

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

RC Rev. 328/2011

Date of Decision: 17.08.2012

DELHI COMMERCIAL PRESS

..... PETITIONER

Through: Mr.B.B.Gupta, Adv. with Ms.Anjana Prabhakar, Mr.Harsh Hari, Adv. with proprietor of the petitioner in person.

Versus

ROOP KISHORE RASTOGI

.....RESPONDENT

Through: Mr.Sudhir Nandrajog, Sr.Adv. with Mr.Sonal Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present Civil Revision Petition has been preferred U/S 25-B(8) of Delhi Rent Control Act (herein after referred to as "Act") against the order dated 19.05.2011 passed by the Ld. Additional Rent Controller (ARC) wherein, the leave to defend application filed by the petitioner in eviction petition E-167/2008 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.15, ground floor, M.C.D. No. 1589&1590, M.J. Building, Bhagirath Palace, Chandni Chowk, Delhi.

2. The suit property consists of one big office which comprises of two rooms measuring 16'.3" x 22'.9" and one kothri measuring 7'x7' and one verandah in front side of the office. In the eviction petition, it was stated that the suit property was let out to the petitioner for commercial purposes and the same was now required by the respondent for starting a business of wholesale and retail electrical goods. It was further stated that the respondent was residing with his mother at Gurgaon and tried to carry on his business from there, but could not obtain any licence to carry out a business; the premises being

residential. The non-availability of any other suitable commercial property, except the suit property, was also pleaded by the respondent.

3. Upon service of summons, the petitioner herein filed leave to defend application and raised several objections against the eviction petition. The petitioner challenged the ownership of the respondent over the suit property and further alleged that the respondent had concealed the fact that he was in possession of several other properties and in view of many triable issues, the petitioner was entitled for leave to defend. The learned ARC, finding no merit in the submissions made by the petitioner, dismissed the leave to defend application and accordingly passed the impugned order.

4. The impugned order has been challenged by the learned senior counsel for the petitioner on the ground that it is bad in law as the learned ARC had failed to take note of various triable issues raised by the petitioner and had erred in not taking note of the fact that the respondent was in possession of several other properties sufficient for meeting his alleged requirement. The properties alleged to be in possession of the respondent are :

i) Bar Wali Kothi, Nai Sarak

ii) Property bearing No.1683, 1681, Bhagirath Palace, Chandni Chowk

iii) Property bearing No.1729-1741, Mangal Building, Bhagirath Palace

iv) Property bearing No.1681, Mangal Building, Bhagirath Palace.

5. It has been further submitted that the respondent has not placed any material on record to show that he has no right, title or interest in any part or portion of the properties, which were stated by the petitioner, to be in the respondent's possession. It has been further submitted that the respondent was not the owner of the suit property, which is evident from the fact that the rent receipts were issued in the name of the father of the respondent, Harish Chand Rastogi. It has been further averred that the learned ARC did not take into account the fact that M/s Vijay Pictures who were previously tenants in property bearing No.1588 and 1590, MJ Building, Bhagirath Palace, owned by the respondent, had vacated the portion recently and hence the respondent was in possession of the said property. It has been further submitted that the respondent has a share in the jewellery business being run under the name and style of M/s Rastogi Jewellers at K-92/B, Central Market, Lajpat Nagar and has presented a concocted story regarding bona fide requirement of the suit property for starting up a business of electrical goods.

6. On the other hand, the learned senior counsel for the respondent has submitted that the revision petition filed by the petitioner is devoid of any merit, and is liable to be rejected, since the order dated 19.5.2011 passed by the learned ARC confirms to the settled legal position that in absence of any credible triable issue, the leave to defend application filed by the defendant/tenant is bound to be dismissed. It has been further submitted that the petitioner had no locus to challenge the ownership of the respondent over the suit property, inasmuch as the petitioner had been paying rent to the respondent, and was estopped by virtue of Section 116 of the Indian Evidence Act. It has been further submitted that the respondent is the owner of vertical half portion of four-storied building bearing No.1586-1590 and vertical half portion of four-storied building bearing No.1681, Mangal Market, Bhagirath Palace by the virtue of deed of partition executed between the respondent and his family members and any other averment made by the petitioner, regarding the respondent owning several other properties, is totally false. It has been further submitted that the factum of owning of these properties was disclosed before the learned Trial Court and the averment of the petitioner regarding concealment of material facts is totally false.

7. It has been further submitted that M/s Rastogi Jewellers is owned by the brother of the respondent and he has no concern with the same. The property known as Bar Wali Kothi, Nai Sarak is stated to be owned by the father of the respondent and is occupied by various tenants, and as such the respondent could not commence any commercial activity in the said property. Lastly, it has been averred that the petitioner has leveled false averments which are devoid of any merit, in the desperate attempt to seek leave to defend, and the order of the learned ARC requires no interference as it is passed on sound reasoning and correct appreciation of evidence.

