

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV.575/2017, CM. APPL. 46297/2017 & CM. APPL.**
14645/2018

Judgment reserved on : 02.08.2018

Date of decision : 15.06.2019

SHRI GAURI SHANKER

..... Petitioner

Through: Ms. Amrit Kaur Oberoi &
Mr. Siddharth Bhardwaj,
Advocates.

versus

SHRI LAXMI CHAND

..... Respondent

Through: Mr. Vishesh Wadhwa, Ms.
Bandana Kaur Grover & Mr.
Siddharth Chopra, Advocates.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Shri Gauri Shanker son of Late Shri Ramjit Sahni, the tenant of the respondent Sh. Laxmi Chand in the demised premises comprising of a shop measuring 5.93 square meters situated on the ground floor as shown in the site plan marked as Annexure-A to the eviction petition filed by the respondent herein as the petitioner of the eviction petition bearing No.E-80122/2016, vide the present petition has assailed the impugned order dated 07.10.2017 of the SCJ-cum-RC, Central, THC, Delhi in the said eviction petition, whereby

the application of the present petitioner arrayed as the respondent to the eviction petition under Section 25-B(4) of the Delhi Rent Control Act, 1958 (as amended),- was dismissed and an eviction order was passed against the tenant i.e. the petitioner herein qua the suit premises, with it having been directed that the said order would not be executed for a period of six months from the date of the said order in terms of Section 14(7) of the Delhi Rent Control Act, 1958 (as amended).

2. It has been contended on behalf of the petitioner herein that substantial triable issues were raised by the petitioner herein, which entitled him to the grant of leave to defend the eviction petition, which had not been properly considered by the learned Rent Controller. The petitioner thus, seeks the setting aside of the eviction order and seeks that he be granted leave to defend the eviction petition submitting to the effect that the eviction petition has not been filed *bonafide* by the landlord i.e. the respondent to the present petition.

3. Submissions were made on behalf of either side by their learned counsel. On 16.04.2018, learned counsel for the respondent/ landlord undertook not to execute the eviction order till the next date of hearing i.e. on 02.08.2018, on which date, submissions were made on behalf of either side and the operation of the impugned eviction order was stayed till the pronouncement of judgment.

4. Through the eviction petition, the landlord of the tenanted premises who has through his affidavit dated 16.03.2016, deposed that he was then 74 years of age (thus, now above the age of 77 years) submitted that he is the owner/landlord of the suit property which is

situated in the premises bearing No.6328/4/6, Dev Nagar, Karol Bagh, New Delhi-110005 and that the said tenanted premises are being run by the tenant i.e. the petitioner herein as a shop on a monthly rent at the rate of Rs.350/-, exclusive of electricity charges as a single tenant and that he was inducted as a tenant on 01.03.1990 vide the lease deed dated 13.03.1990 vide which the tenancy commenced w.e.f. 01.03.1990.

5. The landlord vide the eviction petition submitted that his family comprised of himself only for the reason that his wife has expired on 29.04.2014 and after her death, his two sons had refused to look after him and he was thus dependent on his close relatives who were taking care of him and thus, submitted that he needed the tenanted premises for his own *bonafide* requirement as he has no other alternative accommodation in Delhi from where he can create an opportunity for running his own business by opening a shop of a general store, which he needed to do to increase his income to ultimate lead a better life by earning his livelihood by running his own business.

6. The landlord i.e. the respondent to the present petition has further submitted through his eviction petition that he is presently at the mercy of his close relatives in as much as there was no commercial space available with him to earn his livelihood for survival and that the tenant was occupying the tenanted premises for more than 25 years at the rate of Rs.350/- per month.

7. The landlord put forth through his eviction petition the details of his wife Smt. Rano Devi (since deceased) and he himself having purchased the property bearing no.6328, Block-6 in Ward No.XVI of

Basti Reghar Pura, Dev Nagar, Karol Bagh, New Delhi on 18.04.1998 from Smt. Sona Devi, the owner of the said premises vide two separate registered sale deeds. The landlord further submitted that the property comprises of a basement, ground floor, first floor, second floor and an open terrace. As per the averments made in the eviction petition, the landlord and his wife Smt. Rano Devi vide a registered sale deed dated 26.05.2000, sold a shop 12x15 situated on the ground floor to Bhawani Shanker and Harish Chand who were tenants in the shop for more than 40 years and further on 30.08.2000, the landlord and his wife Smt. Rano Devi executed another sale deed in favour of their two sons namely Sushil Kumar and Vinod Kumar and sold two shops on the ground floor and property bearing private room no.2 measuring 105 square feet and another property bearing private room no.4 measuring 82.5 square feet along with the basement area measuring 300 square feet for the total consideration of Rs.95,000/- vide a registered sale deed.

