

## **Naresh Kumar and Suresh Kumar Vs Mahesh Chand and Sons. (Huf)**

**Court:** Delhi High Court

**Date of Decision:** Aug. 17, 2012

**Acts Referred:** Delhi Rent Control Act, 1958 " Section 14(1)(e), 25B, 25B(8)  
Evidence Act, 1872 " Section 116

**Hon'ble Judges:** M.L. Mehta, J

**Bench:** Single Bench

**Advocate:** Adarsh Ganesh, for the Appellant; Sandeep Sharma, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

M.L. Mehta, J.

The present revision petition has been preferred u/s 25 B (8) of the Delhi Rent Control Act (herein after referred to as Act") against the order dated 26.07.2011 passed by the learned ACJ cum ARC (North), whereby the application filed by the petitioners-tenants

seeking leave to contest eviction petition no. 53/2009, was dismissed and accordingly an eviction order was passed in favour of the respondent-

landlord. The respondent-landlord had filed the abovementioned eviction petition in respect of shop no. 5871 (tenanted shop), forming part of suit

property no. 19 A, U.A. Jawahar Nagar, Delhi on the ground of bonafide requirement as provided u/s 14 (1)(e) of the Act. It was submitted by

the respondent in the eviction petition that he is a Karta and member of HUF Mahesh Chand & Sons and had purchased the suit property in the

year 1975 and after retiring as Additional District Judge from RHJS had started practicing as an advocate at Delhi High Court. It was further

stated by the landlord that the tenanted shop was let out to Sahib Ram at a rent of Rs. 200/- p.m. and after his death the tenanted shop was in

occupation of Naresh Kumar and Suresh Kumar (present petitioners). It was also submitted by him that he was currently sharing the office of M/s

Harish Chandra (India) Ltd., a contractor and engineers company at 113/ A, Kamla Nagar and the same was not suitable for his legal practice,

and hence the tenanted shop was required by him for meeting his bonafide requirement of office space. A legal notice dated 03.06.2008 was

served on the petitioners-tenants whereby their tenancy was terminated. The petitioners-tenants had duly responded to the legal notice, but refused

to vacate the tenanted shop. It was lastly submitted by the respondent- landlord that the adjacent shops are also required by him and for which

separate petitions were being filed by him.

2. Upon receiving the summons, the petitioners-tenants filed an application for leave to contest the petition, along with an affidavit stating that the

requirement of the landlord is not bona fide and he had concealed material facts from the Id. trial Court. The landlord filed reply to the application

as well as the affidavit filed by the petitioners. The petitioners filed yet another counter affidavit contending that there were several triable issues

which merit the grant of leave to defend. Rejecting the contentions, the Id. ARC opined that the petitioners failed to raise any triable issue that

would non-suit the landlord and passed the eviction order dated 26.07.2011.

3. The order granting eviction decree to the respondent has been challenged by the learned counsel for the petitioners-tenants on the ground that

the findings of the learned Rent Controller are not according to the law and the learned Trial Court had failed to consider the fact that the

respondent- landlord had not come with clean hands and had concealed the fact of owning several other properties which are sufficient to meet his

requirements. It has been further urged that the learned Rent Controller had erred in overlooking the fact that no document of title have been

produced by the landlord to prove that he was the owner of the suit property. It has been further urged that the learned Trial Court had not

considered that besides owning six shops in the suit property, the landlord t has four rooms available on the first floor and second floor of the suit

property which has not been disclosed by him. Lastly, it has been submitted that eviction petition is misconceived and was filed with the ulterior

motive of getting the property vacated and for letting out at higher rent by the landlord.

4. On the other hand, the learned counsel for the landlord has submitted that there is no requirement of interference with the well reasoned and

speaking order of the learned Rent Controller. It has been submitted that no triable issue was established by the petitioner, which would merit the

grant of leave to defend application to him. It has been submitted that in case of ample proof of bona fide requirement by the landlord, the

application for leave to defend deserves to be dismissed.

5. I have heard the rival submissions and perused the record.

6. Before adverting to the submissions made by the learned Senior Counsel for the parties, this Court must reiterate that the power of this Court

u/s 25 -B (8) Act are not as wide as those of Appellate Court and in case it is found that the impugned order is according to law and does not

suffer from any jurisdictional error, the High Court must refrain from interfering with the same. The power under this provision is limited and

supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion which was not

possible, based on the material produced, should this Court interfere in the orders passed by the Rent Controller. In *Sarla Ahuja Vs. United India*

Insurance Company Limited, the Apex Court has held as under:

The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent

Controller is "according to the law." In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been

committed by the Rent Controller in passing the order u/s 25B. It is not permissible for the High Court in that exercise to come to a different fact

finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a

finding on the materials available.

