

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

+ R.C. REV. 493/2011

Date of Decision: 28.09.2012

HARSUKH DAS BHAGWANDAS & ANR Petitioners

Through: Mr. A.P.S. Ahluwalia, Sr. Adv.
with Mr. S.S. Ahluwalia, Adv.

Versus

BRAHMALATA SHARMA Respondent

Through: Mr. Sonal Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition under Section 25-B(8) of DRC Act (for short 'the Act') assails order dated 03.11.2011 of Additional Rent Controller (ARC), North, whereby leave to defend application filed by the petitioners, in the eviction petition filed by the respondent, was dismissed.

2. The petitioner No. 1 is a partnership firm with petitioner No. 2 as one of its partners. The partnership firm is a tenant in respect of part of the Ground Floor bearing Municipal No. 5624, Katra Jamun, Nai Sarak, Delhi-110006 where the firm is doing its business. The respondent claiming herself to be owner/landlady, filed eviction petition against the petitioner partnership firm on the ground of

bonafide requirement thereof by her for carrying on business by her husband, who is carrying on wholesale business of cloth on the first floor of the same premises. It is averred by the respondent that her husband wanted to expand his business, which he could not, due to paucity of space and because of his age of about 62 years, due to which he has difficulty in climbing the stairs. It is averred that his customers also feel difficulty to climb the stairs to reach his shop. It is averred that they do not have any other reasonably suitable commercial space and even otherwise the tenanted premises being on the ground floor, is more suitable for business purpose.

3. The petitioners filed leave to contest the application on various grounds. It is averred that the present accommodation of the respondent on the first floor, as also other accommodation in the same premises, is sufficient. It is alleged that the respondent and her other family members also have property bearing No. 5519, First Floor, Gali No. 74, Regarpura, Near Tank Road, Karol Bagh, New Delhi-110005 where husband and son of the respondent are doing their business for the last more than 10 years. It is next averred that the respondent and her husband also have share in commercial property No. 4292, Gali Bhairon, Nai Sarak, Delhi and are holding possession of part of the said property. It is also the petitioners' case that the respondent has two rooms in the basement, just below the tenanted premises. One out of these two basement rooms is lying vacant and about which the respondent has not disclosed. It is also alleged that a few years back, the respondent had let out one room of property No. 5624, Katra

Jamun to one Vinod Aggarwal and has not chosen to seek his eviction if at all she required the commercial space on the ground floor. It is also alleged that adjoining to the shop of the respondent's husband on the first floor, there is one shop in the possession of Rohtas Singh, but the petitioner has not sought his eviction, despite the fact that it was more suitable for expansion of business. It is also averred that stairs leading to the first floor are of little height and the husband of the respondent being quite healthy he and the customers cannot have difficulty in climbing. It is also his case that the shop in property No. 5624 has two portions. The inner portion is owned by the petitioners, and that if they are evicted from the tenanted shop, they would not have any access to their inner shop and thus, shall suffer irreparable loss. In this regard, however, it is also their case that there is a passage between the tenanted shop and the petitioners' shop, which is the only way to enter into their shop located on the inner side of the tenanted shop.

4. In reply to the application, the respondent has denied the pleas and assertions made by the petitioners and has reiterated hers. Some of the properties which are allegedly owned by the respondent, have also been explained by the respondent, as to be either not owned by her or her family members or to be not suitable for their requirement.

5. Before advertng to the submissions of the learned counsel for the petitioners as also for the respondent, I may, at the outset, reiterate about the nature and scope of the revisional power of this Court under Section 25B(8) of the Act. It is trite that this power is supervisory in

nature and is intended to ensure that Rent Controller conforms to the law when he passes the order. The provision is confined to the limited sphere that the order of the Controller is according to the law. In exercise of this power it is only to be seen as to whether any illegality has been committed by the Controller in passing the order under Section 25B of the Act. It is not permissible for this Court in that exercise come to a different fact finding, unless the finding arrived at by the Controller, on the face of it and on the facts, is so unreasonable that no Controller should have reached such a finding on the material available on record.

6. With regard to the plea that the respondent has two shops in the basement, and one of which is in her possession and she has not sought eviction of the tenant in possession of the other shop in the basement, the response of the respondent is that one basement portion was sold by her in the year 2001 to the knowledge of the petitioners. With regard to the second portion of the basement, it is her case that it is in the tenancy of one Ramesh Goel since 1980. This remained uncontroverted and un-assailed by the petitioners.

7. With regard to the plea of the respondent and her husband owning commercial space at 4292, Gali Bhairon, Nai Sarak, the response of the respondent is that this property is owned and occupied by the ancestors of her husband and is only residential.

8. With regard to the plea of the respondent having let out one shop on the ground floor of the said premises to Vinod Aggarwal, the

respondent stated that this was let out to Vinod Aggarwal in March 1996 and since then it is in his occupation.

