

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

+ R. C. Rev. No. 102/2012

Date of Decision: 21.12.2012

PRAHLAD RAI MITTALPetitioner
Through: Mr.Yash Pal Ahuja, Adv.

Versus

SMT. RITA DEVIRespondent
Through: Mr.B.L.Chawla, Adv.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J.

1. The present revision petition is filed under Sec. 25B(8) of the Delhi Rent Control Act, against the Order passed by Ld. ARC, Central District, Delhi dated 05.09.2012 in Eviction Petition No. E-70/2010 dismissing the application for leave to defend. The brief facts giving rise to this petition are as follows.
2. The respondent herein filed an eviction petition on the ground of bona fide requirement, stating that she is the owner of the property bearing no. 3987/88, Kaseru Walan, Pahar Ganj, New Delhi, by virtue of the sale deed dated 01.04.1994 as she purchased the same from its pervious owner Smt. Maya Devi Jain. The suit shop is

situated on the ground floor and forming part of the property bearing No. 2987/88, Kaseru Walan, Pahar Ganj, New Delhi is shown in red in the site plan placed on record before the Ld. ARC. The suit shop was let-out to the petitioner herein for non-residential purpose by the erstwhile owner.

3. In the eviction petition, the respondent submitted that she bona fide requires the shop to settle her son Vipul Gupta and that she has no other reasonably suitable accommodation available to her. She also submitted that the shop in question was lying locked since the beginning and that the electricity connection also stands disconnected on account of closure of premises. The rent of the shop was Rs. 33/- per month excluding other charges, which was paid by the petitioner to the respondent upto 31.03.2004, after which it was alleged that no rent was paid.
4. In the leave to defend application, the petitioner herein stated that the respondent may be put to strict proof of the ownership of the suit shop. He also submitted that the rate of rent was Rs. 35/- per month and he has been paying it regularly. It was also alleged that various property dealers have approached and asked him to vacate the suit shop as the respondent intended to dispose the entire building. He has also alleged the respondent to be owning various properties as given under:

*a. Property No. 3987 (first, second and third floor),
Kaseru Walan, Pahar Ganj, Delhi – 110055, which is*

situated above the suit shop and has been let out to M/s. Hotel Orient Palace Dlx.

- b. Property No. 3984, 3985 and 3986, which is adjoining the demised shop, consisting of (ground, first, second and third floor), and also property no. 451, 452 & 453, at Kaseru Walan, Pahar Ganj, Delhi -110055, which are also let out to M/s. Hotel Orient Palace Dlx. and Hotel Crown Plaza respectively.*
- c. Shop. No. 2440, Gali No. 10, Beadon Pura, Karol Bagh, New Delhi, which is being run by the respondent and her family members in the name of M/s. Apsara Silk Emporium.*
- d. Shop No. 5/30, WEA Ajmal Khan Road, Karol Bagh, New Delhi, from where the respondent and her family members are carrying on their business of whole seller of designer sarees, dupattas and lenghas by the name of M/s. Apsara Creations.*
- e. Shop No. 15-A/23, WEA Ajmal Khan Road, Karol Bagh, New Delhi, Opp. Titan Watch Co. from where the husband of the respondent and her son Sh. Vipul Gupta are doing business of special designer sarees, suits, duapattas and lenghas by the name of M/s. Apsara Silk Emporium.*
- f. Property no. 5/30, WEA Saraswati Marg, Karol Bagh, New Delhi from whereby the respondent and her family members are running a hotel by the name of Baba Continental.*
- g. Property no. 104, Vivekanad Puri, Sarai Rohilla, Delhi, owned by the respondent and her family members, which is located in the locality having mixed land use and from where also the respondent and her family can run any business.*

5. The petitioner placed on record, photographs of the properties as well as business cards and even a photograph of the respondent's son sitting in one of the aforementioned shops. The petitioner also

contended that the respondent has not stated what kind of business she intends to start for her son from the suit premises. He submitted that respondent's son is already devoting full time in the business of Silk Emporium at the shop situated in Ajmal Khan Road, Karol Bagh, besides participating in other businesses of the family. Finally, it was also contended that the respondent and her family members have recently sold a property bearing No. BB/67, Nabi Karim, Pahar Ganj, New delhi.

