

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

R.C.Rev.No.265/2012

Date of Decision: 02.07.2012

SHRI NEM CHAND JAIN Petitioner
Through: Mr. Ashok K. Chhabra and Mr. suryajyoti Singh Paul,
Advocate.s

Versus

SHRI SANJAY KUMAR JAIN & ANR. Respondents
Through: Mr. Sandeep Bajaj, Advocate.

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

M.L. MEHTA, J. (Oral)

1. The present rent revision petition has been filed under Section 25 B Rule 8 of Delhi Rent Control Act (for short the 'Act'), challenging the order dated 08.12.2011 of Additional Rent Controller(ARC) whereby leave to defend application of the present revisionist/petitioner was dismissed and eviction order was passed against him.

2. In the eviction petition filed by the respondent against M/S Kiran Chand Jain & Sons, it had been averred that the shop no. 897-A, ground floor, Chawri Bazar, Delhi, tenanted by the petitioner is needed by the respondents for setting up a card and stationary business for themselves and their children and that they have no other shop in Chawri Bazar suitable for the purpose and they are being forced to carry out the business in a tenanted shop. Admittedly, the suit shop is located in the premises bearing no. 897-899, Chawri Bazar, owned by the respondents and it has 4 floors. It was averred that the respondents are in the possession of the first floor and the second floor of that property, but are using the same as godown as it is not suitable for business purposes.

3. In the application for leave to defend filed by the tenant/petitioner it was alleged that the eviction petition against the petitioner is not maintainable as M/S Kiran Chand Jain & Co. is not his proprietorship concern and Sh.Rakesh Kr. Jain is the proprietor of the same and the rent for the shop was being paid with the consent of landlord earlier to the father of respondents Sh.Ramesh Chand Jain from the account of M/S Kiran Chand Jain & Co. It was further submitted that the shops on the first and second floor of the property bearing no. 897-A are being used for commercial purposes and not as godowns and hence the requirement of the respondents can be easily met. It was further averred that the respondents were in possession of adjoining property bearing no. 929 known as Jain Paper Market and that one shop on the ground floor of the said property was vacated in the year 2008 and the same had been let out by them again to another tenant, which casts shadow on the plea of bonafide requirement of the respondents.

4. The ARC rejected the application filed by the petitioner seeking leave to defend and passed the order of eviction. In the present revision petition, the counsel for the petitioner has argued that the impugned order is bad in law as the facts stated in the application raised several triable issues which could not be decided at the time of considering the application for grant of leave. The learned counsel for the respondents rebutted the arguments of the petitioner.

5. 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 shows 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 outrightly without testing the veracity of the claims made by the tenant/applicant.

6. 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. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section

25B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend parties rely on affidavits in support of the rival contentions. Assertions and counter assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave.....”

7. 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 and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. 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.

8. Applying the above noted legal proposition to the current factual matrix, it is evident that the ARC committed manifest error in accepting the case of the landlord when the facts were seriously disputed and the correctness or otherwise of the claims made by the parties was yet to be

determined. In support of his submission that the eviction petition against him is not maintainable as M/S Kiran Chand Jain & Co. is not his proprietorship concern and the rent for the shop was being paid from the account of M/S Kiran Chand Jain & Co., the petitioner placed on record the copy of Certificate of Registration, copies of balance sheet and bank accounts of M/S Kiran Chand Jain & Co. All these documents were summarily rejected by the ARC terming them to be unilateral documents without attempting to verify their genuineness which was patently illegal and unacceptable. Further, the respondents themselves produced a rent receipt dated 05.03.2011 wherein the name of the tenant was mentioned as 'Nem Chand Jain Sh.Kiran Chand Jain' which raises the presumption that the tenancy was not in the name of the petitioner alone. But the important triable issue that in whose name the tenancy was instituted; was also unceremoniously quelled by the Id. ARC.

9. The claim of the respondents that the shops situated on the first and second floor of the premises were unfit for business was refuted by the petitioner by providing the site plan and annexing the photographs of the shops situated on the said floors. This prima facie shows that the landlord has not come with clean hands to the Court and wrongly stated that the rooms on the first and second floor of the building were being used as godowns and were not fit to meet their requirements. Further, in the reply filed by the respondents to the application for leave to defend, it was contended that no license for trading or storage was granted by the MCD in respect of the first and second floor of property bearing no. 929 and also it was denied that shops were run on the said floors, whereas such claims were refuted by the petitioner in the affidavit filed by him and who also submitted photographs of the shops on the two floors and copy of licenses granted by MCD. In any case, the assertions and controversions made by the parties raised pertinent issues which could be adjudicated by proper trial and should not have been prematurely decided.

10. Moreover, the petitioner asserted that one shop on the ground floor of property bearing no. 929 was vacated in the year 2008 and the same was let out by the respondents again to another tenant. On the contrary the respondents submitted that the said shop was let out in the year 2000 and not 2008. The ARC wrongly observed that in the absence of any documentary proof submitted by the petitioner regarding the date of tenancy of the said shop in the year 2008, the averment made by the respondent must be presumed to be correct. It must be mentioned here that the petitioner could

not possibly be in possession of any proof regarding the letting out of the said shop in the year 2008. Such documentary proof could only be in possession of the landlord of the said shop, i.e. the respondents which could be elicited only in the trial proceedings.

11. Having regard to the facts stated and grounds raised in the affidavit filed by the petitioner seeking leave to defend it is not possible to take a view that no triable issue arose for consideration. Certainly some important triable issues were raised by the petitioner, which were overlooked by the ARC. In this background, the impugned order decreeing the eviction while rejecting the application for leave to defend filed by the petitioner, suffers from illegality.

12 The impugned order is accordingly set aside. Leave to defend is granted to the tenant. The parties are directed to appear before the learned ARC on 18/07/2012 for further proceedings as per law.

Sd//
M.L.MEHTA, J

JULY 02, 2012