

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

**SUBJECT : Delhi Rent Control Act**

R.C.Rev.No.276/2012

Date of Decision : 09.07.2012

GANGA DASS

..... Petitioner

Through: Mr. Peeush Kulshrestha, Adv.

Versus

D.N.SINGHAL & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present petition has been preferred under section 25B of Delhi Rent Control Act (hereinafter referred as 'ACT') for setting aside the order dated 02.03.2012 passed by Ld A.R.C. whereby application for leave to defend filed by the respondent no. 2 to contest the eviction petition filed by the petitioner was allowed.

2. The petitioner has filed the eviction petition in respect of shop in property bearing no. G-87, Vijay Chowk, Laxmi Nagar, Delhi-110092 against the respondent on the ground of bonafide requirement of setting up the business for his son in the suit premises. It was submitted by the petitioner that the suit property was let out to the respondent for commercial purposes which is now required by him for his son namely Jai Deep Raj.

3. Upon receiving the summons, the respondent no. 2 filed an application for leave to defend stating that the requirement of the petitioner is not bonafide as various litigation are pending between the petitioner and his elder son Jai Deep Raj and the petitioner publicly disowned him and that the younger son of petitioner is working as chef in a five star hotel situated at Bengluru and it

is highly improbable that he would leave his lucrative job and return to run a small 'Dhaba'. It was also submitted that the petitioner has also severed ties with younger son as he married against the will of the petitioner. The respondent no. 2 further contended in the application that the eviction petition filed by the petitioner is absolutely false and not maintainable. It was averred that the petitioner has earlier filed three eviction petitions against the respondents on different grounds which were dismissed. The present eviction petition is the fourth one which the petitioner has filed against the respondents. Therefore, eviction petition has been filed on false and frivolous grounds and the respondent must be given the opportunity to contest the eviction petition.

4. While allowing the leave to defend application filed by the respondent, the Id. ARC observed as under:

“8. By way of present application, the respondent no.2 has alleged that there are no good terms between the applicant and his son Jai Deep Raj. The respondent no. 2 also placed on record the photocopy of record of plaint filed by the applicant against his son Jai Deep Raj for mandatory injunction to vacate the room occupied by Jai Deep Raj. A perusal of the photocopy of the plaint would show that the applicant herein had sought mandatory injunction against his son Jai Deep Raj for directing him to vacate the room occupied by him and also for direction not to use the name of the plaintiff in his record or anywhere. In the present case, it is not the case of the applicant that he has no accommodation to run commercial activities but the applicant has sought eviction of the premises in question on the ground that the premises in question is situated on the front side of the market whereas the premises under occupation of the applicant is on the back side. By way of present application, the respondent no.2 has alleged that the applicant has several other properties and rental income. The respondent no. 2 has also alleged that the younger son of the applicant is working in a five star hotel and he is earning Rs.40,000/- to Rs. 45,000/- and there are no chances of his returning back.”

5. The impugned order has been challenged in the present proceedings by the petitioner on the ground that the Ld. ARC has wrongly concluded that the petitioner has disowned his son and that the requirement of the petitioner was not bona fide. It has been averred in the counter affidavit filed by the petitioner before Ld. ARC that he has reconciled with his sons now and his younger son was desirous to come to Delhi and will help the petitioner in running the 'Dhaba'. Therefore, the petitioner requires the additional

accommodation for extension of his 'Dhaba' towards main road as the property in question faces towards main road and no other suitable property was available to him from which his son could run the 'Dhaba' and thus the petitioner was entitled to an eviction decree as there was no triable issue made out by the respondent.

6. I have given thoughtful consideration to the rival contentions and perused the records. On perusal of the records, it is evident that petitioner has recently sold one shop in the same premises; filed suit for permanent and mandatory injunction against his elder son praying that his son should not be allowed to use his name anywhere and that the younger son of the petitioner is working as chef in a five star hotel and not on talking terms with the petitioner. Nothing has been brought on record by the petitioner to refute these claims made by the respondents and to show that his sons have reconciled with him. This is an important triable issue which was rightly noted by the Ld. ARC .

7. Moreover, it is not the case of the petitioner that he is not in possession of any other alternate property. Admittedly, the petitioner runs a "dhaba" from a shop in the premises. Hence, this effectively becomes a case of requirement of additional accommodation. It is settled legal position that in such cases, the leave to defend must ordinarily be accorded to the tenant. In Santosh Devi Soni vs. Chand Kiran 2000 AIR SCW 4916, it has been held that when it is a case of additional accommodation for the landlord, leave to defend should normally be not refused to the tenant. Hence, the order of the ld. ARC cannot be faulted with.

8. Consequently, I find no infirmity or illegality or infirmity in the order of the ld. ARC. The petition being without any merit is hereby dismissed in limine.

Sd/-  
M.L. MEHTA, J.

JULY 09, 2012