

(2010) 09 DEL CK 0357**Delhi High Court****Case No:** R.C. Rev. No. 113 of 2010 and C.M. No. 9000 of 2010

Kharati Ram Khanna and Sons

APPELLANT

Vs

Smt. Krishna Luthra

RESPONDENT

Date of Decision: Sept. 15, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Rent Control Act, 1958 - Section 14(1), 25B(8)

Citation: (2010) 172 DLT 551 : (2011) 1 RCR(Rent) 84

Hon'ble Judges: Vidya Bhushan Gupta, J

Bench: Single Bench

Advocate: Harish Malhotra, Vivek Singh and Abhinav Bajaj, for the Appellant; J.M. Sabharwal S.K. Chaudhry and K.N. Singh, for the Respondent

Final Decision: Dismissed

Judgement

V.B. Gupta, J.

Present revision has been filed against order dated 18th February, 2010 passed by Additional Rent Controller (for short as "Controller") Delhi, vide which application u/s 25-B of Rent Control Act 1958 (for short as "Act") seeking leave to contest filed by respondent, was dismissed and eviction order has been passed against petitioner.

2. Brief facts are that respondent (who is petitioner in trial court) is owner/ landlord of shops number 538 and 539, Katra Neel, Chandni Chowk, Delhi and is in occupation of shop No. 539. Petitioner (who is respondent /tenant in trial court) had taken shop No. 538, measuring approximately 65 sq. yards, at a monthly rent of Rs. 18/- per month, from predecessor-in-interest of respondent. In 1988, husband of respondent took on rent one shop bearing No. 540 in same vicinity from Sh. Vijay Sharma and shifted his family business to the same. However, Wakf Board raised dispute about ownership of the said shop and initiated action against the husband of respondent, who filed a suit for injunction against Wakf Board, but lost the same.

Appeal against same is pending. The occupation of the said shop has now become uncertain.

3. Sh. K.L. Luthra, husband of respondent and her two sons namely, Sh. Deepak Luthra and Sh. Manoj Luthra shifted major part of their business of fancy embroidery suits and other apparels to shop number 539. The width of its front portion is about 8 feet in all. Rest of the portion of shop is behind the demised shop. Family business of respondent is facing lot of difficulties as front portion of shop is too narrow and inadequately spaced to attend all the customers. Invariably, customers at the shop of respondent have to stand outside till the customers already inside the shop leave the shop. Respondent has claimed bonafide requirement for the premises in question on the ground that a sufficient big space is required to display embroidery work in the shop and windows. Respondent also wants to make division of entire space available in shops No. 538-539 to establish her sons separately and independently in her property and in the same trade. Since width of shop in occupation of respondent is only around 8 feet, it is not possible to divide it further to carve out two independent shops. Only option for respondent is to get the demised shop vacated and divide entire portion of two shops bearing No. 538 and 539 in equal shares up to the rear portion and have two independent shops of the same dimensions.

4. It is also stated that petitioner has already acquired another shop bearing No. 741, Nai Basti, Katra Neel, Chandni Chowk, Delhi-110006 and has shifted his business there.

5. Respondent does not have any other shop or commercial space to accommodate her sons separately and independently without disturbing the existing business. The members of family of respondent who are dependent on her for the purpose of space to run their business from the shop are; her 73 years old husband, Sh. Manoj Kumar Luthra and Sh. Deepak Luthra, her married sons.

6. In affidavit for leave to contest, it is stated that shop under litigation cannot be used as accommodation. Sh. Deepak Luthra, son of respondent owns and runs his business from the ground floor of property No. 770, Katra Neel, Chandni Chowk, Delhi, who also owns property No. B-2/27, Ashok Vihar, Phase-II, New Delhi and is living in the said property.

7. It is also stated that property No. 538 and 539, cannot be divided into two portions separately as they are already separated. Respondent has taken contradictory stand and she did not intentionally mention that her husband and sons are running business under the name and style of M/s Kishan Lal Luthra and Sons HUF at 539-540 and 770, Katra Neel, Chandni Chowk, Delhi. Respondent has more than sufficient accommodation of residence as well as that of the business. Thus, eviction petition does not disclose any cause of action.

