



2024:DHC:688



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

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Judgment reserved on: 24.01.2024
Judgment pronounced on: 01.02.2024+ **RC.REV. 128/2020****CHARANJEET SINGH**

..... Petitioner

Through: Mr. Inder Bir Singh, Mr. Pratham
Arora, Advocates

versus

VIVEK JAIN

..... Respondent

Through: Mr. A.K. Jain, Advocate along with
Respondent in person**CORAM:**
HON'BLE MR. JUSTICE GIRISH KATHPALIA**GIRISH KATHPALIA, J.:**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioner/tenant has assailed order dated 23.09.2019 passed by the learned Additional Rent Controller, whereby application of the petitioner/tenant for leave to contest the petition under Section 14(1)(e) of the Act was dismissed and consequently eviction order was passed in respect of mezzanine floor admeasuring 12 feet length x 9 feet width in front and 12 feet width in rear and having a sliced cabin with area 12 feet x 5 feet in the rear partitioned by a brick wall together with the

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common use of the staircase up to mezzanine floor (hereinafter referred to as “the subject premises”) forming part of the larger premises bearing property No. 33A/1, Swadeshi Market, Sadar Bazar, Delhi. On notice of this petition, the respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for the present purposes are as follows.

2.1 The present respondent/landlord, claiming himself to be the owner of the larger premises, including the subject premises as detailed above, filed an eviction petition on the ground under Section 14(1)(e) of the Act against the present petitioner/tenant, pleading that the larger premises, of which the subject premises are a part were purchased by his father Shri Daulat Ram Jain by way of registered sale deed dated 30.08.1993; that after death of his father, which occurred on 23.06.2001, his three brothers namely Shri Narinder Pal Jain, Shri Dinesh Jain and Shri Ramesh Jain are carrying on their business of general merchant under the name and style of R.S. Faqir Chand Jain & Sons from ground floor of the larger premises whereas the respondent himself is engaged in his separate business from the said larger premises under the name and style Shree Sobhagya Traders; that during his lifetime, Shri Daulat Ram Jain had inducted the present petitioner as a tenant at a monthly rent of Rs.50/- which enhanced over a period of time to Rs. 330/- per month; that by way of a Will dated 26.03.2001 Shri Daulat Ram bequeathed his estate in the name of all his four sons, who thereby became



co-owner of the said larger premises including the subject premises and the entire larger premises were mutated in their name on 05.08.2013; that after death of their father, the present respondent and his three brothers have been jointly collecting rent from the petitioner/tenant; that all four brothers including the respondent are carrying on their business from the ground floor of the said larger premises and above their shop is the subject premises occupied by the petitioner/tenant; that the ground floor of the larger premises occupied by the respondent and his three brothers falls short of space for carrying on their business and their sons, who have attained age of majority, are interested to join the business with their respective fathers but are unable to join on account of paucity of space on the ground floor; and that the subject premises are *bona fide* required by the respondent and his brothers for expansion of their business as well as for storage of business goods in the mezzanine floor subject premises as they have no reasonably suitable alternate accommodation for that purpose.

2.2 On being served with the summons in the prescribed format, the present petitioner/tenant filed an application for leave to contest, pleading broadly that the present respondent in his petition had not provided the material details and facts as to how the extra space is required by him, and the pleadings qua the *bona fide* requirement are completely vague; that the present respondent had failed to explain as to how he intends to expand his business; that sons of the present respondent and his brothers Shri Ramesh Jain and Shri Dinesh Jain are already engaged in private jobs while son of Shri Narinder Pal Jain is carrying out separate business under the name and



style Amit Enterprises from shop No. 5392, Second Floor, Gupta Market, Sadar Bazar, Delhi; that there is one vacant room on ground floor of the larger premises, which can be used for storage purposes; that the present petitioner, aged 59 years, is engaged in running a flower shop near the larger premises and the subject premises are being used by him for storage of flowers, so his eviction from the subject premises would cause him immense hardship and inconvenience.

2.3 The present respondent filed a reply to the application for leave to contest, raising a preliminary objection that since the present petitioner had failed to file an affidavit stating the grounds on which he seeks leave to contest, the application was liable to be rejected outright. In reply on merits the present respondent denied the pleadings of the present petitioner and reiterated the eviction petition contents.

