
(2014) 07 DEL CK 0091
In the Delhi High Court
Case No : RC REV No. 242/2014

Lahorian Di Hatti

APPELLANT

Vs

Shyam Lal Meher Chand Jain Huf

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Delhi Rent Control Act, 1958 — Section 14, 14(1)(e), 25B(8)

Citation : (2015) 214 DLT 431 : (2014) 144 DRJ 516

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Ravi Gupta, Senior Advocate, Manav Gupta, Prabhsahay Kaur and Esha Dutta, Advocate for the Appellant; Arun Kumar Gupta and Sandeep Garg, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.

C.M. No 11867/2014 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+ RC. REV. No 242/2012 and C.M. Nos.11866/2014 (for stay) and 11868/2014 (for bringing on record additional evidence/document)

2. There are tenants in the city of Delhi who earn lacs and lacs of rupees from the tenanted premises, and obviously they are entitled to earn whatever amount they can from their business, but once the landlords need bonafidely the tenanted premises, tenants cannot create obstacles to eviction, which efforts are obviously aided and supported by very passionate arguments of their counsel.

3. In the present case, the landlord requires the suit premises for the bonafide commercial needs of his son who is doing a property consultant business and also for the bonafide need of his daughter-in-law who is a management graduate

and wants to open a boutique of ladies wear and for which purpose the suit premises; which are a huge premises of approximately 40'1.6" X 19" in size on ground floor alongwith the mezzanine floor (penchhatti) covering about 3/4th (27'8" X 19'10") of the area of the shop; are ideally suited.

4. The bonafide necessity petition has been decreed after trial. This revision is thereafter filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") impugning the judgment dated 3.1.2014 decreeing the petition.

5. In a petition for bonafide necessity under Section 14(1) (e) of the Act, three aspects are required to be pleaded and proved; (i) that there is a relationship of landlord and tenant between the parties (ii) the landlord requires the tenanted premises for his need and/or for the need of his family members, and (iii) the landlord does not have any other alternative suitable premises.

6. So far as the aspect of existence of relationship of landlord and tenant is concerned, that aspect was not disputed before the Additional Rent Controller and nor is disputed before this Court.

7. The main dispute is with respect to whether the landlord requires the tenanted premises for the bonafide need of his son, who is a property consultant and also for the daughter-in-law who wants to open a ladies boutique.

8. The argument to rebut the claim of bonafide necessity is that the son is already doing business with the father of sarees under the name of Siddha Sarees at a nearby premises bearing No 41 (also numbered as 12) , Bhogal Road, Delhi. It is also argued that the son Mr. Nitish Jain no doubt may have a property consultant business, but, that business has not increased so much that the larger area of the tenanted premises is required. It is further argued and contented that the landlord just about six months prior to filing of the eviction petition had given a notice dated 9.10.2012 to one tenant Sh. Ashok who is having a shop M/s. Ashoka Shoes Store admeasuring 16" X12.6" and after giving of the notice since the tenant Sh. Ashok increased the rent from Rs.300/- to Rs.1500/-, an eviction petition was not filed and that therefore this petition is filed only to seek increase in rent. In sum and substance, it is pleaded that the son Sh. Nitish Jain is also doing the business of sarees and therefore has no need for the tenanted premises, and also that the business of the property consultant of the son Sh. Nitish Jain has not increased so much that a larger premises such as the tenanted premises is required and finally it is pleaded that the eviction petition is not bonafide because the shop to the tenant Sh. Ashok was not evicted by taking benefit of increasing the rent from Rs.300 to Rs.1500 and which shows that the present eviction petition is also only for seeking increase of the rent.

9. At the outset, I must notice one very peculiar aspect of this petition and which is with respect to the issue of bonafide need of the daughter-in-law for opening of a boutique. The peculiar aspect is that whereas the respondent/landlord has

undoubtedly led evidence pursuant to his pleadings that the tenanted premises are also required for opening of a boutique for the daughter-in-law, however, I find that the Additional Rent Controller has not at all touched this important aspect in the impugned judgment and which aspect would definitely fall within the category of bonafide need of the landlord and his family members. What I would like to state is that de hors the issue of requirement of the property for the property consultant business of the son Sh. Nitish Jain, the eviction petition was filed also for the bonafide necessity of opening of a boutique by the daughter-in-law, namely Ms. Neha Jain, however, in spite of leading evidence by the respondent/landlord, the Additional Rent Controller has chosen not to decree the eviction petition with respect to the bonafide need of the daughter-in-law for opening of a boutique for ladies wear. In fact, I must note that no arguments whatsoever have been urged on behalf of the petitioner/tenant before this Court by challenging the need of the daughter-in-law Ms. Neha Jain for opening of the boutique for ladies wear. Therefore, in my opinion, so far as the need of Ms. Neha Jain for opening of boutique stands established and which is enough in itself to decree the bonafide necessity petition and dismiss the present revision petition under Section 25B(8) of the Act, and though therefore, I need not at all deal with any of the arguments urged before me qua the bonafide need of the son Sh. Nitish Jain for a property consultant business, however, since such arguments have been urged before this Court on behalf of the petitioner, I am taking up the same for consideration one by one.

