

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

**Date of Decision: 30.05.2014**

+ **C.R.P.No.149/2013**

SH HANIF SOLANKI ..... Petitioner  
Through: Mr. Piyush Prabhakar, Adv.

Versus

SH. BABU LAL ..... Respondent  
Through: Mr. J.C. Mahindroo with  
Mr. Ankur Mahindroo, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

% **MR. JUSTICE NAJMI WAZIRI**

1. The present petition impugns an order dated 30.4.2013 which directs eviction of the petitioner from a shop bearing No. 968 Gurudwara Road, Kotla Mubarkpur admeasuring 3'x6'. The respondent's petition under Sections 14(1)(e) and 25 B of the Delhi Rent Control Act was allowed while denying the petitioner's/tenant's leave to defend application. Counsel for the petitioner argues that the Trial Court fell into error in not considering certain triable issues raised in the leave to defend, such as the petitioner had not come to the Court with clean hands and had suppressed the material facts that the two shops in the same building were being run by his two sons who

were under the supervision of the landlord and the owner of the property No.969, Gurdwara Road, Kotla Mubarakpur and property No. C-74, Shiv Gali, Nanak Chand Basti, Kotla Mubarakpur from where he is receiving a huge rent and another shop lying vacant adjoining to the shop of the tenant; that the eviction petitioner had merged another shop admeasuring 5'x8' into the shop run by Sh. Raj Kumar, his son; that the tenant would be put into severe hardship if he is evicted from the premises since he has no other premises from where he could run his business. He also disputed the site plan filed by the landlord. In reply, all rights, title and interest in property No. 969 Gurdwara Road, Kotla Mubarakpur were categorically denied by the landlord. It was admitted that C-74, Shiv Gali, Nanak Chand Basti, Kotla Mubarakpur comprising about 40 sq.yds. was in possession of the tenants, therefore the same could not be taken into consideration as alternate accommodation. Another shop having an area of 2.6'x2.6' was considered too small and unsuitable for the commercial activities proposed. It was further denied that one shop was merged into the shop of Raj Kumar. The landlord further stated that in total there are five shops on the ground floor of the property out

of which one shop was in the possession of Santosh Jindal and another in possession of the Anil Kumar. The third shop measuring 4.10'x4' had been sold long ago to one Sh.Trilok Chand due to paucity of funds as well as lack of space the bonafide need could not be fulfilled. It was submitted that the suit shop and the fourth shop were tenanted premises and fifth one was so called adjoining shop admeasuring 2.6'x2.6'. The petition was filed on the ground that the petitioner was 73 years of age and that he has five sons one of whom aged 45 years old suffered from 80% permanent physical disability while the two other sons aged 40 years and 37 years respectively suffered from mental disability of autism. Hence they were totally dependent upon their father and the meagre income from rent of the two shops was woefully insufficient for their maintenance. The petitioner had contended that his two other sons had separated themselves from the petitioner leaving the latter to fend for himself and also to take care of his three disabled sons. That the tenanted premises were required to run/start small scale business of mobile repairing as which would not require much investment. The petitioner did not conceal the dismissal of an earlier civil suit seeking possession of the premises hence the

eviction petition was filed on bonafide ground. After perusing the records with respect to the physical disability and considering the age of the petitioner being over 73 years, the Court came to the conclusion that the need of the petitioner was genuine and the age cannot be a bar to deny the persons need or doubt his ability to work. It rejected the arguments of the tenant that a person of 73 years of age cannot work. Neither could non-experience of a business be considered a disqualification for venturing into that field. The Court reasoned that the need for tenanted premises has to be weighed in the light of the proposed business which he intends to do and that it is neither for the Court nor the tenant to dictate the landlord in the context of his age as to which type of business the landlord should engage himself in. The Court also relied upon the fact that landlord is the best judge of his requirement and has complete freedom of choice in the matter who can know the suitability of the premises for making out the case for a bonafide need. The Court relied upon the ratio of judgment in ***Ragavendra Kumar vs. Firm Prem Machinery & Co., AIR 2000 SC 534***, accordingly found no triable issue with respect to the bonafide need being in doubt considering the advanced age of the petitioner and

his lack of experience in the intended field of business with respect to the alternate suitable accommodation, the Court found that property is already in the occupation of the tenants which could not be considered as being available to the landlord and such property would not be considered to be an alternate accommodation. It relied upon ***Rajender Kumar Sharma vs. Leela wati, 155 (2008) DLT 383*** which held that mere assertions by a tenant apropos landlord's ownership of other buildings and in respect of alternate accommodation cannot be considered an exceptional ground to grant leave to defend. The Court must *prima facie* some substance in such contentions supported by some material. In the absence of which, it would not be considered as a triable issue. The Court rightly considered that space of 2.6'x2.6' by any stretch of imagination cannot be considered as sufficient space for carrying on any business and that the petitioner merged another shop measuring 5'x8' with the shop run by Raj Kumar it could not be said that the said space was available with the petitioner. This Court is of the view that apart from a bald averment to the effect in the absence of any site plan to show which area was available in the first instance and with which shop it was merged. It could not be concluded that such

additional space of 5'x8' was available to the landlord. The Trial Court rightly concluded that there was no triable issue made on this ground.

2. Learned counsel for the petitioner traversed virtually the same arguments as were raised before the Trial Court and contended that the need which could neither be bonafide and that alternate accommodations were available to the landlord, however which are thus alternate accommodations has not been substantiated before this Court to show as to where the Trial Court has erred in coming to the conclusion arrived at. The grounds seeking setting aside by modification of the impugned order do not specify the alternate property which could be deemed to be available to the respondent/landlord. Special emphasis was laid upon the advanced age i.e. 73 years of the landlord therefore it was argued that it could not be considered. It was specially emphasised that since the landlord was 73 years old, there was no special reason for starting new business all of a sudden. This ground is vague and untenable. The Court finds that age cannot be a limiting factor or detriment in the endeavour of the human beings. There are instances of people being healthy at that age and with the

advancement and availability of medical care has provided longevity to human beings. People are known who are carrying on business to manage their affairs by themselves or with the assistance of persons who could be engaged to run their business. Therefore the said ground is not tenable. Furthermore, the landlord clearly made out a ground that his three sons who were physically and mentally incapacitated were entirely dependent on him and he urgently and bonafidely required the premises to start business which would augment his income. Mr. J.C. Mahindroo, learned counsel for the respondent submits that the Trial Court had considered the medical records to conclude that sons of the landlord were disabled.

3. In the circumstances, the need for the tenanted premises was rightly held to be bonafide. No grounds have been made out to interfere with the impugned order. The petition is without merit and is dismissed.

**NAJMI WAZIRI  
(JUDGE)**

**May 30, 2014/ak**