2.4 In his rejoinder, the present petitioner reiterated the contents of his application for leave to contest.

2.5 On the basis of above rival pleadings, after hearing both sides, the learned Additional Rent Controller passed the impugned order, thereby declining the leave to contest and directing eviction of the present petitioner from the subject premises. In the impugned order, the learned Additional Rent Controller, citing the relevant judicial precedents held that since the leave to contest sought by the present petitioner/tenant was not on affidavit, the application in that regard was liable to be dismissed outright. On merits,



traversing through the rival pleadings, the learned Additional Rent Controller in the impugned order held it to be a clear case of *bona fide* requirement of the present respondent and his brothers for the purposes of expansion of their business involving their sons, for which purpose they did not have a reasonably suitable alternate accommodation.

3. Hence, the present petition.

4. During final arguments, learned counsel for petitioner/tenant took me through above matrix and contended that the impugned order is not sustainable in the eyes of law insofar as the petitioner/tenant had successfully established a case for grant for leave to contest. It was argued by learned counsel for petitioner/tenant that since the eviction petition failed to disclose the age, occupation and other particulars of sons of the respondent and his brothers, the petitioner/tenant deserved leave to contest; that since sons of the respondent and his brothers are admittedly employed, there was no *bona fide* requirement for them to seek eviction; that there are no pleadings that sons of the respondent and his brothers are financially dependent upon their fathers, so leave to contest ought to have been granted.

5. On the other hand, learned counsel for respondent/landlord supported the impugned order, contending that the application for leave to contest having not been on affidavit was rightly rejected. It was further argued that the respondent/landlord in his eviction petition had clearly pleaded the *bona fide* requirement of the subject premises for expansion of business.



6. In rebuttal arguments, learned counsel for the present petitioner referred to the judgment of this court in the case of ***Gian Chand vs Roop Narain***, 1979 RLR 469 and contended that only a short affidavit supporting the application is sufficient and the entire content of the leave to contest need not be on affidavit.

7. In the case of ***Gian Chand*** (supra), relied upon by learned counsel for petitioner/tenant, the circumstances were as follows. In the course of summary proceedings under Section 25B of the Act, the leave to contest was filed by way of an application supported with a short affidavit in which the tenant testified that the facts stated in the application were to his best of knowledge and information true and the same were not being reproduced parawise in the affidavit for the sake of brevity. The learned Additional Rent Controller took a view that the grounds for leave to contest have to be stated by the tenant on affidavit and a mere supporting affidavit is not a compliance as per law, so the application was rejected. In the revision proceedings, a coordinate bench of this court took a view that the correct procedure for a tenant was to make a detailed affidavit setting out the grounds on which he sought leave to contest, but it does not mean that the tenant's application should be rejected only for the reason that the tenant did not reproduce the grounds in the affidavit, despite having filed the affidavit supporting the contents of the application for leave to contest.

8. In the present case, unlike the case of ***Gian Chand*** (supra) the short



affidavit supporting the application for leave to contest does not state that “the facts stated in the application have not been reproduced parawise in the affidavit for sake of brevity”. Further, in the present case, even the short affidavit supporting the application for leave to contest is liable to be discarded because it contains blanks qua the para numbers in the sense that it states that “I have been read out and understood the contents of the accompanying Application seeking leave to defend from Paras (blank) to (blank)”. Despite that, following the spirit of cardinal principle of justice adopted in the case of **Gian Chand** (supra), I also would prefer not to approve dismissal of application for leave to contest on such technical ground. Further, even a Division Bench of this court in the case of **Jijar Singh vs Smt.Mohinder Kaur**, 1979 SCC OnLine Del 130 also took the same view. For that matter, even the learned Additional Rent Controller in the impugned order did not dismiss the application for leave to contest on this technical ground and examined the matter further.

9. As mentioned above, the petitioner/tenant has not challenged the status of the respondent as co-owner of the subject premises and the jural relationship of tenancy between the parties. On merits of the case, as narrated above, the petitioner/tenant sought leave to contest the eviction petition for the reason that sons of the respondent/landlord and his brothers are gainfully employed and not dependent upon them; that no specific details have been disclosed by the respondent/landlord as to in what manner they want to expand their business; that the respondent/landlord already has a vacant room on the ground floor of the larger premises which can be used



by them; and that eviction of the petitioner/tenant from the subject premises would cause him extreme hardship and inconvenience in his business.

10. So far as the plea of hardship that would be caused to the petitioner/tenant in case he is evicted from the subject premises is concerned, according to his own case, the subject premises are being used by him only for storage of flowers and his florist shop is in separate, though nearby premises. More importantly, the inconvenience and hardship that would be caused to the tenant in case of eviction cannot be a ground to protect him if otherwise the case set up by the landlord falls within the parameters prescribed by law. In that regard, the learned Additional Rent Controller has fortified his view in the impugned order with the relevant judicial precedents in the cases titled: **Bega Begum & Ors vs Abdul Ahad Khan & Ors.**, AIR 1979 SC 272; **Mohd. Ayub vs Mukesh Chand**, (2012) 2 SCC 155; and **Puran Chand Aggarwal vs Lekh Raj**, (2014) 210 DLT 131.