6. The respondent in her reply to the leave to defend application submitted that she did not have any concern with the properties owned and possessed by other family members. In her counter-affidavit, she submitted the following details regarding the properties, which were alleged to be held by her:

- a. Property nos. 3987 and 3988 are owned by the respondent but, no portion of the said property was available to her to settle her son.*
- b. Property nos. 3984, 3985 and 3986 belong to Smt. Vaishali, W/o. Sh. Vijay Kumar, and she has no concern with it.*
- c. Shop no. 2440, Gali No. 10, Beadon Pura, Karol Bagh is owned by Smt. Angoori Devi, W/o. Sh. Nathu Ram; Shop no. 5/30 WEA, Ajmal Khan Road, Karol Bagh belongs to Sh. Vijay Kumar who is doing the business of Apsara Creations and she has no concern with these properties.*
- d. Shop no. 15A/23, Ajmal Khan Road, is being run by her husband.*
- e. Property no. 5/30 WEA Saraswati Marg, Karol Bagh is owned by Sh. Om Prakash and Sh. Vijay Kumar and not available to her.*

- f. Property no. 104, Vivekanad Puri, Sarai ROhilla, is a residential house and is owned by Sh. Om Prakash and Sh. Vijay Kumar and is not available to her.*
- g. Property No. BB/67 Nabi Karim, Pahar Ganj belongs to Sh. Nathu Ram who lives separately from his sons.*

She also submitted that the nature of the business to be started by her son shall be decided by him on the availability of the premises.

7. Being conscious of the nature and scope of the revisional power of this court under Section 25-B(8), it may be reiterated that when, from the averments as set up in the eviction petition as also the leave to defend application, and the reply filed by the landlord thereto, there appears something on record, requiring to see as to whether the Controller passed the order according to law and rightly examined, evaluated and adjudicated upon the projected need of the respondent of the tenanted premises, this court may peruse the records to ascertain whether any illegality has been committed by the Controller in passing the order under Section 25-B of the Act. It must also be noted that the object behind the rent laws is to strike a balance between the rights of tenants and the landlords. More so in cases where the landlord possesses properties other than the suit premises. While it is settled position of law that the landlord is the best judge of his own requirements, and neither the courts nor the tenant can dictate terms to him, it cannot be said that everything the landlord states should be taken as gospel truth. Keeping this in mind, I have considered the contentions of the learned counsel for the parties and perused the record including the impugned order.

8. The learned ARC in deciding the matter identified three four issues, namely, (i) ownership of the suit premises; (ii) purpose of letting; (iii) alternative accommodation and (iv) bona fide requirement. With respect to the first and second issues, the learned ARC observed that the petitioner has not disputed the relationship of landlord-tenant between the parties. From the Sale Deed dated 08.04.1994 placed on record by the respondent as well as a letter dated 22.04.2010, wherein the petitioner has admitted that the respondent is the owner of the property, the learned ARC recorded the respondent to be the owner of the suit premises. Based on the facts and the law laid down by the Apex Court in **Satyawati Sharma v. Union of India**, III (2008) SLT 553, the learned ARC has decided the first and second issues in favour of the respondent, and I do not see any infirmity with his reasoning in deciding these two issues.
9. With regard to the third and fourth issues concerning alternative accommodation and bona fide requirement, the learned ARC, on the basis of the affidavit and counter affidavit has held that the petitioner herein had failed to bring anything on record to show that the respondent is owner of any of the property except the property in question, as stated by him in his affidavit. The learned ARC has also observed that the photographs do not conclusively prove the capacity in which the respondent's son is sitting in the chair in one of the shops. With regard to petitioner's contention that the

respondent has not revealed the nature of business intended to be set-up by her son, the learned ARC held that it is not necessary that a landlord has to tell what business he wants to start in the tenanted shop as he is free to start any business. He has relied upon the decisions of this Court in the case of **Rajender Kumar Sharma & Ors. v. Leela Wati and Ors.**,¹⁵⁵ (2008) DLT 383; and **Ram Babu Aggarwal v. Jay Kishan Das**, 2009 (2) RCR 455. I find that the learned ARC has prematurely decided the issues regarding alternative accommodation and bona requirement.

10. Firstly, it is imperative to observe that the learned ARC has misapplied the decisions of the above mentioned cases to the factual matrix of the case at hand. In the case of **Rajender Kumar Sharma & Ors. v. Leela Wati and Ors.**, (supra), it was held:

“Mere assertions made by a tenant in respect of landlord’s ownership of other buildings and in respect of alternate accommodation are not to be considered sufficient for grant of leave to defend. Only those averments in the affidavit are to be considered by the Rent Controller which have some substance in them and are supported by some material.”

