

Satpal Vs. Sahi Ram

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Court : Delhi

Decided On : May-27-2011

Judge : P.K.Bhasin, J.

Acts : Delhi Rent Control Act - Sections 25B(8), 14(1)(e)

Appeal No. : RC.REV. 25/2010

Appellant : Satpal

Respondent : Sahi Ram

Advocate for Def. : Mr. Rishi Prakash, Adv.

Advocate for Pet/Ap. : Mr. P.D. Gupta, Adv.

Judgement :

ORDER

1. This revision petition under Section 25 B(8) of the Delhi Rent Control Act has been filed by the petitioner-tenant against the order dated 20th October, 2009 passed by the Rent Controller (South) whereby the application filed by the petitioner-tenant seeking leave to defend the eviction petition filed against him by his landlord, the respondent herein, under Section 14(1)(e) has been dismissed.

2. The respondent had let out one shop in his property no. 378, Hanuman Market, Munirka, New Delhi to the petitioner's deceased father Shri Hari Chand about thirty years back. In June, 2008 the respondent filed an eviction petition against the petitioner, being the legal heir of his deceased father, under Section 14(1)(e) of the Delhi Rent Control Act, 1958 alleging that he was 80 years old and was unable to undertake any work to earn livelihood for himself and his family comprising of twelve persons who were dependent upon him. His two married sons were unemployed and so they wanted to start their business to earn livelihood for themselves and their family members including the respondent since theirs was a joint family. His elder son wanted to start business of motor parts but since the petitioner did not have any other suitable business premises he bonafide required the shop in occupation of the petitioner.

3. The petitioner filed his affidavit before the trial Court seeking leave of the Court to defend the eviction petition filed by his landlord. It was claimed by him that the respondent-landlord was not the owner of the tenanted shop and that eviction petition was liable to be dismissed due to non-joinder of all the legal heirs of the deceased tenant. It was also claimed that the petitioner and his family members were permanently settled and residing in village Tawroo in Haryana where they have huge tracts of agricultural lands and they were engaged in agricultural activities since ages and none of them has ever resided in Delhi. There were many shops on the ground floor and office space on other floors of property in Munirka from which the petitioner was earning rental income of approximately Rs.35,000/- per month. The petitioner had been getting the leased portions vacated and re-letting the same from time to time which he would not have been doing if he actually required the same for the business of his sons. The premises were let out to the father of the petitioner at a rent of Rs.75/- and over the years it had been got increased to Rs.2200/- per month.

4. The respondent in his counter affidavit had maintained that he required the shop in question bona fide for his sons to start business. Regarding the petitioner's claim that he alongwith his entire family was settled in Haryana and did not require the shop in question, the respondent stated in his affidavit that:

"It is emphatically denied that petitioner as well as his sons are permanently settled in village Tawroo, Haryana. It is also specifically and categorically denied that petitioner &/or his sons have huge tracts of agricultural land in the said village and that they are physically and practically engaged in agricultural activities. All such allegations are mala fide and false to the knowledge of respondent. The agricultural land and holdings if any owned and possessed by the petitioner in the above said village is very small and absolutely insufficient for earning his livelihood and make both ends meet keeping in view the size of his family. The petitioner and his sons have to look after and manage their agricultural land in Haryana as well as property in situated in Delhi of which shop-in-suit forms part, to earn their livelihood and have to run from pillar to post in these days of sky-high prices It is specifically and categorically denied that the present petition has been filed to coerce the respondent to increase the rent Further, without prejudice to the pleas taken hereinabove and here-in-after, it is respectfully submitted that whenever rent was increased, it was increased in accordance with the provisions of law and/or mutual consent/agreement, which does not give any grievance to the Respondent. It I specifically and categorically denied that the petitioner ever pressurized the respondent for increasing the rent, nor there is any reason for the same "

5. The learned Rent Controller has rejected the petitioner's application for leave to contest the eviction petition filed by his landlord. Since no appeal lies against an order of rejection of leave application the petitioner has invoked the revisional jurisdiction of this Court under Section 25B (8) of the Delhi Rent Controller Act, 1958.

