

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

Date of decision: 11th JULY, 2022

IN THE MATTER OF:

+ **RC.REV. 642/2018**

ABDUL RASHID

..... Petitioner

Through: Mr. R. K. Saini, Advocate

versus

NAWAB ALI

..... Respondent

Through: Mr. G M Farooqui, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant revision petition is directed against the Order dated 11.10.2018, passed by the learned Additional Rent Controller, Central District, Tis Hazari Courts, Delhi in eviction petition, being E-160/15 (*hereinafter referred to 'the instant eviction petition'*).

2. The facts, in brief, leading to the instant petition are as under :-

- i. It is stated that Respondent herein (*hereinafter referred to as 'the Landlord'*) is the owner of a shop/godown in Property bearing No. 2386, Ward No. 11, Gali Dr. Inayat Khan, Kucha Chelan, Darya Ganj, New Delhi (*hereinafter referred to as 'the tenanted premises'*). It is stated that the said godown was let out by the Landlord to the Petitioner herein (*hereinafter referred to*

as 'the Tenant') @ Rs. 330/- per month for commercial purposes.

- ii. It is stated that the Landlord is also the owner of property bearing No. 4083, Gali Nalwali Urdu Bazar, Jama Masjid, Delhi-06 admeasuring 50 sq. yds. which consists of three floors and a tin shed on the terrace. It is stated that the Landlord is running his guest house in the name & style of Nawab Guest House in the said property by using the ground floor, first and the second floor. The third floor is being used by the Landlord and his family members for residential purposes.
- iii. It is stated that the Landlord has one married daughter and an unmarried son. The son, Mohd. Fazal, aged 22 years is unemployed, has no source of income and is interested in running his own independent business of tent house. It is stated that due to paucity of accommodation, the son of the Landlord has not been able to even start his business till date. It is further stated that the Landlord has no other property either for residential or commercial purpose, and therefore, the Landlord has filed the instant eviction petition on the ground that the tenanted premises is *bona fide* required by him to enable his son to run his own business.
- iv. An application for leave to defend was filed by the Tenant. In the said application, it was contended by the Tenant that:

- a) The Landlord was not the owner of the tenanted premises since the property in question is the Custodian Property situated in a Slum Area.
 - b) The Guest House owned by the Landlord is well-known and is currently being operated by the son, and, therefore, the son does not require the tenanted premises.
 - c) There are other alternate residential as well as commercial accommodations available and, therefore, there is no *bona fide* requirement of the tenanted premises. It is stated that there are four shops lying vacant in Property No. 4083, Urdu Bazar, Jama Masjid, Delhi which is owned by the Landlord.
 - d) It is stated that the first, second and third floor premises of House No. 2386, Gali Dr. Inayat Khan Chelan, Darya Ganj, New Delhi are also lying vacant.
 - e) It is stated that the Landlord has four shops within the commercial area of Gazipur Mandi and he recently got one shop vacated from the tenant situated near the shop of the Petitioner herein and sold the same.
- v. A reply was filed by the Landlord to the leave to defend application filed by the Tenant denying the allegations of the Tenant and reiterating the averments made in the eviction petition. In the reply, it is contended that once the landlord-tenant relationship is established, the ownership of the former cannot be challenged. It is further stated that the Tenant has not

provided any documentary evidence establishing that the Landlord is not the owner of the tenanted premises. The affidavit further states that the Tenant has also not provided any documentary evidence to substantiate his allegations pertaining to the aforementioned properties as well as his allegation pertaining to the son of the Landlord running and operating his business elsewhere. The affidavit states that the Landlord has categorically provided true and complete details of the properties under Paragraph 18(v) of the petition and requires the tenanted premises for his son.

