



2024 : DHC : 420



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on: 18.01.2024+ **RC REV. 333/2019, CM APPL. 25232/2019****LAXMI NARAIN & ORS.**

... Petitioners

Versus

VISHAL MOONDHRA & ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Rambhakt Agarwal, Advocate.

For the Respondents : Ms. Ritu Sobti, Advocate.

CORAM:**HON'BLE MS JUSTICE TARA VITASTA GANJU****[Physical Court Hearing/ Hybrid Hearing]****JUDGMENT****TARA VITASTA GANJU, J.:**

1. The present Revision Petition has been filed by the Petitioners/tenants impugning the Order dated 24.11.2018 passed by the learned Administrative Civil Judge-cum-Additional Rent Controller (Central), Delhi [hereinafter referred to as "Impugned Order"] in respect to Shop/Room No. 14, Ground Floor, part of building/premises No. 3917, Roshan Pura, Nai Sarak, Delhi – 110006 [hereinafter referred to as "demised premises"].
2. By way of the Impugned Order, the Application for Leave to Defend/Contest filed by the Petitioners/tenants, has been dismissed



and the Eviction Petition filed before the Trial Court under Section 14 (1)(e) [hereinafter referred to as “Eviction Petition”] of Delhi Rent Control Act, 1958 [hereinafter referred to as the “the Act”] has been allowed.

3. Briefly the facts are, the demised premises forms part of the ground floor of building/premises No. 3917, Roshan Pura, Nai Sarak, Delhi. [hereinafter referred to as “subject building”]. The Respondents/landlords are three brothers who jointly own the demised premises and each of them reside on separate floors of the subject building with their wives and children.

3.1 The subject building contains four shops on the ground floor of which the demised premises is one. The Respondents/landlords have set out their requirement in the Eviction Petition which is to expand their respective businesses. It has been contended as follows:

(i) Respondent No.1, together with his spouse and two children, currently occupy a single room, one bedroom, and one kitchen/store located on the second floor of the subject building. The single room functions as the operational office for Respondent No.1, from wherein he runs his business of re-charge coupons and facilities for satellite television providers. Consequently, his family is compelled to reside in the remaining space, which is inadequate. It is argued that the premises in question are essential for the efficient operation



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of his business and to afford adequate living space for his children.

- (ii) It is stated in the Eviction Petition that Respondent No.2 along with his wife and child inhabit a single bedroom and a kitchen/store on the first floor, and a drawing room on the second floor of the subject building. Respondent No.2 requires to initiate a new venture focused on goods transportation, thus, necessitating a warehouse, for which the demised premises is sought.
- (iii) The spouse of Respondent No. 2 possesses qualifications as a Textile Designer and has aspirations to establish a boutique specializing in ladies wear, contributing to the family's financial support. The demised premises being in close proximity to her residence will enable her to operate the business while being next to the family.
- (iv) Respondent No. 3, together with his wife and twin sons, occupies the third floor of the subject building, consisting of one bedroom, one drawing room, one kitchen, and one store. Respondent No.3 is engaged in the trading of "SS Pipe Fittings," Respondent No.3 requires space for stock storage due to the nature of the business. While the business is currently conducted from another shop owned by Respondent No.3, the available space in that establishment is insufficient for adequately storing the inventory.



4. An Application for Leave to Defend/Contest was filed by the Petitioners/tenants [hereinafter referred to as “Application”], contending that *bona fide* need of Respondents/landlords is vague and unsubstantiated. The Respondents/landlords are already part of various business ventures, which can be used to satisfy their needs. Additionally, the subject building is a big *Haveli*, and, there is sufficient vacant space on the ground floor apart from the demised premises, hence, triable issues have been raised for grant of Leave to Defend.
5. By the Impugned Order, the Application was dismissed as the Trial Court held that no triable issues were raised by the Petitioners/tenants. It was held that the other business ventures which are stated to be owned by the Respondents/landlords including “Jaipur Golden Transport Co. Pvt. Ltd.” and “Moondhra Road Carriers” are stated to be the exclusive business venture of father of the Respondents/landlords, and Moondhra Road Carriers was shut down in mid-1980's, and the Petitioners/tenants did not place any document or evidence on record to the contrary. It was further held that so far as concerns the additional space available on the ground floor, it is open space/chowk and is not suitable for being used as shops.
- 5.1 Being aggrieved by the Impugned Order, the present Revision Petition has been filed by the Petitioners/tenants.
6. A Coordinate Bench of this Court had granted the Petitioners/tenants interim protection on 08.11.2019 subject to