11. So far as the petitioner's argument qua dependence of sons of the respondent and his brothers is concerned, it is trite that for the purposes of eviction proceedings under Section 14(1)(e) of the Act, the dependence of a family member of the landlord on him has to be construed liberally so as to include also the family members who need not necessarily be financially dependent upon landlord. The emotional dependence of the landlord on his family members and vice versa cannot be ignored in the proceedings of the present nature. The dependence in such proceedings has to be interpreted judiciously keeping in mind intent behind the enactment. The Delhi Rent



Control Act was enacted not to kill rights of an owner of a property who had inducted tenant in the same. The Act was enacted solely to protect the interest of the tenant so as to prevent his exploitation for monetary gains. For *bona fide* enjoyment of the tenanted premises, the Act does not confer on the tenant a right superior to that of the landlord.

12. There is no explicit statement in the Delhi Rent Control Act to describe as to who is a dependent on the landlord and what constitutes a family. The enactment consciously uses the expression “for any member of his family dependent on him(*the landlord*)”, deliberately not confining the dependence to financial one. It is necessary to understand that in social milieu, the expression “dependence” is not confined to financial or physical one but means emotional one as well. In the case of ***Corporation of the City of the Nagpur vs The Nagpur Handloom Cloth Market Co. Ltd.***, AIR 1963 SC 1192, the Supreme Court held that the expression “family” has according to the context in which it occurs a variable connotation, which does not postulate existence of relationship by blood or marriage only, and rather even a single person or master-servant can also be regarded as a family, depending upon the context. Therefore, the dependence in the present case cannot be narrowly construed to exclude the gainfully employed sons of the respondent and his brothers from the scope of *bona fide* requirement.

13. More so, because the respondent/landlord has set up specific case that he and his brothers desire to expand their business by involving their sons. In the Indian society, a father desiring his children - be it daughters or sons



to join his business and grow the same further with their fresh blood is not something outlandish or infelicitous. Such a father cannot be told not to expand his business by involving his sons because for that purpose they would have to put their tenant's business to an inconvenience.

14. I am not convinced with the argument of learned counsel for petitioner/tenant that since the respondent/landlord did not disclose as to how they would use the subject premises, the requirement pleaded is not *bona fide*. As mentioned above, the respondent/landlord has categorically pleaded that he and his brothers are engaged in business as general merchant, which business they want to expand with the help of their sons and they need the subject premises for the purposes of storage of stock.

15. Going a step deeper, the eviction petition under Section 14(1)(e) of the Act cannot fail even for the reason that sons of the respondent and his brothers are gainfully employed in private jobs as alleged by the petitioner/tenant. The Supreme Court dealt with this aspect in the case of ***Raghunath G. Panhale (dead) by LRs vs Chaganlal Sundarji & Co., AIR 1999 SC 3864*** and held thus:

"It will be seen that the trial Court and the appellate Court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lock-out or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as contended by him and hence not entitled to an order for possession of the shop. This test, in our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get



*possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lock-out" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. **One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant.** It is not necessary for the landlord to adduce evidence that he had money in deposit in a Bank nor produce proof of funds to prove his readiness and willingness as in a suit for specific performance of an agreement of sale of immovable property. **So far as experience is concerned, one would not think that a grocery business was one which required extraordinary expertise.** It is, therefore, clear that the entire approach of both the Courts was absolutely wrong in law, and perverse on fact. Unfortunately, the High Court simply dismissed the writ petition filed under Article 227 stating that the findings were one of fact".* (emphasis supplied)

16. Then comes the last leg of challenge to the impugned order qua availability of the reasonably suitable alternate accommodation. The petitioner/tenant in his application for leave to contest alleged that one room on ground floor of the larger premises is lying vacant and the same can be used by the respondent/landlord for the purposes of storage of stock. In reply, the respondent/landlord categorically denied availability of any such vacant room. Despite that, the petitioner/tenant did not bring on record even a shred of reliable documentary material in support of his this averment. Merely on the basis of such bald averment if the parties are pushed into the churning and rigmaroles of full-dress trial, it would completely negate the



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principle underlying Section 14(1)(e) of the Act, which provides speedy remedy to a landlord for his *bona fide* need of the tenanted premises as he has no reasonably suitable alternate accommodation.

17. I am unable to find any triable issue in this case. There is no infirmity in the impugned order, so the same is upheld and consequently, the revision petition is dismissed.

GIRISH
KATHPALIA

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**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 01, 2024/as