observed that the Petitioner has failed to put forward any ground, which may disentitle the Respondent, landlord, from getting an eviction order. The Trial Court further observed that Petitioner, tenant has not even claimed that the Respondent has an alternate accommodation to run his business. The Trial Court was of the opinion that the landlord has duly disclosed his ownership of the three shops and has properly explained that the shops, except the tenanted premises, are occupied



by his wife and mother who are carrying on their respective businesses in the said shops.

8. The Trial Court had also rejected the Petitioner, tenant's, plea that the Respondent, landlord, does not require the tenanted premises as he is already carrying on a business with his mother. It held that the Respondent, landlord, cannot be compelled to continue to work with his mother and cannot be prevented from starting his independent business. The Trial Court thus concluded that the pleas raised by the Petitioner, tenant, in his application for leave to defend does not give rise to any triable issues and in the said facts proceeded to deny granting leave and consequently, passed the order of eviction.

9. Before this Court, the learned counsel for the Petitioner while making his submissions, has challenged the legality of the impugned order dated 26.05.2022 on the ground that the Trial Court failed to appreciate that since the mother of the Respondent, landlord, is an aged lady, the landlord's plea that the 2nd shop is in mother's possession ought not to have been accepted. He contends that the Respondent, landlord, is already carrying on business of selling cosmetics in his 2nd shop and therefore he has no *bona fide* need for the possession of tenanted premises. He further insists that in the facts of the present case, the landlord's petition for possession of tenanted premises was a mere 'desire' as opposed to a *bona fide* 'need'.

10. The Supreme Court in the case of ***Inderjeet Kaur Vs. Nirpal Singh, (2001) 1 SCC 706***, has held that the leave to defend as sought for by the tenant cannot be granted on mere asking or in a routine



manner since it would defeat the very object of the special provisions contained in Chapter III-A of the Act.

11. The Supreme Court while dealing with a *pari materia* provision, in ***Baldev Singh Bajwa Vs. Monish Saini, (2005) 12 SCC 778***, has held that a tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of declaration sufficient to raise a triable issue. It further held that a heavy burden would lie on tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence if available, to support his plea in the affidavit itself so that the Rent Controller will be in position to adjudicate and decide the question of a genuine and *bona fide* requirement of the landlord. The court held that the mere assertion on the part of tenant to rebut the strong presumption in landlord favour that his requirement of occupation of the premises is real and genuine.

12. In light of the principles enunciated by the Supreme Court in the aforesaid judgments, it is well settled that at the stage of seeking leave to defend, the tenant is required in law to disclose that the issues raised in his/her application gives rise to triable issues, which would warrant a consideration on merits. The defense raised by the tenant cannot be one which has been described by the Supreme Court to be a mere moonshine. Therefore, at the stage of grant of leave to defend, the real test for the Rent Controller is to examine whether the facts as disclosed in the affidavit filed seeking leave to defend *prima facie*



show that the landlord would be disentitled for obtaining order of eviction.

13. Coming to the facts of the present case, the Respondent, landlord's, plea of *bona fide* need of the tenanted premises was disputed by the tenant only on the basis of the 2nd shop, wherein the mother of the Respondent is carrying on business. Pertinently, in the application for leave to defend, the Petitioner, tenant, has not disputed the fact that the Respondent, landlord's, mother is indeed carrying on business from the said 2nd shop and also there was no dispute qua the fact that the wife of the Respondent, landlord, was also carrying on her independent business from the 1st shop. The relevant paragraph of application seeking leave to defend is as follows.

“H. That the petitioner has no need of opening a garments shop in the shop in question as he is already running the cosmetic shop with his old aged mother and his wife is also running a beauty parlour and Beauty Training Centre in the name and style of M/s Sangeeta Beauty Parlour and the petitioner and his wife are earning handsome income from these shops.

K. That the petitioner is also getting rental income from the rooms let out on rent by him in the 100 sq. yds. house in which three shops are there at the ground floor out of which one shop is run by the deponent whereas in one shop the wife of the petitioner runs beauty training centre and beauty parlour and third shop is run by the petitioner himself which is a cosmetic shop in the name and style of M/s Memlata Cosmetics. The children of the petitioner are also minor as stated by the petitioner in his petition and there is also no requirement to evict the deponent from the shop in question.”

14. Learned counsel for the Petitioner contends that since the mother of the Respondent, landlord, is an old day she could not have been carrying on her own independent business. He states that the said



submission raises a triable issue and the landlord must lead evidence to prove that his mother is indeed carrying on her business.

15. In the considered opinion of this Court, the pleas of the Petitioner, tenant, do not give rise to a triable issue. In his application seeking leave to defend the Petitioner, tenant, has not raised a dispute that the mother of the landlord is not carrying on cosmetics business from the 2nd shop. The Petitioner, tenant's, plea that since the Respondent's mother is an old lady it gives rise to doubts that whether she could be carrying on her independent business. The submission of the Petitioner, tenant, is based on a surmise and conjecture and therefore does not give rise to any triable issue. The Petitioner, tenant, has not placed on record any material or documents which gives rise to an assumption that the Respondent, landlord's, mother is not working; on the contrary in the application for leave to defend, as set out above it has been admitted that she is carrying on her own business in the 2nd shop. It appears that the tenant's contention is that the mere fact that the mother of the landlord is an old lady and therefore, it should be assumed in the first instance that she is incapable of carrying on her own business. This Court finds that this plea is without any merit. It is common knowledge that running a business of sale of cosmetics does not require any specific age and can easily be carried out by an elderly person and further, it is not uncommon to find elderly persons carrying on their independent businesses. Thus, in the opinion of this Court the plea raised by the Petitioner, tenant, does not give rise to any triable issue. The tenant



has not placed on record any material which would give right to an assumption that the landlord's mother is incapable of carrying on business. The tenant has also admitted that the Respondent's wife is carrying on her independent business from the 1st shop.

16. The argument sought to be raised by the Petitioner, tenant, that the Respondent, landlord, is already working with his mother in 2nd shop and therefore, there is no *bona fide* need for the possession of the tenanted premises is in the teeth of the decision of the Supreme Court in *Anil Bajaj v. Vinod Ahuja, (2014) 15 SCC 610*, wherein the Supreme Court has held as under:

"It is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises for his own business"

(Emphasis Supplied)

17. Since there is no dispute that the Respondent, landlord, owns only three shops and two of the said shops are already in use, the landlord's requirement of the 3rd shop for carrying on his own independent business has been rightly held by the Trial Court to be a *bona fide* requirement.

18. This Court is of the opinion that there is no infirmity in the impugned order and the Trial Court has given detailed findings after duly considering the record, which requires no interference. The tenant has failed to raise any triable issue which would require grant of leave to defend. The three tests of, existence of landlord tenant relationship, *bona fide* requirement and absence of alternate



accommodation has been duly adjudicated in the present matter and rightly held in favour of the landlord. Accordingly, the present petition is dismissed and the eviction order dated 26.05.2022 passed in favour of the Respondent, landlord, and against the Petitioner, tenant, is upheld.

19. No order as to costs.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 01, 2022/hp/aa

