

(2014) 08 DEL CK 0088

Delhi High Court

Case No: RC Rev No. 76/2013 & CM No. 3147/2013

Vijay Kumar Ahluwalia

APPELLANT

Vs

Bishan Chand Maheswari

RESPONDENT

Date of Decision: Aug. 4, 2014**Acts Referred:**

- Delhi Rent Control Act, 1958 - Section 14(1)(e), 25-B(8)

Hon'ble Judges: Valmiki J. Mehta, J**Bench:** Single Bench**Advocate:** R.S. Kela, Advocate for the Appellant; Anand Maheshwari and Navin Gupta, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Valmiki J Mehta, J.

This rent control revision petition is filed u/s 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'Act') against the impugned judgment of the Additional Rent Controller dated 13.8.2012 by which the leave to defend application filed by the petitioner/tenant has been dismissed and the eviction petition u/s 14(1)(e) of the Act for bonafide necessity has been decreed with respect to one shop on the ground floor of the property bearing no. 1548/V, Nai Sarak, Delhi-06 as shown in red colour in the site plan annexed alongwith the eviction petition.

2. The eviction petition for bonafide necessity was filed by the respondent no.1/landlord stating that he had retired from Government service/Northern Railways in the year 2002 and thereafter he has not been doing any job and wants to do business. It was prayed that the tenanted premises are required by the respondent no.1 for doing the business of cloth inasmuch as respondent no.1 wants to open such independent business, but he has no accommodation available to start his business. So far as the portion on the first floor above the tenanted premises is concerned, the same was said to be in occupation of the son of the respondent

no.1/landlord Sh. Vivek Maheshwari, and who is doing the business of cloth from the first floor in the name of M/s Balaji Fashion. The second floor of the property was/is being used by both the sons of the petitioner for godown purposes. On the third floor there is one room and which is used by the customers of both sons who come for business. Therefore, except the suit tenanted shop there is no other premises in which business can be carried on by the respondent no.1/landlord and accordingly a petition for bonafide necessity was filed. Respondent no.1 is the adopted son of Sh. Miri Mal and Smt. Ram Piari who owned the entire property no. 1548/V.

3. Petitioners who are the legal heirs of the deceased tenant Sh. Ram Prakash contested the petition and filed their leave to defend application. In the leave to defend application various aspects are pleaded, but, the following aspects only have been urged before this Court to challenge the impugned order denying leave to defend:-

(i) Respondent no.1 is not the owner or the landlord of the suit property.

(ii) Premises no. 1547, Nai Sarak, Delhi i.e. the adjoining premises is jointly owned by respondent no.1 and his sons and these premises are therefore available for carrying on of the business by the respondent no.1.

(iii) One room on the third floor above the tenanted premises is not being used by the customers who come for the business with the sons of respondent no.1, and in this portion respondent no.1/landlord can carry on his new cloth business.

4. A reading of the leave to defend application shows that there is no denial ie no challenge is raised to the same, that the son of respondent no.1 Mr. Vivek Maheshwari is not using the first floor above the tenanted premises for doing the business of M/s Balaji Fashion. In the leave to defend application, it is only alleged that the adjoining premises bearing no. 1547 are owned by the respondent no.1 and his sons including Mr. Vivek Maheshwari which premises are available to the respondent no.1. Also, in the eviction petition the respondent no. 1 specifically stated, and which aspect is not challenged in the leave to defend application, that the respondent no.1 with his adoptive mother Smt. Ram Piari had filed an eviction petition against another tenant Mr. Meghraj, and which proceedings were contested on right till the Supreme Court and possession of the shop with Meghraj was given to the respondent no.1 and on this shop on the ground floor another son of respondent no.1 is carrying on the business of sarees under the name and style of M/s Aarti Saree Emporium, meaning thereby there is no challenge to the fact that the respondent no.1 is the owner-landlord.

5. (i) On the first aspect as to whether there exists relationship of landlord and tenant between the parties, the fact is that though the petitioner may want to state that a triable issue arises on this aspect, but, the Additional Rent Controller has rightly noted that to show the factum of adoption, a registered adoption deed dated 14.3.1978 has been filed and also there is filed on the record of the Addl. Rent

Controller copies of the passport, ration card and house tax receipts showing that the respondent no.1 is the adopted son of Miri Mal and Smt. Ram Piari. Therefore, in my opinion, the Additional Rent Controller has committed no illegality in holding that respondent no.1 is the adopted son inasmuch as there is no other person who is claiming ownership to the suit property, and in such a scenario there is no locus standi of a tenant to question the title/ownership of a landlord. This aspect of existence of the relationship of landlord and tenant is further confirmed by the fact that the respondent no.1 with his adoptive mother had filed an eviction petition against another tenant Mr. Meghraj and which proceedings went right till the Supreme Court, and therefore, once the adoptive mother during her life time admits to the factum of adoption of the respondent no.1 as her son, petitioner cannot for the sake of argument deny the aspect of adoption and allege that a triable issue arises. I therefore reject the argument that respondent no.1 is not the owner/landlord of the premises.

