

(2012) 03 DEL CK 0531
In the Delhi High Court
Case No : RCR No. 235 of 2011

Surjeet Singh

APPELLANT

Vs

Urmila Devi

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Citation : (2012) 03 DEL CK 0531

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : B.L. Chawla, for the Appellant; K.L. Bhendwal, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.

1 Order impugned is the order dated 16.12.2010; the application filed by the tenant seeking leave to defend had been dismissed; the eviction petition filed by the landlord had been decreed. Record shows that the present eviction petition has been filed by the landlady Urmila Devi seeking eviction of her tenant Surjeet Singh from a shop in part of property No. 24/52-B Tilak Nagar, New Delhi; the tenant was paying a monthly rent of `140/- excluding electricity and water charges; contention of the petitioner is that she is the owner of the aforementioned suit premises having purchased them in the year 1966; premises had been let out for non-residential purpose; the tenant is carrying on his business under the name and style of "M/s Lovely Tracer" from the said premises; the petitioner has no other reasonably suitable accommodation; her contention is that her late husband Krishan Lal had started the work of picture framing on a very small scale to earn income to support his family; the said work was started under the canopy on the ground floor; income from the framing work was not sufficient; as such the aforementioned shop was given on rent to the present petitioner; the second shop was also given on rent to other tenant Mian Khan; this was only to supplement the income of the petitioner and her husband. With the passage of

time, the work of the husband of the petitioner improved; her son Bhupesh also joined the business; the husband of the petitioner died in 1990; her son Bhupesh was married in 1990; his wife was well-versed with boutique work and she started a boutique on the ground floor; the business of Bhupesh which was of photo framing, selling, cutting, grinding, etching and painting over glass increased over a period of time; more and more workers were required and added by Bhupesh the boutique work of her daughter in law had also increased; she was doing tailoring work with a number of sewing machines; 16-18 workers were engaged in the boutique and glass work; the only portion available to the petitioner is four rooms as depicted "A", "B", "C" & "D" in the site plan marked "X"; contention is that room "A" is being used for grinding and etching work; rooms "B" & "C" are being used for boutique work and room "D" is being used to keep a generator as there are frequent electricity faults and a generator is thus required; further contention being that there is no proper office/showroom or reception to attend to and to deal with the customers which is embarrassing both to the customers as also the persons dealing with them; at present the customers are being attended to at the canopy which is clumsy and in bad shape; present shop is thus required by the petitioner to enable her son Bhupesh as also her daughter in law to carry out their business works from an accommodation which clearly falls short; eviction petition was accordingly filed.

2. Leave to defend has been filed; contention of the tenant before this Court is that the site plan which has been filed by the landlady is not correct; he has filed a counter site plan; the site plan filed by the tenant has also been perused. They appear to be no difference in the site plan filed by the tenant or by the landlord except for the fact that the site plan filed by the tenant also includes the premises as depicted the first and second floors which are admittedly being used by the landlady and her family for a residential purpose; it is also not the case of the tenant that this is a commercial establishment or the said first floor or second floor are being used for a commercial purpose.

3. Further submission of the tenant is that there are seven rooms which are available to the landlady on the ground floor; however this submission does not find mention anywhere in the application for leave to defend; contention of the tenant being that the site plan filed by him in fact shows this position; this submission is also misdirected as the site plan shows only four rooms which are marked "A", "B", "C" & "D" and the purpose for which they are being used have been aforementioned and explained by the landlady in her eviction petition. There is also no dispute to this factual submission made by the landlady. The contention of the tenant that there are seven rooms available on the ground floor with the landlady is not borne out from the site plan; apart from the rooms marked "A", "B", "C" & "D" there appears to be an open area in front which is covered with a canopy; there is no pucca structure or a room apart from the rooms marked "A", "B", "C" & "D" and the two shops which have been tenanted out to two different tenants namely the present petitioner and one Mian Khan.

4. No triable issue has arisen on this count.

5. The other submission made by learned counsel for the tenant is that there is another alternate accommodation which is available with the landlady which is a shop bearing No. 1, Old Market, Tilak Nagar which is lying locked since the last ten years and this can be used by the landlady. In reply to this submission it has been stated that this is a tenanted shop and even otherwise it is away from the business place of the petitioner; it is unused and is lying locked for the aforementioned reason; further contention being that this is not suitable for the purpose for which the present shop is required which is absolutely adjacent to the place from where the business is being carried out by the son and daughter in law of the petitioner. This factual submission is clearly borne out from the record.

