

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

**SUBJECT : DELHI RENT CONTROL ACT**

RC Rev. 51/2007

Date of Decision: 06 .08.2012

ATTAR SINGH

.... PETITIONER

Through: Mr.Ajay Kumar Gupta, Adv.

Versus

TAHOORA KHWAJA

.....RESPONDENT

Through: Mr.Kameshwar Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present revision petition has been preferred under Section 25-B (8) of the Delhi Rent Control Act (here in after referred to as 'Act') assailing the order dated 27.08.2007 passed by the Id. Additional Rent Controller (ARC) in Eviction Petition No. E-1013/06, whereby the application of the petitioner seeking leave to defend was dismissed and eviction order under Section 14(1) (e) of the Act was passed in favour of the respondent in respect of suit property bearing no. 5182, Ballimaran, Chandni Chowk, Delhi.

2. In the eviction petition filed by the respondent, it was averred that, her father late Nawab Sultan Yar Khan was the owner of the suit property and after his demise, she became its owner by virtue of a registered partition deed executed among all his heirs and representatives. The petitioner is the occupant of tenanted premises which consists of a 10x10 room at the ground floor of the suit property. It is submitted in the eviction petition that the tenanted premises is required bona fide by the respondent for meeting the residential requirement of herself and the family members dependent upon her for their residence. The respondent and her husband are doctors by profession and are residing in U.S.A. It was submitted that she is in possession of only half dalan and open courtyard in front of dalan with no kitchen, store and bathroom, which is not sufficient to meet the residential requirements of her family comprising of her husband, a daughter and a son.

It is pleaded by the respondent that her children intended to come to India and pursue BAMS/BUMS courses and she would also reside with them, with her husband frequently visiting them from U.S.A. It is also submitted that the petitioner had not paid rent to the respondent since 01.01.1984. The absence of any other residential accommodation is also pleaded by the respondent in the eviction petition.

3. In the application seeking leave to contest, the ownership of the respondent qua the suit property and the bona fides of the respondent's requirement are questioned by the petitioner. It is contended by the petitioner that the respondent is well settled in U.S.A. with her family and it is highly unlikely that she or her children would ever return to India and the only object of the eviction petition is to wrestle the tenanted premises back from the petitioner, so that it could be converted into a commercial property. In support of this contention, it is urged by the petitioner that the respondent has never visited India even once after her marriage and her chances of returning here are remote. It is submitted by the petitioner that he had paid rent up to December, 2003 to one of the legal heirs namely Mr. Naved Yar Khan. It is also submitted that the respondent is in possession of several other properties; although no documentary proof was produced by the petitioner to strengthen this plea. The respondent, in reply to the leave to defend application of the petitioner, denied all the averments and reiterated those of the eviction petition.

4. The learned ARC observed that there was no dispute so far the relationship of landlord and tenant between the parties is concerned. The learned ARC was also in agreement with the plea of bonafide requirement of the respondent and lack of alternative accommodation with her. Upon consideration of the averments of petitioner and respondent, the Ld. ARC dismissed the leave to contest of the petitioner.

5. In the present revision petition, the learned counsel for the petitioner has argued that the impugned order is bad in law as the facts stated in the application raised several triable issues, which could not be decided at the time of considering the application for grant of leave. It has been urged that the Ld. ARC overlooked the fact that the respondent has not visited India for the last 22 years and has presented a fabricated story. It has been submitted that even the passport and visa of the respondent and her family were not produced before the trial Court to prove the fact that the respondent or any of her family member had visited India prior to filing the eviction petition.

The learned counsel for the respondent rebutted the arguments of the petitioner.