10. The first argument which is urged is that the son Mr. Nitish Jain is in fact doing the business of sarees with his father under the name of Siddha Sarees in the premises bearing no. 41, Bhogal Road, Jungpura, Delhi and therefore he does not require the said tenanted premises for bonafide purpose. This argument is completely without substance for various reasons. Firstly, the respondent/landlord has denied that the son Mr. Nitish Jain has nothing to do in the business of Siddha Sarees which is actually the business conducted by the mother of Mr. Nitish Jain and before the Additional Rent Controller there is no evidence to the contrary that the business is not being carried on by the mother of Mr. Nitish Jain. Secondly, and in any case, the suit premises are better located on the main road as compared to the premises bearing no. 41, Bhogal Road, Jungpura, Delhi from where the business of sarees is carried on. Thirdly, it is not disputed that the shop in which the business of sarees is being carried on is much smaller than the tenanted premises with respect to which eviction is sought of the petitioner. Another and fourth reason is that assuming that it is the son Sh. Nitish Jain who is carrying on the business of sarees, yet, this Court fails to understand that if for a separate property consultant business, in addition to the business of siddha sarees, the son Sh. Nitish Jain requires the premises, then, how can a premises in which the business of sale of sarees is carried out can be said to be an alternative premises because alternative premises must mean the available vacant premises and which is not the position qua property 41, Bhogal Road, Jungpura Delhi because the business of siddha sarees is admittedly being carried

on in the said premises. Finally and fifthly, and as already stated above, even if the shop in which the business of Siddha Sarees is being carried on, it is assumed to be that of the son and it is further also assumed that the son does not need the property for the property consultant business, yet, the need with respect to opening of the boutique of ladies wear by the daughter-in-law Ms. Neha Jain definitely survives and stands established. Therefore, for all the above reasons, arguments with respect to the premises being 41, Bhogal Road, Jungpura Delhi being an alternative premises are rejected.

11(i) That takes us to the second argument that the bonafide necessity petition is not bonafide because actually the intention is to increase the rent. This argument is buttressed by the fact that in a shop in the very premises in which the tenanted premises are situated there is a tenant Sh. Ashok having in his possession a shop admeasuring 16" X 12.6" and this tenant was given a notice dated 9.10.2012 (admitted document) for eviction for the same purpose of the need of Sh. Nitish Jain for a property consultant business, but this shop was not vacated because the tenant Sh. Ashok increased the rent from Rs.300 to Rs.1500/-.

(ii) Even this argument urged on behalf of the petitioner is totally misplaced for many reasons. Firstly, the tenanted shop with Sh. Ashok is in area which is much smaller than the tenanted premises and would be just about 1/7th to 1/8th of the area of the tenanted premises. Also, the said shop with Sh. Ashok is not on the main road whereas the tenanted premises open on the main road and the shop with Sh. Ashok is on the side road. Supreme Court recently in the judgment in the case of Anil Bajaj and Anr. Vs. Vinod Ahuja in Civil Appeal No 5513/2014 decided on 8.5.2014: Anil Bajaj and Another Vs. Vinod Ahuja, has held that a tenant cannot question the landlord if the landlord wants to shift from a less suitable premises to a more suitable premises. In the case of Anil Bajaj (supra) , the landlord was already having an accommodation and he was only wanting to shift his business to the better located tenanted premises, and in such facts, the Supreme Court held that tenants cannot dictate to the landlords that the business of the landlords should not be carried on from a more suitable premises. Therefore, both on the ground that the premises with the tenant Sh. Ashok is much smaller than the tenanted premises and secondly the fact that it is situated not on the main road but on the side road and the landlord has a right to decide from which premises better located he or his family members want to carry on the business, the argument that the bonafide necessity petition lacks bonafides on account of the tenant Sh. Ashok not being vacated by increase of rent, is a misconceived argument and rejected. Finally, I would like to note that the fact that there is an admitted document being rent receipt filed with respect to the rent paid by the said tenant Sh. Ashok and this rent receipt Ex.PW1/12 shows that the rent was Rs.1500/- per month even prior to the issuing of the notice dated 9.10.2012. In any case, this aspect of increase of rent, even if the same was done after issuing of the legal notice dated 9.10.2012, will be of no effect in view of the size and location of the tenanted premises as discussed

above. This second argument is also therefore rejected.