paying monthly use and occupation charges at the rate of Rs.9,000/- per month equally to each of the Respondents/landlords. This Court had by its order dated 06.10.2023 further directed that the use and occupation charges shall be paid on or before 10th day of each calendar month during the pendency of this Petition.

6.1 After hearing arguments, both parties were directed to file their Written Submissions in the matter and judgement was reserved.

7. Learned Counsel for the Petitioners/tenants, has contended as follows:

- (i) The ground forming the basis of the Eviction Petition are vague and unsubstantiated. A duty is cast upon the learned Rent Controller to satisfy itself that the need of a landlord is genuine and *bona fide*. Reliance is placed upon ***Kempaiah v. Lingaiah & Ors***¹ to submit that the *bona fide* requirement has to be more than a “desire”.
- (ii) The Respondents/landlords have concealed they are involved in business ventures that are in the name of M/s Jaipur Golden Transport Co Pvt Ltd, and Moondhra Road Carriers. The Respondents/landlords have falsely claimed in their Reply to Leave to Defend that the Moondhra Road Carriers business was shut down in mid-1980s. The Petitioners/tenants have filed a photograph with the Revision Petition, claiming that the said business is still operational.

¹ (2001) 8 SCC 718



- (iii) Respondent No. 2's claim of factory closure related to pollution clearance is unsubstantiated. Thus, it has been falsely stated that his business has been closed and halted due to it, and no proof of the same has been given by the Respondents.
- (iv) The requirement as set up by the Respondent No. 2's wife of a proposed boutique and Respondent No. 3 of an Iron Pipes fitting businesses are not *bona fide*, since the premises are located at 'Nai Sarak' which is famous for books/books trading.
- (v) The Respondents' father has rented out commercial spaces 4 to 5 times the size of the demised premises during the proceedings. This fact has been admitted by the Respondents in their reply to Leave to Defend Application. Relying on ***Charan Dass Duggal v. Brahma Nand***², it is contended that while granting Leave to Defend, the properties owned by other family members are to be taken into account.
- (vi) The Petitioners/tenants have also relied upon a subsequent event of the death of the father of the Respondents/landlords to submit that the Respondents/landlords are engaged with their father's businesses and as such, after his death the Respondents/landlords would have multiple on-going business ventures. Thus, the need for demised premises to set

²1983 (1) SCC 301



up their businesses as averred, is not *bona fide* and amounts to requirement for additional accommodation.

- (vii) Additionally, the Respondents/landlords have recently acquired possession of the two unoccupied adjacent shops, in pursuance of Eviction Petition's filed. Reliance in this regard is placed on *Mohd. Ismail vs. Dinkar Vinayakrao Dorlikar*³ wherein it was held by the Supreme Court that if the *bona fide* requirement of the landlord gets satisfied pursuant to an subsequent event after the Eviction Petition is filed, it would be open for the tenant to amend his pleading and raise additional objections.

8. Learned Counsel for the Respondents/landlords, on the other hand has contended:

- (i) The relationship of landlord and tenant between the Petitioners and Respondents has not been disputed by the Petitioners, hence this aspect of Section 14(1)(e) of the Act stands satisfied.
- (ii) The Petition was filed for *bona fide* requirement of each of the three Respondents/landlords and for their own use and occupation for commercial purposes, since the demised premises is a shop on the ground floor in a market place.

