

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

**SUBJECT : Delhi Rent Control Act**

R.C.REV.- 105/2012

Date of Decision: 06.08.2012

PRADEEP KUMAR TYAGI &ORS. . . . . Petitioners  
Through: Mr. Vibhor Verdhan with Mr. Sandeep Singh, Advocates.

Versus

SMT. BIMLA TYAGI . . . . .Respondent  
Through: None.

CORAM:  
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. Present rent revision petition has been filed under section 25B(8) of Delhi Rent Control Act (hereinafter referred as "ACT") assailing the judgment/order dated 23.01.2012 passed by Ld. Additional Rent Controller (ARC) in eviction petition bearing No. E-230/2011, whereby the application filed by the petitioner seeking leave to defend, was dismissed.
2. The brief facts of the case are that the respondent being the owner of a shop measuring 8'x8' on the ground floor of property bearing no.32 , Sarojini Park, Shastri Nagar, New Delhi-110034 (hereinafter referred as 'tenanted premises') filed an eviction petition dated 09.12.2010 on the ground of bonafide commercial requirement. Respondent stated that father of petitioners was inducted as tenant in the tenanted premises for commercial purposes and after the death of the father of petitioners on 01.11.2007, both the petitioners had become joint tenants therein @ Rs 2000/-month. It was stated in the petition that the tenanted premises was required by the respondent and her husband for running a 'Kirana' shop, since due to the separation of their son, Praveen Tyagi, they are facing financial problems. Therefore, they are in need of the shop to earn livelihood for herself and her husband. The tenanted premises was stated to be most convenient for them as the same is within the property where she resides and

is situated on the main road and adjoins the main gate of the property. Respondent has no other shop or place from where she can settle her business of 'Kirana' shop. Hence, the tenanted premises is stated to be required for meeting her bonafide commercial needs, as she does not have any other reasonably suitable commercial property.

3. Upon receiving summons, the application for leave to contest was filed by the petitioners/tenants on the ground that the requirement projected by the respondent was not bonafide, as the property in question consists of four shops on the main road and one shop in the adjoining street. Out of these five shops, one has been let out to a tailor, one to a bartan merchant, one to a carpenter and one corner shop is still in the possession of respondent, which she lets out seasonally to the Rui-wala. It was averred that the shop let out to the carpenter was lying closed for the last 6-7 years. It was averred that husband of the respondent is earning Rs. 5000/- pm as working in atta chakki at D-24 Pandav Nagar. It was averred that Praveen, son of respondent lives in this premises and is running a shop of watches at Neelam Market, Chandni Chowk, Delhi and earning a handsome income from that shop. It was further averred that respondent was getting pension since last 5-6 years and her husband was also getting pension. It was averred that ground and second floors of the property had been let out at a monthly rent of Rs.2,500/- and Rs.3,000/- respectively. It was averred by the petitioner that he has only one small business, and has no other source of income, except the business carried out from the tenanted premises. On all these grounds, the petitioner stated having established triable issues and thus, entitled to grant of leave to defend.

4. The respondent filed reply to leave to defend reiterating that all the shops as mentioned in the site plan are in possession and occupation of the tenants and that she has no other property in Delhi as well as outside Delhi, except the present suit property. It was further stated that her son is residing separately in the suit premises and has denied that he is running watch store in Neelam Market at Chandni Chowk. It was averred that neither she nor her husband is getting any pension from the said banks. It was denied that one shop was let out to a bartan merchant or that shop let out to the carpenter was closed since last 6-7 years. It was further averred that her husband is working in Atta Chakki.

5. The order of granting eviction decree to the respondent has been challenged in the present proceedings by the learned counsel for the

petitioner on the ground that Ld. ARC has committed grave illegality by not considering the material on record as the respondent herself has stated in eviction petition that expect the shop in question, the entire property is in her exclusive possession. It was also challenged on the ground that the need of respondent was not bonafide as respondent is receiving rents from other tenants in the suit property. It was assailed on the ground that respondent and her husband are getting pension. Hence, tenanted premises was alleged to be not required for bonafide commercial requirement as the eviction petition had been filed in order to let out the tenanted premises at a higher rent.