8. In counter affidavit filed by respondent, it is stated that her son is not running any business from the ground floor of property bearing No. 770, Katra Neel, Chandni Chowk, Delhi. The store in property No. 770, Katra Neel is used as godown and the same is not suitable for running the business. It is further stated that property bearing No. B-2/77, Ashok Vihar, Phase-II, New Delhi, is an exclusive residential accommodation of respondent and members of the family dependant on her for purpose of residence.

9. It is denied that her sons and husband are running their business activities from premises bearing No. 539-540 and 770, Katra Neel Chandni Chowk, Delhi. Store in premises No. 770, Katra Neel, is a godown and same is not suitable for running business. However, Shop bearing No. 540, Katra Neel, does not belong to her husband or sons of respondent and they do not have any vested right in the same. This shop is in occupation of her husband as a license and the same in dispute. Her husband may have to leave the same as he was unable to get order of stay of dispossession against Wakf Board which claims ownership of the same. Her sons are running their business only from shop No. 539, Katra Neel, Delhi. She has decided to provide separate shops to both her sons, so as to enable them to run their independent and separate business.

10. It is contended by learned Counsel for petitioner that in leave application, triable issues for consideration have been raised and as such leave to defend ought to have been granted. A statutory duty is cast on the Controller to grant leave to the tenant to contest and defend the eviction petition, if affidavit filed by tenant discloses such facts as would disentitle the landlord for an order to recover possession. The test is to see whether the defence raises a real issue and not a sham one, that is, if the facts alleged by petitioner are established there would be a good and plausible defence on those facts.

11. It is further submitted that respondent have made a false averment on oath and have concealed facts, as she owns and possess shop No. 770 in the vicinity of shop No. 539-540 and her husband and children are carrying on their business from the said premises. Total area of that shop is 150 sq. yard and fact of existence of shop No. 770 has been subsequently admitted by respondent, though the same has been allegedly termed as godown. Since, factum of shop No. 770 has not been disputed thus, only issue is whether shop has reasonable area and is suitable and sufficient for carrying on business. The issue of purpose of use is certainly a question of trial and no document has been produced to show that shop No. 770 is being used as a godown. Thus, respondent has sufficient space for expansion of their business. Present eviction petition is utterly malafide, as respondent has alternate accommodation by way of shop No. 770 available to her.

12. In support, learned Counsel relied upon following judgments:

- (i) [Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjana Deva Tayal, ;](#)
- (ii) Satto Devi v. Om Prakash Saini 1997 IV AD (Delhi) 534;
- (iii) Charan Dass Duggal v. Brahma Nand, (1983) 1 SCC 301 and
- (iv) [Inderjeet Kaur Vs. Nirpal Singh,](#)

13. The underlying principle of law laid down in above judgments is that;

Leave to defend must be granted where tenant raises triable issues making out a prima facie case against landlord's eviction suit on ground of personal requirement filed u/s 14(1)(e) read with Section 25B of the Act.

14. On the other hand, it is submitted by learned Counsel for respondent that averments made by respondent in para 18 (a) (iv), (vii), (viii) and (x) of the eviction petition have not been denied by petitioner. Son of respondent is not running any business on the ground floor of property No. 770, as the same is being used as a godown and same is not suitable for running the business.

15. It is also contended that though property No. 540 is being used for business by husband of respondent but it does not belong to her husband or sons. Her husband is only a tenant in this premises.

16. It is further contended that sons of respondent are running their business only from shop No. 539 and respondent has decided to provide separate shops to her sons so as to enable them to run their independent and separate business. Thus, respondent bona fide requires the shop in question for her sons who want to carry out separate business in their respective portion. As far as Ashok Vihar property is concerned the same is residential one. Thus, there is no triable issue in this case.