³(2009) 10 SCC 193



- (iii) The requirements of each of the Respondents/landlords are set forth separately;
- (a) Respondent No.1 provides re-charge facilities pertaining to his satellite television customers and is currently using a part of his residence for this purpose. The ground floor is more suitable for him to shift his office in view of the fact that he has walk-in customers. Currently, Respondent No.1 operates from a room in his residence which can be freed up for use of his family. Reliance is also placed on ***Rajesh Jain v. Qazi Shamim Ahmed***⁴ to contend that a tenant cannot dictate to the landlord as to how he should manage his business affairs.
- (b) Respondent No.2 was earlier running his business from a rented premises and paying a rental of Rs.37,000/- per month. The rental deed has been attached as proof. However, since the business has been shut down due to its being a pollution generating venture, he requires to start new work for which the demised premises is requisite.
- (c) Respondent No. 2's wife is a qualified textile designer and would like to start her garment boutique from the ground floor to augment the family income. Reliance

⁴ 2015 SCC OnLine Del 9262



is placed on the judgment in the case of *Adarsh Electrical & Ors. v. Dinesh Dayal*⁵ to submit that even if a person has no income experience, a new business can be commenced.

- (d) Respondent No.3 has a business of SS Pipes and has the *bona fide* need to expand his business to settle his twin sons who are 23 years old. Relying on *Ghanshyam Dass v. Shakuntla Bakshi*⁶, it is contended that the landlord is entitled to assess his need and requirement for himself and his family members. Neither the Court nor the tenant can dictate terms to the landlord.
- (iv) The Respondents/landlords do not own any other commercial property except the demised premises and three shops adjoining to it in the subject building. All four shops on the ground floor are tenanted. Two of the shops have been vacated pursuant to order dated 05.02.2019 passed by a Coordinate Bench of this Court. Even thereafter, the requirement of the Respondents/landlords subsists as each of them require at least one shop.
- (v) In response to the averment of the Petitioners/tenants that there are businesses by the name of Jaipur Golden Transport, Moondhra Road Carriers etc. which were earlier being

⁵ 2010 SCC OnLine Del 3712

⁶ 2013 SCC OnLine Del 4310



operated by the father of the Respondents/landlords and thus, the contention that the Respondents/landlords requirement to expand their businesses is malafide, it is specifically contended that these businesses were operated by the father of the Respondents/landlords only and the Respondents/landlords have no connection or concern with these businesses. Further, in any event, Moondhra Road Carriers was shut approximately 40 years ago.

- (vi) The Respondents/landlords have also relied upon the judgment in the case of ***Gaya Prasad vs Pradeep Srivastava***⁷ to submit that the date for determining the *bona fide* need of a landlord is the date an Eviction Petition was filed and the death of the father of the Respondents/landlords is a subsequent event which cannot be considered for adjudication of the present Eviction Petition.
- (vii) Relying on ***Navneet Lal v. Deepak Sawhney***⁸ and ***M/s Megh Raj Roshan Lal v. Rashmi Jain***⁹, it is submitted by the Respondents/landlords that the Petitioners/tenants have failed to place on record any documents/material, *prima facie* in support of the contentions with regard to any of the aforesaid contentions.

9. The Supreme Court in the ***Abid-Ul-Islam v. Inder Sain Dua***¹⁰ while

⁷ AIR 2001 SC 803

⁸ 2010 (210) DRJ 346

⁹ 2013 SCC OnLine Del 4001

¹⁰ (2022) 6 SCC 30



relying on the judgment in the case of *Sarla Ahuja v. United India Insurance Co. Ltd.*¹¹ has clarified the scope and ambit of the proviso to Section 25-B(8) of the Act which is the power of Revision to be exercised by this Court. It has been held that the Legislature was very clear in its intent to consciously remove the right of two stages of appeal and replace it with the power of revision. The scope of interference has been confined to an error apparent showing absence of adjudication *per se*, in the absence of which, the High Court should not interfere with a decision of the Trial Court. It is further held in the *Abid-Ul-Islam* case that the suggestion of the High Court must be confined to the limited sphere that the order of the Rent Controller is in accordance with law and that the Rent Controller would have reached such a finding based on the facts involved, as follows:

