

Komal Kishan Chugh vs.vinod Kumar Chugh & Anr

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Court : Delhi

Decided On : Apr-19-2018

Appellant : Komal Kishan Chugh

Respondent : Vinod Kumar Chugh & Anr

Advocate for Pet/Ap. : Mr. Sanjeet Singh, Ms. Yamini Khurana, Mr. A.S. Chandhiok, Mr. Sanjeev Sahay, Mr. Aditya Sharma, Ms. Sweta Kakkad, Ms. Pallavi Kumar, Mr. Angad

Judgement :

\$~18 & 19 IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:-

"19th April, 2018 + RC.REV. 533/2016 + SOMNATH CHUGH

... Petitioner

Through: Mr. Sanjeet Singh & Ms. Yamini Khurana, Advs. versus VINOD KUMAR CHUGH & ANR

... RESPONDENTS

Through: Mr. A.S. Chandhiok, Sr. Adv. with Mr. Sanjeev Sahay, Mr. Aditya Sharma, Ms. Sweta Kakkad, Ms. Pallavi Kumar & Mr. Angad, Advs. RC.REV. 576/2016 KOMAL KISHAN CHUGH

... Petitioner

Through: Mr. Sanjeet Singh & Ms. Yamini Khurana, Advs. versus VINOD KUMAR CHUGH & ANR

... RESPONDENTS

Through: Mr. A.S. Chandhiok, Sr. Adv. with Mr. Sanjeev Sahay, Mr. Aditya Sharma, Ms. Sweta Kakkad, Ms. Pallavi Kumar & Mr. Angad, Advs. CORAM: HON'BLE MR. JUSTICE R.K.GAUBA1 ORDER (ORAL) These two revision petitions are directed against the judgment dated 10.06.2016 of the Additional Rent Controller (ARC) passed on the file of two separate eviction petitions (registered as eviction RCR53316, 5

Page 1 of 13 petitions No.128/2012 and 127/2012) which were instituted by the respondents (concededly, the landlords) on 28.09.2012 respecting two different tenanted portions, adjoining to each other, situate at ground floor forming part of property bearing No.C-4, Housing Society, Main Gurudwara Road, NDSE Part-I, New Delhi -110049 shown in colour red in the respective site plans filed with each such petition, one in occupation and use of the petitioner of the first captioned case and the other in use and occupation of the petitioner in the second captioned case. There is no dispute as to the fact that each of these petitioners are tenants in respect of said premises, doing their separate businesses.

2. It may be mentioned here that the eviction petitions, resulting in two separate judgments being passed on 10.06.2016, were filed on almost identical pleadings by the landlords on the ground of bona fide need under Section 14 (1) (e) of Delhi Rent Control Act, 1958. The grounds on which each petition was resisted by the two tenants herein were also identical. In both the eviction petitions, leave to contest was granted and thereafter a full-dressed trial was held in which evidence was led by each side, the contentions raised, in fact and in law, being identical, and the import and effect of the evidence led being similar. The final submissions in both the cases were heard by the Additional Rent Controller simultaneously in each case, the arguments being similar, they having been dealt with by identical reasoning through the separate but similar judgments.

3. The questions of law, as indeed of facts, which have been raised by the learned counsel on both sides, against the above backdrop, at the hearing on these

revision petitions, have also been similar, if not RCR53316, 5

Page 2 of 13 identical. Both the petitions having been heard together, in fact the learned counsel for the parties having chosen to refer primarily to the pleadings and evidence in the case from which the first captioned petition arises, it being treated by them as the lead case, these petitions are being decided through this common order.

4. It would be advantageous to take note of certain facts which are either undisputed or in which regard there is no longer any contest, the same having been culled out by the learned counsel for both sides during the course of their submissions from the pleadings or from the evidence.

5. The respondents are brothers to each other who are co-owners of the property of which each of the tenanted premises forms a part. Earlier the first respondent and his father Mohri Ram Chugh were joint owners. After the death of Mohri Ram Chugh on 10.01.2008, his share devolved on the second respondent in terms of the Will dated 19.04.2002 and the property was accordingly mutated in the joint names of the two respondents. Since reference would require to be made to certain other properties in the vicinity, for sake of convenience the property of which tenanted portions form a part would hereinafter be referred to as property No.C-4.