- vi. After going through the material on record, the learned Rent Controller declined to grant leave to defend to the Tenant by holding as under:
 - a) That there is no dispute regarding the landlord-tenant relationship, and that once the tenant has admitted the relationship, it is now not open for the tenant to turn around and dispute the ownership of the tenanted premises.
 - b) The learned Rent Controller did not accept the contention of the Tenant that the Landlord is in possession of sufficient alternate accommodation and the tenanted premises is not required by the Landlord. The learned Rent Controller held that the fact of availability of alternative accommodation has been denied by the

Landlord and no documents have been placed on record by the Tenant to substantiate his contention.

- c) The learned Rent Controller rejected the contention of the tenant that the son of the Landlord, for whom the tenanted premises is required, is running the guest house from the Property No. 4083, Urdu Bazar, Jama Masjid, Delhi, and, therefore, the need of the Landlord is not bona fide. The learned Rent Controller held that even assuming that the guest house is being run by the son of the Landlord, then also it cannot be said that there is any bar on the son of the Landlord to start an independent business of his own other than helping his father in running the guest house.
- d) The learned Rent Controller rejected the contention of the Tenant that the entire first, second and third floor of property bearing No. 2386, Gali Dr. Inayat Khan Chelan, Darya Ganj, New Delhi are lying vacant. The learned Rent Controller held that this fact has been denied by the Landlord by stating that three godowns on the ground floor, and one room each on the first and second floor of the said premises are owned and possessed by Adbul Rais and Adbul Rahat, both sons of late Adbul Rashid, and Maqsood, son of Abdul Kareem. The learned Rent Controller held that no document has been produced by the Tenant to rebut the submission of the Landlord that

the entire first, second and third floor of property bearing No.2386, Gali Dr. Inayat Khan Chelan, Darya Ganj, is not in his possession.

- e) The learned Rent Controller also rejected the contention of the Tenant that the Landlord has four shops within the commercial area of Gazipur Mandi and he recently got one shop vacated, which was situated near the shop of the Tenant and sold the same, on the ground that no supporting document has been filed by the Tenant to show that the Landlord has other premises. The learned Rent Controller held that mere bald assertions cannot raise a triable issue and some documents/material has to be produced by the Tenant in order to substantiate his contention that an alternative accommodation is available to the Landlord.

- vii. It is this order against which the Petitioner/tenant has approached this Court by filing the instant petition.

3. Mr. R. K. Saini, learned counsel appearing for the Petitioner/Tenant, draws the attention of this Court to certain photographs to show that the property bearing No. 4083, Urdu Bazar, Jama Masjid, Delhi, bearing the board of Nawab Guest House, is lying vacant. He, therefore, states that this fact itself raises a triable issue and the learned Rent Controller ought to have granted leave to defend to the Tenant to show that rooms are available in the said premises itself to enable the son of the Landlord to conduct the business. Learned counsel for the Petitioner also states that a room, which

was lying vacant in the property No. 2386, Gali Dr. Inayat Khan Chelan, Darya Ganj, has been sold by the Landlord. He states that the said premises could have been used by the Landlord to establish his son. He states that instead of establishing his son in that property, the Landlord chose to sell the same which shows that the need put forth by the Landlord is not genuine. Learned counsel for the Petitioner also places reliance on the judgment of this Court in Arvind Kumar Jain v. Jagdish Lal Khanijo, **254 (2018) DLT 664**, to contend that since the Landlord is already running one business, leave to defend ought to have been granted to the Tenant for the Landlord to establish that he requires the tenanted premises for supporting his son.

4. *Per contra*, Mr. G. M. Farooqui, learned counsel for the Respondent/Landlord, contends that photographs do not indicate that the room, which has been shown as locked in the photograph, is available to the Landlord. He states that the said room is a part of the Guest House which is run by the Landlord. He further draws the attention of this Court to sale deed dated 26.06.2010 and contends that the room which was sold by the Landlord was sold in the year 2010 and the instant eviction petition has been instituted in the year 2015 and, therefore, this cannot be a ground to grant leave to defend to the Tenant. He further contends that the said shop was only 18 Sq. m., which, even if available, would not have been suitable for running a business.

5. Heard Mr. R. K. Saini, learned counsel for the petitioner, Mr. G. M. Farooqui, learned counsel for the Respondent, and perused the material on record.