6. The next submission made by learned counsel for the tenant is that there is another alternate accommodation of 200 square yards at Vikas Nagar, Uttam Nagar, New Delhi available with the petitioner and the present premises is not required bonafide by the landlady. In reply to this submission, it has been stated that the Uttam Nagar shop has been allotted in the name of the son of the landlady; allotment letter of the Uttam Nagar shop which has been allotted in the name of the son of the landlady has been placed on record which shows that this is only an area measuring 21.69 square meters; the submission of the landlady that this is only a plot and is lying undeveloped and is also more than five kilometers away from the business place from where the petitioner's family is carrying a business has also not been disputed.

7. It is in this background that the submission of the tenant that alternate accommodation is available with the landlady has to be considered.

8. A Bench of this Court in Adarth Electricals through its partner Sh. S.K. Aggarwal and Others Vs. Sh. Diensh Dayal S/o late Sh. Jagdishwar Dayal Karta Dinesh Dayal HUF 173 (2012) DLT 518 has held as under:-

The concept of alternate accommodation means that accommodation which is "reasonable suitable" for the landlord, which in this case is not, as that particular accommodation is a support of income to the family of the respondent. As to alternative accommodation disentitling the landlord to the relief of possession, it has been held time and again that it must be reasonably equivalent as regards suitability in respect to the accommodation he was claiming. 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. It is to be observed that it would be incorrect to suggest that the

question of accommodation, actually in possession of the landlord, being "reasonably suitable" is to be judged solely in the context of physical sufficiency of the accommodation and that the Court may hold that accommodation is insufficient having regard to various circumstances, such as, the social status of the family or traditions and customs observed by it. As long as the landlord is able to establish that he in good faith and genuinely wishes to occupy the premises in possession of the tenant and that good faith or genuineness is of a reasonable man, it would not be open to the Controller to weigh the claim of the landlord in a fine scale and that the viability of the other accommodation will have also to be considered from the stand-point of a reasonable landlord. It is further to be observed that the law does not require the landlord to sacrifice his own comforts and requirements merely on the ground that the premises is with a tenant and for deciding whether or not the alternative accommodation available to the landlord is suitable or not, the social customs, conventions and habits, usage and practices of the society cannot be completely ruled out and termed as irrelevant. The problem had to be approached from the point of view of a reasonable man and not that of a whimsical landlord.

9. Accommodation at Uttam Nagar is only a plot which is undeveloped and which is admittedly more than five kilometers away from the business place where the son and daughter in law are doing business. Further contention being that this plot even as per the tenant is lying locked; this cannot be substituted for the accommodation required by the son and daughter in law to carry out the business which they are already carrying on from a smaller portion of the disputed premises. The site plan shows that the disputed premises is a shop which is absolutely adjacent to the place from where the son Bhupesh is carrying out his glass work of etching and painting and also adjacent to the boutique work being carried out by the wife of Bhupesh it is also an admitted case that both the son and daughter in law of the petitioner are dependent upon the petitioner for their need for accommodation. They are a joint family who is living on the first floor of the said premises. The site plan marked "Y" has also been placed on record to show that if this shop is vacated by the present petitioner the wall operating in between the working place of Bhupesh and his wife can be broken and it can be converted into a single hall where both the employees of Bhupesh and his wife can sit together to work for their respective purposes i.e. business of Bhupesh which is of framing, cutting, grinding, etching and painting over glass and business of his wife which is of a boutique. The bonafide need of the landlady has clearly been established.

10. No triable issue appears to have arisen.

11. The Court cannot thus grant leave to defend in a routine or in a mechanical manner.

12. In Shri Nem Chand Daga Vs. Shri Inder Mohan Singh Rana, a Bench of this Court had noted as under:-

That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.

13. In Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjana Deva Tayal, the Apex Court has held:-

Prayer for leave to contest should be granted to the tenant only where a prima-facie case has been disclosed by him. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend.

In this background the eviction petition having been decreed and the application seeking leave to defend having been dismissed as no triable issue has arisen, suffers from no infirmity. Petition is without any merit. Dismissed.