

## Phoola Rani Vs Rameshwar Sharma

**Court:** Delhi High Court

**Date of Decision:** Oct. 3, 2011

**Acts Referred:** Delhi Rent Control Act, 1958 " Section 14(1), 25B(4), 25B(5), 25B(8)

**Hon'ble Judges:** P.K. Bhasin, J

**Bench:** Single Bench

**Advocate:** Sanjiv Kakra and Irfan Ahmed, for the Appellant; S.P. Pandey, Vinod Sharma and Rashmi Pandey, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

P.K. Bhasin, J.

This petition u/s 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter called "the Act") has been filed by the Petitioner-

tenant questioning the correctness of the order dated 18.03.2010 passed by the Additional Rent Controller whereby her application for leave to

contest the eviction petition filed by her landlord, Respondent herein, u/s 14(1)(e) of the Act has been dismissed and she has been directed to hand

over the possession of property bearing No. X-21, West Patel Nagar, New Delhi(hereinafter referred to as the "tenanted shop") to the

Respondent-landlord.

2. The tenanted shop was let out to the deceased father of the Petitioner in the year 1957 by the erstwhile owner thereof from whom the

Respondent-landlord claims to have purchased it in the year 1992. The Respondent-landlord had pleaded in para 18(a) of the eviction petition,

which was filed on 2 June, 2009, about his requirement of the tenanted shop and the relevant averments are as under:

1 The Petitioner is owner of shop No. X-21, West Patel Nagar, New Delhi-110018....Petitioner bona fide requires the tenanted shop of

Respondent for his grandsons namely Abhishek and Ritesh for business purposes. The Petitioner has no other reasonable alternative commercial

accommodation for his grandsons for carrying on the business. On account of non-availability of the commercial accommodation grandson

Abhishek was forced to join private Job/service. Mr. Ritesh has also appeared in his final year exams of B.A. and thereafter he is interested in

running his own business like his grandfather and other family members.

2....

3. That Petitioner family consists of self, wife, two sons, two major grandsons and one minor grandson.

4....

3. As required u/s 25B(4) of the Act, the Petitioner-tenant had sought leave to contest the eviction petition from the Additional Rent Controller by

pleading the following facts in paras No. 4, 5, 7 & 12 of her leave to defend application dated 2 September, 2009, which was accompanied by

her affidavit also:

4... The Petitioner has himself alleged in the Eviction petition that he has three other properties in Delhi other than the premises at X-21, West Patel

Nagar, New Delhi. It is submitted that in one of those properties, X-17, West Patel Nagar, New Delhi has presently three shops are in operation.

The Petitioner has let out one of the said shops to Reliance and the Petitioner has been drawing a high rental income there from. It is further

submitted that the Petitioner has been using one of the other two shops in the premises at X-17, West Patel Nagar, New Delhi for running a Chaat

Bandar. It is further submitted that the third shop was also till a few months back let out by the Petitioner to another retail chain, namely Subhiksha.

It is further submitted that as this third shop on X-17, West Patel Nagar, New Delhi is presently lying vacant the Petitioner could have utilized the

said third shop for any alleged commercial purpose or setting up of an alleged business for his grandsons, as alleged. The fact that the Petitioner

has a vacant shop lying with him has been concealed from this Hon"ble Court with mollified intentions and ulterior motives of creating a totally false

ground for eviction of the Respondent and as such the eviction petition merits outright dismissal. Had the Petitioner required any further

accommodation he would have utilized the said shop and not filed the present false, frivolous and misconceived Eviction Petition against the

Respondent.

5. That the Eviction Petition as filed is not maintainable in as much as the Petitioner is guilty of willful concealment of material facts pertaining to the

gainful employment of his two grandsons. The Petitioner has alleged in the eviction petition that one of his grandsons had been forced to take up a

private job/service on account of non-availability of a commercial accommodation. It is submitted that Abhishek Sharma is presently gainfully

employed/working in a leading Information Technology Company at a respectably higher designation for more than a couple years, and therefore it

is false and vexatious for the Petitioner to allege that Abhishek Sharma was forced to join a private job/service. The Petitioner has also false

alleged in the eviction petition that his other grandson, Ritesh, has just appeared in his final year B.A. exams and is interested in running his own

business. It is submitted that Ritesh also has specialized technical knowledge in a technical field and he also has been employed with a private

concern for more than a year. It is therefore false, frivolous and vexatious assertion by the Petitioner to allege that he requires the Suit Premises for

commercial accommodation for his two grandsons as both of them are presently employed with respectable concerns and there is least likelihood

that in the near future, any of the two grandsons would start a business. The Petitioner has no bonafide requirement, therefore he is resorting to

false and frivolous grounds to try and get the Respondent evicted from the Suit Premises on one pretext or the other.