6. It is trite law that the purpose of Chapter III-A of the Delhi Rent Control Act, 1958, is to ensure expeditious disposal of an eviction petition filed by a landlord on the ground that the premises is required by the landlord. Special category of landlords, as mentioned in Section 25(B)(1) of the Delhi Rent Control Act, are entitled to the benefit of summary proceedings for eviction of tenants if the premises is required for their own bona fide use. When any of the category of landlords, as mentioned in Section 25(B)(1) of the Delhi Rent Control Act, files an eviction petition for bona fide requirements, there exists a presumption that the need of the landlord is genuine. It is also well settled that while filing an application seeking leave to defend, if a tenant makes averments intending to disentitle the landlord from invoking the summary provisions, then such statements must be specific and must contain all particulars which would lead to a triable issue for the learned Rent Controller not to give the benefit of summary procedure to the landlord and, therefore, relegate the landlord to go through the usual procedure for evicting the tenant on the ground of *bona fide* requirement. A tenant has to give all necessary facts supported by documentary material, if available, in the leave to defend application so that the learned Rent Controller is in a position to adjudicate and decide the question as to whether the facts so disclosed would compel the landlord to enter into the witness box and prove his *bona fide* need.

7. A perusal of the application filed by the Tenant for leave to defend shows that other than making bald assertions that the Landlord has got other premises, details of any such premises have not been provided by the Tenant. The photographs showing that one room locked in property bearing No.

4083, Urdu Bazar, Jama Masjid, Delhi, does not raises a triable issue as it has been stated by the Landlord that the said shop is a part of his Guest House. The learned Rent Controller has noted that other than stating that the entire first, second and third floor premises of House No. 2386, Gali Dr. Inayat Khan, Kucha Chelan, Darya Ganj are lying vacant, nothing has been produced by the Tenant to substantiate the same. Futher, the Landlord has stated that three godowns on the ground floor, one room each on the first and second floor of the said property are owned by other persons, and, therefore, it cannot be said that those rooms are available to the Landlord to establish his son. The Tenant has not produced any document to rebut the submission of the Landlord and substantiate that there are alternate accommodations available with the Respondent/landlord which may be sufficient to meet his *bona fide* requirement. As noted above, in the application filed by the Tenant for leave to defend, the Tenant has contended that the Landlord has four shops within the commercial area of Gazipur Mandi. However, other than stating that the shops are in Gazipur Mandi, no details have been provided by the Petitioner/tenant to substantiate his claim.

8. The Supreme Court has consistently opined on how vague assertions by the tenant are not sufficient for the learned Rent Controller to grant leave to defend. In Abid-ul-Islam vs. Inder Sain Dua, **2022 SCC OnLine SC 419**, the Apex Court has held as under :

"15. For availing the leave to defend as envisaged under Section 25B(5), a mere assertion per se would not suffice as Section 14(1)(e) creates a presumption subject to the satisfaction of the learned Rent Controller qua bona fide need in favour of the landlord which is obviously

rebuttable with some material of substance to the extent of raising a triable issue. The satisfaction of the Rent Controller in deciding on an application seeking leave to defend is obviously subjective. The degree of probability is one of preponderance forming the subjective satisfaction of the Rent Controller. Thus, the quality of adjudication is between a mere moonshine and adequate material and evidence meant for the rejection of a normal application for eviction.

22. Learned Rent Controller passed a detailed speaking order. On undertaking such an exercise, he found that the bona fide need is satisfied; the averments of the respondent regarding alternative accommodation are vague; the title of the appellant cannot be questioned; and the embargo under the Enemy Property Act does not get attracted. Thus, having found that the defense set up by the respondent is only a moonshine, the application filed seeking leave to defend was accordingly rejected.

