

**Sandeep Kumar Vs. Nihal Chand**

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**Court :** Delhi

**Decided On :** Jan-02-2014

**Judge :** Manmohan Singh

**Appellant :** Sandeep Kumar

**Respondent :** Nihal Chand

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment pronounced on: January 02, 2014 + RC. Rev. No.330/2012 & C.M. No.808/2013 SANDEEP KUMAR Through ..... Petitioner Mr.Ramesh Kumar, Adv. with Ms.Anjali Chopra, Adv. versus NIHAL CHAND Through ..... Respondent Mr.Randhir Jain, Adv. with Mr.Ravi Chand Garg and Mr.Dhananjai Jain, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as the Act) against the eviction order dated 31st January 2012 passed by ACJ-cum-ARC (North) Delhi in an eviction petition filed by the respondent in respect of shop No.682, Pvt. No.2-A, Katra Hira Lal, Chandni Chowk, Delhi- 10006 and Chabutra in front of the shop (hereinafter referred to as the tenanted premises).

2. The respondent in the eviction petition had stated that he is the owner of the suit premises and required the tenanted shop for running his whole sale cloth business

and that he was not in use and occupation of any other suitable accommodation for his need. It was stated that in absence of the suitable accommodation, the respondent was compelled to run his business from his residence only which was not at all suitable as it is situated at the second floor of the property No.683/676 situated in Katra Hiral Lal, Chandni Chowk, Delhi, having only two rooms in which he had to adjust his business as well as his residence. It was stated that the petitioner is an affluent businessman having multifarious business activities and also having other properties from which he is carrying on other businesses. Leave to defend was granted in the matter.

3. In the written statement filed by the petitioner, the title of the respondent to the tenanted premises was contested. It was contended by the petitioner that the residential address given by the respondent in support of his claim was incorrect and he denied that the respondent was carrying on his business activities from his residential premises. The petitioner gave particulars of various properties allegedly used by the respondent to carry out his business activities. The rent agreement executed by his father was denied by the petitioner. The petitioner also denied ownership to the properties mentioned by the respondent.

4. The respondent contested the averments made by the petitioner in the replication filed by him.

5. After the examination of witnesses, the learned trial court, pursuant to hearing the parties, passed the impugned eviction order against the petitioner. With regard to the issue of ownership, it was observed that while the petitioner had contended that respondent is not the owner of the tenanted shop, he had neither led any evidence in support of his contention nor mentioned who else is the owner of the tenanted shop. On the other hand, the respondent had filed and proved on record the copy of the sale deed executed in his favour. Since the relationship of landlord-tenant was not denied and payment of rent to the respondent was admitted by the petitioner, the learned trial court opined that the ground of ownership so alleged by the petitioner was just for the sake of defence without having any substance in it. With regard to the issue of bonafide requirement, it was observed by the learned trial court that except for his bare testimony alleging that respondent is the owner

of various properties and carrying on his business there from, the petitioner had not led any other evidences. Relying on the evidence led by the parties in support of their contentions and settled law on this aspect, the learned trial court opined that the respondent was able to show his bonafide requirement of the tenanted premises for running his business, for the reasons stated therein. On the issue of availability of other reasonably suitable accommodation, it was observed that the petitioner in his cross examination admitted that he had made statements with regard to certain properties without seeing the papers and without ascertaining the same. The deposition of the petitioner in his cross-examination that the respondent is carrying on his business in the name of Nihal Textiles in all the properties mentioned in his affidavit was in the view of the learned trial court, beyond his pleadings as the name of the firm had not been mentioned by the petitioner in his affidavit filed in examination-in-chief. While the petitioner had failed to lead evidence except his bare testimony to show that the respondent is in possession and occupation of any other alternative and suitable accommodation to run his business, the respondent had successfully established that he had no other reasonably suitable alternative accommodation and he required the tenanted property to carry on his own business.

6. With these observations, the learned trial court passed the impugned eviction order against the petitioner. Aggrieved thereof the petitioner filed the present petition.

