

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

R.C.REV. 216/2012

Date of Decision: 21.12.2012

KIRAN SACHDEVA & ANR.

.....Petitioner

Through: Ms. Amrit Kaur Oberoi, Adv.

Versus

PUSHPA DEVI & ANR.

.....Respondent

Through: Mr. Vivek Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition under Section 25-B(8) of the Delhi Rent Control Act (for short the 'Act') is directed against the order of Addl. Rent Controller (ARC), North, Tis Hazari Courts dated 04th February, 2012, whereby the leave to defend application filed by the petitioners, was dismissed.

2. The petitioners are the tenants in respect of one shop at the ground floor of the property bearing No. 29-E, Kamla Nagar, Delhi under the respondents/landlords. Their eviction was sought from the tenanted shop on the ground of bona fide requirement thereof by the respondents for running therein business of readymade garments. It was their case that they do not have any other reasonably suitable space for this purpose in the suit premises or otherwise. It was averred that there are three other shops, besides the suit shop, which are with different tenants. It was averred that the respondents are engaged in the business of garments and the respondent No. 1 is doing the garments' business in partnership with her son-in-law Anil Khurana, whereas, the respondent No. 2, who was carrying her business of garments

from the tenanted shop taken by her son at Noida, has surrendered the tenancy of the said shop to its landlord. Thus, they intend to start the garment's business from the tenanted shop, which is very convenient to them, and also because they do not have any other commercial property to carry on their business.

3. The application seeking leave to defend was filed by the petitioners on various grounds. The learned ARC, vide the impugned order, dismissed the leave to defend application, which order is under challenge in the instant petition.

4. I have heard learned counsel for the petitioners as also the respondents and perused the records including the impugned order. It is noticed that all the grounds which were taken by the petitioners seeking leave to defend have been adequately dealt with by the learned ARC except one, which will be discussed hereinafter. All the pleas, which were taken by the petitioners regarding availability of alternative accommodations with the respondents at Greater Kailash, Majlis Park and Najafgarh, and also that the respondents have sold various portions of the suit premises to different tenants at different times, have been dealt with by the learned ARC, and I do not see any infirmity or illegality in those findings.

5. However, it is noticed that the learned ARC seems to have overlooked very important aspect from his consideration. It was the case of the respondents that they are engaged in the business of garments and the respondent No. 1 is a partner of her son-in-law Anil Khurana, and running garments business under the name and style of M/s. Fury Fashion, and further that her daughter/respondent No. 2 was doing the garments business from a tenanted shop at Noida, which she has now surrendered. The plea of the petitioners in this regard as set out was that the respondents are admittedly in the business of garments and are well settled, having spacious space available for this purpose. In response thereto, the respondents had stated in the reply that such averments are misconceived. It was averred that they desired to start readymade garments business and thus, required the tenanted shop for their business.

6. The learned ARC here committed an error in observing that there is no law, which requires the respondents to show the extent of business being carried by them. This observation in the context of the averments seems to be misplaced. What was averred by the respondents themselves was that the

respondent No. 1 is engaged in the garments business with her son-in-law Anil Khurana, and was carrying the business under the name and style of M/s. Fury Fashion. It has not been disclosed in the petition and the reply to leave to defend application as to from where this business of M/s. Fury Fashion was being carried by her. If the respondent No. 1 had been carrying such business of garments, then, it was required to be ascertained that from where it was being carried and that the accommodation there, was suitable or not, and further whether the tenanted shop was required for the said partnership firm or by the respondent No. 1 alone. This aspect directly goes to the bona fide requirement of the respondents as also to assess the suitability or otherwise of the space from where the respondent No. 1 was carrying the said business. There is no dispute that a landlady is entitled to have the expansion of her business, and can also seek additional accommodation for the same, but, then, it is necessary to know that the space available was either insufficient or not suitable for doing the business. It was also necessary to know if it was for the expansion of the said business in the new location i.e. the tenanted shop. This was a vital triable issue, which is seen to have been raised by the petitioners, and in the light of this, projected requirement of the respondents is required to be tested objectively by the Controller. From the respondents' own pleadings, a triable issue is seen to have been raised by the petitioners.

7. In view of above discussion, I am of the view that the learned ARC has erred in appreciating the averments as set out in the petition as also in the leave to defend application, and reply thereto in this regard. Thus, it could be seen that the petitioners have been able to raise prima facie, triable issue which seems to have been overlooked by the learned ARC, and which could not be prematurely decided, without adjudication by way of evidence. As such, the petitioners cannot be thrown out of the tenanted premises at the threshold at least till the time, the respondents are able to make out their case of bona fide requirement of the same. The impugned order is thus set aside. The petition is allowed, and the leave to defend is granted to the petitioners. The parties are advised to appear before the learned ARC on 16.01.2013.

Sd/-
M.L. MEHTA, J.

DECEMBER 21, 2012

