

(2012) 03 DEL CK 0425

Delhi High Court

Case No: RC. REV. 264 of 2011 and CM No. 13063 of 2011 (for stay)

Rakesh Sud

APPELLANT

Vs

Arun Kumar Gupta

RESPONDENT

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**Date of Decision:** March 19, 2012**Acts Referred:**

- Delhi Rent Control Act, 1958 - Section 14(1), 15(1), 25B

**Citation:** (2012) 8 AD 193 : (2012) 189 DLT 161**Hon'ble Judges:** Indermeet Kaur, J**Bench:** Single Bench**Advocate:** Sanjeev Sachdeva, with Mr. Preet Pal Singh and Ms. Priyam Mehta, for the Appellant; Rakesh Khanna with Mr. Devender N. Grover, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Indermeet Kaur, J.

1 Order impugned is the order dated 22.02.2011 whereby the eviction petition filed by the landlord Arun Kumar Gupta seeking eviction of his tenant u/s 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) on the ground of bonafide requirement had been decreed. Record shows that the petitioner was the landlord of shop No. 4997, Ward No. XI on plot No. 57, Daya Nand Marg, Darya Ganj; this property has been let out to the tenant at monthly rent of Rs. 50/-. Contention of the petitioner is that he had a shop in the basement of B-43, Greater Kailash-I from where he was carrying on his business of sale of electronic articles like DVD player/LCD/TV for the last 15 years; this shop was located in a residential area and under the orders of the Apex Court had been ordered to be sealed; petitioner is in dire need of space to run his business; he has no other means of livelihood; this is the only commercial property available with him which is required for his bonafide need to carry on his business. Present petition was accordingly filed. Further contention in the eviction is to the effect that the tenant had in fact purchased a

portion of this property from Rajesh Luthra who in turn had purchased this portion from the present petitioner. Further contention is to the effect that an earlier eviction petition u/s 14(1)(a) of the DRCA had been filed by the landlord against the father of the respondent in which the tenant had initially opposed the landlord-tenant relationship but thereafter in the course of those proceedings he had himself moved an application admitting the status of Arun Kumar Gupta as landlord/owner.

2. To support this submission attention has been drawn to the order passed by the Additional Rent Controller (ARC) in proceedings u/s 15(1) of the DRCA (dated 27.5.1985) wherein the submission of the father of the tenant (Nanak Chand Sud) that there is no relationship landlord and tenant had been repelled; as an interim measure Nanak Chand Sud (in those proceedings) had been directed to pay interim rent. Attention has also been drawn to the application filed by Nanak Chand Sud (father of the tenant) wherein he had himself had admitted that he was satisfied about the title of the petitioner (Arun Kumar Gupta); his prayer in that application had sought a dismissal of the petition u/s 14(1)(a) of the DRCA. This submission of the counsel for Nanak Chand Sud has also been recorded on 09.4.1986 before the ARC in those proceedings which was to the same effect.

3. All these facts had been noted by the ARC in the correct perspective. These orders in fact become relevant in view of the vehement submission made by the Learned Counsel for the petitioner before this Court today that the relationship of landlord and tenant does not exist between the parties. This submission has little force as in view of the aforementioned orders, the father of the tenant (tenant is deriving his title only from his father) had himself made a submission in writing that he had satisfied himself about the title of Arun Kumar Gupta; in fact, in those proceedings he continued to pay rent to the present landlord. Thus this submission that Arun Kumar Gupta is not the owner/landlord of these premises is bereft of all force. The additional submission made by this tenant on this count that even otherwise in the eviction petition it has not been specifically pleaded that Arun Kumar Gupta is owner of the suit property is also without merit. The form in which the present eviction proceedings have been filed (under Section 14(1)(e) of the DRCA) have been perused; Column 3 specifies the name and head of the landlord; the name of Arun Kumar Gupta finds mention; para 18 contains the grounds of eviction; they have specified that the tenant (Rakesh Sud) had purchased the adjoining central shop from Rajesh Luthra who in turn had purchased it from Arun Kumar Gupta; this was vide a registered sale deed; it is implicit from a reading of this document that Arun Kumar was the owner and that is how vide a registered sale deed he had sold this central shop to Rajesh Luthra who in turn had sold it to the present tenant Rakesh Sud. The tenant Rakesh Sud has in fact admitted that Arun Kumar Gupta was the owner of four shops one of which has been purchased by his wife from the intervener Rajesh Luthra.