7. I have heard learned counsel for both parties and have gone through the pleading and document produced. Both the parties have also filed written submissions in support of their case.

8. The respondent has claimed ownership on the basis of the sale deed dated 20th March, 1985 which is not disputed by the petitioner and is Ex.PW-1/1 during the course of hearing of the petition.

9. Admittedly, the suit premises is a shop and have been let out to the petitioner for commercial purposes.

10. The main case of the respondent with regard to bonafide requirement before the trial court was that he is running his business M/s Nihal Textiles from his residential room situated on the second floor of property No.676, Katra Hira Lal, Chandni Chowk, Delhi-110006. He is stated to be residing in the two rooms bearing private No.31 & 32 situated on the second floor of property no.676, Katra Hira Lal, Chandni Chowk, Delhi - 110006 and stated that he is running his business from room No.32. He stated that he requires suit premises which is situated on the ground floor for his business needs.

11. It was averred in the written statement by the petitioner that the respondent is owner of various properties. He is residing in property No.4304, Gali Bhairon Wali, Nai Sarak, Delhi-110006 and which property he started using for his business and shifted to 7/13, Ansari Road, Daryaganj, New Delhi-110002. He is also in possession of two shops on the ground floor bearing No.682/2B and 682/1-A. The respondent stated that these two shops are in possession of Sh. Subhash Chander who is running business in the name of M/s Gyan Traders from these two shops. He did not disclose in the proceedings that Sh.Subhash Chander is his real brother. Sh. Subhash Chander was never examined as a witness in this case. No evidence was filed on record that Sh.Subhash Chander was in possession of these two shops and was running the business of M/s Gyan Traders.

12. It is argued by the respondent that during the course of trial petitioner relied on sale deed dated 20th March, 1985 Ex.PW1/1. Perusal of this document shows that various portions were under occupation of different tenants and respondent did not have possession of any part of the property. Even otherwise, the petitioner has failed to lead any evidence to show that possession of any of the premises mentioned by him in his written statement was with the respondent who examined himself as PW1. After filing his affidavit of evidence Ex.P-1, the respondent was cross-examined at length by the petitioner but could not get anything out of his testimony to substantiate his claim.

13. Even the petitioner examined himself and filed his affidavit Ex.RW1/1. In his affidavit he has only deposed about petitioner owning various properties, but in the entire affidavit he has not stated even a single premises, the possession of which

might be with the respondent. In his cross examination he candidly admitted that apart from sale deed Ex.PW1/1 he had no evidence to show that the respondent being owner of any premises or having possession of any premises.

14. However, in the present petition, the petitioner is trying to place on record certain photographs as Annexure P-7, P-8 and P-9 which did not form part of the trial court record. The same cannot be looked into or considered in a revision petition. In any case, these photographs do not show respondent is having possession of any property.

15. It is submitted that earlier the respondent was carrying on business in property No.4304 Gali Bhaironwali, Nai Sarak, Delhi, which property was in dilapidated condition and was demolished by MCD being dangerous and the same is duly proved by Ex.PW1/3. Petitioner, during course of cross-examination of PW1, has tried to suggest that respondent was still carrying on business from those premises. Such a plea cannot be taken now as even otherwise the respondent is no more carrying any business in that place and secondly, the property at Jogiwada has ceased to exist and nobody can carry on business on the heap of debris.

16. Admittedly, during the pendency of present petition, the petitioner has filed an application, being CM No.808/2013, seeking permission to file a photograph of shop No.682/2B and 682/1A, Katra Hardayal, Chandni Chowk, Delhi-110006 and adduce additional evidence to prove the said photograph. Paras 5 to 11 of the said application are relevant which are as under:

5. The petitioner after passing of the eviction order and just prior to filing of this petition succeeded in obtaining photograph of shop no.682/2B and 682/1A, Katra Hardayal, Chandni Chowk, Delhi-110006 showing the respondent to be in possession of these two shops and running his business therefrom. These photographs clearly shows that these shops are in use and possession of the respondent and that these shops are situated on the ground floor. The respondent has not filed any reply to this revision petition and thus the plea of respondent being in possession of these shops has not been controverted by the respondent. These shops have also been converted into one by the respondent as is visible

from the photographs.