7. That the eviction petition is not maintainable in as much as no document whatsoever has been filed along with the eviction petition in support of

the alleged requirement of the grandsons of the Petitioner.... It has not even been disclosed in the entire eviction petition as to whose sons are

Abhishek and Ritesh and whether their parents have any other accommodation. The eviction petition as such has deliberately been kept vague and

evasive and lacks material particulars. The Petitioner has deliberately kept the eviction petition vague with the sole mollified intention of improving

upon their case subsequently by concocting and fabricating further allegations and documents.

12. That the eviction petition is not maintainable in as much as one shop at X-17, West Patel Nagar, New Delhi-110008 was lying vacant and has

been let out by the Petitioner to Reliance on a monthly rent of Rs. 32,000 per month about a few months back. Had the Petitioner required the

premises bonafide for his grandsons he would not have let out the said portion to Reliance....

4. The Respondent-landlord in his reply dated 8 October, 2009 to the leave application of the Petitioner refuted the allegations that his two

grandsons were not dependent on him and also that he already had sufficient properties with him and his requirement of the tenanted shop was not

bona fide. It was claimed that none of the three shops in property No. X-17 was lying vacant and all were occupied (The Petitioner-tenant had

earlier claimed that one shop in the said property which had been let out to M/s Subhiksha had been vacated by it and was lying vacant and one

shop had been recently let out to M/s Reliance). In reply to the categorical averment made by the Petitioner in her leave application dated 2

September, 2009 that one shop in X-17, West Patel Nagar had been recently let out to M/s Reliance, the Respondent's reply was: "It is denied

that one shop in X-17, West Patel Nagar was lying vacant as has been let out by the Petitioner to Reliance about a few months back. The

Respondent has been beating round the bush and making false and baseless allegations just to prejudice the mind of the Hon'ble Court to avoid

eviction.

5. The learned Additional Rent Controller in his impugned order dealt with the various pleas raised by the Petitioner-tenant in her leave application

and rejected each one of them. The relevant portion from the impugned order, dealing with the pleas which alone were pressed into service before

this Court, are re-produced below:

7. It has been argued on behalf of the Respondent that the Petitioner has himself alleged in the eviction petition that he has three properties in Delhi

other than the shop in question, but the said contention is baseless because nowhere in the entire eviction petition Petitioner has stated that he has

three other properties apart from the shop in question. Rather he has categorically stated that he is owner of only two shops i.e. shop No. X-21

and X-93 whereas the shop No. X-95 belongs to his wife Smt. Malti Sharma and shop No. X-17 belongs to his son Parvesh Sharma. It is

contended on behalf of Respondent that Petitioner has falsely stated his son Parvesh Sharma to be owner of shop No. X-17 whereas he himself is

owner of this shop as well shops No. 95. But this is only a bald assertion of the Respondent without any material to substantiate the same it is

settled law that bald allegations without any material on record to substantiate the same could not be looked into as mere bald allegations are not

enough for the grant of leave to defend.... Similarly the averment of the Respondent is without any material to substantiate the same, whereas the

Petitioner has filed documentary proof regarding ownership of his son over shop No. X-17 and his wife over shop No. 95. He has filed copy of

Conveyance Deed dated 30.11.04 in favor of his wife Malti Sharma with respect to shop No. X-95, West Patel Nagar and copy of registered

Sale Deed dated 22.10.1985 in favor of his son Parvesh Sharma with respect to shop No. X-17, West Patel Nagar. Thus, the allegations of the

Respondent regarding Petitioner's ownership over these two shops gets falsified.

8... Thus, as per the Respondent himself one of the three shops is with the Reliance Company and the second with the Petitioner himself who is

running his business therein. Now regarding the third shop firstly he has said that it was let out to Subhiksha whereas subsequently he has said that

it is presently lying vacant. There is some ambiguity in his version because if it was let out to Subhiksha then how it could be vacant and if

Subhiksha has vacated the shop, then when the same was vacated? Respondent is silent on this point as he has not stated anything in his leave to

defend application about the vacation of the said shop by Subhiksha. ....

9. It is also contended on behalf of the Respondent that both the grandsons of Petitioner are gainfully employed in private concerns and there is

least likelihood that in the near future any of the two grandsons would start a business. Though the Petitioner has admitted in his eviction petition

that one of the grandsons is employed with private company but he has categorically denied in his reply to leave to defend application that the other

grandson Ritesh is also employed. Again the Respondent has not denied/disputed the said fact as she has failed to file any rejoinder. Regarding the

first grandson i.e. Abhishek Sharma, the Petitioner has submitted that he was forced to do private job due to non-availability of commercial

accommodation for running business, though he had also wanted to run business like other family members. So, if now he wants to leave his job

and start his own business, the tenant could not stop him from doing so and no leave to defend could be granted merely on the basis of

apprehension of tenant that there is least likelihood of his leaving job and starting his business. Moreover, the premises could be required by the

second grandson for starting his own business as the Respondent has not denied the fact that he is not employed in any private concern.

