

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Delhi Rent Control Act

R.C.Rev.No.279/2011 & CM 7832/2012

Date of Decision: 09.07.2012

MOHD.JAFAR & ORS.

..... Petitioners

Through: Mr. Amit Gupta, Advocate

Versus

NASRA BEGUM

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (ORAL)

1. This civil revision petition has been filed under Section 25 (B) of Delhi Rent Control Act (here in after referred to as 'Act') read with Section 115 of Code of Civil Procedure assailing the order of Id. Additional Rent Controller (ARC) in Eviction Petition No. E- 463/2009, whereby the application of the petitioner seeking leave to defend was dismissed and eviction order under Section 14(1)(e) of the Act was passed in favour of the respondent in respect of shop no. 780, Ward No. 6, Kabari Bazar, Delhi.

2. The eviction petition was filed by the respondent landlord on the ground of bona fide requirements. It was on the averments that the respondent required the tenanted shop in question for her son Mohd. Akbar, who wanted to set up the business of selling of old motor parts and other accessories. The petitioner filed the application for leave to defend the eviction petition stating that the respondent is in possession of first and second floor of the shops no.780, 781, 782,783 and 784 Kabari Bazar, Jama Masjid and the husband of the respondent is running a hotel in these shops which shows that the requirement as projected by the petitioner is not bonafide. It was also stated by the petitioner that the son of the respondent is already engaged in the business of his father at shop no. 782, Motor Market, Jama Masjid and

does not require the tenanted shop for starting a business. In the reply to the leave to defend application the respondent denied the allegations made by the petitioner and contents of the eviction petition were reiterated. While dismissing the application for leave to defend, the Id. ARC expressed the view that the petitioner was not able to raise any triable issue and the bonafide requirement of the suit shop has been established by the respondent landlord.

3. It has been averred by the learned counsel for the petitioner that the impugned order suffers from illegality as the Id. ARC has overlooked the triable issues raised by the petitioner. It has been further contented that the Id. ARC ignored the material contradictions made by the respondent, regarding additional properties available with her, in the reply filed to the application seeking leave to defend. Reliance has been placed by the petitioner on Santosh Devi Soni vs. Chand Kiran 2000 AIR SCW 4916 to contend that in case of requirement of additional accommodation for the landlord leave to defend should normally not be refused to the tenant.

4. On the other hand, the learned counsel for the respondent has urged that the order of the Id. ARC requires no interference which has been passed after taking into consideration the bonafide requirement of the respondent for the shop in order to enable her son to start a business of spare parts. It has been further submitted that no triable issues were raised by the petitioner that would merit the grant of leave to defend the eviction petition to the petitioner.

5. I have heard the rival submissions and perused the file.

6. At the stage of granting leave to defend the real test should be whether the facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an eviction order and not whether at the end the defence may fail. If the application filed under Section 25-B discloses some substantial triable issues, then it would be grave injustice to brush them out rightly without testing the veracity of the claims made by the tenant/applicant.

7. In para 4 (ii) of the reply to the application for leave to defend filed on the behalf of the respondent, it has been denied by the respondent that there are six rooms on first and second floors of the shops bearing no.780, 781, 782,783 and 784 Kabari Bazar, Jama Masjid as alleged by the petitioner.

But in para 4(vii) of the reply, it has been admitted by the respondent that a hotel/guest house is being run by her husband on the first and second floors of the said shops. Such an apparent contradiction in the stand taken up by the respondent definitely raises an important triable issue regarding the alleged possession of the shops. It is pertinent for the adjudication of the eviction petition that the factual position regarding the said shops is revealed which can be done only with the help of evidence. In my considered opinion, grave illegality was committed by the ARC in overlooking this significant triable issue at the time of disposal of the application for leave to defend. Leave to defend must not be granted on mere asking, but it is equally improper to refuse to grant leave when triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. In *Inderjeet Kaur vs. Nirpal Singh* (2001) 1 SCC 706 the Apex Court has held that “13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction.....”

8. Moreover, the present case is a case of requirement of additional accommodation by the respondent landlord as shop no. 782, Jama Masjid, is already in the possession of the husband of respondent from where he runs a spare parts shop. 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*(supra), 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.

9. In view of the foregoing discussion, it is evident that jurisdictional error has been committed by the ld. ARC, which calls for interference. The petitioner raised an important triable issue the veracity of which could not be tested at this stage of the lis, without calling for additional evidence.

10. Consequently, the impugned order is set aside and leave to defend is granted to the petitioner. The parties are directed to appear before the ARC on 17.08.2012. The written statement has to be filed by the respondent before the ARC. The petition stands disposed off in these terms.

Sd/-

M.L. MEHTA, J.

JULY 09, 2012