*“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. **Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.**”*

[Emphasis supplied]

¹¹ (1998) 8 SCC 119



- 9.1 This Court is thus required to see if the findings of the learned Rent Controller are in accordance with law.
10. The grievance of the Petitioners/tenants before this Court in the present Revision Petition is that triable issues were raised by the Petitioners/tenants before the Trial Court which were not adequately dealt with. The Petitioners/tenants have relied on the *Charan Dass* case in this regard.
- 10.1 In addition, the Petitioners/tenants have relied upon two subsequent events to contend that in view of these events, Leave to Defend ought to have been granted by the Trial Court.
- 10.2 In the first instance, it has been contended that the *bona fide* need of the Respondents/landlords does not subsist any longer since two additional shops on the ground floor of the subject building have become available to the Respondents/landlords after the filing of the Eviction Petition.
- 10.3 Secondly, it has been contended that the Respondents/landlords' father had various businesses and after his demise these businesses would be run by the Respondents/landlords, thus, the need for the demised premises does not subsist.
11. The provisions of Section 14(1)(e) of the Act provide that three essential ingredients be satisfied for an order of eviction:
- (i) Existence of relationship of landlord/tenant between the parties;



- (ii) A *bona fide* requirement exists for the landlord and/or the members of his family dependent on the landlord; and
 - (iii) Non-availability of an alternate suitable accommodation.
12. The demised premises were taken on rent by the Petitioner No.1 herein in the year 1965 from the predecessor-in-interest of the Respondents/landlords. As stated in paragraph 8(i) above, this fact has not been disputed by the Petitioners/tenants.
- 12.1 What has instead been challenged by the Petitioners/tenant is that alternate accommodation is available, and the need is projected by the Respondents/landlords, is not *bona fide*.
13. The *Gaya Prasad* case has held that crucial date for considering the *bona fide* need of the landlord is the date the petition was filed. Reliance is placed on the following extract:

“10. We have no doubt that the *crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction.* The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. *If every subsequent development during the post-petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists...*”

11. *We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of petition. In Ramesh Kumar vs. Kesho Ram a two-Judge Bench of this Court (M.N. Venkatachalia, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately*



in consideration of subsequent events provided such events had an impact on those rights and obligations....

[Emphasis Supplied]

13.1 Admittedly, at the time of filing of the Eviction Petition, there was no other commercial accommodation available with the Respondents/landlords that was suitable for their respective businesses.

14. The contention of the Petitioners/tenants is, however, that two other shops on the ground floor of the subject building have been vacated and now the *bona fide* need, for the demised premises no longer subsists.

14.1 Usually, the *bona fide* need of a landlord is required to be substantiated at the time of filing of the Petition. However, if a subsequent event significantly eclipses the *bona fide* need, it will be required to be taken into account. This principle is supported by the decision in *Gaya Prasad* case which states:

“13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three-Judge Bench of this Court in Pasupuleti Venkateswarlu v. Motor and General Traders [(1975) 1 SCC 770] which pointed to the need for remoulding the reliefs on the strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then: (SCC pp. 772-73, para 4)

“We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities,



the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.”

[Emphasis Supplied]

- 14.2 The Supreme Court in the *Gaya Prasad* case relying on the *Pasupuleti Venkateswarlu v. Motor and General Traders*¹², has however cautioned that in the field of rent control litigation, cognizance of subsequent events should be taken with care so that the rules of fairness are available to both parties.
- 14.3 Since the process of litigation is slow, by the time the litigation reaches its final stages, there are likely to be several subsequent events. However, only some are ‘subsequent’ events of such nature, that would completely overshadow the genuineness of a landlord’s requirement.
- 14.4 The need as set forth in the Eviction Petition by the Respondents/landlords, who are three brothers, is that each of them requires one or more shops. Each of the three Respondents/landlords are doing separate businesses and have set up a need for their respective businesses which is set forth in paragraph 3.1 above. The demised premises can, at best, cater to the requirement of one of the Respondents/landlords only. Even after taking into consideration the availability of two additional shops (the subsequent event), the need of the Respondents/landlords is not fulfilled - at least not without the demised premises.