8. The landlord/respondent herein submitted through his eviction that on 20.03.2009, his wife Smt. Rano Devi (since deceased) executed a Will dated 20.03.2009 in favour of their two sons namely Sushil Kumar and Vinod Kumar and bequeathed her half undivided share in the suit property vide a registered Will but that she expired on 29.04.2014 and by virtue of the said Will dated 20.03.2009, Sh. Sushil Kumar and Sh. Vinod Kumar became the owner of the half undivided share of the said property which they in turn vide a registered gift deed dated 20.01.2016, gifted their half undivided share of the said property to the petitioner.

9. The petitioner herein i.e. the tenant of the landlord/ respondent herein, through his application under Section 25-B(4) of the Delhi Rent Control Act, 1958 (as amended) sought leave to defend the eviction petition contending to the effect that the petition was malafide and had been filed by the landlord only in order to sell the tenanted shop in view of the increase in the prices and that the landlord was himself a property dealer and his sons are also property dealers of this locality and that the landlord has a three storey building, in which he had constructed five shops on the ground floor and basement and he had sold the entire first floor to the buyers and he was living with his two sons, who were property dealers and were also running a business of photography on the first and second floor and that the landlord himself was carrying on the business of photography and property dealer in the entire basement and that the landlord had sold two shops to the different buyers and one shop had been let out by him since the last two years prior to filing of the application under Section 25-B(4) of the Delhi Rent Control Act, 1958 (as amended) @ Rs.65,000/- per month, wherein the tenant was running a business in the name and style of RAXDON with the rent being at the rate of Rs.35,000/- per month.

10. The petitioner/ tenant further contended that the respondent had also let out one shop at the rate of Rs.80,000/- per month wherein the tenant was doing the business in the name and style of M/s HAVELUCK. It was also sought to be submitted by the petitioner/ tenant that the respondent had managed the transfer of the portion of the property by a gift deed in his favour to create a false ground for

eviction and that the respondent was seeking eviction of a small portion of the property, which was in the old tenancy of the petitioner herein and that the respondent had sufficient income of rent amounting to Rs.2,00,000/- (two lakhs) per month apart from the sum of Rs.2,00,00,000/- (Two Crores) after selling some portion of his properties.

11. *Inter alia* the petitioner/ tenant contended that the respondent was the lone member of his family and he had a monthly income of Rs.2,00,000/- (Two lakhs) per month as rent and thus, the petitioner had no *bonafide* need for himself at the age of 80 years of seeking the eviction of the petitioner/ tenant from the tenanted shop. The petitioner/ tenant thus, contended that substantial triable issues had arisen in the matter and that he was entitled to the grant of leave to defend the eviction petition.

12. Through the reply that was submitted by the landlord/ respondent herein before the learned Rent Controller, Central, the landlord/ respondent denied that he was living with his two sons who were property dealers and were also running a business of photography on the first and second floor of the building No.6328/4/6 Dev Nagar, Karol Bagh, New Delhi. The respondent/ landlord further submitted that on the ground floor, there were six shops besides a basement which were being used for commercial purposes while the upper floors were residential in nature and that the petitioner herein had been inducted as a tenant in one of the shops on the ground floor by the landlord on 01.03.1990 vide a rent note dated 13.03.1990.

13. The respondent herein/landlord has further stated specifically through his reply to the application filed by the petitioner herein under Section 25B(4) of the Delhi Rent Control Act, 1958 (as amended) that he and his wife Smt. Rano Devi (since deceased) for their bonafide needs had sold one shop no.5 from the side of Padam Singh Road to one Sh. Filter Yadav vide a registered sale deed dated 24.11.1999 and he and his wife had sold another shop Pvt. No.3 from the side of Padam Singh Road to one Sh. Bhawani Shankar vide a registered sale deed dated 26.05.2000.

14. The landlord/ respondent further submitted that on 30.08.2000, the respondent herein/ landlord and his wife late Smt Rano Devi for their needs had sold two more shops bearing private no.2 and 4 from the side of Padam Singh Road and the basement beneath the same to his sons Sh. Sushil Kumar and Sh. Vinod Kumar vide a registered sale deed. A shop bearing private no.1 was also sold vide a registered sale deed dated 30.08.2000 by the respondent herein and his wife and thus, it was submitted by the landlord/ respondent herein that by 30.08.2000 all the five shops out of the six shops on the ground floor of the property in dispute stood sold by him and his wife and the only shop which was left unsold was the tenanted premises in which the petitioner herein was a tenant. The undivided share in the shop rented to the petitioner herein which was bequeathed by late Smt Rano Devi to her two sons Sh. Sushil Kumar and Sh. Vinod Kumar vide a registered sale deed dated 20.03.2009 was gifted by her beneficiaries i.e. Sh. Sushil Kumar and Sh. Vinod Kumar with their rights in the tenanted shop to the landlord/ respondent herein vide a registered gift

deed dated 20.01.2016 and thus, it was contended by the respondent/ landlord that he was left with only one shop which was in the tenancy of the petitioner which was let out on 01.03.1990.