24. The High Court, while ignoring the aforesaid conduct of the respondent, as noted by the learned Rent Controller, proceeded to allow the revision by treating it like an appeal. It did not even reverse the findings of the learned Rent Controller, but proceeded to hold that the denials of the appellant in his reply to the application seeking leave to defend are vague, qua the plea of alternative accommodation, notwithstanding the rejection of the contention of the respondent that he cannot question the title. This approach, in our considered view, cannot be sustained in the eye of law.

26. We have already discussed the scope of Section 14(1)(e) vis a vis Section 25B(8) of the Act. Therefore, the mere existence of the other properties which are, in fact, denied by the appellant would not enure to the benefit of the respondent in the absence of any pleadings and supporting material before the learned Rent Controller to the effect that they are reasonably suitable for accommodation."

(emphasis supplied)

9. Similarly, this Court in Rajender Kumar Sharma v. Smt. Leela Wati & Ors., 155 (2008) DLT 383, has observed as under :

"11. Only those averments in the affidavit are to be considered by the rent Controller which have same substance in it and are supported by some material. Mere assertions made by a tenant in respect of landlord's ownership of other buildings and in respect alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed the whole purpose of Section 25-B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence defeating the very purpose of the statute. The Rent Controller is thus not precluded from considering the material placed before it by the landlord in response to leave to defend to show that the tenant's assertions and averments were totally false. "

(emphasis supplied)

10. If bald assertions were to raise triable issues, then the whole purpose of Chapter IIIA of the Delhi Rent Control Act, 1958, would be defeated. The

sale deed which has been produced by the tenant to substantiate the argument that had the need of the Landlord been *bona fide*, he would have settled his son in the shop which was sold by him. This does not raise a triable issue inasmuch as the sale deed was signed on 26.06.2010 and the instant eviction petition was filed by the Landlord only in 2015.

11. It is well settled that the landlord is the best judge of his requirements and he also has the complete authority to prioritize the needs of his family as well as those who are dependant on him over any hardship that might be caused to the tenant. Further, the Apex Court in Anil Bajaj v. Vinod Ahuja, (2014) 15 SCC 610, has reiterated that it is not for the tenant to dictate the terms to the landlord and advise him on what he should do and what he should not do. The relevant portion of the aforesaid Judgment has been reproduced as under:

“6. In the present case it is clear that while the landlord (Appellant 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord, Appellant 1, does not propose to utilise the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant

contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. (emphasis supplied)

12. Similarly, this Court in Anil Jain v. Bhagwan Shankar Khanna, 2014 SCC OnLine Del 3855, has held as follows :

“11 (c)....This Court is in agreement with the reasoning and finding of the learned ARC. Moreover, it is well settled that a landlord is the best judge of his requirement. It is neither open for the Court or for the tenant to dictate terms to the landlord. Furthermore, the contention of the tenant that the son in the past never intended to start such a business and that too from a small bye lane situated in old Delhi which has no potential for such business is without any merit. A tenant cannot be permitted to dictate terms to the landlord as to the suitability of the premises for purposes under which the eviction is sought. Therefore, the finding of the learned ARC does not warrant any interference by this Court.”

13. In Joginder Pal v. Naval Kishore Behal, (2002) 5 SCC 397, the Apex

Court has observed as under:

" 24. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by the landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act."

14. Therefore, it is not up to the tenant to advise the landlord as to how he can adjust himself without getting possession of the tenanted premises. In

the instant case, the son of the Respondent/Landlord is currently unemployed, has no other source of financial income, and is, therefore, dependant on his father for commercial space. Therefore, it cannot be said that the requirement of the Respondent/Landlord is not *bona fide*.

15. In light of the above, this Court does not find any perversity in the Order dated 11.10.2018, passed by the learned Additional Rent Controller, Central District, Tis Hazari Courts, Delhi in E-160/15. The findings in the Order dated 11.10.2018 are legally firm and do not warrant the interference of this Court.

16. Accordingly, the instant revision petition is dismissed along with the pending application(s), if any.

JULY 11, 2022
Rahul

SUBRAMONIUM PRASAD, J.

नात्यमेव जयते