6. I have heard the rival submissions and perused the record.

7. At the outset, this Court must reiterate that the power of this Court under Section 25 –B (8) of the Act are not are wide as those of Appellate Court, and in case it is found that the impugned order is according to law and does not suffer from any jurisdictional error, the High Court must refrain from interfering with the same. The power under this provision is limited and supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion which was not possible, based on the material produced, should this Court interfere in the order passed by the Rent Controller. In *Sarla Ahuja vs. United India Insurance Co. Ltd.* AIR 1999 SC 100 the Apex Court has held as under:

“The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is "according to the law." In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

8. Upon examination of above judgment it may safely be held that this court in exercise of the powers vested by proviso to sub-section (8) of Section 25B of the Act may reappraise the evidence only for a limited purpose of ascertaining whether the conclusion arrived at by the Rent Controller was wholly unreasonable and that no reasonable person acting with objectivity could have reached the same conclusion as that of the Rent Controller on the material available or otherwise. In *Praveen Jain & Ors (Shri.) Vs. Dr. Mrs. Vimla*, 2009 IV AD (Delhi) 653, this court observed;

"The powers of this Court under Section 25 B(8) are not appellate powers and this Court has only to see that the Trial Court had acted in accordance with law and not transgressed the limits of its jurisdiction.”

9. In *Rajinder Kumar Sharma &Ors. Vs. Leela Wati & Ors.*, 155 (2008) Delhi Law Times 383 the court observed;

"Section 25B was inserted by the legislature in Delhi Rent Control Act as a special provision for eviction of the tenants in respect of specified category

of cases as provided therein. Where a landlord seeks eviction on the basis of bonafide necessity, a summary procedure is provided and tenant has to seek leave to defend disclosing such facts which disentitled the landlord from seeking eviction."

10. Applying the above noted legal proposition to the current factual matrix, it is evident that along with the issue of ownership, the bona fides of the respondent's requirement are under fire in the present case. In order to assert the ownership on the suit premises, the respondent has produced on record the registered partition deed executed between the legal heirs of the erstwhile owner of the suit property. The bare perusal of the said deed shows the suit property falling in the respondent's share. Hence, there cannot be any dispute regarding the respondent's title over the suit property and this contention of the petitioner is liable to be rejected.

11. The petitioner has further contended that the respondent is not his landlord as he has not ever paid rent to her, but paid to a person named Naved Yar Khan. This plea is again misconceived. It must be noted here that there is no rent receipt produced by the petitioner to show that he paid rent to any such person. The respondent has admitted the fact that the petitioner had not made any payment of rent since 1984. But, this does not debar the respondent from getting the tenanted premises vacated because once the respondent is proved to be the owner of the suit property, she would be the landlord as it is settled law that owner is always the landlord, even if the relationship of landlord and tenant is not proved. It must be kept in mind that the context in which the word "owner" has been used in Section 14 (1)(e) of the said Act has been succinctly set out by the Hon'ble Supreme Court in Smt. Shanti Sharma & Ors. Vs. Ved Prabha & Ors. 33 (1987) DLT 80 (SC) 2028 as under:

"owner as used in clause (e) in Section 14(1) does not postulate absolute ownership in the sense that he has an absolutely unrestricted right to deal with the property as he likes. To describe some one as owner, and perhaps even as an absolute owner, of property is to say two things: it is to assert that his title to the property is indisputable and that he has all the rights of ownership allowed by the legal system in question. "

12. In Praladh Singh Rekhi Vs. Smt. Bhawani Devi & Anr. 113 (2004) DLT 137, a bench of this Court while dealing with a similar objection and on the

concept of ownership in proceedings under Section 14 (1)(e) of the DRCA had noted as follows:-

“.....The proceedings under the said Act cannot be converted and utilized by a tenant to prevent eviction merely on the ground that he seeks to cast doubt on the title of the property which has been inherited when there is really no one else claiming right to the property.”

13. The next contention raised by the petitioner was that the respondent is in possession of several other properties. Without a single shred of evidence or details regarding the properties allegedly owned by the respondent, I am afraid much cannot be read into this contention, and it is clearly misconceived.

