

(2012) 03 DEL CK 0311

In the Delhi High Court

Case No : RC. REV. 320 of 2011 and CM No. 15415 of 2011

Vishwa Nath Kakkar and Another

APPELLANT

Vs

Sarla Sharma Decd Thr Lrs and Ors

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1)

Citation : (2012) 03 DEL CK 0311

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Som Dutt Sharma, for the Appellant; Praveen Suri, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—The impugned judgment dated 18.5.2011 had dismissed the application seeking leave to defend filed by the tenant; eviction petition had been decreed. Record shows that the present eviction petition has been filed by 10 petitioners u/s 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA). The premises in dispute is a shop bearing No.VI/4942, Allahabad Bank Building, Chandni Chowk, Delhi (as depicted in the red colour in the site plan). Rate of rent was Rs.805.25 per month exclusive of electricity and water charges; contention was that the petitioners are the owner and the landlord of the said premises; the respondent is an old tenant carrying on business of a retail shop; the said shop is now required by the petitioners for bonafide use for starting their own business. The family of the petitioners earlier had a shop in Chandni Chowk and have experience in the field of watches and other electronic goods but on account of the demise of two of the co-owners the business was discontinued. Petitioners have no other alternate accommodation for conducting the said business; they want to re-start their business which they could not do on account of non-availability of accommodation. Present eviction petition was accordingly filed.

2. Leave to defend was filed by the tenant. Contention was that out of the 10 petitioners, the petitioners no.1,4,7 and 8 are all senior citizens aged more than 70 years and are leading a retired life. Petitioner no.2 is a resident a resident of Mumbai; petitioners no.5 and 6 are settled in the USA and are well placed in their jobs; petitioner no.3 is having his own business and he is not connected with the watch company; petitioners no.9 and 10 are employed in a multi-national company and do not require the premises for any business purpose.

3. This is the whole thrust of the application filed by the tenant seeking leave to defend; contention being that the premises are not required bonafide for the use of any of the petitioners/landlords. Another arguments has been propelled which is the to the effect that on the back side of the aforementioned disputed premises there are six other shops; this argument has, however not been pressed any further as apart from the fact that this objection does not find mention in the application seeking leave to defend, even otherwise the landlord has pointed out that there are no such shops at the back portion and this has been clearly conceded by the learned counsel for the tenant; contentions being that the same shop which is opening on the front side is longitudinal and is in continuation at the back portion.

4. Record shows that the ownership/landlord status of the petitioner has not been disputed. Record further shows that in the application for leave to defend the tenant has admitted that petitioner no.3 is not connected with the watch business of the family; meaning thereby that the tenant has himself admitted the position that earlier the family of the landlords was carrying on a watch business. Thus in this background the submission of the petitioners that they want to re-start the business which they had discontinued because of the demise of two of the co-owners and they have no other commercial place has been amply established by them. Even presuming that two of the petitioners are residents of USA and one petitioner is a resident of Mumbai ;there are admittedly four other petitioners who are senior citizens and are unemployed; merely because they are senior citizen; which would qualify them as person above 62 years would not deprive them from pursuing a business activity in which they already have experience as they admittedly were carrying out the same business at an earlier point of time. Petitioners no.1,4,7, and 8 (are even as per the statement of the tenant) living a retired life and merely because they are senior citizens would not preclude their right of starting their own business; landlord has also vehemently denied that petitioners no.9 and 10 are employed; no detail of the employment of petitioner no.9 and 10 has even otherwise been given; it is a mere bald assertion; landlord has denied this averment. Thus on this count the submission of the tenant that the need of the landlord is not bonafide but malafide is an objection clearly without any merit. Thus the requirement of petitioners no.1,4,7,8, 9 and 10 to start the watch business has prima facie been established.

5. In this context time and again the courts have held that it is for the landlord

to show his need; he is the best judge of his requirements; it is not for the tenant or the Court to dictate terms to him.

The Supreme in *Prativa Devi Vs. T.V. Krishnan*, had in this context *inter alia* noted as:-

The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.

In *Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others*, the Apex Court had observed:

It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business.

6. Reliance by the learned counsel for the petitioner on the judgments of Apex Court reported in *Charan Dass Duggal v. Brahma Nand*, (1983) 1 SCC 301 *Shri Tulsi Ram Vs. Shri Ram Kishan Dass and Others*, is misplaced. There is no dispute to the proposition that if a triable issue arises leave to defend should be granted; the converse is also true; if there is no triable issue leave to defend should not be granted in a routine or in a mechanical manner.

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.