(ii) Also, I would like to reject at this stage one argument urged on behalf of the petitioner/tenant that the ration card, passport, house tax receipts are fabricated after the death of the adopted mother Smt. Ram Piari to show respondent no.1 as the adopted son, however, when the counsel for the petitioner was asked to show any such averment made in the leave to defend application that these documents are forged and fabricated after the death of Smt. Ram Piari, no such averment so made in the leave to defend application could be pointed out. I may note that respondent no.1 alongwith the eviction petition had filed copies of all these documents being the ration card, passport and house tax receipts, and therefore, it was necessary for the petitioners/tenants to have challenged these documents in the leave to defend application, but as stated above, no such averment with respect to these documents being forged and fabricated after the death of the adoptive mother Smt. Ram Piari are made in the leave to defend application.

6. On the aspect of alternative suitable accommodation, the main stress laid on behalf of the petitioner was that the property no. 1547 is owned by respondent no.1 also in addition to the ownership of his sons. In this regard, a learned Single Judge of this Court on 18.11.2013 in order to get clarification for the ownership of property no. 1547 passed the following order:-

"Lower court record has been added.

Learned counsel for the petitioner states that in para 3 of the application for leave to defend the petitioner has made a specific statement that the respondent has not disclosed that the respondent and his sons own property No. 1547, Nai Sarak, Delhi, which is a three storey built up building having commercial space on all the three floors. Learned counsel for the respondent states that the said property is purchased by his son. The sale deed is also registered in the name of his son. Let him disclose the exact position of the said property by filing the additional affidavit along with the copy of the site plan of complete building of property No. 1547, Nai

Sarak, Delhi within two weeks. Both the parties are also allowed to file short written submissions within four weeks.

List on 30th January, 2014.

Interim order to continue, in the meanwhile."

7. Pursuant to the aforesaid order the respondent no.1 has filed his additional affidavit alongwith the title deed of the property bearing no. 1547 and which title deed shows that the property bearing no.1547 is not owned in whole or part by the respondent no.1, but the same is only owned by his son Sh. Vivek Maheshwari. In this additional affidavit filed by respondent no.1, respondent no.1 has stated that property no. 1547 is occupied by his son Vivek Maheshwari who is carrying on business from there and which is not disputed by filing a reply to the said affidavit. Therefore, the argument urged by the petitioner stating that the property no. 1547 belongs to or is available to respondent no. 1 is an argument lacking any substance, and therefore it is held that the property no. 1547 is not owned by the respondent no.1 and nor is it lying vacant for the respondent no.1 to carry on his business from the same.

8. The last argument which is urged on behalf of the petitioner is that one room is available on the third floor of the property, and that room should be taken as an alternative suitable accommodation for carrying on business by respondent no.1. This argument is misconceived for various reasons. Firstly, surely the ground floor of a property is not only more convenient but far a better proposition for carrying on a business in a commercial area. A room on the third floor cannot be said to be an alternative suitable accommodation as compared to a shop on the ground floor and I can take judicial notice of the fact that businesses are carried out much more successfully in a ground floor of the property rather than on the third floor. A tenant cannot dictate to a landlord from where to carry on business once the ground floor is more suitable vide [Anil Bajaj and Another Vs. Vinod Ahuja](#), . Also, the respondent no.1 in the eviction petition has specifically averred that one room on the third floor is being used by customers of the sons of the respondent no.1, and who come for doing business, and therefore I do not find that such user is an illegal user or an absurd user or a contrived user so that it can be argued by the petitioners/tenants that the room on the third floor should not be used by the customers who come for doing business with the sons of the respondent no.1. The room in the third floor is hence not an alternative suitable accommodation . I therefore hold that even so far as this one room on the third floor is concerned, the same is not an alternative suitable accommodation than as compared to the ground floor tenanted shop with the petitioners/tenants.

9. In view of the above, there is no merit in the petition, and therefore the same is dismissed, leaving the parties to bear their own costs.