6. It is an admitted case of the parties that the first respondent had earlier joined the petitioner Somnath Chugh (the petitioner of the first captioned case) in a partnership business in the name and style of M/s Malik Trading - it being the case of Somnath Chugh that the said partnership business commenced in the year 1975. The said firm M/s Malik Trading came to be inducted as a tenant in the tenanted portion RCR53316, 5

Page 3 of 13 in the occupation of petitioner Somnath Chugh, the first respondent and his father being the landlords. Sometime around the same period (1978) Komal Kishan Chugh (petitioner in the second captioned petition) took on rent the other portion in the tenanted premises from the first respondent and his father Mohri Ram Chugh, to set up his business in the name and style of M/s V.K. Glass Corporation.

7. The property no.C-4, adjoins property no.C-3, Housing Society, Main Gurudwara Road, NDSE part I, New Delhi, which is owned by one Mohinder Kumar Gupta (hereinafter referred to as the landlord of the first respondent). It is an undisputed case of both sides that the first respondent and petitioner Somnath Chugh had jointly taken a portion (shop) forming part of the said adjoining property (hereinafter referred to as the property No.C-3) on rent (sometime in 1980/1981) to set up a partnership business in the name and style of M/s Raizada Chit Fund. Concededly, the two partnership businesses in the name and style of M/s Malik Trading and M/s Raizada Chit Fund, continued to be functional till 1985 from two different tenanted portions, one in property No.C-4, (in which first respondent, a partner, has been a co- owner) and the other from property no.C-3 owned by the said Mohinder Kumar Gupta.

8. The partnership of first respondent and petitioner Somnath Chugh came to be dissolved on 11.11.1985. There are averments, and sufficient evidence, to show that the dissolution of the partnership was formalized by execution of Dissolution Deed and letter of relinquishment dated 11.11.1985 (Ex.PW-1/2). The effect of the arrangement entered upon at the time of dissolution of partnership was RCR53316, 5

Page 4 of 13 that the first respondent continued as the sole tenant in the premises in property no.C-3 under Mohinder Kumar Gupta while petitioner Somnath Chugh became the sole tenant, under the respondents in the subject premises in property No.C-4. The petitioner Somnath Chugh continued to do business in the name of M/s Raizada Chit Fund while the first respondent continued the business in the name and style of M/s Malik Trading, each after dissolution and from different premises as referred to above.

9. It may be mentioned here itself that the petitioners have made averments about payment of pagri at the time of taking the said premises on rent, the grouse being that the respondents need to account for the same. In the present proceedings, particularly in view of the fact that the evidence in this regard is not very convincing, this Court finds no substance in the issues raised on this score.

10. It is not disputed that the first respondent has been doing the business in the name and style of M/s Raizada Electricals from the tenanted portion forming part of the adjoining property C-3 for the last several years. The accommodation in the said tenanted portion, as per the case of the respondents, provides space admeasuring 1,000 square feet approximately. It is also not in dispute that Mohinder Kumar Gupta, the landlord of the first respondent, had instituted eviction proceedings against him in respect of the tenanted portion in property no.C-3, the said eviction case being pending till date. It may be noted here itself that the contention of the petitioners is that the said eviction case instituted by the landlord of first respondent against the latter is RCR53316, 5

Page 5 of 13 collusive and brought about only to provide a ground for filing the eviction petitions from which the revision petitions arise.

11. Reference has been made to three other adjoining properties, they being described as property No.C-5, Housing Society, Main Gurudwara Road, NDSE Part I, New Delhi; property No.C-6, Housing Society, Main Gurudwara Road NDSE Part I and property No.C-7, Housing Society, Main Gurudwara Road NDSE part I, New Delhi (hereinafter referred to as property no.C-5, property no.C-6 and property no.C-7 respectively.

12. The respondents had referred to a portion in property no.C-5, (lower ground floor portion) in use and occupation of the petitioner Somnath Chugh, this in addition to certain other portions in three other properties they being shop at building bearing No.N-14, NDSE-1, New Delhi-49; B-22, Shivalik; and building bearing No.68, Central Market, Lajpat Nagar -II, New Delhi-49. In a case founded under Section 14 (1) (e) of Delhi Rent Control Act, 1958 to plead the bona fide requirement of the landlords, availability of alternative business accommodation to the tenant is not of any consequence.

13. The reference to the other two properties viz. C-6 and property no.C-7 has been made by the petitioners in an attempt to bring home their plea that the need pleaded here is not bona fide. It was, however, fairly conceded at the hearing that certain portions in property No.C-6 and C-7 are in use and occupation of firms described as M/s Maa Bhagwati Impex and M/s Maharani Electricals. It has been

the case of the respondents that son of the second respondent is a partner in the said firms, the respondents having no connection therewith or with the RCR53316, 5

Page 6 of 13 premises in use or occupation of the said firms in property nos. C-6 and C-7.

