

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

R.C. Rev 240/2011

Date of Decision: 21.12.2012

M/s GOPAL DASS & SONSPetitioner
Through: Mr.P.C.Dhingra, Adv. with Mr.P.Choudhury, Adv.

Versus

DINESHWAR NATH KEDARRespondent
Through: Ms.Kamlakshi Singh, Adv.

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

M.L. MEHTA, J.

1. This revision petition under Section 25B (8) of the Delhi Rent Control Act (for short "the Act") is directed against the order of Addl. Rent Controller (ARC) dated 28.02.2011, whereby the leave to defend application filed by the petitioner, was dismissed and an eviction order was passed against it.

2. The petitioner is the tenant in respect of one godown on the ground floor in property bearing no.1160, Chhatta Madan Gopal, Maliwara, Chandini Chowk, Delhi-110006 (hereinafter referred to as "the tenanted premises"), which was let out for commercial purpose. The respondent filed an eviction petition under Section 14 (1) (e) of the Act on the ground that the tenanted premises was required by the respondent as well as his son, who was dependant on him, to start their own business. The respondent stated that at the time of letting out the tenanted premises i.e. in the year 1979-80, his son was at a tender age and thus he did not require the said premises. At present, however, his son is 32 years and as he is not employed, the bonafide requirement of the tenanted premises has arisen. It was further submitted by the respondent that he was running a dairy business that had to be discontinued due to ban imposed by the Government of Delhi. In addition,

the respondent submitted that he had no other available accommodation that would be suitable to carry on the said business. The petitioner filed leave to defend application, wherein he brought forth certain issues. The learned ARC dismissed the said leave to defend vide the impugned order dated 28.02.2011. This petition has been filed by the petitioner/tenant assailing the said order.

3. The law governing consideration of leave to defend application is well settled that at this stage, it is only the averments of the affidavit of the leave to defend application and reply thereto, if any, which are to be considered. If the averments in the affidavit disclose such facts which would ultimately disentitle the landlord from recovering possession, that by itself, makes obligatory upon the Controller to grant leave to defend to the tenant. It is also trite that at the stage of consideration of leave to defend application, the tenant is only required to make a prima facie case and not to make out a strong case. The leave to defend application cannot be refused where the eviction petition is filed without bona fide requirement. If the tenant is able to raise the triable issue, he would be entitled to grant of leave to defend by the Controller. This is primarily because the rival contentions, cannot be decided by way of affidavits only and require reliable material for proof.

4. Though it is settled law that the landlord is the best judge of his preferences and choices as also how he would utilize his premises, and that neither the tenant nor this court can dictate him terms, but at the same time, it is also settled principle of law that it is not on the mere asking of the landlord that the tenant will be thrown out of the premises at the threshold. It is not the subjective decision of the landlord alone, which would entitle him straight eviction order against the tenant, but the objective assessment by the Controller of the bona fide requirement of the landlord. Once the landlord is able to demonstrate his bona fide requirement of the tenanted premises objectively, neither this court nor the tenant would be entitled to dictate its terms upon the landlord and in that situation, the landlord would be the best judge of his decisions and choices as regard to the use of the tenanted premises by him or his dependent family members. In this context, the observations of the Supreme Court in the case of *Mattulal vs. Radhe Lal*, (1974) 2 SCC 365 can be noted, which reads thus:

“12.....It is now well settled by several decisions of this Court including the decision in *Sarvate T.B.'s case* (supra) and *Smt. Kamla Soni's case* (supra) that mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of

starting or continuing his own business is not decisive. It is for the court to determine the truth of the assertion and also whether it is bona fide. The test which has to be applied is an objective test and not a subjective one and merely because a landlord asserts that he wants the non-residential accommodation for the purpose of starting or continuing his own business, that would not be enough to establish that he requires it for that purpose and that his requirement is bona fide. The word “required” signifies that mere desire on the part of the landlord is not enough but there should be an element of need and the landlord must show — the burden being upon him — that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business.”

5. The learned counsel appearing for the petitioner has vehemently assailed the impugned order of ARC dismissing the leave to defend application summarily. It is noticed that the eviction of the petitioner was sought from the tenanted premises on the ground that earlier, the respondent was carrying dairy business, which got banned by the government and since, he does not have any other accommodation, he required the suit premises, which is on the ground floor, and is suitable for this purpose. It was also the case of the respondent that the suit premises is also required for the business of his son Ritesh, who is unemployed and dependent upon him. The only averment made in the eviction petition regarding the alternative accommodation available with him was that he has no other reasonably suitable accommodation for carrying the business.

6. In the leave to defend application, the petitioner has set up various grounds. It was his case that the respondent owns two properties viz. 1160, Chhatta Madan Gopal, Maliwara, Chandni Chowk i.e. the suit premises, and another premises being 1838, Chhatta Madan Gopal, Gali Matawali, Delhi. It was his case that he (respondent) has as many as sixteen shops in the four storied premises i.e. 1160, out of which, ten shops have been let out and six are in his possession, and also he has sufficient accommodation in premises No. 1838. It was also his case that the shop in which the respondent was carrying dairy business is lying vacant and has been locked by him. It was further the case of the petitioner that near the suit premises, the respondent also has one big shop in his possession and also one building in Karol Bagh.

