

In the matter of :

(1) Sh. Ashok Kumar Puri,
S/o Late Sh. Baldev Raj Puri,
R/o A-32, First Floor,
Rajouri Garden, New Delhi-110027.

..... Petitioner

VS.

(1) Sh. Satish Ahuja
S/o Sh. Roshan Lal Ahuja
(2) Sh. Garish Ahuja
S/o Sh. Roshan Lal Ahuja
(3) Sh. Sushil Ahuja
S/o Sh. Roshan Lal Ahuja
(4) Sh. Radhey Shyam Ahuja
S/o Sh. Roshan Lal Ahuja
All R/o A-53, Kallash Colony,
New Delhi-110048.

..... Respondents

Date of institution of the suit : 05.12.2018
Date of reserving order : 29.06.2020
Date of pronouncement : 09.07.2020



JUDGMENT

1. This order shall decide the question whether the respondent be granted leave to contest the present application under clause (e) of proviso to sub section (1) of section 14 of the Delhi Rent Control Act, 1958.
2. Brief facts of the case as per the petitioner are that he is the absolute owner of the suit property by way of a Gift Deed duly executed by his mother in the year 2005. That the respondents were inducted as tenants in the year 1983. That the petitioner is carrying out the business under the name and style of M/s Puri Industries from the two shops on ground floor. That the other shop (evicted from the tenant in the year 2012) is being used by the wife of the petitioner for running her business under the name of Celebrating Life Family. That the unmarried daughter of the petitioner namely Archana Puri is a meditation Guru and is running an Organisation namely 'Celebrating Life Foundation' from her residential flat, Sec-12, Dwarka, New Delhi. That his daughter is running the programme for the benefit of general public as Sewa. That the said flat is



requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

In the same judgment, in para 7 it is further observed:-

7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave. Maybe in the end the defence may fail. 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

not conducive for carrying out official work from there. That the daughter of the petitioner requires two shops on ground floor for opening office of her Trust and the office. That the daughter of the petitioner has three whole time employees alongwith 4-5 volunteers for providing Sewa. That on the occasion of Guru Purnima and other festivals, volunteers increase due to which, commercial space is required to run the activities of Trust. That the petitioner was forced to file the present case and against other tenant "Jeet Tyre House", a tenant in adjoining shop. That the petitioner has no other shop / building / office which can be put to use for running the office of the Trust. That the petitioner is running his business from the back portion of the property. That the daughter of the petitioner is solely dependent upon the petitioner and is residing with him. That the first-floor portion is being used purely for residential use and the second floor portion is occupied by the family members of the deceased brother of the petitioner namely Late Vinod Kumar Puri.

3. In the affidavit (annexed with the leave to defend application), it is the plea taken by the respondents that there is no requirement of the daughter of the petitioner as she has got sufficient accommodation and



is already doing her business at Dwarka. That the daughter of the petitioner is earning much and she can afford any other rented accommodation. It is also the plea taken by the respondents that the need of the petitioner is not bona-fide and is only a desire. That the petitioner and his daughter are having number of properties.

4. The application is contested by the petitioner by way of a written reply supported by counter-affidavit of the petitioner, wherein the contents of the application are denied and the facts of the petition are reiterated and re-affirmed. It is also stated that the petitioner is not having alternative accommodation and also that the application for leave to contest and the affidavit, whereby no triable issues are raised is liable to be dismissed.

5. I have heard the counsels for the parties and gone through the material on record carefully.

6. Having drawn my attention on the application for eviction, affidavit of the petitioner, documents filed on behalf of the petitioner in support of the application for eviction, it is submitted by Ld. counsel for



the petitioner that the tenanted property is bonafidely required by his daughter Archana Puri for opening the office of her Trust and therefore, the application for eviction be allowed and the application for leave to contest made by the respondent be dismissed.

I have given my thoughtful consideration to the submissions made on behalf of the parties.