14. The respondent had declared in the eviction petitions that the first respondent also owns, having in his possession, a shop on the ground floor in property No.D-851, New Friends Colony, Opposite Sujana Mohindra Hospital, New Delhi -110065. It was stated in the petition that the said premises had been sealed by the Monitoring Committee appointed by the Supreme Court of India for the reason it was part of a residential house and such commercial use being impermissible. Though noises have been made by the petitioners about availability of such alternative accommodation to fulfil the needs for which eviction is sought, rejection by the Additional Rent Controller of the plea with reference to such property in the distant New Friends Colony, must be upheld at this very stage in view of the explanation of the need set out in the eviction petition and the evidence led by the respondents bearing in mind, particularly, the fact that they are senior citizens, (they were 63 years and 70 years on the date the eviction petition was filed in September, 2012), they having been pre-occupied in businesses from the neighbourhood where the subject property is situate for last several decades, their kith and kin also being around in close vicinity, the dimensions of the premises described as shop in the property at New Friends Colony also being grossly inadequate.

15. The property no.C-4, of which the tenanted portions form a part, concededly comprises of three floors and a basement. Though it was stated in the eviction petitions that the upper two floors are used for residential purposes, it has come to be admitted during the course of RCR53316, 5

Page 7 of 13 trial that the accommodation on the said upper floors is used to provide paying guest accommodation. The ground floor of this property (property No.C-4) admittedly has the two tenanted portions in the front, the dimensions being 12 feet 3 inches x 21 feet 10 inches and 12 feet 4 inches by 21 feet 10 inches respectively with a combined frontage concededly of 24 feet 7 inches.

There is a small passage adjoining the said shops on one side it leading to the rear portion, the accommodation wherein comprises of a hall, dimensions whereof, according to the petitioners, are 20 feet 7 inches x 27 feet 3 inches, this portions abutting a pantry and a toilet, rest of the area being meant for staircase leading to the basement or upper floors. The basement hall forming a part of property No.C-4, even as per the petitioners has the dimensions of 20 feet x 7 inches x 20 feet 9 inches. It may be noted here that the hall on the rear side at the ground floor and the basement hall referred to above are the alternative accommodation pointed out by the petitioners.

16. The description of the need for which the orders of eviction were sought against the petitioners, as forming part of the pleadings, may be noted at this stage, they being similar in each case.

17. It was stated in the eviction petitions that the first respondent carries on business in the name and style of M/s Raizada Electricals from the tenanted premises in property No.C-3, from which he faces eviction proceedings at the instance of his own landlord (Mohinder Kumar Gupta) and, therefore, he is desirous of ensuring that he has available to him suitable business accommodation in his own property in the event of he being evicted, he further being desirous of RCR53316, 5

Page 8 of 13 immediately setting up for himself a suitable business - as an alternative business - in the subject premises so as to sustain himself and his family, the intention being of expanding/extending his business activities, not only by carrying on the existing business in the name and style of M/s Raizada Electricals but also by starting from the subject premises a new business in the electrical accessories. It was explained that the business activity in the name and style of Raizada Electricals involves dealing in fancy lights, ceiling fans and other similar fancy electrical goods. Through the averments in the eviction petitions, the second respondent - co-owner of the premises - joined in setting out a case of bona fide requirement of the first respondent, expressing his no-objection if the latter were to use and occupy the tenanted premises for such purposes, there being no other suitable alternative accommodation available to the latter.

18. With particular reference to the rear portion (hall) and basement at the ground floor of property No.C-4, it was pleaded that the same are used primarily as a godown by the firms M/s Maa Bhagwati Impex and M/s Maharani Electricals in which sons of the second respondent are partners, the former portion i.e. the rear portion at the ground floor, being contemporaneously also used by the workmen of Raizada Electricals (of the first respondent) inasmuch as there is a bathroom/toilet facility available there.

19. These eviction cases have been contested by the petitioners refuting the afore-mentioned case of the respondents primarily contending, as noticed earlier, that the eviction case initiated by Mohinder Kumar Gupta is collusive and further that the respondents RCR53316, 5

Page 9 of 13 are guilty of concealing material facts with regard to the availability of alternative commercial space owned by or available to them. Though in the pleadings and in the evidence, reference was made to a number of properties in different localities, at the hearing on these revision petitions focus of the petitioners has been on the accommodation available on the Upper floors, the hall on the rear side of the ground floor besides basement of property no.C-4. The petitioners have sought to refute the case of the respondents that the rear side portion and the basement portion at the ground floor in property no.C-4 are not available or not suitable or that the same are utilized by the said other firms (Maa Bhagwati Impex and Maharani Electricals) or by workers of the first respondent.