12(i) The third argument which is addressed before this Court on behalf of the petitioner is that in the original rent agreement dated 17.12.1985, Ex.PW1/2, there is a clause no. 5 which states that the tenant will not be evicted except on account of non-payment of rent, and therefore, the bonafide necessity petition is not maintainable. This argument which is raised in this regard, if I can say so, lacks even an elementary aspect of legality inasmuch it is now settled law by means of hundreds and thousands of judgments that there is a non-obstante clause which appears in all Rent Control Acts of different States, including in Section 14 of the Delhi Rent Control Act, and in view of non-obstante clause nothing contrary whether contractual or even by virtue of a statute such as the Transfer of Property Act, 1882 can be seen in order to decide the eviction of a tenant from the tenanted premises under the Act. Therefore, this argument is of no worth and being totally baseless is rejected. In my opinion, also, if really clause 5 was intended to create a perpetual tenancy for lifetime in favour of the petitioner, nothing prevented execution and registration by the parties of a perpetual lease deed to make the petitioner/tenant as a perpetual tenant in the suit premises, and which admittedly is not the position. This argument therefore urged by the petitioner is also rejected.

(ii) While on the aspect of non-eviction on account of clause 5 of the Rent Agreement, I would like to reject another argument that petitioner allegedly had paid a sum of Rs.14,000/- at the time of entering into of Rent Agreement on 17.12.1985, and it is because of which this clause no. 5 was written in the rent agreement, inasmuch as, this argument will stand rejected not only in terms of the aforesaid discussion but also because I note that not a single shred of evidence has been led on record with respect to this payment of Rs.14,000/- by the petitioner to the respondent at the time of entering into of the Rent Agreement on 17.12.1985, and therefore even on facts this aspect is not established for being argued on behalf of the petitioner.

13(i) That takes us to the final argument which is urged on behalf of the petitioner in placing reliance upon an application under Order 41 Rule 27 of Code of Civil Procedure, 1908 (CPC) which is filed before this Court for additional evidence. In this application, it is urged that the petitioner/tenant has "recently come to know" that the entire first floor and the second floor above the suit premises are available to the landlord and which would be alternative suitable accommodation and therefore the eviction petition should be dismissed.

(ii) I have given my careful consideration to this application. It is the admitted fact that during the entire course of conduct of the eviction petition before the Additional Rent Controller i.e the stage of pleadings or the stage of evidence and right till the stage of final arguments such a plea was not raised on behalf of the petitioner and since obviously cases are decided only on the basis of existing pleadings and the evidence, and therefore once there was no such plea which is urged by the petitioner and no evidence led by the petitioner, this plea was not

decided before the Additional Rent Controller. Therefore, today to allow an application under Order 41 Rule 27 CPC will be to set the clock back by many years by throwing the parties back to the stage of pleadings and again causing the parties to complete pleadings again, and again lead evidence and again ask the Additional Rent Controller to pass the judgment. In my opinion, this is not the purpose of Order 41 Rule 27 CPC because I refuse to accept the reason given by the petitioner that the petitioner "did not know" that the first floor and the alleged second floor which is partly constructed was available to the respondent inasmuch as the petitioner/tenant is carrying on his business just below the first floor and the second floor which is said to be alternative accommodation and therefore it cannot be believed that the petitioner did not know that these premises allegedly were available with the respondent/landlord. Counsel for the respondent/landlord did want to raise any such arguments on merits with respect to non-availability of the first floor and the second floor, but I need not look into this aspect that premises at first floor and the second floor are not available inasmuch as I am dismissing the application under Order 41 Rule 27 CPC because the object of Order 41 Rule 27 CPC is not to permit re-trial of the entire case by setting the clock back and which will cause grave prejudice to the opposite party more so the landlord in a petition for bonafide necessity. C.M. No. 11868 is therefore dismissed.

14. No other argument is urged before this Court except the arguments which have been dealt with above.

15. The present petition is therefore dismissed with costs of Rs.3 lacs inasmuch as it is not a case where the tenant/petitioner is a poor person but the tenant is carrying on the flourishing business of halwai/sweet maker from the suit premises. Also, I may note that on behalf of the respondent/landlord an offer was made during the hearing of the petition that if the petitioner wants time to vacate the premises the same can be considered, but, the petitioner has declined the offer obviously for the reason that the petitioner/tenant is carrying on the flourishing business and he does not want to vacate the suit premises and which in spite of the established bonafide need of the respondent's son and more particularly with respect to the daughter-in-law Ms. Neha Jain for opening of a boutique for ladies wear. Supreme Court in the judgment in the case of Rameshwari Devi and Others Vs. Nirmala Devi and Others, has held that it is high time that actual costs and appropriate costs be imposed once costs have to follow the event. I am also empowered to impose costs in terms of Volume v. of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15. Out of the amount of costs, a sum of Rs.2 lacs will be adjusted by the respondent/landlord towards the claim of mesne profits in terms of the ratio of the judgment of the Supreme Court in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., . Costs be paid within four weeks.