The present petition for eviction is under clause (e) of proviso to sub-section (1) of section 14 of Act 59 of 1958 which reads as under :-

14 (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant :

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely :

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.

Explanation.- For the purpose of this clause, 'premises let for residential



purposes' include any premises which having been let for use as a residence and, without the consent of the landlord, used incidentally for commercial or other purposes.

As per the law laid down by the Hon'ble Supreme Court in *Satyawati Sharma v. Union of India and another*, 143 (2008) DLT 705 (SC) clause (e) of proviso to sub-section (1) of section 14 of Act 59 of 1958 is also applicable to the premises let out for purpose other than residential purpose.

The Hon'ble Supreme Court in *Charan Dass Duggal v. Brahma Nand*, (1983)1 SCC 301 while dealing with the question in the matter of granting leave to contest the eviction petition filed on the ground of personal requirement, in para 5 has stated thus:-

5. What should be the approach when leave to defend is sought? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see *Santosh Kumar v. Bha. Vool Saigri*). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and oppositions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal

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252 it has been observed by the Hon'ble High Court of Delhi as follows:-

The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14 (1) (c) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition. However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the

grant the leave.

Further in *Precision Steel and Engineering Works v. Prem Deva Nirranjan Deva Tayal*, AIR 1982 SC 1518 the Hon'ble Supreme Court having discussed the relevant provisions of Act 59 of 1958 held as follows:

The Controller has to confine himself to the affidavit filed by the tenant under sub-sec. (4) and the reply if any. On perusing the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the only question, Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in cl. (e) of the proviso to Section 14 (1)? The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavit against the other set of affidavit. That is not the jurisdiction conferred on the Controller by sub-sec. (5) because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima-facie and not on contest disentitle the landlord from obtaining an order for recovery of possession. At the stage when affidavit is filed under sub-sec. (4) by the tenant and the same is being examined for the purpose of sub-sec. (5) the Controller has to confine himself only to the averments in the affidavit and the reply if any and that become manifestly clear from the language of sub-sec. (5) that the Controller shall give to the tenant leave to contest the application if the



affidavit filed by the tenant discloses such facts as would disentitle the landlord from recovering possession etc. The jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at that stage is the relevant document and one must confine to the averments in the affidavit. If the averments in the affidavit disclose such facts which, if ultimately proved to the satisfaction of the Court, would disentitle the landlord from recovering possession, that by itself makes it obligatory upon the Controller to grant leave. It is immaterial that facts alleged and disclosed are controverted by the landlord because the stage of proof is yet to come. It is distinctly possible that a tenant may fail to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown.

From the law laid down by the Hon'ble Supreme Court, it can be discerned that while deciding the question of the grant of leave to contest under the provisions of section 25B of Act 59 of 1958, the Rent Controller should see the affidavit filed by the tenant and the counter affidavit filed by the landlord. From the decisions of the Hon'ble Supreme Court it is also clear that while deciding the question of the grant of leave, the Controller is not required to conduct a full fledged trial and should



the petitioner and his daughter are having sufficient accommodation, (ii) daughter of the petitioner is earning much and (iii) that the requirement is not bonafide.

(i) It is the plea taken by the respondents that the petitioner and his daughter are having number of properties. It is also pleaded that the daughter of the petitioner has got sufficient accommodation for herself. It is also pleaded that the petitioner is having 6 shops at Rajouri Garden and also a property near Dwarka Mod, Delhi. It is also pleaded that the second floor of the property in question is in the name of the petitioner and lying vacant. It is also pleaded that there are many other residential and commercial properties in the name of the petitioner, which are not disclosed.

In para 11 of the counter-affidavit (filed alongwith the reply to application under consideration), the petitioner has denied all the grounds raised by the respondents. It is stated by the petitioner that he is having no other property in his name or in the name of his family members in Delhi or otherwise. It is also stated that no particulars of the



alleged shops were mentioned nor has given the number of the same. The respondent has also not given the details of any property belonging to the daughter of the petitioner which can be stated to be sufficient to meet the requirement of this case.

