

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

+ RC REV. No.572/2012

% **31<sup>st</sup> July, 2014**

ABDUL HAMID ..... Petitioner  
Through Mr.R.L.Kohli with Mr.Varun Yadav,  
Advocates.  
versus

QURESHIA BEGAM ..... Respondent  
Through Ms.Deepika V.Marwaha with  
Mr.Umesh Kumar Yadav, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not? Yes

**VALMIKI J. MEHTA, J (ORAL)**

1. This revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') by the petitioner/tenant (respondent before the Additional Rent Controller) challenging the judgment dated 28.8.2012 by which the Additional Rent Controller has rejected the leave to defend application filed by the petitioner/tenant and has decreed the eviction petition with respect to the two tenanted premises one tenanted premises being one shop and the other tenanted

premises being one room, both on the ground floor of the property bearing no.2192, Gali Nai Wali, Pahari Bojla, Bazar Chitli Qabar, Delhi-6.

2. The eviction petition for *bonafide* necessity was filed by the respondent/landlady on the ground that the shop in tenancy with the petitioner/tenant is required by her younger son, Ajmal Khan for carrying on his business since there are no commercial premises which are available to Ajmal Khan who wants to start his business for earning his living. Ajmal Khan, the younger son of the respondent/landlady, is residing on the second floor of the same property along with his family members. So far as the room in the tenancy of the petitioner, which is being used for residential purposes is concerned, the requirement of the same is stated to exist for the elder son of the respondent/landlady, Ashraf Khan, and with respect to whose residential need besides the tenanted room in question, another petition (being no.E-111/2011) for *bonafide* necessity was simultaneously decided by the Additional Rent Controller for the *dalan* (hall) on the ground floor which is in tenancy with the legal heirs of one other tenant Saeed Ahmed.

3. In a petition for *bonafide* necessity, there are three aspects which are required to be pleaded and shown by the respondent/landlady; (i) that there

is a relationship of landlord and tenant between the parties, (ii) the premises are required *bonafidely* by the landlord/landlady for his/her own need and/or for the need for his/her family members, and (iii) there are no other suitable alternative accommodation available to the landlord/landlady for his/herself or his/her family members for whose need the *bonafide* necessity petition is filed.

4. So far as the aspect of relationship of landlord and tenant is concerned, the same was not disputed before the Additional Rent Controller, and is also not disputed before me. The disputes, really, pertain to existence of alternative suitable premises for the younger son, Ajmal Khan as regards a shop and a residential room/portion in the same premises for the elder son Ashraf Khan for his residential need.

5. Let me first deal with the aspect of the need of the younger son Ajmal Khan for the part of the tenanted premises which is a shop. The contention of the petitioner/tenant is that there are three commercial premises which are available for the younger son Ajmal Khan and which are; (a) shop at 900/L, Kamra Bangash, Tiraha Behram Khan, Chandni Chowk, Delhi, (b) shop at 1579, Gali Peepal Wali, Pahari Bhojla, Delhi, and (c) one shop which according to the petitioner/tenant exists in the ground floor of the same premises and allegedly in occupation of one tenant, namely, Abdul Majeed.

6. So far as the shop at 900/L is concerned, the Additional Rent Controller has given the conclusion that, that shop was owned by the father of the wife of the elder son Ashraf Khan, i.e the father-in-law of Ashraf Khan, and after the death of the wife of Ashraf Khan, the 900/L shop has been inherited by the grand-son Farhan Khan, and who is doing his business from the said shop at 900/L. Once that is so, and there is no credible response by the petitioner/tenant that the said shop belongs to the respondent/landlady or Ajmal Khan, the shop at 900/L cannot be said to be a suitable alternative accommodation including for the reason that it is not vacant and Farhan Khan is carrying on his business from the same.

7. So far as the shop at 1579 at Gali Peepal Wali is concerned, again, that shop is not owned by or is in the tenancy of the respondent/landlady or her younger son Ajmal Khan because that shop 1579 was in the tenancy of the deceased wife of Ashraf Khan and the respondent/landlady's elder son Ashraf Khan is doing his business from that shop. Therefore, the said shop at property no.1579 cannot be said to be a suitable alternative accommodation because it neither belongs to the respondent/landlady or her younger son Ajmal Khan for whose need the tenanted shop is claimed and nor is the same vacant.

