

**THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : DELHI RENT CONTROL ACT**

R. C. Rev. 512/2012

Date of Decision: 05.12.2012

MANIKA RANI GHOSH & ORS. ....Petitioner  
Through: Mr. M. M. Kalra & Mr. Kunal Kalra, Advs.

Versus

DHARWINDER KAUR .....Respondent  
Through: Nemo

CORAM:  
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. The present petition has been filed under Sec. 25B(8) of the Delhi Rent Control Act against the order passed by the Ld. Rent Controller Sh. Sandeep Yadav, Saket Court in Eviction Petition No. 32/10, decided on 08.06.2012; whereby the Ld. RC has dismissed the application filed by the petitioners.

2. Briefly stating the facts, the landlady/respondent herein, a senior citizen filed petition for eviction before the Ld. RC under Sec. 14(1)(e) of the Delhi Rent Control Act, stating that the tenanted shop was bona fide required by her to start a business of wholesale and retail selling of readymade ladies/gents suits, with the help of her retired husband. The landlady/respondent submitted that she wanted to start the aforesaid business in order to earn livelihood to meet the increasing need of old age. Since she has no other commercial premises from where she can start the business, and also because she possesses the adequate financial capacity and business equipment to start the new business, the landlady/respondent sought the eviction of the petitioners on the ground of bona fide requirement.

3. Sh. Amaresh Ghosh filed a counter affidavit required under Sec. 25B on behalf of the other tenants/petitioners herein. It was contended before the Ld. RC that the landlady/respondent had tried evicting the tenants/petitioners vide an eviction order under Sec. 14(1)(b) and (j) of the Delhi Rent Control

Act dated 21.07.2001. However, the tenants/petitioners preferred an appeal to the Rent Controller Tribunal against the order, wherein the eviction order dated 21.07.2001 was set aside. Thereafter, the landlady/respondents filed a CM(M) in this Court which was dismissed on 09.04.2006. A subsequent SLP filed before the Hon'ble Supreme Court by the landlady/respondents, was also dismissed.

4. It was the primary contention of the tenants/petitioners before the Ld. RC that the landlady/respondent has been persistent to evict the tenants/petitioners herein and that there is no bona fide requirement of the landlady/respondent to start a new business. It was contended by the tenants/petitioners that the landlady/respondent is merely trying to take advantage of the Hon'ble Supreme Court's decision allowing landlords to seek eviction of the tenant even in respect of commercial property on the ground of bona fide necessity. In this regard, the tenants/petitioners contended that the landlady/respondent was more than 62 years old and has never carried out any business activity. They also contended that the residence of the landlady/respondent was 20kms away from the suit shop, which is located in Nehru Place, predominantly computers market and therefore, wasn't suitable for carrying out business in readymade garments. Alternatively, they also contended that the landlady/respondent had other properties at her disposal and such wholesale business can even be carried from there or her residence.

5. The Ld. RC has dismissed the application filed by the petitioners seeking leave to contest the eviction petition vide Order dated 08.06.2012. The Ld. RC has observed that it was not the prerogative of the tenant to question the need of the landlady to start her own business. The Ld. RC has also noted that the landlady is not obliged to divulge or disclose the details of the names and addresses of the firms with whom she wishes to do business in order to prove that she was going to start a business. The Ld. RC has relied upon the decision of the Apex Court in *Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal*, (2005) 8 SCC 252, wherein it was held that it was not open to the Court or to the tenant to dictate the landlord as to how and what for she should use her premises. The Ld. RC also rejected the contentions of the tenants/petitioners regarding the alternative properties in possession of the landlady/respondent, as these were bald assertion unsubstantiated by any evidence, which could give rise to a triable issue. Aggrieved, the tenants have approached this Court.

6. I have perused through the impugned order and given my thoughtful consideration to the submissions advanced by the petitioners. The position of law regarding bonafide requirement of the landlord with respect to a commercial property is no longer res integra. In the case of Dinesh Kumar v. Yusuf Ali, AIR 2010 SC 2679, the Apex Court has held that the landlord is the best judge of his need. The Apex Court in this case made observed this: “In Prativa Devi Vs. T.V. Krishnan (1996) 5 SCC 353, this Court held that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live. However, in Ram Dass Vs. Ishwar Chander & Ors. AIR 1988 SC 1422, this Court held that ‘bona fide need’ should be genuine, honest and conceived in good faith. Landlord's desire for possession, however honest it might otherwise be, has, inevitably, a subjective element in it. The ‘desire’ to become ‘requirement’; must have the objective element of a ‘need’.

7. The Ld. RC has noted that in the case of Ram Babu Agarwal v. Jai Kishan Das, 2009 (2) RCR 55, it has been held that prior experience is not necessary to start a new business. Further, Apex Court in the case of Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778 has held:

“The need of the landlord is to be presumed as genuine and bonafide and it is not for tenant to prove that the need is not bonafide. Heavy burden lies on the tenant to prove that the need is not genuine.”

The Ld. RC has also observed that in the case of Raghavendra Kumar v. Firm Prem Machinery & Co., (2001) 1 SCC 679 it was held:

“Land lord is the best judge of his requirement. It is not open to the Court or the tenant to dictate him in what manner he should use his premises. He has got complete freedom in the matter.”

8. I subscribe to the view taken by the Ld. RC in deciding the eviction petition. It is often contended by the tenants that the landlord has no prior business experience, capacity or that the suit premises are not suitable for the business proposed by the landlord. For instance, similar contentions were raised by the tenants before this Court in the case of Shashi Kant Jain v. Tilak Raj Salooja & Anr., R. C. Rev. 167/2010 and have been refuted. Such allegations whereby the tenant tries to raise questions regarding the age of the landlord or lack of business experience or suitability of the suit shop for the business proposed by the landlord and which are invariably vague do not consist a triable issue. The tenants/petitioners made assertions before the Ld. RC regarding the landlady possessing alternative properties, but were unable to furnish sufficient documentary evidence to substantiate the allegations.

There is no dispute that the business cannot be profitably carried from the residential premises and thus, the plea that the landlady could start the business from her residence is untenable. Moreover, it is not for this Court to examine the viability of the business at the suit premises or assess if it may be a profitable venture for the landlady.

9. In light of my above discussion and the principle of law applicable to the facts of the case, I find that the impugned order dismissing the leave to defend application of the tenants/petitioners herein, does not suffer from any infirmity. The petition is hereby dismissed.

Sd/-  
M.L. MEHTA, J.

DECEMBER 05, 2012