7. In the reply to leave to defend application that was filed by the respondent, he admitted to be owning these two properties namely 1160 and 1838, Chhatta Madan Gopal and that the premises No. 1160 was four

storeyed. With regard to the premises No. 1160, his reply was that there are only three shops on the ground floor, one of which is with the petitioner, and second and third with the tenants under the tenancy of Jariwala and Maliwara Johri Association. With regard to the first floor, it was stated that one room therein was in the tenancy of one Vimal Dass and the remaining portion was being used by him as his office. With regard to the second and third floor, his response was that there are three rooms occupied by the two tenants on each of these floors. He stated the entire property to be tenants' occupied. While denying that he was in possession of sixteen rooms, as alleged, he stated that the suit premises had only eleven rooms from ground to the top floor. He also stated that since he required the accommodation which was on the ground floor, therefore, he has not given the details of other portions in the premises as that would lead to confusion. With regard to the premises No. 1838, he stated it to be a residential property being used by him and his family for his residence. He denied to be having any shop, which was being used by him for dairy purpose, and maintained the suit premises to be required by him for his business, and also for his son.

8. With the kind of averments contained in the eviction petition and the leave to defend application as also the response thereto as noted above, it is seen that the learned ARC has proceeded to accept the versions set up by the respondent as a gospel truth. He seems to have overlooked various triable issues, which were raised by the petitioner and were not adequately responded to or explained by the respondent. He has also overlooked that the respondent had filed the site plan only of the ground floor, and did not disclose to be owning the upper three floors of this premises No. 1160. Even though the eviction was sought of the suit premises situated on the ground floor, it was incumbent upon the respondent to have disclosed the other accommodation existing in the premises and to explain the same to be in his possession or not. He has stated that one room on the first floor was in possession of a tenant Vimal Dass and the rest of the same with him where he was running his office. Neither the extent of accommodation available with him on the first floor, nor the nature of the office activity has been disclosed. The fact that he was running his office, would imply him to be engaged in some activities requiring maintenance of office. In the absence of there being any disclosure of the business intended to be carried by his son, it could not be said outrightly that the space available with the respondent on the first floor was not suitable for his son.

9. The plea of the respondent that he requires the suit premises for doing his business was also required to be tested objectively. Though, he had not disclosed as to where he was running his dairy business when it was banned, but from his pleadings, it is gathered that he was carrying this business in the ground floor of premises No. 1838. Neither, he had disclosed this property in the eviction petition, nor the extent of accommodation available with him therein in his reply as well. He was evasive in responding that he was doing the dairy business in this premises 1838. In any case, if the dairy business was banned in premises 1838, it was a triable issue as to whether the same could be set up in the suit premises, which was in the same locality. Though, the landlord had the prerogative of setting up of any other business of his choice, but since he had specifically averred to be requiring the premises for this purpose, this aspect would certainly require consideration of the Controller.

10. It was only in reply to the leave to defend application that the respondent disclosed about the premises No. 1838, but stated the same being used for residence by him and for his family member. It is noted that in the eviction petition, it is not that he has concealed about this property, but, he has mentioned about his residential address to be that of 1160. In this regard also, the respondent seems to be concealing something which creates doubt as to whether his need of the suit premises is bona fide or not. It is moreso, as he had stated that except some portion on the first floor, the entire four storeyed premises 1160 was with the tenants.

11. The observation of the learned ARC that the respondent had denied that he was previously running a dairy business, is entirely contrary to the averments of the respondent himself. Further, the learned ARC also erred in observing that since the petitioner was in possession of the suit premises, he was supposed to know as to the names of other tenants in the suit premises. He has outrightly believed and accepted as correct what was stated by the respondent, without applying his mind to make objective assessment of the projected requirement by the respondent/landlord. The learned ARC seems to have got swayed with the proposition that the landlord is the best judge of his requirement and neither the court, nor the tenant can dictate him. As is stated above, this proposition can be pressed in only after the landlord is able to demonstrate about his projected requirement to be bona fide, and that, he does not possess any other suitable accommodation in comparison to the one from he was seeking eviction of the tenant.

12. There is no doubt that the ground floor is more suitable and profitable for business activities, but, it is not that it will be so for each and every type of commercial activity. Certain commercial activities can be better run from the upper floors than the ground floor. In the absence of there being any disclosure made by the respondent as regard to the official activity being carried on the first floor, and the nature of the business sought to be set up by his son, the requirement of the ground floor, would certainly required to be tested.

13. It is necessary to bear in mind that when leave to defend is refused, the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross- examination. The rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not as simple as is sought to be projected by the respondent that he requires the tenanted premises for carrying on business activity, and that, does not have any other reasonably suitable space for that purpose.

14. In view of my above discussion, it could be seen that the petitioner has been able to raise prima facie, triable issues, which seem to have been overlooked by the learned ARC, and which could not be prematurely decided, without the adjudication by way of evidence and not merely on the affidavits of the parties. As such, the petitioner cannot be thrown out of the tenanted premises at the threshold at least till the time, the respondent is able to make out his case of bona fide requirement of the tenanted premises, after opportunity is afforded to the tenant to test the same. I strongly feel the impugned order suffering from infirmity which has resulted in miscarriage of justice to the petitioner. Thus, the impugned order is liable to be set aside. The petition is allowed and the leave to contest is granted to the petitioner. Petitioner to file written statement before the ARC. The parties are advised to appear before the learned ARC on 16.1.2013.

Sd/-
M.L. MEHTA, J.

DECEMBER 21, 2012