6. The petitioner has succeeded in taking another photograph on 08.01.2013 showing the respondent sitting in these shops and running his business therefrom and this photograph is annexed herewith as Annexure-1. The photographs filed earlier in the revision petition also pertain to the same shops. It confirms that the respondent is continuously running his business from the said shops and which fact was concealed by the respondent in the eviction petition and during the stage of trial of the said petition.

7. The photographs filed earlier with the revision petition have not been denied or controverted by the respondent. The photograph filed along with this petition pertains to the same shops and the respondent sitting therein is clearly visible in the encircled portion.

8. The petitioner seeks leave to defend of the Honble court to bring this photograph on record. In case the respondent deny the photographs or give any other explanation thereby denying possession to this shop by the respondent, the petitioner may be permitted to lead additional evidence.

9. The photographs pertain to the period subsequent to the passing of the impugned eviction order and thus there was no occasion for the petitioner to produce the same before the Ld. Trial Court. The respondent had prayed for eviction of the suit shop so that he could have business premises on the ground to run his business which as per him was not conveniently run from the second floor premises in his possession. The suit shop is measuring 40 sq. Ft. approximately and is situated in the back side whereas the size of shop no.682/2B and 682/1 collectively is approximately 200 Sq. Ft. and are situated on the front. Thus the bonafide need, if any, stands fulfilled. This being a relevant factor deserves to be taken into consideration atleast as being the subsequent event though the petitioner has continuously maintained and stated that this shop has been in use and possession of the respondent only.

10. It need be submitted that in the sale deed dated 20.03.1985 the shop no.682/2B is in the tenancy of Sh.Harbans Lal Sadana and shop no.682/1 is in the

tenancy of M/s Jawahar Singh Man Singh. The respondent did not state as to when its possession was taken over by the respondent from the said tenants. It confirms that the respondent had not approached the Ld. Trial court disclosing all material facts.

11. The fact that the respondent atleast presently is in possession of the said two shops which are much bigger in size than the suit shop and are situated on the ground floor in the front portion are relevant considerations and are very material for the purposes of proper and complete adjudication of this petition. No prejudice would be caused to the respondent who is otherwise expected in law to bring truth on record.

17. By order dated 15th January, 2013, the respondent was granted time to file reply. However, no reply has been filed by the respondent.

18. The learned counsel for the petitioner has also made his submissions in the application for production of additional evidence.

19. As per sale deed dated 20th March, 1985 Ex.PW-1/1, the shop bearing No.682/2B was stated to be in possession of Sh.Harbans Lal and shop No.682/1 was stated to be in possession of M/s Jawahar Singh Man Singh. At the time of trial these shops were stated to be in possession of Sh.Subhash Chander by the respondent whereas the petitioners case was that the same are with the respondent.

20. The respondent never brought it on record as to when the tenants mentioned in the sale deed have vacated the said two shops. The respondent also has not disclosed during the trial when he has let out these two shops to his brother Sh.Subhash Chander and what was the purpose of letting out these shops when as per respondent he was not having sufficient accommodation with him for his business.

21. All these relevant facts have not been considered by the learned ARC in the impugned order.

22. It appears to the Court after examining the photographs filed along with application for additional evidence that the respondent has now placed one big shutter outside these two shops. The perusal of these photographs would also indicate that it is the respondent who is in possession of the shop and not Sh.Subhash Chander, as he himself is cleaning the floor of the shops. A person who is not owner and in possession of the shops would be cleaning the floor unless he owns shops as appeared from one of the three photographs placed at page no.111 of paper-book. The other photograph placed at page no.112 shows that the respondent is hiding from the camera when he saw being photographed by the petitioner. It shows that he is in actual physical possession of the said shops otherwise the question of hiding in the shops does not arise.

