

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC.REV. 470/2013 & C.M.No.19938/2013(for stay)

DATE OF DECISION : 15th July, 2014

RAJ KUMAR SETHI

.....Petitioner

Through: Mr.Kumar Vikram, Advocate.

VERSUS

SUNIL KUMAR VERMA

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. The petitioner is enjoying the benefit of interim order dated 28.2.2014, by which the impugned order dismissing the leave to defend application is stayed.
2. This petition filed under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the judgment of the Additional Rent Controller dated 26.9.2013, by which the Additional Rent Controller dismissed the leave to defend application filed by the present petitioner and decreed the eviction petition for bonafide necessity.
3. The tenanted premises in this case is one shop on the ground floor of the property, i.e E-10, Mansarover Park, Shahdara, Delhi-32. The respondent/landlord states that he requires the shop for opening of a jewellery shop for his son. The respondent/landlord is already having one shop in the same premises. The family of the respondent/landlord beside himself consists of two married sons and two grand-daughters.

4. The main defence of the petitioner/tenant is that the bonafide necessity petition is not bonafide because the respondent/landlord has space behind the shop which he can use for opening the shop, if really the need is there of the respondent/landlord to extend the shop for carrying on business of his son. In the leave to defend application, it is also pleaded that the respondent/landlord has a property in Faridabad, and consequently, the respondent/landlord has reasonably suitable alternative accommodation. In the leave to defend application, no details are however furnished of this Faridabad property.

5(i) On the basis of the fact that the respondent/landlord has the Faridabad property and possibly a property which is shown by means of photographs at pages 40 to 43 of this petition paper book, interim orders were granted to the petitioner on 28.2.2014.

(ii) Since respondent is present in person, I have shown the photographs and asked him whether the property belongs to him or to any of his family members, and if the property is found belonging to him then he will be prosecuted for perjury. The respondent after looking at the photographs categorically states that he has absolutely no concern with the property shown in the photographs and though the same is of one Sunil Verma (the name Sunil Verma as shown in the name plate in the photographs) the property is not of the respondent. The respondent states that he is ready to face any consequence of prosecution/perjury, in case his statement is proved incorrect. The respondent also denies that he has any property at Faridabad details of which in any case have not been given in the application for leave to defend.

6. In my opinion, the Additional Rent Controller has not committed any illegality or perversity in dismissing the application for leave to defend because the respondent/landlord has no other alternative suitable accommodation for the requirement of his son opening a jewellery shop. It is not for the courts to dictate to the landlord that he should not be allowed to evict the tenant, if the portion with the tenant can be used for the business of one of his sons. In the present case, the son of the respondent/landlord used to carry on a business in the tenanted premises but that tenanted premises was sold in the year 2011 because the jewellery business was not successful at the other tenanted premises. In any case, the respondent/landlord has another son for whom the tenanted premises are sought to be got evicted for carrying on the business.

7(i) The contention of the petitioner/tenant that the respondent/landlord can extend the area behind the shop where there is additional space, is an argument without any merit for two reasons.

(ii) Firstly, the so-called space behind the back of the shop is part of the residential area of the family of the respondent and his sons. The area behind the shop on the ground floor as also other additional area on the ground floor is used for the residential purpose, by the landlord and his family of two married sons with their two children who also are using three rooms on the first floor for residence. Whatever residential portion is there in the premises is already in use on account of the very large family of the respondent/landlord having two married sons with their two grand-daughters.

(iii) The second reason is that the petitioner/tenant has himself averred in the leave to defend application that, as per the policy prevalent in Delhi in the area where the tenanted premises are situated, no commercial activity can be carried-on on the ground floor except on the existing commercial shops which have been opened prior to the drive of the municipal authority to prevent any commercial misuser. This is specifically stated in para 3 of the affidavit accompanying the leave to defend application. Therefore, to the other area on the ground floor or the second floor no commercial activity can be carried out.

8. The resume of the aforesaid facts show that the family of the respondent/landlord comprises besides himself of his two married sons and two grand-daughters. The respondent/landlord is asking for the petitioner/tenant to vacate the shop because the shop is proposed to be used by the son of the respondent/landlord for his jewellery business and which reason is a justified/bonafide necessity. If the landlord has the tenanted shop which he can give to his son for opening of a business, the courts cannot prevent him by holding that the need of the landlord is not a bonafide need.

9. With respect to the property at Faridabad besides the fact that no details are given, in any case, it is a settled law, that when the Courts have to look at an alternative suitable accommodation such an alternative suitable accommodation has to be in Delhi and not outside Delhi. The property at Faridabad which is outside Delhi, therefore, in view of the settled law cannot be said to be alternative suitable accommodation.

10. I have already observed above that the respondent/landlord states that the photographs which are filed in this petition are not with respect to any property which is owned by him. Accordingly, it is clear that the

respondent/landlord needs the tenanted shop for his bonafide necessity for opening of the business of his son.

11. Learned counsel for the petitioner argues that in fact one of the sons of the respondent/landlord is already carrying on the business in another premises. When asked to show what is the specific averment in the leave to defend application along with the property where the respondent's/landlord's son is carrying on business, the counsel for the petitioner had no option but to admit that there is no such averment in the leave to defend application. Obviously, it is easy to make baseless allegation but difficult to substantiate them with specifics.

12. Also, I may note that any ground which is not taken up in the leave to defend application cannot be permitted to be taken up after a period of 15 days period which has been sacrosanct by the Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15 observing that whatever has to be stated by the tenant has to be stated within 15 days by filing of the leave to defend application and there can be no extension of time for filing of the leave to defend application. Once there can be no extension beyond 15 days that means that additional affidavits containing additional grounds cannot be filed time and again by the tenant to add to the averments which are made in the leave to defend application.

13. In view of the above, there is no merit in the petition and the same is therefore, dismissed with interim application, leaving the parties to bear their own costs.

JULY 15, 2014

Sd/-
VALMIKI J. MEHTA, J.