

(2014) 03 DEL CK 0139

In the Delhi High Court

Case No : RC. Rev. No. 46 of 2013 and C.M. No. 11083 of 2013

Bharat Glass and Plywood Co.

APPELLANT

Vs

Sushan Pal Soni

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Delhi Rent Control Act, 1958 — Section 14(1)(a) 25B(8)

Citation : (2014) 142 DRJ 262 : (2014) 2 RCR(Rent) 59

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : V.B. Andley and Mr. Priyank Sharma and Mr. K.C. Baliar Singh, for the Appellant; Kailash Vasdev Mr. Amit Bhatia, Shreyans and Ms. Joanne Pudussery, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—The petitioner by way of the present petition u/s 25B(8) of Delhi Rent Control Act, 1958 (hereinafter referred to as "the DRC Act") has assailed the order dated 24th November, 2012 passed by Additional Rent Controller, Rohini, Delhi. Brief facts of the case are that the respondent filed an eviction petition against the petitioner on the ground of bonafide requirement u/s in respect of Shop No. 5 and 6, on the ground floor in the property bearing No. 11, Block A, Rajouri Garden, New Delhi-110027 (hereinafter referred to as "tenanted shops") which was let out to the petitioner for commercial purposes at Rs. 347/- per month in the year 1963.

2. It was stated in the eviction petition that respondent is the owner of the property bearing No. A-11, Rajouri Garden, New Delhi (hereinafter referred to as the "suit property") being one of the legal heirs of the previous owner Smt. Santosh S. Soni. Other two legal heirs executed a relinquishment Deed in respect of their undivided share in the suit property in favour of the respondent who had previously shifted to Canada for better business prospects and had been carrying

out business in India for about 7-8 years. He holds a Person of Indian Origin Card (PIO) issued by Government of India. On account of business in India, he has been regularly visiting India and is running a BPO in India under the name and style of M/s. Soniteck Payphones and Telecom Private Limited (now the name was changed to M/s. Sonitek Consultancy Private Limited). He is the Managing Director/Promoter. He is having one son Puneet Pal Soni who is law graduate was pursuing his MBA from Singapore and is interested to open his Legal Processing Office (LPO) in India. He is a law graduate. He wants to set up a business centre in India and on account of steep cost of commercial office/unit. He is not in a position to afford the monthly rents and thus needs to evict the petitioner from the tenanted premises to run his commercial unit/office from the said shops which are having great commercial value. The other property owned by him bearing No. 1687, Arya Samaj Road, Naiwala Gali Karol Bagh, Delhi, is fully occupied by various tenants who were inducted by the previous owner (i.e. the deceased mother of the respondent). On account of non-availability of commercial space with him, the eviction petition was filed. The specific statement was made in the eviction petition that the first floor portion of the suit property is being used by the respondent for his residence and for the residence of his family members. The statement was also made that the petitioner had merged the tenanted shops into one by removing the load bearing wall and caused serious damage to the whole property and the petitioner has also defaulted in paying the agreed rent.

3. In the leave to defend application the petitioner averred that the respondent had not approached the Court with clean hands as the petitioner was a tenant in respect of Shops No. 1, 2 and 3 of the suit property while the eviction petition was filed in respect of shops No. 5 and 6 of the suit property. The site plan filed by the respondent was also disputed.

The respondent's prayer in the eviction petition is not genuine as the respondent is a Canadian citizen and is permanently settled as well as running his business in Canada. It was stated that the son of the respondent is not an Indian citizen as he is also Canadian citizen. The respondent is already running a business of call centre from the first floor of the suit property for which the physical presence of the respondent is not necessary in the nature of business he is carrying on. The allegation for non-payment of rent were denied rather it was contended by the petitioner that Smt. Santosh S. Soni, the earlier owner of the suit property had defaulted in paying property tax to MCD due to which MCD attached the rent of all the tenanted shops of the suit property and directed the tenants to pay the rent of the tenanted shops to MCD. The petitioner has deposited the amount with MCD who have adjusted the said amount towards property tax.