17. In support, learned Counsel for respondent cited following judgments:

- (i) [Narinder Kumar Vs. Vishnu Kumar Nayyar,](#)
- (ii) J. Chatterjee v. Mahinder Kaur 2000 RLR 561 SC;
- (iii) John Impex (Pvt.) Ltd. v. Dr. Surender Singh and Ors. Delhi High Court 2007 (1) RCR 509;
- (iv) Mohd. Usman v. Siraj Ahmed 154 2008 DLT 342;
- (v) [Shri Nem Chand Daga Vs. Shri Inder Mohan Singh Rana,](#)
- (vi) [Shri Hari Shanker Vs. Shri Madan Mohan Gupta,](#)
- (vii) Shamshad Ahmed and Ors. v. Tilak Raj Bajaj (Deceased) 152 2008 DLT 301 SC;
- (viii) [Rajender Kumar Sharma and Others Vs. Smt. Leela Wati and Others,](#)
- (ix) [Sh. Om Prakash Vs. Chaman Industries and Others,](#)

(x) [Smt. Sudesh Kumari Soni and Another Vs. Smt. Prabha Khanna and Another,](#)

(xi) Rupareal and Company (Delhi) v. S. Avtar Singh Puri (Decd.) through Lrs. and Ors. 159 2009 DLT 101 and

(xii) [Satyawati Sharma \(Dead\) by LRs. Vs. Union of India \(UOI\) and Another,](#)

18. There is no dispute about relationship of landlord and tenant between the parties. As far as letting purpose is concerned, same is for non residential purpose. In Satyawati Sharma (Supra) it has been held, "The premises let out either for residential or commercial purposes can be got vacated by the landlord for bonafide requirement".

19. Present petition has been filed u/s 25B(8) of the Act. A full Bench of this Court in Mohan Lal v. Ram Chopra and Anr. 1982 (2) RCJ 161 exhaustively considered the provisions of Section 25B of the Act. On the scope of the proviso to Sub-section (8) of this Section, after examining the judgment of Supreme Court in Hari Shanker and Ors. v. Rao Girdhari Lal Chowdhury AIR 1963 S.C. 698 and [Bell and Co. Ltd. Vs. Waman Hemraj,](#) it was laid down as follows:

In our opinion the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision u/s 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction u/s 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act.

20. Upon examination of above judgment it may safely be held that this Court in exercise of the powers vested by proviso to Sub-section (8) of Section 25B of the Act may reappraise the evidence only for a limited purpose of ascertaining whether the conclusion arrived at by the Rent Controller were wholly unreasonable that no reasonable person acting with objectivity could have reached on the material available to test the order of the Rent Controller on the touchstone of whether it is in accordance with law.

21. In Praveen Jain and Ors. (Shri.) v. Dr. Mrs. Vimla 2009 IV AD Delhi 653, this Court observed;

The powers of this Court u/s 25B(8) are not appellate powers and this Court has only to see that the Trial Court had acted in accordance with law and not transgressed the limits of its jurisdiction.

22. In Rajinder Kumar Sharma (Supra) the court observed;

Section 25B was inserted by the legislature in Delhi Rent Control 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.

23. In Nem Chand Daga (Supra), it was held;

That before leave to defend is granted, the respondent must show that some triable issues which disentitled 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.

24. In [Frank Anthony Public School Vs. Amar Kaur](#), it was held;

The legislature has devised a ""special procedure for the disposal of the application for eviction on the ground of bonafide requirement". It is modelled on Order XXXVII of the Code of Civil Procedure. The object is to reduce delays in litigation. The object is to introduce a "summary trial" in place of full length trial.