6. On the other hand, the learned counsel for the respondent has urged that the order of Ld. ARC requires no interference which has been passed after taking into consideration the bonafide requirement of the respondent for the tenanted premises in order to enable her and her husband to run Kirana Shop. It was submitted that it was specifically pleaded in the eviction petition that the tenanted premises is required for commercial purpose as the same, is required for running the Kirana Shop. It was further submitted that the petitioner himself has admitted the tenanted premises to be commercial and that site plan filed by the respondent was also not disputed.

7. Heard the rival submissions and perused the material on record.

8. With regard to the plea taken by the petitioner herein regarding the respondents having other reasonably suitable commercial accommodation, the learned ARC found this to be vague and bald. It was not disputed that the tenanted premises is situated on the main road and is also of bigger size than the adjacent shop, which was allegedly being given by the respondent on seasonal basis to Rui-wala. Though, the respondent has denied her giving this shop to Rui-wala, but, assuming what is alleged by the petitioner to be correct that this shop was being rented by the respondent seasonally to Rui-wala, that itself would show the said shop was not available with the respondent for setting up a regular business by her husband. Setting up of any business for the intervening period can neither be feasible nor meaningful and profitable. Further, in any case, the said shop was, undisputedly, smaller than the tenanted premises. The plea that one shop vacated by the Carpenter was lying vacant for the last 6-7 years, was vehemently denied by the respondent alleging the said shop to be still with the carpenter, though, he has kept the same locked for considerable time. In *Viran Wali vs. Kuldeep Rai Kochhar*, 2010(2)RCR (Rent)571 it was held

that landlord has all right and choice to start his business in premises more suitable and convenient to him. Tenant cannot dictate landlord as to how and in what manner he should use his property. Moreover, it is well settled law that it is the landlord's prerogative as to in which location he prefers to run business and law should not and cannot prevent such preference by a landlord in order to meet his bonafide requirement.

9. The plea that the respondent and her husband were getting pensions and so do not need to set up any business, are irrelevant and extraneous. It was the petitioner's own assertion that the respondent's husband was doing a job at atta chakki and earning Rs.5,000/- per month. This would rather falsify the plea of the petitioner and fortify that of the respondent that her husband was intending to set up a business of his own in the tenanted premises. The fact that her husband was gainfully employed at atta chakki would also substantiate that he was physically capable of setting up of his own business. Setting up business by the husband of the respondent may not only be for additional income, but, may be to keep himself busy at this age. In either case, the respondent's bonafide need of the suit premises gets strengthened. That was their own prerogative to decide the way they intend to lead their lives. There could neither be any intervention by this Court nor by the tenant. In either case, the respondent's bona fide need of the suit premises gets strengthened. In *Sat Prakash Chaudhary vs. Kewal Kishan Malhotra* 2011(1) RCR 340, it was held by the Bench of Punjab and Haryana High Court that landlord in the evening of his life can express a desire to settle down in demised premises. Apart from this, no Court can stop individual to start his business. Therefore, the above contention of petitioner is without any basis as respondent has her own choice to start her business and to settle her husband.

10. It is well 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. The whole purpose and import of summary procedure under Section 25B of the Act would otherwise be defeated. In *Precision Steel & Engineering Works & Anr. Vs. Prem Devi Niranjana Deva Tayal* (1982) 3 SCC 2870, 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 the present

case, the petitioner has failed to raise any triable issue that would merit grant of leave to defend the eviction petition. Having no iota of doubt regarding the bonafide requirement of the respondent, it would be suffice to say that the order passed by the Ld. ARC cannot be faulted with. The power of this Court under Section 25-B (8) of the Act is limited and supervisory in nature.

11. In the light of the facts and circumstances of the case, I am of the considered opinion that the order of the ld. ARC is based on sound reasoning and correct appreciation of material available on record and deserves no interference.

12. The petition stands dismissed. The parties to bear their own cost. The petitioner is directed to vacate the tenanted premises within six months from today.

Sd/-  
M.L. MEHTA, J.

AUGUST 06, 2012