4. In reply affidavit filed by the respondent, it was stated that there was no legal bar on the respondent to run his business in India. He has no other commercial space available to him except the suit property (being approved commercial as per Master Plan of MCD) to run his business. It was submitted by him that the

petitioner has not filed any counter site plan to show that the shops in question are distinct and do not form part of the property. The shops bearing No. 5 and 6 are private numbers being mentioned for the purpose of convenience of the tenants and the landlord as there are other tenants and the identity of the shops having been not challenged by the petitioner nor any evidence is placed on record to show that the suit shops are in possession of someone else. The respondent has settled all the disputes towards the arrear of house tax and as such there is no attachment of rent on the date of filing of the eviction petition. It is admitted by him that he has been running BPO business in India and is paying regular taxes to the government. It is not denied that respondent has not been carrying on business of BPO from the first floor of the suit property i.e. A-11, Rajouri Garden, New Delhi, however, it was stated that the first floor cannot be used for commercial purposes as per MCD Master Plan. Thus, he requires the commercial space on the ground floor which is approved commercial space, from where he needs to carrying on his business with his son who has now completed the study of MBA and intends to start LPO business with his father in order to have better business prospects in India in view of the reason that in Canada and America there has been economic recession.

5. While dismissing the leave to defend application of the petitioner vide the impugned order, the learned Trial Court observed that there was no dispute regarding the relationship of landlord-tenant between the parties, rate of rent and the induction of petitioner as tenant. With regard to the contention of the petitioner that the site plan filed by the respondent is wrong and also that the eviction is wrongly sought of shops No. 5 and 6, since the petitioner is the tenant in respect of shop No. 1, 2 and 3, the learned Trial Court observed that the petitioner had not placed on record any document in support of his contention except only a site plan mentioning the number as 1, 2 and 3 which is otherwise admitted by the respondent on the ground that private number of the shop is given by the petitioner and moreover photocopy of rent receipt is admitted by the petitioner wherein surprisingly no number of the shops is given or mentioned.

6. With regard to the issue of bonafide requirement, the learned Trial Court observed that the respondent had complete freedom to choose the most suitable accommodation for setting up business of his son and the petitioner could not dictate terms to the respondent. It was specifically averred by the respondent that the tenanted shops are bonafidely required by him for setting up a business for his son as he does not have any other alternative accommodation in which he can set up the business for his son. The son of the respondent was pursuing MBA from Singapore and interested to open his LPO as he has requisite qualification to run the same. Moreover the tenanted shops are situated adjacent to the Ring Road, Delhi, having commercial value as such more suitable to the respondent for the purpose of starting business. The learned Trial Court opined on the basis of plethora of case laws that there was nothing malafide if son of the respondent wants to start his own business, who is dependant upon the respondent. The respondent required the tenanted shops for the purpose of setting up of business

of his son and as such it appeared that he wanted to increase his financial status and his standard of living.

Accordingly, in the light of these observations, the learned Trial Court opined that the petitioner had failed to raise any triable issues and so the leave to defend application was dismissed vide the order dated 24th November, 2012 and aggrieved thereof the petitioner has filed the present petition.

7. During the pendency of the revision petition, the petitioner also filed application, being CM No. 11083/2013, u/s 151 CPC for taking subsequent events into consideration while deciding the present revision petition. It is stated in the application that in the month of June-July, 2013 when this Court was closed for summer vacations, the respondent has covered all the open courtyards on the ground floor by laying pacca cemented roofs thereon and converting the open courtyard into very vast additional regular living rooms on the ground floor as well as correspondingly on the first floor of the suit property.

The said additional newly converted/created/developed accommodation on the ground floor as well as on the first floor of the suit property has come to the possession of the respondent and is reasonably suitable accommodation. The said requirement of the respondent has thus been fully satisfied and has ceased to exist and has come to an end. Therefore, the eviction petition has become infructuous. The petitioner has filed photographs of the same from outside which are attached with the application.