25. In Sarwan Dass Bange v. Ram Parkash 2010 IV AD Delhi 252, observations made by Supreme Court in [Baldev Singh Bajwa Vs. Monish Saini](#), have been quoted as under;

It was held that the legislative intent is of expeditious disposal of the application for ejectment of tenant filed on the ground of requirement by the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only. It was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the Court for ejectment of tenant unless his need is bona fide - no unscrupulous landlord in all probability, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him. It was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the court his requirement shall be presumed to be genuine and bona fide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine. The tenant is required to give all the necessary facts and particulars supported by documentary evidence if available to prove his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement

of the landlord; a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine

26. Petitioner in his affidavit has taken contradictory pleas with regard to shop No. 770, Katra Neel, Delhi. On the one hand, he states that Sh. Deepak Luthra son of respondent owns and runs his business from the ground floor of this shop. While in same breadth, petitioner states that respondent's husband and sons are running business under the name and style of M/s Kishan Lal Luthra and Sons HUF at shop No. 770. Relevant paras of petitioner's affidavit read as under;

3. (vi) That Sh. Deepak Luthra son of the petitioner owns and runs his business from the ground floor of property No. 770, Katral Neel, Chandni Chowk, Delhi. Deepak Luthra also owns property No. B-2/27, Ashok Vihar, Phase-II, New Delhi and is living in the said property.

(vii) That the property No. 538 and 539 cannot be divided into two portions separately, as they are already separated.

(viii) That the petition does not disclose any cause of action and is liable to be dismissed.

(ix) That the petitioners have taken contradictory stands and petition does not intentionally mentioned that her husband and sons are running business under the name and style of M/s Kishan Lal Luthra and Sons HUF at 539-540 and 770, Katral Neel, Chandni Chowk, Delhi.

27. As per petitioner's own case, Sh. Deepak Luthra son of respondent, owns and run his business from ground floor of property No. 770, Katra Neel, Chandni Chowk, Delhi. It is not petitioner's case that respondent is the owner of this shop. This plea of petitioner thus falls to the ground that respondent has concealed about shop No. 770, Katra Neel, Chandni Chowk, Delhi, where her husband and sons are running the business.

28. Now, coming to Shop No. 539, Katra Neel, Delhi the Case of respondent as per averments made in eviction petition is as under;

18(a) (vii) That the petitioner, her husband and sons shifted the major part of their business to and are in occupation of the shop 539, Katra Neel, Chandni Chowk, Delhi-110006. The husband of the petitioner, Sh. Krishan Lal Luthra and her sons, Sh. Deepak Luthra and Sh. Manoj Kumar Luthra run their business of fancy embroidery suits and other apparels from the said shop. Both the sons of the petitioner attend to the business from the shop No. 539, Katral Neel, Chandni Chowk, Delhi-110006.

(viii) That the width of the front portion of the shop in the occupation of the petitioner is around 8 feet in all. The rest of the portion of the shop of the petitioner

is behind the demised shop. The above family members of the petitioner have fairly good business and their shop is visited by scores of customers every day.

(ix) The petitioner and her sons are facing a lot of difficulty as the front portion of the shop of the petitioner is too narrow and inadequately spaced to attend all the customers. In this regard it is pertinent to submit that the duration of attendance of the customers is needed for selection of work on suits etc. Invariably the customers at the shop of the petitioner have to stand outside till the customers already inside the shop leave the shop. With the narrow and inadequate width of the shop the show windows are not possible. Sufficiently big space is required to display of embroidery works in the show windows.

(x) That both the sons of the petitioner are married and are residing at B-2/34, Ashok Vihar, Phase-II, New Delhi-110052. But due to temperamental difference both the sons of the petitioner are not in good terms with each other. The petitioner has already separated the mess of her sons and has accommodated her elder sons at the first floor; whereas her younger son, Sh. Deepak Luthra is living on the ground floor with the petitioner and her husband. This decision to separate the sons is taken by the petitioner and her husband, with heavy heart, to buy peace and tranquility at home. The said residential house is in the joint name of the petitioner and her husband.

(xi) That with the passage of time of more than five years the need of the petitioner for commercial space has increased many fold due to the expansion of business and due to the fact that the petitioner and her husband want to establish their sons in separate and independent shops. The need of the petitioner is most urgent as the sons of the petitioner are not pulling on well with each other. The petitioner wants to make division of the entire space available in the shops No. 538 and 5639, Katra Neel, Chandni Chowk, Delhi and establish their sons separately and independently in her property and in the same trade.