15. The landlord/ respondent herein reiterated that during the lifetime of his wife Smt. Rano Devi, the petitioner was assisting his sons in their business i.e. photography trade and they also used to look after and maintain him in an honourable way but now they have refused to take care of him and that the landlord/ respondent herein in these circumstances wanted to do his own business by opening a shop of a general store to increase his income which will ultimately lead to a better life.

16. The respondent herein/ landlord further contended that the said intended commercial activity i.e. running of a shop of a general store can only be done from the ground floor and that the tenanted shop with the petitioner herein was the only shop left with the respondent herein/ landlord which was suitable for the use of the respondent herein/landlord and thus it was required bonafidely by the respondent herein/landlord. The landlord further contended that since five other shops on the ground floor had already been sold in the year 2000, he had no other accommodation from where he could establish his trade of a general store which he could run effectively.

17. The respondent herein/landlord further contended that the petitioner herein was a man of means and status and owned a property bearing No.5354, Gali No.68, situated at Reharpura, Karol Bagh, New Delhi which was a four storeyed building constructed on a plot measuring 75 sq. yds. and beside this property he owned two shops

bearing No.(i) 11661/1, New Tank Road, Karol Bagh, New Delhi and (ii) Shop bearing No.16-B/25, Pyare Lal Road, Dev Nagar, New Delhi and that thus, the petitioner herein would not be put to any inconvenience if he was directed to vacate the tenanted shop. *Inter alia* the respondent herein/landlord further submitted that he was not 80 years of age but was 74 years of age at the time of filing of his reply i.e. on 21.12.2016 and submitted that there were no triable issues that arose for grant of the leave to defend to the petitioner/ tenant to contest the eviction petition filed by him, the landlord as the grant of bonafide requirement.

18. The petitioner/ tenant through his rejoinder to the reply filed by the landlord to the application seeking leave to defend refuted the contentions of the respondent herein/landlord and reiterated that the respondent herein/landlord was running a business of photography in the basement portion and that there were 4-6 photographs that he annexed with the record which showed the respondent sitting in the basement portion of the property.

19. The learned Rent Controller vide the impugned order, vide paragraphs 8 to 17 thereof, observed to the effect:-

“8. The issue of ownership and landlordship of petitioner, as such is not disputed by respondent. He has raised ten issues, which are appreciated by me in my subsequent paragraphs, on the touchstone of whether they constituted any triable issues, requiring trial.

9. The first issue raised by the respondent was that petitioner has filed present petition with malafide intention for the purpose of selling it at higher price. Said claim does not constitute any triable issue as rights

of respondents are saved by Section 19 of DRC Act, which he can always exercise, if needed.

10. Respondent next claim that petitioner is having three storey building with him, in which he has constructed five shops in ground floor and basement. He has sold entire first floor of this property and is living with his two sons. On the face of it, respondent failed to raise any specific plea while claiming aforesaid issue as he did not give details of the building and the shops, referred by him. Such vagueness did not constitute any triable issue. Even otherwise, properties of petitioners, as such are not relevant to respondent who is a tenant.

11. That petitioner is running the business of photography and property dealing in the entire basement. That claim again was vague as respondent did not specify the property in which petitioner is running the business of photography. He did not file any document, showing the fact that petitioner is owner of the said businesses. The photographs relied by the respondents at best, show that petitioner is sitting in a place near some photo studio whose identity is not clearly reflected. Otherwise also, petitioner has claimed that he wanted to increase his source of income for living a better life. As such, that claim, cannot be doubted with negativity. Petitioner has the right to live with dignity and have quality of life. If he wants to the business of general store from shop in question, then as such, there is nothing bad about it. As such, no triable Issue is raised, with regard to aforesaid highlighted claim of respondent.

12. Respondent further claims that petitioner is earning rent amount of Rs. 55,000/- and 30,000/- besides Rs. 80,000/- per month from different tenants. In support of that contention, respondent did not file any

documentary proof. Those contentions remained bald claims and as such did not constitute triable issues.