The respondent did not give the details / numbers of the said shops nor he has filed any document / details of the same. In the absence of the same, it can be stated to be a triable issue.

(ii) It is also the plea taken by the respondent that the daughter of the petitioner was earning much and she can afford any other rented accommodation for her office easily.

As per the contents of the petition itself, the daughter of the petitioner is running a Trust for the benefit of general public. So, there is no question nor any triable issue in this case whether the daughter of the petitioner was earning sufficiently or not. It is beyond understanding as to why a party be asked to go for a rented accommodation despite having his own accommodation. So, it is not a triable issue.

(iii) It is also the plea taken by the respondent that the



petitioner. In these circumstances, the court can not presume anything in favour of the respondent.

It was held by the Hon'ble High Court of Delhi in 'Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors.' 155 (2008) DLT 383 that the leave to defend not to be granted to the tenant on the basis of false affidavit and false averments and assertions. It was further held that only those averments in the affidavit are to be considered by the Rent controller which have some substance in it and are supported by some material.

It was held by the Hon'ble High Court of Delhi in 'Mukesh Kumar Vs. Rishi Prakash RCR' 34/09 DOD 06.10.99 that a bald statement without supporting material does not give rise to a triable issue entitling tenant for leave to defend.

B. The petitioner has pleaded the bonafide requirement of the suit premises on the grounds that the same is required bonafidely by the daughter of the petitioner as she requires the shop in question for opening the office of her Trust and for office.



In the absence of any substantial material brought before the court or pointed out by the respondents in the affidavit, it cannot be said that the present application for eviction is actuated by mala-fide and has not been made with bona fide intention. Merely stating in the affidavit that the application for eviction has been made with mala-fide intention is not sufficient to sustain the contention of the respondents. The court is satisfied that there is no triable point between the parties.

9. As per the provisions of section 25-B of Act 59 of 1958 a tenant shall be entitled to leave to contest the petition for eviction, if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the grounds specified in clause (e) of proviso to sub-section (1) of section 14 of Act 59 of 1958.

Even if, there is any issue the same is insignificant and does not entitle the respondent from seeking leave to contest the application for eviction.

10. In view of above discussion and the documents filed by the

parties, this court is of the considered view that there is no triable issue between the parties which entitles the respondent for leave to contest the present application for eviction. **The application for leave to contest is without merit and the same is dismissed.**

11. As an off shoot of the dismissal of the application for leave to contest made by the respondent, the petitioner is found entitled to recover the possession of suit premises. i.e. **Shop situated on the ground floor of property No.A-32, Rajouri Garden, New Delhi-110027, as shown in red colour in the site plan annexed with the application for eviction. The application for eviction is allowed.**

In the facts and circumstances of the case, there shall be no order as to costs.

In view of the provisions of sub-section (7) of section 14 of Act 59 of 1958 this order for recovery of possession of premises shall not be executed before the expiration of a period of six months from this date.

File be consigned to record room after due compliance.

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requirement is of bona-fide and it is only a desire.

It is pleaded by the petitioner in the petition itself that the suit property was required for his daughter for opening of office of her Trust for the welfare of general public and not for any commercial benefit. It is also pleaded in the petition that the daughter of the petitioner^{is} was solely dependent and residing with the petitioner. It is also pleaded that there was no other shop / building / office to meet the requirement in this case.

It is also the plea raised by the respondent that the petitioner was also having many properties at Dwarka Mod and Rajouri Garden but did not give the details / addresses of the same. The respondent even, did not place on record any document in support of his plea. In the absence, thereof, the same cannot be termed a triable issue.

The respondent has failed to disclose as to which accommodation is available with the petitioner or as to what was the accommodation not disclosed by the petitioner. The application for

PRONOUNCED ON

09th of July 2020.



(RAJINDER
KUMAR)

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