

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC Rev. No. 236/2014

DATE OF DECISION : 22nd July, 2014

MOHD. NAQI

.....Petitioner

Through: Mr.Kirti Uppal, Sr. Advocate with Mr.Zaved Ahamd, Advocate.

VERSUS

NAZIA BEGUM

..... Respondent

Through: Mr. A.K.Mishra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

Caveat No.599/2014

Since the appearance has been put in on behalf of the respondent/caveator, the caveat stands discharged.

RC Rev. No. 236/2014 & C.M.No.11566-11567/2014

1. This revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 impugning the judgment of the Additional Rent Controller dated 12.5.2014 by which the Additional Rent Controller has dismissed the leave to defend application and decreed the petition for bonafide necessity.

2. The tenanted premises are one shop measuring 8 x 10 ft. situated in the front side portion of the ground floor of the property bearing no. E-11, New Selampur, Delhi-53. The respondent/landlady states that the tenanted premises are required by her husband to carry on his business because the husband used to carry on his business of selling garments on the footpath and due to action of the MCD, carrying on the business on the footpath has been discontinued.

3. In a petition for bonafide necessity three requirements have to be established by the landlord. First is the relationship of landlord and tenant, second, the fact that the landlady requires the premises bonafide for her necessity or the necessity of her family members for business, and thirdly, there is no other alternative suitable premises available.

4. So far as the aspect of relationship of landlord and tenant is concerned, the same is not disputed before this Court, and in any case, the respondent/landlady has filed the documentations dated 31.8.2005 by which her rights in the suit property were proved. The subject bonafide petition was filed on 10.12.2013 after the period of five years bar contained in Section 14(6) of the Act.

5. That takes us to the case as to the bonafide necessity of the landlady of the shop for carrying on business by her husband. Once it is shown that the husband was carrying on business on the footpath, even if MCD has not taken any action against carrying on business on the footpath, surely if a premises is available to the landlady that should be available to her husband as the member of the family of the landlady for carrying on the business. Accordingly, the Additional Rent Controller has rightly come to the conclusion that the respondent/landlady requires the premises for the bonafide use of the business of her husband.

6. The final aspect, and which is very strenuously urged before this Court by the petitioner is that the husband of the respondent/landlady has alternative suitable accommodation to carry on business. It is argued that the accommodation with the husband which is behind the tenanted premises, and which was purchased by the husband has been concealed, and therefore the eviction petition was liable to be dismissed. On the aspect of alternative premises, the petitioner/tenant has also contended that there is one shop with a shutter which is lying vacant and which should also be considered as alternative premises.

7. On the first aspect, as to whether the husband had the alternative accommodation behind the tenanted premises from where business could be carried out, the argument is fallacious for various reasons.

8(i) Firstly, on a query put to the learned senior counsel for the petitioner, it is conceded that in the leave to defend application, no ground has been raised that the husband of the landlady has alternative suitable premises for

carrying on business and which is behind the tenanted premises. Once a ground is not taken up in the leave to defend application, such ground cannot be urged at the time of arguments in view of the judgment of the Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LR's (2010) 2 SCC 15, and which holds that the period of 15 days provided under Section 25B of the Act for filing leave to defend application is sacrosanct and there cannot be condonation of delay of even one day in filing of the leave to defend application. Supreme Court has held that neither the provision of Section 5 of the Limitation Act, 1963 nor the provisions of CPC, 1908 apply to the exhaustive procedure for eviction on the ground of bonafide necessity provided under Section 25B(8). The sequitur is that once no leave to defend application can be filed beyond 15 days, all grounds which a tenant wants to urge for seeking leave to defend have to be stated in the leave to defend application filed within 15 days and additional affidavits and additional documents cannot be filed once or more after filing of the leave to defend application because that would amount to destroying the sanctity of 15 days period for filing of leave to defend as provided by the Supreme Court in the case of Prithipal Singh (supra).

(ii) The second reason is that the alternative premises which are stated to be owned by the husband is not even stated before this Court that the same, as per the municipal laws, can be used for commercial purposes. Therefore, once there is no averment that the alternative premises behind the tenanted premises belonging to the husband can be used for commercial purposes under the municipal laws, the small premises of the area 35 sq. ft. owned by the husband cannot be used as commercial premises, and hence the premises cannot be said to be the suitable alternative premises for carrying on business to deny eviction for bonafide necessity. Taking the case of the petitioner/tenant at the best, the shop/premises of the husband are not on the main road but behind the tenanted premises and which tenanted premises is on the ground floor, and the front portion of the premises where the tenanted premises are actually the ideal portion from which a shop can be run for selling garments, and therefore for this reason also, the arguments urged on behalf of the petitioner/tenant of availability of alternative suitable accommodation to the husband of the respondent/landlady is misconceived.

9. No doubt, Delhi Rent Control Act gives protection to the tenants, but equally, the Act balances respective rights by giving special procedure in favour of the landlords in cases of bonafide necessity. The object of summary procedure is that tenants must not obdurately refuse to vacate the tenanted premises, although there exists bonafide need of the

landlord/landlady and their family members. In the present case, the husband of the landlady used to carry on his business on the footpath, and thereafter surely, the petition for bonafide necessity was justified.

10. One last point which requires to be noted is that the petitioner/tenant is in fact guilty of misleading this Court by filing of documents at page 79 of the paper book. The photographs filed at page 79 amount to misleading this Court because the Additional Rent Controller has observed in the impugned judgment that the so-called shop having a shutter adjacent to the tenanted premises is actually not a shop but only a passage to the rear portion which is covered by the shutter. Before this Court, the photographs which have been filed are taken angularly so that only shutter and part of the passage is visible so as to create an effect of being an enclosed portion, whereas the shutter covers not a shop but only the passage going to the back portion. Therefore, the petitioner/tenant is guilty of misleading this Court.

11. There is another aspect of malafide of the present petitioner/tenant, and which is more clear from the eviction petition filed by the respondent/landlady. In the eviction petition it is stated that the petitioner/tenant has in fact his own nursing home at F-1, New Selampur, Delhi, which is hardly at a distance of about 50-100 metres from the tenanted premises. Accordingly, the tenanted shop is stated not being vacated by the petitioner, as to grab huge amounts of money from the respondent/landlady. Of course, this argument is vehemently disputed on behalf of the petitioner/tenant. However, it is not disputed that the petitioner/tenant owns a nursing home which is hardly 50-100 meters away from the suit premises.

12. In this view of the matter, the present petition is an abuse of law and is accordingly dismissed with costs of Rs.50,000/-, which costs shall be paid within a period of six weeks from today. I may note that the Supreme Court in the judgment in the case of Ramrameshwari Devi & Ors. Vs Nirmala Devi & Ors. (2011) 8 SCC 249 has held that it is high time that in frivolous litigations, exemplary costs must be imposed. I am empowered to impose costs in terms of Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15.

Sd/-

VALMIKI J. MEHTA, J.

JULY 22, 2014