4. The Apex Court in the case of [Shanti Sharma and Others Vs. Ved Prabha and Others](#), had an occasion to examine the concept of "owner" as envisaged u/s 14 (1)(e) of the DRCA. The Apex Court has noted that the word "owner" has not been defined anywhere in the DRCA; the following extract of the judgment of the Apex Court is relevant:-

The word "owner" is not used in Section 14 (1) proviso (e) of Delhi Rent Control Act in the sense of absolute owner; where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction, the only thing necessary for him to prove being bona fide requirement and he is the owner thereof. In this context the meaning of "owner" is vis-à-vis the tenant i.e. the owner should be something more than the tenant. In most of the modern townships in India the properties stand on plots of land leased out either by the Government or the Development Authorities and therefore it was not contemplated that for all such properties the landlord or the owner of all such properties the landlord or the owner of the property used in common parlance will not be entitled to eviction on the ground of bonafide requirement and it is in this context that we have to examine this contention. It could not be doubted that the term "owner" has to be understood in the modern context and background of the scheme of the Act.

5. Question of ownership/status of landlord does not in any manner raise a triable issue.

6 The second submission made by the Learned Counsel for the tenant is to the effect that there are three shops which were owned by the landlord which have been sold by a registered sale deed in September 2009 and the present eviction petition has been filed malafide; a paucity of accommodation has in fact been created; if the landlord required the premises bonafide, the could not have sold the aforementioned three shops.

7 Record shows that in fact 2 shops had been sold by the landlord on 22.1.2009 to Rajesh and the third shop was sold to Babita Luthra (wife of Rajesh Luthra) also on 22.01.2009. This sale deed dated 22.01.2009 in favour of Rajesh Luthra is on record; it also makes a mention of the will executed by Sewti Devi on 26.7.1982 by virtue of which she had bequeathed the entire ground floor in favour of the present landlord Arun Kumar Gupta. This is a registered document. In fact it was from Rajesh Kumar Luthra himself that one such shop had been purchased by the present tenant; the tenant had recognized the title of Rajesh Luthra who in turn had derived it from the present landlord i.e. Arun Kumar Gupta which was on the basis of the will of Sewti Devi dated 27.6.1983. The submission of the petitioner on this count that the will of Sewti Devi was a disputed document also has no force.

8. Going back to the submission that the three shops had been sold by the landlord admittedly on 22.01.2009, it is on record that the present eviction petition had been

on 22.12.2010 which was after a lapse of about two years. The submission of the landlord on this Court is that he was constrained to sell these shops two years prior to the date of the filing of the eviction petition because of a financial crisis. In fact in the entire body of the application for leave to defend malafides have not been imputed to the landlord on this count; eviction petition having been filed two years later when admittedly there is no dispute to the specific averments made by the landlord that because of a financial crisis he was forced to sell these three shops, there is no reason to disbelieve the landlord on this score.

9. Courts have time and again noted 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.

10. No triable issue has arisen on this count either.

11. Last submission of the Learned Counsel for the petitioner is that the landlord is a rich man who is running a resort in more than 7 acres of land at Dehradun; he does not wish to carry out any business from the aforementioned premises. This submission has been vehemently denied. In the reply filed by the landlord it is stated that a small house has been purchased by the wife of the petitioner (who hails from Dehradun) out of her own funds which has been built on an agricultural land where a "bed and breakfast scheme" which pre-supposes persons using the premises on a daily rental basis has been set up; it is denied that the value of this property is 100 crores as has been alleged; it is stated that this scheme is being run by his wife in which petitioner has no interest; it is reiterated that the petitioner wishes to carry out his own business from the aforementioned premises which business he was earlier admittedly doing from the premises at B-43 Greater Kailash-I which has since been sealed. There is no dispute to the factum that this shop has been sealed under the order of the Monitoring Committee of the Supreme Court and as on date it cannot be used as it lying sealed and being located in a residential area, it cannot be used for a commercial purpose. The landlord has been able to prove that he is the owner and has the status of the landlord in the aforementioned premises; he has no other alternate accommodation; this shop is the only commercial shop which is available to him from which he can run his business which earlier he was carrying out from a shop at Greater Kailash-I which had been since sealed as it is located in the residential area. Petitioner has no other reasonably suitable accommodation. Three other shops had been sold by him two years prior to the filing of the present petition to override a financial crises. The need of the petitioner two years later is a bonafide and genuine need to set up his business from this shop. This need stands

prima facie established.

12. No triable issue has arisen on this count. Courts have time and again held that unless and until a triable issue arises leave to defend cannot be granted in a routine manner. The very purport and import of the Section 25-B of the DRCA would otherwise be defeated.

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.

14. In this background the eviction petition having been decreed and the application seeking leave to defend having been dismissed thus suffers from no infirmity.

15. Reliance by the Learned Counsel for the petitioner upon the judgment reported in [Inderjeet Kaur Vs. Nirpal Singh](#), is misplaced. There is no dispute that if a triable issue arises leave to defend should be granted; the converse is also true; if no triable issue has arisen leave to defend should not be granted in a routine or in a mechanical manner. This petition being without any merit; it is dismissed.