7. Now, I may examine the facts and circumstances of the case in order to arrive at the conclusion that whether the impugned order confirms to the

settled parameters of law or it requires interference by this Court. The ownership of the respondent over the suit property has been challenged by

the petitioners. In order to prove his ownership, the respondent had placed on record the registered sale deed executed in his favour in respect of

the suit premises. This proves the contention of the petitioners that no document of title have been produced by the respondent, to be utterly false.

Moreover, it does not lie in the mouth of the petitioners-tenants to question the ownership of the respondent over the suit property, when they have

been paying rent to him and rent receipts issued by the respondent are a part of record. Once the petitioners had started paying rent to the

respondent, they are deemed to have accepted the respondent as the owner of the suit premises and are barred from questioning the respondent's

ownership over the suit premises. When a tenant denies ownership of landlord, he is obliged to disclose who was the owner/ landlord and to

whom rent was being paid. The proceedings under the Act cannot be converted and utilized by a tenant to prevent eviction merely on the ground

that he seeks to cast doubt on the title of the property which has been acquired when there is really no one else claiming right to the property.

Consequently, this defence taken up by the petitioners fails.

8. In *Ramesh Chand Vs. Uganti Devi*, a bench of this Court while dealing with a similar objection and on the concept of ownership in

proceedings u/s 14 (1)(e) of the Act had noted thus:

It is settled proposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and

right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not

for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the

owner howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction

petition u/s 14(1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that

too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can

challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title

of the landlord, qua the premises, to whom he is paying rent, acts dishonestly.

9. The next contention raised by the petitioners was that the respondent- landlord is in possession of several other properties. Without a single

shred of evidence or details regarding the properties allegedly owned by the respondent, I am afraid much cannot be read into this contention and

it is clearly erroneous.

10. The learned counsel for the petitioners had further urged that besides owning six shops in the suit property, the respondent has four rooms

available on the first floor and second floor of the suit property which has not been disclosed by him. The perusal of record points otherwise. In the

counter affidavit filed by the respondent, the details of his family members are provided and it is submitted that the rooms on the two floors of the

suit property are being utilized by his family for residential purposes. Naturally, they are not available to the respondent for setting up an office and

this fact was duly noted by the learned Rent Controller. Regarding the six shops in the suit premises, the respondent has deposed that they are in

occupation of tenants and he has also filed eviction petition in respect of two of the said shops, as they are also required by him for converting them

into his office. It is not that by making wild allegations, without any shred of evidence, refuted by the landlord in his affidavit, the tenant becomes

entitled to a leave to defend. These contentions taken up by the petitioners are nothing, but bald statements which are liable to be rejected.

11. In the absence of any iota of evidence, such false averments cannot be accepted as gospel truth and were rightly discarded by the Id.

Controller. Section 25B was inserted by the legislature in the Act as a special provision for eviction of the tenants in respect of specified category

of cases as provided therein. Where a landlord seeks eviction on the basis of bonafide necessity, a summary procedure is provided and tenant has

to seek leave to defend disclosing such facts which disentitled the landlord from seeking eviction. Where a tenant pleads, in leave to defend

preposterous propositions and makes such averments which are palpably false and the landlord in his reply affidavit to leave to defend is able to

show to the Controller that all facts stated in leave to defend, were palpably false, the Controller is not precluded from considering the falsity of

such facts on the basis of material placed before it by the landlord.

12. It is settled legal principal that leave to defend is granted to the tenant in case of any triable issue raised before the trial Court which can be

adjudicated by consideration of additional evidence. The whole purpose and import of summary procedure u/s 25B of the DRCA would otherwise

be defeated. In Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjana Deva Tayal, , the Apex Court has held that the

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 Shri Nem Chand Daga Vs. Shri Inder Mohan Singh Rana, , a Bench of this Court had

noted as under:

That before the 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 the instant case, the petitioners have miserably failed to raise any important triable issues that could merit grant of leave to defend, whereas

the respondent has succeeded in proving his bonafide requirement of the tenanted shop for setting up an office and has proved beyond doubt that

he has no other suitable property in his possession which could be utilized by him. In R.C. Tamrakar and Another Vs. Nidi Lekha, , the Hon"ble

Supreme Court while considering the reasonable and bona fide requirement of landlord, held that the question to be asked by a judge of facts, by

placing himself in the place of the landlord, is, whether in the given facts proved by the material on record, the need to occupy the premises can be

said to be natural, real, sincere and honest. If the answer be in the positive, the need is bona fide. In view of my above discussion I could not find

any infirmity or illegality in the impugned order of the learned ACJ cum ARC warranting any interference by this Court.  
The petition is devoid of

any merit, and is hereby dismissed.