8. That takes us to the third shop which exists on the ground floor of this very property where the tenanted premises are situated. Both the counsel for the parties have filed their site plans in the court below and in both the site plans, there are three shops which are shown on the ground floor. Both the parties in their site plans have shown that out of three shops, one shop adjacent to the stairs is with a tenant Abdul Hamid, and the second shop adjacent to the shop of Abdul Hamid, (and which is between the shop of Abdul Hamid and another shop) is in tenancy with Abdul Majeed. Therefore, two shops out of three shops are, admittedly in the tenancies of Abdul Hamid and Abdul Majeed. The third shop, as per the case of the respondent/landlady is with the elder son Ashraf Khan, who is carrying on his business of artificial jewellery from this third shop. Therefore, since none of the three shops are vacant, the same being already occupied by the tenants Abdul Hamid and Abdul Majeed and the elder son Ashraf Khan, it cannot be said that any of these three shops are available to the respondent/landlady or her younger son Ajmal Khan for whose need the shop with the petitioner/tenant is claimed. It cannot be the law that the landlady must ask one son to close his business and vacate the shop for the business of another son merely because a son is bonafidely carrying on

business from more than one premises. I, therefore, hold that no triable issue arises even with respect to the third shop because the third shop is not vacant and is being already used by her elder son Ashraf Khan, and therefore, there is a *bonafide* need of the tenanted shop for the younger son Ajmal Khan.

9. In view of the aforesaid discussion, so far as the *bonafide* need of the son Ajmal Khan for the shop in the tenancy of the petitioner stands established, and hence no fault can be found with the impugned judgment of the Additional Rent Controller as regards this matter.

10. That takes us to the need of the elder son Ashraf Khan, and for whose residential need the residential room with the petitioner/tenant is claimed. In order to decide whether there exists any need for residential purpose of Ashraf Khan, the entire accommodation in the entire property bearing no. 2192, Gali Nai Wali, Pahari Bojla, Bazar Chitli Qabar, Delhi, will have to be examined and considered. It is first to be noted that the property no.2129 is situated on an area of only about 145 sq. yds. and thus the rooms thereof are not big in area. There is a ground floor, first floor, second floor and third floor of this property. The elder son Ashraf Khan is living on the third floor of this property. As per the site plans filed by both the parties, there is

absolutely no difference in the constructed area on the third floor, and the same consists of just one room along with kitchen, latrine and bathroom. The family of the elder son Ashraf Khan, admittedly comprises of Ashraf Khan himself, his son Farhan Khan, who is 27 years of age and of marriageable age at the time of filing of the eviction petition (he is stated to be already married now), and three married daughters who are living in the same vicinity. Once on the third floor there is only one room, surely, that accommodation is grossly inadequate because the elder son Ashraf Khan is entitled to one room for himself, one room for his married son Farhan Khan, one room as living room. Ashraf Khan also needs one guest room for his married daughters who visit frequently, and therefore, Ashraf Khan has a need for at least three bed-rooms besides a living room i.e four rooms but he has only one room. Therefore, the landlady requires three other rooms for being available either on the ground floor or on the first floor or on the second floor of the property no.2192.

11. Let us now take the residential portions which are available on the second floor, first floor and the ground floor respectively in order to determine whether any extra rooms are available for the residential need of Ashraf Khan. The second floor of the property as per the site plans filed by

both the parties comprises of two rooms. One room on this second floor is with the younger son Ajmal Khan, and for whose need the shop on the ground floor is also claimed. On the second floor, Ajmal Khan is living with his family which comprises besides himself, his wife and three children aged 17, 15 and 13 years respectively. Therefore, the family of Ajmal Khan would require at least three bed-rooms i.e one for Ajmal Khan and his wife, one for his elder son who is 17 years of age, and the third room for his two children who are about 15 years and 13 years of age respectively. Besides three rooms, Ajmal Khan would also require a living room. Therefore, there is a requirement of total four rooms for the younger son Ajmal Khan and his family, whereas, as per the respondent/landlady, there is only one room on the second floor with the Ajmal Khan, but as per the petitioner/tenant he has two rooms on the second floor. Though the second room as per the case of the respondent/landlady is with a tenant, however even assuming that the tenant is not there as contended on behalf of the petitioner, yet the younger son Ajmal Khan will, therefore, have only two rooms instead of four rooms. Therefore, there is no portion even available on the second floor for the need of Ashraf Khan and his family and in fact there is a need for two more rooms for the residential need of Ajmal Khan and his family. Therefore, for

Ashraf Khan and Ajmal Khan and their families four more rooms are required.

12. That takes us to the first floor of the property and this first floor comprises, as per the petitioner/tenant four bed-rooms, whereas, the respondent/landlady states that there are three bed-rooms. The case of the respondent/landlady is that one big room which exists on the first floor has been made by the petitioner/tenant into two rooms in the site plan, although actually there is only one big room and not two rooms. There is also besides the three rooms or four rooms (as per the tenant), a *dalan* i.e a living room and a room in the front portion with a tenant.