8. Reply to the application was filed by the respondent in which it is stated that the said application has been filed in order to delay the disposal of the revision petition. It is stated that since the entire property was constructed more than 50 years ago without the support of any RCC Pillar, the petitioner with a view to give adequate support to the fragile structure on which rested a Genset, erected pillars on the rear side and had reinforced the existing weak roof with a view to place the Genset, had fortified the said area by reinforcing the roof to keep the generator on the back side. The respondent has stopped the said construction at the site and the entire structure previously erected has been demolished on 22nd July, 2013. The respondent has filed few photographs showing the demolition action carried out by the MCD in the presence of the police officials.

9. One of the other submissions of the respondent is that the petitioner has failed to pay the arrears of rent and is not paying rent of the tenanted premises for the current period. After hearing, I am of the view that the said objection is without any substance firstly petitioner has never admitted in his pleadings that he is in arrears of rent. Secondly, it was stated by the petitioner that the respondent has falsely stated that the petitioner has not paid the rent to him. It was submitted by the petitioner that the petitioner deposited Rs. 3780/- for the period up to March, 2011 in the Municipal Corporation of Delhi who attached the rent. The attachment was withdrawn by letter dated 27th April, 2011. The petitioner remitted rent for shops No. 1, 2 & 3 by money-order for the period of

April, 2011 to June, 2011 to the respondent but he did not accept it. Therefore, the petitioner has issued a cheque for a sum of Rs. 10,063/- and has filed before this Court. Counsel argued that despite of many request the respondent is accepted the rent. As the litigation is pending in this Court, the petitioner has issued the cheque in the name of the respondent and filed the same along with list of document. He submits that the petitioner has never denied the arrears of rent but it was respondent which is not accepting the same and so far the respondent has not initiated any proceedings u/s 14(1)(a) for eviction and receiving of rent.

10. I have considered the contentions of the learned counsel for the parties and perused the record including the impugned order. If necessary, the application to take the additional facts would be considered on merit in later part of my judgment.

Parties have also referred various decisions and have also filed written submissions. If these are read in meaningful manner, these mandate that the tenant must show that there are triable issues which will disentitle the landlord for getting the order of eviction. Leave to defend should be granted to a tenant if it discloses a prima-facie case. In the absence thereof, i.e. without disclosing a prima-facie case which disentitle landlord from obtaining order of eviction, the Court should not, in routine matters, grant the leave to defend. If a triable issue is raised it is the duty of the Rent Controller or the Court to grant leave even end of the day, defence may fail. There is reason for the same that if leave to defend is refused, an opportunity to test the truth of the averments of the other side may not be surfaced. A mere desire of the landlord is not sufficient not to grant the leave to contest, the burden is on the landlord to establish his case as pleaded. Therefore, only the relevant decisions are referred. It is also a matter of fact that most of the decisions are after recording the evidence of the parties.

11. It is settled law that the High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. The court is to examine in the revision jurisdiction as to whether the controller passed the order according to law and has evaluated and adjudicated upon the projected need of the landlord of the tenanted premises based on his subjective decision. Thus the approach has to be cautious and judicious in granting or refusing leave to defend.

12. While deciding the leave to defend, the controller is not expected to examine the success or failure of the plea raised but has to examine merely a tenable case. The controller is estopped in view of settled law from recording a finding as to disputed questions of fact. In the case of Charan Dass Duggal v. Brahma Nand, (1983) 1 SCC 301 speaking through Hon'ble Desai, J. the Supreme Court observed that "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..."

13. In the case of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, , it was observed by the Supreme Court that:

Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by "requires" is much more higher than in mere desire. The phrase "required bonafide" is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejection of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself-whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

14. For the purpose of bonafide requirement, in nutshell the case set up by the respondent in his eviction petition and in his subsequent pleadings was that he wants to run his business centre in India from the ground floor of the tenanted premises along with his son who has already completed his MBA from Singapore and is interested to open his Legal Processing Office in India. He is dependent

upon the respondent. The respondent has no commercial place to run his business. The other commercial properties occupied by different tenants. The tenanted premises is suitable to the respondent for the purpose of starting business. The first floor is being used by the respondent for his residence as well as the residence of his family members. He has already filed an affidavit dated 4th April, 2006 before the Monitoring Committee set up by the Supreme Court to close his business operations from the first floor of the premises No. A-11, Rajouri Garden, New Delhi, by 30th June, 2006.