10... It is also contended on behalf of the Respondent that the grandsons of the Petitioner are not dependent upon him either financially or for

accommodation. But the same has been vehemently denied by the Petitioner in his reply and he has categorically stated that his grandsons are

dependent upon him for all intents and purposes. The allegation of the Respondent in this regard is again bald allegation without any substance. It is

not his case that the grandsons are residing separately or are having their own accommodation for which they could be said to be not dependent

upon the Petitioner for accommodation requirement. Hence, leave is refused on this ground also.

6. It was contended by the Learned Counsel for the Petitioner that many tribal issues had been raised in the leave to contest application but the trial

Court has brushed them aside without appreciating the limited scope of its jurisdiction vested u/s 25B(5) of the Act by returning the findings which

could be done only after a regular trial.

7. On the other hand, Learned Counsel for the Respondent-landlord supported the impugned order and submitted that there was no illegality or

perversity in the impugned order justifying any interference by this Court in exercise of its revisional jurisdiction which is very much limited to be

exercised.

8. After having considered the submissions advanced by counsel for the parties and going through the averments made in the leave to defend

application, reply filed thereto by the Respondent-landlord and the reasons given by the learned Additional Rent Controller, I am of the view that

the impugned order cannot be said to be in accordance with the law governing the disposal of such like applications for leave to contest eviction

petitions. The Additional Rent Controller has failed to notice that one of the two grandchildren of the landlord is admittedly professionally well

qualified and gainfully employed also. That shows that he is not dependent upon him for his livelihood or even for any accommodation to run any

business, if at all he intends doing business by leaving the lucrative job which he is presently doing. In fact, the eviction petition does not even have

necessary averments to the effect that Petitioner's grandchildren are dependent upon him financially or otherwise, which aspect being an important

ingredient of a petition u/s 14(1)(e) was required to be pleaded and more particularly, when it was Respondent's own case that his one son was

already employed and the other one was running a sweets shop in Patel Nagar itself. That shows, at least prima facie, the non-dependency of the

Petitioner's grandchildren on him. In any event, a tribal issue does arise which, in the event of being established by the tenant during the trial, may

disentitle the Respondent from securing an order of eviction.

9. There are other tribal issues also arising in the matter. The Petitioner-tenant had claimed that one shop in property No. X-17 had been vacated

by another tenant M/s Subhishka and the same was available with the Respondent. The Respondent had not specifically denied that fact. The

Respondent would be required to justify as to why fresh business could not be commenced there by his grandchildren. So, leave to contest could

not have been denied to the Petitioner-tenant when these tribal issues had been raised by him.

10. The Petitioner-tenant has also brought to the notice of this Court the occurrence of a development after the passing of the eviction order

against her and that development has been admitted by the Respondent-landlord. After passing of the impugned order in favor of the Respondent,

two more shops in property No. X-17 has been vacated by other tenants and instead of the grandchildren of the Respondent starting their business

there the same have been let out to two different tenants. The Respondent's stand on this aspect is that though two shops in property No. X-17,

which is owned by his elder son Parvesh Sharma, have been vacated by the tenants and have been re-let also after the passing of the impugned

order but that has not been done voluntarily but under compulsion. His said son had taken a loan of thirteen lacs from Punjab & Sind Bank against

the security by way of mortgage and the bank has full control over it and his son had no right and authority to induct any tenant or take possession

from any tenant in occupation without prior permission and approval of the bank till the entire loan amount of the bank is re-paid. So, counsel for

the Respondent submitted, both the shops vacated by other tenants were let out again as per the directions of the mortgagee bank. However, in

my view, this aspect would also need trial and this Court need not express any view about the acceptability of the said justification given on behalf

of the landlord that the two shops which had become available after the passing of the impugned order had to be let out again as per the dictates of

the bank. That should be left to the decision of the Additional Rent Controller. Suffice it would be to say that in case it is held after trial that there is

no covenant with the bank that property No. X-17 had to be with the tenants only so long as its loan was not cleared, the bona fide requirement of

the tenanted shop in occupation of the Petitioner-tenant might become mala fide.

11. This case, thus, bristling with several tribal issues deserves to be remanded back to the Additional Rent Controller for trial and disposal on

merits after giving opportunity to both the sides to substantiate their respective claims. The revision petition is accordingly allowed and the

impugned eviction order against the Petitioner-tenant is set aside and consequently leaves to contest the eviction petition stands granted to her. The

matter shall now be taken up by the Additional Rent Controller on 17 October, 2011 at 2 p.m. on which date or any other date which may be

fixed by the Additional Rent Controller the written statement shall be filed by the Petitioner-tenant.