(xii) That unfortunately the width of the shop in the occupation of the petitioner is only around 8 feet and it is not possible to divide it further to carve out two independent shops. The only option for the petitioner is to get the demised shop vacated and divide the entire portion of the two shops bearing No. 538-539, Katra Neel, Chandni Chowk, Delhi in equal share up to the rear portion and have two independent shops of the same dimensions.

(xiii) That the petitioner and her husband are elderly people. Petitioner is around 69 years of age and her husband is about 73 years of age. The petitioner and her husband are completely dependant on their sons and they cannot run the business without their assistance. The petitioner has decided to divide the property equally and establish the trade independently and separately for both the sons gracefully in their lifetime to avoid any bad blood or ill-will after their death, whilst kept domain over the property and the business.

29. The above averments made in eviction petition have not been denied at all by the petitioner and as such they are deemed to be admitted as correct.

30. Respondent has claimed her bonafide requirement for tenanted premises on the ground that she wants to settle down her two sons separately and independently. After getting the demised shop vacated, she would divide entire portion of two shops bearing No. 538 and 539 in equal shares, as due to inadequate width of the shop in her occupation, customers have to wait outside the shop. She is not able to display the embroidery work in the show window. She also wants to settle her married sons, though they are jointly running a business, into separate business and needs separate premises for both of them. Thus, her requirement cannot be said to be fanciful or arbitrary.

31. It is an admitted fact that respondent is having two sons and they are already running the business of fancy embroidery suits etc in one shop only. Respondent's requirement of two separate shops for running business by her two sons separately and independently, is a bonafide and genuine requirement.

32. Petitioner has not disputed the composition of family members of respondent, their business and their day to day difficulties being faced in respect of their customer's care due to narrow and inadequate space in the shop in occupation of the respondent. Thus, respondent has bonafide requirement for the premises in question for the use an occupation of herself and her family members.

33. In John Impex (Supra) this Court observed;

The conspectus of the aforesaid judgments shows that the broad principles have been set down of the requirement of a landlord not being a mere whim or fanciful but that it should be a genuine need of the landlord. It is only then that the requirement can be said to be bona fide within the meaning of u/s 14(1)(e) of the said Act. This would naturally require all the necessary matrix in terms of the factual averments and the evidence to be adduced in that behalf. Simultaneously it has to be kept in mind that the landlord is the best judge of his requirement and a tenant cannot dictate the terms on which the landlord should live. The bona fide requirement of the landlord would also depend on his financial status and his standard of living. The ARC found in favor of the landlord/owner and thus what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate court though the scope of scrutiny in a rent revision would be more than a revision petition u/s 115 of the Code of Civil Procedure, 1908.

34. In Ram Babu Agarwal v. Jay Kishan Das 2009 (2) RCR 455, Supreme Court observed;

However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord

had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.

35. In *Sudesh Kumar Soni (Supra)*, it was held;

It is not for tenant to dictate terms to landlord as to how else he can adjust himself without getting possession of tenanted premises-suitability has to be seen for convenience of landlord and his family members and on the basis of circumstances including their profession, vocation, style of living, habit and background.

36. In view of the aforesaid, if respondent wants to establish her sons separately and independently in her property and in the same trade, then by no stretch of imagination it can be said that requirements of respondent are neither bonafide nor genuine. Petitioner has failed to raise any triable issue in this case, which if proved might disentitle the respondent from getting an order of eviction in her favour. The trial court has given a detailed and reasoned order which does not call for any interference nor the same suffers from any infirmity or erroneous exercise of jurisdiction.

37. Present petition is hereby dismissed with costs of Rs. 25,000/- (Rupees Twenty Five Thousand only).

38. Petitioner is directed to deposit the costs by way of cross cheque with Registrar General of this Court, within four weeks from today.

CM No. 9000/2010 (stay)

39. Dismissed.

40. List for compliance on 21st October, 2010.