

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DRC ACT

Date of Judgment: 21.02.2012.

R.C.R. No.429/2011 & CM No. 19597/2011

SANJAY BATRA

..... Petitioner

Through Mr. Sanjay Gupta, Adv.

versus

GULSHAN SAHANI & ANR

..... Respondents

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned judgment is dated 14.07.2011; eviction filed by the landlord seeking eviction of the tenant from a shop bearing No. 62, Khursheed Market, Sadar Bazar, Delhi measuring 6X3 square feet as depicted in the red colour in the site plan had been decreed in favour of the landlord. The application seeking leave to defend filed by the tenant had been dismissed.

2 Record shows that the present eviction petition has been filed by the landlord against two tenants qua the aforementioned premises. Contention is that the premises have been let out to the tenant on 18.12.1990 vide a rent agreement; the landlord is the owner of the suit premises having purchased them from one Narender Kumar vide a registered power of attorney and other allied documents dated 15.11.1990; the present tenant was inducted into the shop vide a rent agreement dated 08.12.1990; he is running a business of wholesale of various kinds of cloths under the name and style of

'M/s Sun Raj Sports' in the aforementioned premises. The landlord is living with his family comprising of four family members i.e. his wife, his elder son aged 25 years and younger son aged 20 years; family is living together at the ground floor of Prashant Vihar in a tenanted premises at a monthly rental of `9,000/-. The landlord is also carrying out the business of dealing in various kinds of towels under the name and style of 'M/s Gulshan Agency'; he is the proprietor thereof; his business has now expanded; his elder son is running his own business under the name and style of 'Deepak Agencies' from the residential premises from where the present petitioner is also carrying out his proprietorship business. Both the petitioner and his son are using their residence for keeping their stock which place is highly insufficient; their drawing room and verandah is thus occupied by the stocks of both the petitioner and his son. It has specifically been averred that the family of the petitioner has no other alternate accommodation available with them and the present premises are accordingly required by him as also for his son for stocking of their goods which are presently being kept in their residential accommodation which place is a tenanted place and even otherwise is highly insufficiently space for the said purpose; the shop/godown which has been tenanted out to the tenant is accordingly bonafide required by the petitioner for the aforementioned purpose.

3 Leave to defend had been filed by the tenant. His contention is that the present accommodation is not a shop but an Almirah measuring 6'X 3' square feet which would not suffice the purpose for which the present petition has been filed as this place is highly insufficient. Further contention being that the landlord is confused as to whether the bonafide need is for himself or for his son; contention being that in another eviction petition filed by the landlord on the ground of bonafide need, need has been depicted of his son Deepak.

4 Arguments have been addressed and record has been perused.

5 It is not in dispute that the present premises (whether it is a almirah or a space in which the almirah has been kept) is a space which had been leased out by the owner/landlord to the tenant; there is no dispute on this count; whether it has wrongly been described as a shop and is actually a space in which an almirah has been fitted will not affect the bonafide need of the landlord and the requirements which are required to be established by the landlord while establishing his case under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA). This argument is thus bereft of any merit as the

admitted position is that vide a rent agreement dated 08.12.1990 these premises had been rented out to the present tenant. The landlord is living in a rented accommodation at the ground floor at Prashant Vihar; his family comprises of four persons; his elder son is also carrying on his business under the name and style of 'Deepak Agencies'; the landlord is carrying out the business of dealing in various kinds of towels under the name and style of 'M/s Gulshan Agency'; both of them are carrying on their business from the ground floor of their tenanted premises; they are stocking their goods in the same premises; this space is highly insufficient and their goods have taken the space of one room, their balcony and the verandah. The shop space i.e. the tenanted premises is in a highly commercial area in Khursheed Market, Sadar Bazar, Delh is bonafide required by the landlord for stocking of their towels and other allied material. In fact there has been no dispute on this Court at all. The only argument urged before this Court is that a triable issue has arisen for the reason that the property has been ill-described. This does not in the view of this Court tantamount to a triable issue. Whatsoever has been tenanted out to the tenant is in terms of the rent agreement dated 08.12.1990 which has described the said premises; the need of the landlord to take back these premises in the factual scenario has prima-facie established. The landlord has no other suitable accommodation to store his goods either for himself or for the business of his elder son. Premises are bonafide required by them. All the ingredients of Section 14 (1)(e) have been fulfilled. No triable issue has been raised by the tenant.

6 The Courts time and again have held that unless and until a triable issue arises leave to defend should not be granted in a routine and a mechanical manner. If this is allowed, the very purpose and import of the summary procedure as contained in Section 25 B of the DRCA shall be defeated and this was not the intention of the legislature.

7 In *Nem Chand Daga Vs. Inder Mohan Singh Rana* 94 (2001) DLT 683, a Bench of this Court had noted as under:-

“That before 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.”

8 Impugned order thus decreeing the eviction petition of the landlord suffers from no infirmity. Petition is without any merit. Dismissed.

Sd./-

INDERMEET KAUR, J

FEBRUARY 21, 2012