6. Learned counsel for the petitioner has pressed before me only two grounds in support of the prayer for grant of leave to the petitioner to contest the eviction

petition. The first ground was that there is no requirement whatsoever of the respondent in respect of the shop in question and the requirement projected in the eviction petition is highly mala fide and that was evident from the fact that the petitioner and his two sons are agriculturists and are permanently settled in Haryana since ages and they have been earning their livelihood from agricultural activities also. The mala fides were apparent from the fact that the petitioner was having ration card in Haryana as well as in Delhi. The learned Rent Controller while rejecting this ground raised before him also has observed in para no.6 of the impugned order that:

" ..It is stated that the petitioner and his sons are permanently settled in village Tawru, Haryana and have huge tracts of agricultural lands in village Tawru Haryana and are engaged physically and practically in the agricultural activities for ages. Respondent has filed photocopy of documents showing petitioner and his sons are the owner of agricultural land in village Tawru, Haryana. The fact that the petitioner and his sons are owner of agricultural land does not mean that they would not like to commence their business in the tenanted shop which is located in the commercial area. Petitioners have clearly stated that in the reply that they are residing in the portion of property bearing no.378, Hanuman Market, Munirka, New Delhi. Respondent has not stated that the income derived from agricultural activities is sufficient to support the family of the petitioner Petitioner has clearly stated in his reply that he has filed eviction petition against one Sunil Kumar who is also a tenant under him in respect of shop no,378/1(ground floor), Hanuman Market, Munirka, New Delhi as the same is required bona fide by the petitioner for his younger son namely Naval Singh who is dependent on him. Therefore, the petitioner has not concealed any material fact from this Court."

7. Learned counsel for the petitioner submitted that from the afore- quoted observations of the trial Court it becomes clear that it had passed the impugned order as if he was deciding the eviction petition after full trial which was not the correct approach to be adopted while dealing with an application for leave to contest. In this regard, learned counsel relied upon a decision of the Supreme Court in **"Inderjeet Kaur vs. Nirpal Singh"**, JT 2001 (1) SC 308. Learned counsel for the petitioner had submitted that in this case before the Hon'ble Supreme Court the landlord was settled abroad but in his eviction petition against his tenant he had claimed that he had returned back to India along with his family and therefore, he required the tenanted premises bonafide for his residence and that of his family members dependent upon him and that his children who were still abroad keep on visiting him but he was unable to provide them accommodation and further that his son had also decided to return to India after winding up his affairs abroad. The tenant had claimed in his leave to defend application that the landlord had no intention to come to India as he was comfortably settled abroad and his son also was well settled there and so there was no question of his winding up his affairs in U.K. and his coming back to India and the eviction petition had been filed to increase the rent and further that eviction petition was bad for non- joinder of the necessary parties. Learned counsel then drew my attention to the following observations of the Supreme Court made while setting aside the order of the Rent Controller rejecting the leave application and also the order passed by this Court in the revision petition affirming the order of the Rent Controller:-

"We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord leave to defend should not be granted when it is not the requirement of Section 25B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat

the very object of the special provisions contained in Chapter IIIA of the Act, Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under Clause (e) of the proviso to Sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under Clause (e) of the proviso to Sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that

when a leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noted that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25B(7) speaks of the procedure to be followed in such cases. Section 25B(8) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Section 25B(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.

14. This Court in *Charan Dass Duggal v. Brahma Nand* : (1983)1SCC301 while dealing with the question in the matter of granting leave to defend to contest the eviction petition filed on the ground of personal requirement, in para 5 has stated thus:

5. What should be the approach when leave to defend is sought for? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a *prima facie* case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see *Santosh Kumar v.*

Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought for on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

15. In the same judgment, in para 7 it is further observed:

7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave: May be in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross- examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that

[illegible]

17. With this background, we now turn to the facts of the case in hand. It is clear from the reading of the order of the Addl. Rent Controller that he has taken pains to write an elaborate order as if he was writing an order after a full-dressed trial of eviction petition he has considered merits of the respective contentions at the stage of granting leave to defend under Section 25B(5) without keeping in mind the scope of the provisions and statutory duty cast on him. He exceeded the jurisdiction vested in him in refusing leave to defend to the appellant. ..Whether the suit premises was used for residential-cum-commercial purposes from the inception and whether the respondent and his son and other members of the family are permanently and comfortably settled in U.K. and whether the requirement of the premises by the respondent was bona fide, are the matters which could not be adjudicated as has been done by the Addl.

Rent Controller at the stage of dealing with the application to grant leave to defend. In this view of the matter, we have no hesitation to say that the order passed by the Addl. Rent Controller refusing leave to defend to the appellant cannot be sustained ."(emphasis supplied)

8. Learned counsel for the petitioner also relied upon one unreported decision of a Single Judge Bench of this Court dated 23rd October, 2009 in CM(M) 1164/2009 "Mukesh Kuamr vs. Rishi Prakash" and my attention was specially drawn to paras 9 and 11 of that order which read as under:-

"9. All the aforesaid contentions would show that the pleas raised are such from which it cannot be said that the defence raised by the tenant does not disclose any ground on which the petitioner can be granted the order of eviction without a trial. The desire of the petitioner to open his own showroom in the tenancy premises, in my opinion itself would be a triable issue. As held by the Bombay High Court in Nanalal Goverdhandas and co. vs. Samratbai Lilachand Shah AIR 1981 Bom 1, bonafide requirement is a state of mind and unless a person claiming requirement is subjected to examination/cross examination, requirement without his evidence cannot be established.