Actually as per the site plan filed by the petitioner/tenant, five rooms are shown and not four rooms, and this is because the fifth room on the front portion is obviously with a tenant, and thus one room being with a tenant in the front portion of the first floor is not disputed by the petitioner/tenant. The issue thus really boils down only as to whether there are three vacant rooms plus *dalan* on the first floor with the respondent/landlord or there are only two rooms with *dalan* i.e one more room because one room is bifurcated into two parts to make it into two rooms as per the case of the petitioner/tenant. The respondent/landlady has pleaded that besides her need

of one bed-room and one living room, she requires two guest rooms for the use of her four married daughters who frequently visit there with their children.

13. In my opinion, considering the facts of the present case where not only the respondent/landlady has four married daughters but the respondent/landlady also will be required to accommodate the family members of her younger son Ajmal Khan and elder son Ashraf Khan as detailed above i.e Ajmal Khan has just one room on the second floor, although he has in his family besides himself and his wife, three children aged 17 years, 15 years and 13 years respectively and Ashraf Khan needs three more rooms i.e between Ajmal Khan's family and Ashraf Khan's family there is need for five more rooms and hence not too much capital therefore can be made by the petitioner of one or two additional rooms on the first floor available with the respondent/landlady, and all of which is after accepting the case of the petitioner that the rooms with the tenants on the first and second floor are available to the landlady, inasmuch as five additional rooms are required by the landlady i.e two more than the three rooms which the petitioner/tenant claims to be with the landlady being with two tenants and one additional room on the first floor.

14. One last aspect which was urged on behalf of the petitioner/tenant was that one eviction petition cannot be filed with respect to two separate tenancy premises i.e one tenancy of the shop and other tenancy of the residential room. On this aspect I may note that there are two judgments of this Court which hold that joinder of causes of action by seeking eviction on different grounds is permissible under the Delhi Rent Control Act. The first judgment is of the learned Single Judge of this Court in the case of ***Mohd. Yusuf Vs. Ram Nath 1972, RLR (N) 36*** and the second judgment is of the Full Bench of this Court in the case of ***Smt. Abnash Kaur Vs. Dr.Avinash Nayyar & Ors. 1974 RCR 350***. Accordingly, I do not find any merit in the argument urged on behalf of the petitioner/tenant that joinder of the cause of action is not permissible. I may state that joinder of cause of action would not be permissible where eviction is sought on one ground of *bonafide* necessity and on another ground which is not of a *bonafide* necessity, because there are two separate procedures which are provided for *bonafide* necessity eviction petition and for an eviction petition on other grounds, but once the eviction petition joins causes of action only with respect to a *bonafide* necessity, and procedure for *bonafide* necessity is the same, in my opinion, joinder of cause of action will be permissible in terms of the

judgment of this Court in the case of *Smt.Abnash Kaur (supra)*. I must hasten to add that joinder of two causes of action for two tenancies are being held permissible in the peculiar facts of this case because the two tenancies are of portions of one building and because facts with respect to the two petitions considerably overlaps as is found above because of the need of the sons and their families of the respondent/landlady having to be considered simultaneously. I clarify that I am not holding entitlement to join causes of action for two separate tenancies except existing in peculiar facts as found in this case.

15. Counsel for the petitioner has sought to place reliance with respect to the fact that joinder of causes of action is not permissible by relying on a judgment of this Court in the case of *Roshan Devi Vs. Arjan Das 1975, RLR (N) 86*, however, I do not find any observation or any ratio of that judgment which states that two causes of action for two separate tenancies cannot be joined in one petition for *bonafide* necessity as per the facts found in this case.

16. Even under Order 2 Rule 3 CPC, a petitioner is entitled to join several causes of action against one defendant i.e a petitioner/landlord can join more than one cause of action i.e for two separate properties in one petition, and

as already stated above, unless there are separate procedures provided for the separate petitions/grounds of eviction, and which is not so in the present case, it cannot be held that there is misjoinder of causes of action by joining two separate tenancies in the facts of this case.

17. In view of the reasoning, and also adopting the conclusions given by the Additional Rent Controller, I do not find that there is any illegality or perversity in the impugned judgment which requires to be interfered with by this Court, and this revision petition is therefore dismissed, leaving the parties to bear their own costs.

**VALMIKI J. MEHTA, J.**

**JULY 31, 2014**  
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