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

9. 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 to defend the real test should be whether the facts disclosed in the affidavit filed seeking leave to defend prima facie shows that the landlord would be disentitled from obtaining an eviction order and not whether at the end the defence may fail. The whole purpose and import of summary

procedure under Section 25-B of the DRCA would otherwise be defeated. In Precision Steel & Engineering Works & Anr. Vs. Prem Devi Niranjana Deva Tayal (1982) 3 SCC 270, the Apex Court has held that the prayer for leave to contest should be granted to the tenant only where a prima facie case has been disclosed by him. In the absence of the tenant having disclosed a prima facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend. In Nem Chand Daga Vs. Inder Mohan Singh Rana, 94 (2001) DLT 683, a Bench of this Court had noted as under:

“That before the leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.”

10. Applying the above noted legal proposition to the current factual matrix, let me examine whether the order of the Id. ARC is sustainable or otherwise. On the perusal of record, it is noted that the respondent has produced rent receipts issued in his own name, pertaining to the year 2000, which shows that the petitioner has in fact paid rent to the respondent. The rent receipt issued in the name of the father of the respondent, which has been relied upon by the petitioner, belongs to the year 1974. What has emerged from the perusal of these rent receipts is that the father of the respondent was collecting rent from the petitioner at the time when the respondent was a minor, but afterwards the rent was being paid to the respondent in his individual capacity. Once the petitioner has started paying rent to the respondent, he is deemed to have accepted the respondent as the owner of the suit premises and is barred from questioning the respondent's ownership over the suit premises. Moreover, the registered partition deed, brought on record by the respondent, clearly depicts that the suit property has fallen into the share of the respondent. When a tenant denies ownership of landlord, he is obliged to disclose who was the owner/ landlord and to whom rent was being paid. The proceedings under the 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 and, when there is really no one else, claiming right to the property. Consequently, this defence taken up by the petitioner fails.

11. Regarding the averments made by the learned senior counsel for the petitioner that the respondent is in possession of various properties (noted

above) at Bhagirath Palace, the respondent has submitted that except vertical half portion of four-storied building bearing No.1586-1590 and vertical half portion of four-storied building bearing No.1681, Mangal Market, Bhagirath Palace, he does not own any other property. The registered partition deed executed between the family members of the respondent also proves the same. The petitioner has not brought any material on record to support his contention. Similarly, the plea of the petitioner that the respondent is the owner of Bar Wali Kothi, Nai Sarak is hollow and erroneous. There is nothing on record to suggest that the respondent is the owner of the said property. In the absence of any iota of evidence, such false averments cannot be accepted as gospel truth, and were rightly discarded by the Id. ARC. Section 25-B was inserted by the legislature in the 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. Where a tenant pleads, in leave to defend, preposterous propositions and makes such averments which are palpably false and the landlord in his reply affidavit to leave to defend is able to show to the ARC that all facts stated in leave to defend, were palpably false, ARC is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it.

12. Next plea of the learned senior counsel for the petitioner was that respondent has a share in the jewellery business, being run under the name and style of M/s Rastogi Jewellers at Lajpat Nagar, which is refuted by the respondent. It has been submitted by the respondent that M/s Rastogi Jewellers is owned by his brother. The onus of proving the fact that the respondent does in fact has any role in the said jewellery business, lied on the petitioner, which has not been discharged by him. It is not that by making wild allegations, without any shred of evidence, refuted by the landlord in his affidavit, the tenant becomes entitled to a leave to defend. This contention taken up by the petitioner is nothing, but a bald statement, which is liable to be rejected.

13. The last contention raised by the learned counsel for the petitioner was that M/s Vijay Pictures who were previously tenants in property bearing No.1588 and 1590, MJ Building, Bhagirath Palace, owned by the respondent, had vacated the portion recently and hence the respondent was in possession of the said property, which could be utilized by the respondent

to meet his so called requirement. On this point, it is pertinent to note the respondent's submission that the said portion was vacated in the year 1999, pursuant to order dated 23.12.1999 passed in eviction petition bearing no. E-558/74 under Section 14 (1) (b) of the Act. Moreover, the respondent has produced on record the details of tenants who were the occupants of the said property at the time of filing of eviction petition, along with the rent receipts. Consequently, it cannot be said that the said property is available for meeting the requirement of the respondent.

14. In the instant case, the petitioner has miserably failed to raise any important triable issue, that could merit grant of leave to defend, whereas the respondent has succeeded in proving his bonafide requirement of the suit property for starting up his business and has proved beyond doubt that he has no other suitable property in his possession which could be utilized by him. In *Siddalingamma & Anr. Vs. Mamtha Shenoy* (2001) 8 SCC 431, the Hon'ble Supreme Court while considering the reasonable and bona fide requirement of landlord, held that the question to be asked by a judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by the material on record, the need to occupy the premises can be said to be natural, real, sincere and honest. If the answer be in the positive, the need is bona fide.

15. In view of my above discussion, I could not find any infirmity or illegality in the impugned order of the Rent Controller warranting any interference by this Court. The petition is devoid of any merit, and is hereby dismissed.

Sd/-
M.L. MEHTA, J.

AUGUST 17, 2012