14. The only question that now remains for consideration is that whether the respondent's requirement is genuine and not a feigned one, as alleged by the petitioner. The respondent has pleaded bonafide requirement of the tenanted premises so that it can be used along with the adjoining portion of the suit property, in order to fulfill her family's residential requirement. It is pertinent to test the veracity of this claim for the disposal of the eviction petition. On his part, the petitioner has alleged that the respondent had no intention of coming back to India after being settled in the U.S. for more than two decades and the projected requirement was a sham. However, the only proof that was submitted to support this contention was photocopies of the passport of the respondent, her husband and her daughter, along with Indian visa pertaining to the year 2002 and 2003. Apart from this, there is no record or proof of any visit to India by the respondent or her family during the last twenty years. Even if the passport of the respondent and her family had expired, as submitted, they could have been easily procured from the passport's office for the Court's perusal. But no such effort had been made by the respondent. There is also no evidence regarding any efforts made by the respondent to procure admission for her children in the Indian educational establishments. Any person seeking to study in India must have made any contact with the authorities for the same and must naturally have a record of the same. But these crucial details were conspicuously absent from the documents submitted by the respondent. Also placing heavy reliance on the fact that the respondent's daughter has a bank account at Delhi would be giving the impression that all that a NRI needs to prove his bonafide requirement of a premise in India is a bank account. Without any material to prove the genuineness of the respondent's intention to come and reside in

the suit premises, it is hard to form a conclusive opinion regarding the same. Clearly substantial and important triable issues were raised by the petitioner at the time of filing application of leave to defend, which should not have been prematurely decided. The Id. ARC has hurriedly decided the pertinent question of bonafide requirement of the respondent in her favour, without testing the veracity of her claims.

15. The discharge of burden of proof placed on the respondent in regard to this submission is germane to deciding the question of bona fide requirement as alleged by the respondent. In *Charan Dass Duggal vs. Brahma Nand* (1983) 1 SCC 301 it has been observed by the Hon'ble Supreme Court that the burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that he is staying outside Delhi. It would be relevant to note para 7 of the judgment at this juncture, which reads as under:

“7. ....Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise. We are, therefore, satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant the leave.”

16. Further in *Nandlal Goverdhandhas and Co. Vs. Samratbai Lilachand Shah* (AIR 1981 Bom 1) it has been held that bona fide requirement is a state of mind and unless a person claiming requirement is subjected to cross-examination, requirement without his evidence cannot be established. In the present case such burden of proof has not been discharged by the respondent satisfactorily.

17. It is settled legal principal that leave to defend is granted to the tenant in case of any triable issue raised before the trial Court, which can be adjudicated by consideration of additional evidence. At the stage of granting leave, the real test should be whether facts disclosed in the affidavit filed while seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end the defence may fail. Leave to defend must not be granted on mere asking, but

it is equally improper to refuse to grant leave when triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses. If the application filed under Section 25-B discloses some substantial triable issues, then it would be grave injustice to brush them outrightly without testing the veracity of the claims made by the tenant/applicant. In Charan Dass Duggal vs. Brahma Nand (supra), while dealing with the issue of leave to defend the Apex Court has held thus:

“5. What should be the approach when leave to defend is sought for? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought for on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.”

18. In my considerate view substantial and important triable issues were raised by the petitioner at the time of filing application leave to defend which should not have been prematurely decided. It is evident that the ARC committed manifest error in accepting the case of the landlord when the facts were seriously disputed and the correctness or otherwise of the claims made by the parties was yet to be determined. Having regard to the facts and circumstances of the case, it would be erroneous to conclude that no triable issues were raised for consideration.

In this background, the impugned order allowing the eviction petition while dismissing the application for leave to defend suffers from illegality and cannot be sustained. The impugned order is accordingly set aside and the

petitioner is granted leave to contest the eviction petition. The respective parties are directed to appear before the learned Senior Civil Judge-cum-Rent Controller on 22.08.2012. The petition is accordingly allowed.

Sd/-  
M.L. MEHTA, J.

AUGUST 06, 2012