¹² (1975) 1 SCC 770



15. In the present case, the other subsequent event sought to be raised by the Petitioners/tenants is that since the father has passed away, the businesses belonging to the father have been inherited by the Respondents/landlord and thus, they do not require the demised premises to start/further their respective businesses.
- 15.1 However, the Petitioners/tenants have not submitted that how the passing away of the father of the Respondents/landlords would automatically diminish the requirement of the Respondents/landlords need for the demised premises.
- 15.2 A specific reference has been made by the Respondents/landlords to each of the businesses titled "Moondhra Brothers"; "Jaipur Golden Transport Co." and "Moondhra Road Carriers" in their pleadings to contend that they have no concern with these businesses. It has been reiterated in the written submissions as follows:

*“6.2 **Moondhra Brothers** at 487, Katra Asharfi, Chandni Chowk, Delhi-6 [Pg.111 at Para 15 of Affidavit of Petitioner/Tenant No.2] Gauri Shankar Moondhra, Madan Lal Monndhra & Sanjeev Moondhra are partners of Moondhra Bros [Pg-251 at Para 15 of counter Affidavit of Respondent No.1 of PDF file TCR]. Partnership Deed of Moondhra Bros dtd 1.4.1997 was filed by the Respondents [Pg. 383 of the PDF file of TCR].*

*6.3 **Jaipur Golden Transport Co.** [Pg. 111 at Para 16 of Affidavit of Petitioner/Tenant No.2]. Exclusive business endeavour of Respondents' father [Pg. 253 at Para 16 of Counter Affidavit of R -1]. Respondents have no concern with Jaipur Golden.*

*6.4 **Moondhra Road Carriers** [Pg 113 at Para 17 of Affidavit of Petitioner No.2] . Exclusive venture of Respondents' father when Respondents were minors, which was shut in mid 1980 [Pg 255 at Para 17 of Counter Affidavit of R-1].”*



- 15.3 The Respondents/landlords have thus contended that they have no concern with either of these businesses and specifically set out that these businesses were being run by other persons and that one of these businesses was shut 40 years ago.
- 15.4 The Petitioners/tenants have, along with their written submissions annexed a photograph which is stated to be of the year 2016 showing a '*sign Board/banner*' with the name of Jaipur Golden Transport Company and Moondhra Road Carriers to submit that if the Respondents/landlords had nothing to do with these businesses, then why would the '*sign Board/banner*' still exist.
- 15.5 A bare perusal of the '*sign Board/banner*' shows that the same appears to be an old one. No explanation has been provided by the Petitioners/tenants as to why these documents were not placed before the Trial Court, if these pertain to the year 2016. In any event, this cannot be said to '*obscure*' the requirement of the Respondents/landlords.
- 15.6 Thus, applying the principles as laid down by the Supreme Court in the ***Gaya Prasad*** case and ***Pasupuleti*** case, the subsequent events are not of such a nature which '*eclipse*' the need of the Respondents/landlords.
16. In these circumstances, even after considering the subsequent events, no case has been made out for setting aside the Impugned Order.



17. The contention raised by the Petitioners/tenants relying on the ***Charan Dass case*** that the properties of family members that is the father of the Respondents/landlords must be taken into consideration while assessing *bona fide* need is also misconceived. The facts in the ***Charan Dass case*** were completely different. In the said case, properties mentioned belonged to the wife of the landlord and were available to the landlord for his use. It was in that context that the Supreme Court held that since the landlord has additional properties available, his need was not *bona fide*.
18. In view of the foregoing discussions, the Respondents/landlords have been able to demonstrate that a *bona fide* requirement for the demised premises still exists. This Court, thus, finds no reason to interfere with the Impugned Order.
19. The Petition is accordingly dismissed. Pending Application also stand closed.

TARA VITASTA GANJU, J.

JANUARY 18, 2024/r