11. I am of the opinion that the learned ARC has overlooked the fact that a detailed list of properties held by the respondent was placed on record by the petitioner. He also submitted photographs as well as business cards of the business carried out by her son. Once such evidence has been placed on record, it cannot be called a bald assertion and the merit in such claims can only be examined by

adducing additional evidence in furtherance of the contentions of either parties.

12.It is important to note that burden is placed on the landlord to prove that his need is a bona fide one, moreso, when he has other alternate accommodations in his possession. The Apex Court in **Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta**, (1999) 6 SCC 222, has held:

“If a landlord wants to get a property from a tenant despite his having in his possession another property, the Court can justifiably require the landlord to justify his decision to do his business only from the property from which the tenant is sought to be evicted.”

13.Further, in **S. M. Mehra v. D. D. Malik, Civil Appeal No. 120 of 1990, decided on 11.01.1990**, it was held:

“Whether the landlord required additional accommodation or not could be properly determined only by granting leave to contest the eviction petition to the tenant and there was no need to take a summary procedure.”

14.If in the process of the landlord trying to prove his bona fide requirement, the tenant is able to raise any triable issue then the court has to allow the leave to defend application. By allowing the leave to defend application, an opportunity is being given to the tenant to try and test the contentions of the landlord. It is obvious that on mere assertion of the tenant leave cannot be granted, but if the tenant is able to bring about certain issues which need to be

examined then the rent controller is bound to allow him the leave to defend.

15. It is also observed that the respondent has not mentioned the nature of business intended to be set-up by her son. The Ld. ARC held that it was not imperative for the landlord to disclose the nature of business he intends to start, placing reliance upon the decision in **Ram Babu Aggarwal v. Jay Kishan Das**, (supra). I find that the ratio of this case does not apply to the factual matrix at hand because in the *Ram Babu Case*, the issue was whether a son who has been employed in his father's textile business can now set-up a footwear business in the tenanted business without prior experience. The Court in the abovementioned case held that the lack of prior-experience is not a bar for a landlord to start a new business. There is also no dispute that it is not open for the Court or the tenant to dictate what the landlord must do with his premises, but, at the same time, the landlord is required to demonstrate that the projected need of tenanted premises is genuine and authentic, and is not his mere wish and desire. It is not the subjective decision of the landlord alone, which would entitle him straight eviction order against the tenant, but the objective assessment by the Controller of the bona fide requirement of the landlord. It is not that whatever landlord would say, in every case, would be taken to be as gospel truth. If that was so, then, on the mere asking of every landlord that he needs the premises for doing his business and he is the judge and

master of his decisions and choices, the statutory protection afforded to the tenant, would become meaningless. That is not the intent of the legislation. The applicability of above proposition is only after the landlord is able to demonstrate that his assertion of requirement of the tenanted premises is authentic and genuine. If he is able to show and demonstrate so, then certainly neither the tenant nor this Court could dictate terms upon him as to how and in what manner he should utilize his premises. The projected requirement of the tenanted premises, based on his subjective decision, is required to be tested by the Court.

16. The Apex Court has in the case of ***Charan Dass Duggal v. Brahma Nand***, (1983) 1 SCC, 301, has specifically held that the burden is on the landlord to prove his personal requirements:

“4. When landlord seeks possession for personal requirement he has to prove his present need. If he has any premises in his possession he must allege and prove why that is not sufficient for his present use, or why he has to shift to the premises of which he seeks possession.”

In the instant case, while it might not be necessary for the respondent to reveal the nature of the business she intends to set-up for her son, it is imperative for her to establish the need for setting up a business for her son. The merits in these claims cannot be decided summarily.

17. In view of my above discussion and keeping in view the above legal propositions, as noted above, it could be seen that the petitioner has been able to raise prima facie, triable issues regarding alternative accommodation available with the respondent as also her bona fide requirement of the suit premises, which seem to have been overlooked by the learned ARC, and which could not be prematurely decided, without the adjudication by way of evidence and not merely on the affidavits of the parties. As such, the petitioner cannot be thrown out of the tenanted premises at the threshold, at least till the time the respondent is able to make out his case of bona fide requirement of the tenanted premises, after opportunity is afforded to the tenant to test the same. I strongly feel the impugned order suffering from infirmity which has resulted in miscarriage of justice to the petitioner. Thus, the impugned order is liable to be set aside. The petition is allowed and the leave to contest is granted to the petitioner. The parties are advised to appear before the learned ARC on 16.01.2013 for further proceedings.

M.L. MEHTA, J.

DECEMBER 21, 2012

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