9. With regard to the plea that the husband of the respondent is in possession of property at Regarpura, where he is doing business with his son, it is categorically stated by the respondent, and which is not controverted, that it is in possession of her son Naveen Sharma where he is carrying on his business in the name of M/s Iceberg Company as its sole proprietor.

10. With regard to the plea that the respondent has not sought eviction of the ground floor shop in possession of Vinod Aggarwal and the first floor premises in possession of Rohtas Singh, the submissions of the respondent is that the first floor portion in possession of Rohtas Singh is not suitable for the business and that in any case, the tenanted premises is more suitable than the first floor or the portion in possession of Vinod Aggarwal. In this regard, it is also the submissions of the learned counsel for the respondent that the tenant cannot dictate terms upon the landlord as to which of the premises owned by her is to be more suitable for their requirement.

11. The learned ARC has dealt with each and every property, as noted above, to assess the bonafide requirement of the respondent.

12. In the case of **Viran Wali Vs. Kuldeep Rai Kochar, 2010 IX AD Apex, Delhi 536** it was held that the owner/landlord cannot be at the mercy or dictates of the tenant for running his own business in the property owned by him. It is well known fact that shop situated on the

ground floor is more convenient than the shop in the basement and even for that matter on the first floor. The landlord/owner has all the rights and choices to start his own business in the premises which is more suitable and convenient to him if the bonafide of the landlord is established.

In *Virawali* (supra) it was also held as under:

“38. The concept of alternate accommodation means that accommodation which is "reasonable suitable" for the landlord. As to alternative accommodation disentitling the landlord to the relief of possession, it has been held time and again that it must be reasonably equivalent as regards suitability in respect to the accommodation he was claiming. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the RCR No.124/2010 Page 19 of 26 landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. As long as the landlord is able to establish that he in good faith and genuinely wishes to occupy the premises in possession of the tenant and that good faith or genuineness is of a reasonable man, it would not be open to the Controller to weigh the claim of the landlord in a fine scale and that the viability of the other accommodation will have also to be considered from the stand-point of a reasonable landlord. It is further to be observed that the law does not require the landlord to sacrifice his own comforts and requirements merely on

the ground that the premises is with a tenant and for deciding whether or not the alternative accommodation available to the landlord is suitable or not, the social customs, conventions and habits, usage and practices of the society cannot be completely ruled out and termed as irrelevant. The problem had to be approached from the point of view of a reasonable man and not that of a whimsical landlord.”

13. Admittedly, the tenanted premises is situated on the ground floor. It has been categorically stated by the respondent that she is not in possession of any portion on the ground floor or in the basement. Though, there is none, but even if it is assumed that some portion in the basement is available, as alleged by the petitioners, the respondent cannot be forced to work from the basement, when she can get the tenanted premises evicted which is more suitable, being on the ground floor, for running the business.

14. It is true that the respondent and her husband owned two basements shops on the ground floor, but one of those shops had already been sold in the year 1981 and the other one is in the tenancy of Ramesh Goel since 1980. One of the shops on the ground floor is also in the tenancy of Vinod Aggarwal and one shop on the first floor in the tenancy of Rohtas Singh. In view of the above, the plea that the respondent's projected requirement of the tenanted premises is not bonafide when she could have got evicted her shops from her tenants Vinod Aggarwal on the ground floor and Rohtas Singh on the first floor, is devoid of any merit and thus, untenable. The plea that the

stairs leading to the first floor are small and neither the husband of the respondent nor the customers can have any difficulty in climbing up to first floor, also has no force inasmuch as, as noted above, any business being run from the ground floor of the premises obviously may attract more customers than the business being run from the first floor. Even otherwise, the tenant cannot dictate the landlord as to how and in what manner he should use her own property. The age of the husband of the respondent being about 62 years is not disputed. It is a ground reality that a person of this age would certainly feel more comfortable and convenient to do his business on the ground floor than on the first floor.

15. The plea that the petitioners own a shop which is in the inner side of the tenanted shop and in the event of their being evicted, they would not have any access to their own shop, is entirely extraneous. An inconsistent plea to this has also been taken that there is a passage between the tenanted shop and their inner shop and they can have access through that passage only. Existence of passage has been categorically denied by the learned counsel for the respondent. During the course of arguments, however, it was stated by him that though it is not the concern of the respondent, but in the event of the respondent succeeding in getting the petitioner evicted from the tenanted premises, she may make a provision for access to the shop of the petitioner. Though, this is not in the domain of the Controller or this Court to see the convenience of the tenant in the case of respondent establishing

bonafide requirement of the tenanted premises, but, a mention of this has been made as it came up during the course of arguments that if the petitioner suffers loss on account of non-availability of access to their shop, the respondent would make provision of access thereto.

16. In view of my above discussion, I do not see any infirmity or illegality in the impugned order of ARC, warranting any interference by this Court. The petitioner has no merit and is hereby dismissed.

M.L. MEHTA, J.

SEPTEMBER 28, 2012/awanish