11. As is stated above, the eviction on the ground of bona fide requirement was earlier not possible under the Rent Act and has become possible after the judgment aforesaid of last year in Satyawati (supra). After the said judgment, it is found that all landlords of commercial premises are filing petitions for eviction claiming requirement. In cases, where the requirement is not established from the admitted facts and where it is controverted as held by the Controller in the present case and which reasoning is found to be in accordance with law, the petitions cannot be allowed without trial. The petitioner has in the petition given detailed facts only as to how he needs urgent finances

because of his growing family but not as to his need/requirement of tenancy premises for commercial purposes."

9. Learned counsel for the respondent-landlord on the other hand while supporting the decision of the Rent Controller contended that the petitioner and his family members were residing in Delhi also and just because they were having some agricultural lands in some village in Haryana they cannot be denied the benefit of starting some business in the shop in question and the learned Rent Controller has rightly held so in the impugned order. It was also submitted that once leave to contest is granted to the tenants the eviction cases then remain pending for years and years and in the process the purpose of having summary procedure of eviction of tenants on the ground of bona fide requirements of the landlords gets defeated.

10. After considering the facts pleaded by the respondent landlord in his eviction petition and the facts stated by the petitioner tenant in his leave to contest application and the decision of the learned trial Court I am of the view that this revision petition deserves to be allowed. The leave application filed by the petitioner tenant does raise triable issues which cannot be decided without giving him an opportunity to substantiate the same by producing relevant material/evidence and cross-examining the landlord. I also find force in the contention of the learned counsel for the petitioner that the facts of this case are quite similar to the facts in Inderjeet Kaur's case (supra) before the Supreme Court wherein leave to defend was granted to the tenant.

11. There is another reason also for grant of leave to the petitioner-tenant in the present case. The petitioner-tenant has filed an additional affidavit claiming that the respondent-landlord had four more shops also in his property in Munirka and the same had been let out to different tenants and he was getting rent of ` 2,000/- from two tenants, ` 2,700/- from one tenant and ` 2,500/- from another one and with effect from 1st January, 2011 he had re-let all the four shops at a monthly rent of ` 8,000/- each. Learned counsel for the petitioner had submitted that this subsequent development which came to the knowledge of the petitioner after the

disposal of the eviction petition, shows the mala fides of the respondent-landlord in filing the eviction case against the petitioner. The respondent-landlord in his counter affidavit to the said additional affidavit of the petitioner claimed that the rent had been increased because of the rise in price index and further that actual market rent of the shops was much higher and, therefore, the bona fides of the respondent cannot be doubted because of his having got the rents of other tenants increased to a reasonable extent. Learned counsel for the respondent had submitted that though this Court could consider this subsequent development the justification given by the respondent in his counter affidavit should be accepted and no mala fides can be inferred from that circumstance.

12. I am, however, of the view that at least for the purpose of grant of leave to contest to the petitioner-tenant the aforesaid circumstance of the respondent-landlord having increased the rent of other tenants four times does bring an element of mala fides in his decision to initiate eviction case against the petitioner herein and learned counsel for the petitioner was justified in submitting that eviction petition against him appears to have been filed to increase the rent in respect of the shop in dispute.

13. This petition is accordingly allowed. The impugned order of the learned Rent Controller is set aside. The petitioner is granted leave to defend the eviction petition. The parties shall now appear before the Additional Rent Controller on 8th July, 2011 at 2 p.m. on which date the petitioner shall file his written statement. Since during the course of hearing today the counsel for the respondentlandlord had expressed his apprehension that if leave to defend is granted to the tenant the eviction proceedings would continue to linger on for years and years and that would defeat the very purpose of having a summary procedure for the eviction of tenants on the ground of bona fide requirement of the tenanted premises by the landlord, learned counsel for the petitioner had responded by submitting that this Court could fix any reasonable time period within which the Rent Controller should dispose of the eviction petition and the petitioner shall not seek unnecessary adjournments. Accordingly, the trial Court is directed to make all efforts to dispose of the eviction petition within a period of 1 1/2 years from 8th July, 2011.