15. If that is real position in the matter, the matter does not require any interference. From the pleadings and documents, different picture emerges which even has not been considered by the learned Rent Controller. It is not in dispute that in the eviction petition the respondent specifically made a statement that the first floor is being used by him for his residence as well as for residence of his family members. But after filing of the application for leave to defend it was admitted by the respondent that the respondent is already carrying on business from the part of first floor of the property. The said fact was admittedly not disclosed in the eviction petition. It was mentioned by him later on that he is running his BPO business from the portion of the first floor. It was argued on his behalf that though he was earlier using the part of the first floor for commercial purposes, however, he has closed his activities after filing the affidavit on his behalf in April, 2006 before the Monitoring Committee appointed by the Supreme Court as first floor cannot be put to commercial use in view of orders passed by the Supreme Court and the respondent would close his business activities by 30th June, 2006. However, as per the documents available on record produced by both the parties, it appears that respondent has been using the first floor for commercial activities continuously even after filing the affidavit before the Monitoring Committee. One of the documents is Tax Invoice No. OEPL/13/14/286 dated 31st July, 2013 issued by M/s. Olive from the first floor of the suit property, i.e. A-11, First Floor, Rajouri Garden, New Delhi.

16. The duty is always cast upon the landlord to disclose the true facts in the application for eviction due to the reason that it is he who is seeking the relief in the summary procedure and in case, landlord does not disclose the true facts about himself otherwise it would be difficult for the Court to know the real position while deciding the application for leave to defend and to strike the balance between the parties at the time of deciding the application for leave to defend. Even otherwise, law mandates in every case, when a party approaches the Court in order to seek relief, it is presumed that the party would always disclose the true facts as truth is an integral part of justice delivery system. No doubt that the landlord is the best judge of his own requirement and neither the court nor the tenant can dictate terms to the landlord but it cannot be said that whatever he states is to be taken by the Courts as gospel truth.

17. The case of the petitioner is that the first floor of suit property can be used both for residential and non-residential purposes as per Master Plan. The

petitioner has placed on record prima facie evidence and certain portion of the Master Plan which contains the different Zones of Delhi including the plan of Zone-G of Master Plan of Delhi which is updated on 7th January, 2013 with regard to the area of Mixed Use Areas. It appears from the said document that the main Najafgarh Road from Laxman Sylvania, New Moti Nagar Chowk to Outer Ring Road Crossing, i.e. Ganesh Nagar covers the Zone-G i.e. for Mixed Use Areas. The main Rajouri Garden is the part of the said area. The contention of the petitioner's counsel is that the respondent in order to confuse the Court has taken the said plea in order to evict the petitioner from the tenanted premises. It is a Mixed Use Areas within the knowledge of the respondent who is admittedly running his business for the last many years and even till date. The petitioner has also filed certain documents in order to prima facie show that third parties are using first and second floors for commercial purposes. The details of the same filed as Annexures P-19 to P-24 along with present petition are given as under:-

18. Admittedly, it is also not the case of the respondent that the first floor is not suitable for him and his son or the accommodation with him is insufficient. His case is that no business can be carried out from the first floor in view of restriction, thus, he needs the tenanted premises for himself and his son. The area of the first floor is more than 3000 sq. ft. Even nothing concrete on record to the contrary is available to show that the relevant documents filed by the petitioner with regard to Zone-G of the Master Plan are not genuine documents or the first floor of the premises cannot be used both for residential and non-residential purposes in the presence of documents placed on record as well as already user of first floor by the respondent himself for the last many years.