23. The photograph placed at page no.113 shows that these two shops have been merged into one. Existence of these two shops was shown in the site plan by the respondent in the execution proceedings.

24. When revision petition was filed, it was mentioned by the petitioner that the respondent has been in possession of two shops on the ground floor. The petitioner has given the details of size of these two shops, i.e. approximately 200 sq. ft. whereas the size of the petitioners tenanted shop is about 40 sq. ft. which is situated on the backside whereas these two shops are situated on the front. The size and location of these shops is clearly shown in the site plan Ex.PW1/2 placed on record.

25. So, it appears that the respondent has not disclosed about the true fact of these two shops being in his possession. The petitioner has also taken another photograph of these two shops on 8th January, 2013 which shows that the respondent is running his business therefrom. Thus, from the filing of the revision petition till date, it is the respondent alone who is in possession of these two shops as per the case of the petitioner.

26. The respondent has not filed the reply to the revision petition and has chosen not to file the reply to the application for considering the additional evidence.

27. It mandates in law that a party is required to approach the Court with clean hands by making full disclosure of all the facts. The respondent has intentionally not disclosed that he has always been in possession of the said two shops. Therefore, he has not made a bonafide and correct statement in his eviction petition. In the present case, after filing the photographs, there is no explanation by the respondent who has also failed to take any stand before the Court. Learned counsel for the petitioner made a statement that in case the respondent will deny the possession to these shops, his client be permitted to lead additional evidence. But there was no positive response from the respondents side.

28. It is pertinent to mention that the additional evidence produced by the petitioner by way of production of photographs are further strength his plea already taken in para 18A of written statement where it was specifically pleaded that the respondent is the owner of the property no.682, Katra Hardayal from where he is running his business and is also owner of the property no.682/1-A from there also he is running his business. In the replication the respondent clarified that property no.682-682/1-A is the same property but it was occupied by tenant Subhash Chand. In his cross- examination, the respondent denied the suggestion that he is the owner and in possession of the property from where he is carrying on business of sale of cloths. The petitioner in his evidence RW-1 again deposed in paras 11 and 12 of his affidavit that in fact the said property is in possession of the said property and he is the owner and he has taken the same stand in his cross-examination. The respondent failed to demolish the case of the petitioner before the learned trial court who failed to consider the vital evidence otherwise impugned order ought not to have been passed in favour of the respondent.

29. There is no positive response when the additional documents were confronted from the side of the respondent. The reply was obviously evasive. It is settled law that the High Court would have the power to consider the additional evidence if proved by a party in order to find out the truth in the matter. Thus, this Court is of the opinion to consider the additional documents/evidence by allowing the prayer of the application.

30. Law mandates that when a party approaches the Court in order to seek relief, it is presumed that the party would always disclose the true facts. No litigant can derive benefit from a Court of law of his own wrongs. No litigant should be encouraged to invoke the jurisdiction of the Court by concealing material fact. If such attempt is made, normally such a party would not be entitled to relief as truth is an integral part of the justice delivery system.

31. The petitioner has also addressed his submissions on the issue of alternative accommodation of the respondent by alleging that the respondent has been in possession of the said two shops bearing no.682/2B and 682/1A. The respondent has also been in possession of property no.4304, Gali Bhairon Wali, Nai Sarak, Delhi-110006. As per the case of the respondent, it has become dilapidated. But, no evidence was led to show that it was dilapidated or that it was not worthy of use. No evidence of closure of these businesses has been filed by the respondent. No bill book, no income tax return and other documents have been filed to show the actual place of business of the respondent. The respondent was running his business from the said premises when the notice dated 5th December, 2000 was sent to the petitioner.

32. It is apparent from the silence maintained by the respondent that at present the respondent has two shops in his possession on the ground floor which are five times bigger than the tenanted shop. The respondent had no bonfide requirement when the eviction petition was filed and his claim was false. Therefore, the prayer made in the present petition is allowed by setting aside the impugned order. The eviction petition filed by the respondent is accordingly dismissed.

33. No costs. (MANMOHAN SINGH) JUDGE JANUARY02 2014

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