20. Having heard the learned counsel on both sides and having gone through the record of each case, this Court is not impressed with the argument relating to the eviction case instituted by the landlord of the first respondent qua the premises in property No.C-3 where the first respondent is presently carrying on his business. Only because the leave to contest was granted to the first respondent in the said case or because it has remained pending all these years, does not mean the case is to be assumed to be collusive. In order to attribute collusion, something more required to be brought on record. The fact remains that a sword has been hanging on the first respondent, the possibility of he being evicted from the tenanted premises looming large. There is nothing unusual or improper in these facts and circumstances for him to seek eviction of the tenants in the property of which he

himself is a co-owner. RCR53316, 5

Page 10 of 13 21. It does appear that in the eviction cases, the grounds are set out, almost in the alternative, indicative of his intent to shift and establish his business in his own property and at the same time expand his business. The averments only indicate that he does not want to let go of the tenanted premises in property No.C-3 easily. But then, there is nothing unnatural in his desire to be in readiness to shift his business to the property which he can claim to his own in his own rights. At the same time, there is nothing improper or unusual in his intent to expand his business, in a larger space - which the two tenanted portions involved here would undoubtedly provide.

22. The learned counsel for the petitioners referred at length to the evidence concerning the firms named Maa Bhagwati Impex and Maharani Electricals. The endeavour was to show that the first respondent has connection with businesses of the said firms, in which context it was also sought to be pointed out that the documents relating to the said firms were brought on record through the testimony of the first respondent. It was also the thrust of the argument of the counsel for the petitioners that the evidence with regard to the said firms pertains to the period, generally speaking, post the filing of these eviction petitions. It is noted that the said evidence has been examined at great length by the Additional Rent Controller in the impugned judgments and nothing adverse to the case of the respondents could be brought out. In the opinion of this Court, there is nothing in the evidence led on record in these cases from which it can be inferred, even remotely, that any of the respondents has any direct connection with the aforementioned firms or their businesses. RCR53316, 5

Page 11 of 13 On the contrary, there is ample evidence, duly authenticated, confirming the case that the said firms are using the rear portion at the ground floor and the basement of property No.C-4, as godown and also for availing the facilities in the nature of toilet, bathroom etc. for their workers, this in addition to the employees of the first respondent whose business in the name and style of M/s Raizada Electricals is functional next door (from property No.C-3).

23. In these circumstances, the argument of the petitioners that it is a case of artificial scarcity created by the respondents with reference to the rear portion on

the ground floor and at the basement of property No.C-4, must be rejected.

24. In fact, even if it were to be assumed that the space on the rear side at the ground floor level and in the basement floor of property No.C-4 is vacant, it is not correct on the part of the petitioners to argue that such space is a suitable alternative accommodation available to the first respondent for shifting to or expanding his business therefrom. It has to be borne in mind that the first respondent is engaged in the business of fancy electric goods. It was explained that the wares in which he deals in include fancy lights, chandeliers, ceiling fans etc. Business of this nature cannot obviously be run from the basement floor, such level generally being space used for storage or as a godown. A dealer in such goods hopes to attract his customers by displaying his wares to the public at large and for this the position from which he hopes to exhibit and offer his goods for sale, it is desirable, must be visible from outside i.e. through display windows to the prospective customers. The rear hall at the ground floor to which RCR53316, 5 Page 12 of 13 access is available through narrow passage alongside the suit shops can hardly fulfil the requirements of such business premises.

25. The above reasons also squarely apply to the argument with reference to the upper floors in the property No.C-4. As noted earlier, the said upper floors have been put to use by the respondents for setting up paying guest accommodation. It is, therefore, not fair to seek adverse inference to be drawn against the respondents from such use of the upper floors in property No.C-4.

26. The reliance by the petitioners on M. M. Quasim vs. Manohar Lal Sharma & Ors. AIR1981 Supreme Court 1113 is misplaced as mere proof of some other vacant premises in possession of the landlord is not sufficient to negative the claim of the landlord without it being demonstrated that the said other premises is one which the landlord can conveniently occupy to address the requirements which have been pleaded, there being no such proof adduced by the petitioners.

27. Thus, the revision petitions are found devoid of merits and are dismissed.
R.K.GAUBA, J.

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