13. Respondent claimed that he had paid pagdi amount of Rs.1,50,000/- to petitioner at the time of inception of his tenancy, that petitioner had falsely created documents regarding his ownership, that petitioner is having sufficient amount with him from sale proceeds of parts of property in question, that is bonafide need based on him being maintained by his relatives was false and that his sons had gifted him property in question. All those claims were inconsequential in nature as they did not carve out any triable issues for which evidence is required, as they were bald claims only, not supported by any reasoning and proofs. Respondent did not explain the basis of his said claims and as such, his bald averments, cannot take the shape of triable issues.

14. Respondent lastly claimed that he is running business from shop in question and is earning his livelihood from the said shop, if that is so, then, as such, there is nothing against petitioner, as it is the responsibility of the respondent to maintain his family. His liability, as such, does not affect the bonafide need of petitioner, who being the owner of shop in question, requires the said shop for his need. Said need in the given circumstances, is not seen as malafide by me.

15. The net result is, respondent failed to carve out triable issues for which trial is needed. He referred to the case of petitioner with a state of denial without basis. He did not place on record any document, based on which he had made the claims in his affidavit. As such, his claims remained bald claims, for which he cannot be granted leave to contest this matter.

16. So far as petitioner is concerned, he filed petition stating his bonafide need and placed on record documents of his title alongwith site plan of his shop in question. Those documents were not challenged by respondent, on the basis of some cogent proof. Petitioner was able to show that not only he is entitled for an eviction order based on his ownership rights rather, he has bonafide need for said shop which is identifiable.

17. Respondent's application under section 25 B (5) of DRC Act is therefore dismissed, in the background of aforesaid appreciation and conclusions. Eviction order is accordingly passed against respondent Sh. Gauri Shanker in respect of property bearing no. 6328/4/6, Dev Nagar, Karol Bagh, New Delhi-5, as shown in red colour in site plan annexed with the petition. This order shall however not be executed within a period of six months from today as per section 14 (7) of DRC Act."

20. A bare perusal of the record brings forth that admittedly, the respondent herein i.e. the petitioner of the eviction petition is the landlord and the owner of the tenanted premises and whether or not he requires the premises for his own needs, is under challenge.

21. The factum that the tenanted shop in question under the tenancy of the tenant i.e. the petitioner herein is the only shop available for eviction on the ground floor is not disputed by the petitioner herein.

22. The available record also establishes that all other premises in the building in question owned by the respondent herein/ landlord are residential in nature.

23. The contention of the petitioner herein that there is a basement in which the petitioner was running the business of the photography

whilst assisting his sons is not even remotely established as per the record.

24. The factum that the respondent herein has since lost his wife and the factum that he has two sons who were unwilling to look after him, in fact compels the landlord/ respondent herein to seek eviction of the petitioner from the tenanted premises to augment his income and to lead a life of dignity.

25. As rightly held by the learned Rent Controller, apparently in his old age, the premises suitable to run the tenanted shop can only be from the ground floor of the building and not from the basement and other floors. There is nothing thus, on the record also to indicate that the respondent herein/ landlord had any other reasonable suitable accommodation other than the tenanted premises.

26. In view of the observations of the Hon'ble Supreme Court in Civil Appeal No. 4244 of 2006 titled as "***Dinesh Kumar Vs. Yusuf Ali***" ***AIR 2010SC 2679*** and of this Court in R.C. REV.307/2018 titled as "***Simarjit Singh Vs. Balbir Singh***" ***252(2018)DLT737*** and in R.C. REV No.588/2015 titled as "***Subhash Chander Rana Vs. Jitender Verma***"; it is well settled that the landlord is the best judge of his own needs and cannot be mandated and dictated by the tenant as to in which portion of the property, he needs to run his own business.

27. There is nothing whatsoever on the record to indicate that the eviction petition had been filed by the respondent herein/ landlord with malafide intent to evict the petitioner from the tenanted premises for sale of the same for in relation thereto as rightly held by the learned Rent Controller, the embargo of Section 19(2) of the Delhi

Rent Control Act, 1958 (as amended) would clearly assist the petitioner herein/ tenant in the event of the landlord not taking the possession of the tenanted premises within three years from the date of possession of the same being ordered in his favour and apparently thus, the landlord cannot let out the suit premises to any person other than the evicted tenant within the period of three years from the date of obtaining possession.

28. In the circumstances, it is apparent that there is no infirmity whatsoever in the impugned order dated 07.10.2017 of the learned Rent Controller. The RC.REV.575/2017 and the accompanying applications are thus, dismissed.

29. The interim stay granted to the petitioner vide order 02.08.2018 is vacated.

JUNE 15th, 2019/NC

ANU MALHOTRA, J.

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