19. In the case of Deena Nath Vs. Pooran Lal, the Supreme Court observed thus: "The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire. The "bonafide requirement" must be in praesenti and must be manifested in actual need which would evidence the court that it is not a mere fanciful or whimsical desire".

20. With regard to bonafide requirement of the tenanted shops for the purpose of respondent's son Puneet Pal Soni is concerned, it is not denied by the respondent that his son was admittedly born in Canada and he holds Canadian Passport and resided and studied and is a citizen of Canada and he is a foreigner under the Foreigners Act. Mere contention of the respondent is that he would expand business of his father being a qualified person and he may open a separate unit of LPO. There is no force in the argument of the petitioner that being a foreigner he can start his own business or carry on business with his father. There is no bar or restriction under the Delhi Rent Control Act to carry on

business by a foreigner or to file the application on the ground of bonafide requirement. But the need of the respondent on the ground that his son is likely to join the respondent's business creates a doubtful case as to whether the said need is a real, genuine need, conceived in good faith or is mere desire based on predilection, as there is no prima-facie evidence or even affidavit on his behalf has not been filed that he would leave Canada and join his father's business or to start his own business.

21. So far as the need of the son is concerned, the said need or requirement is not felt in presenti which is the requirement of the law but is the need basing upon the likelihood in future which is again contrary to the judgments of the Supreme Court including Dina Nath (*supra*). Thus, the learned Controller ought not to have simply ignored this aspect of the case which is itself ambiguous and casts doubt on the requirement of the respondent. I am of the view that facts and circumstances in the present case speak for themselves that it is a triable issue as to whether first floor of the premises can or cannot be used for both purposes. It is relevant to bear in mind that when the application for leave to contest is refused, the right of the party to produce the evidence is closed/denied and the veracity of the averment of the opposite party would not be surfaced.

22. Even, in the case of additional accommodation, the leave to contest is normally granted. If the tenanted premises is required for additional accommodation, the Supreme Court in the following cases has held as under:

1. In *S.M. Mehra vs. D.D. Malik*, Civil Appeal No. 120/1990, decided on 11th January, 1990, it was held:

Whether the landlord required additional accommodation or not could be properly determined only by granting leave to contest the eviction petition to the tenant and there was no need to take a summary procedure.

2. In the case of *Santosh Devi Soni vs. Chand Kiran*, Civil Appeal No. 412/2000, the Supreme Court held that where additional accommodation is asked for in proceedings under the Delhi Rent Control Act, normally leave to defend should not be refused.

23. In view of the aforementioned discussion, it is clear that the order passed by the learned Controller is not in accordance with law. The approach of the learned Controller suffers from legal infirmities who failed to examine the permissible extent of inquiry required for the purpose of grant or non-grant of the leave to defend. Thus, the impugned order is unsustainable warranting interference of this Court. There is no need to decide other objections raised by the petitioner's counsel as the leave to defend is being granted in the matter.

24. It is well settled that the revisionary Court can interfere with the decision of the Rent Controller if the same is not passed according to law. The expression "according to law" includes the jurisdictional errors or acting contrary to bounds of the provisions of the Act or acting contrary to the permissible scope of inquiry

for deciding the proceedings or putting onus of proof on the wrong shoulders. (Kindly see the judgment passed by the Supreme Court in the case of Malini Ayyappa Naicker (Now Dead) through I.R. etc. Vs. Seth Manghraj Udhavadas Firm by Managing Partner Chathurthuj Chhabildas (Dead) Thereafter by I.Ss. and Others, , wherein the Apex Court interpreted the expression "according to law").

25. The impugned order is set-aside and the leave to defend is granted. The findings arrived at are tentative and shall have no bearing when the matter is decided on merit at the strength of evidence produced by the parties.

26. The parties are directed to appear before the learned Rent Controller for further directions on 16th April, 2014.

27. In the meanwhile, the tenant is allowed to file their written statement within four weeks from today. Replication, if any, be filed within two weeks thereafter. The trial Court proceedings are expedited who would make its endeavour to decide the matter within a period of twelve months from today. The petition and pending application are disposed of.