

Munna Alias Manoj Vs. Ram Narain

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Court : Delhi

Decided On : Nov-02-2011

Judge : P.K.Bhasin, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 25-B(8), 14(1)(e)

Appeal No. : RC.REV. NO. 142 of 2011

Appellant : Munna Alias Manoj

Respondent : Ram Narain

Judgement :

1. This revision petition under Section 25-B(8) of the [Delhi Rent Control Act, 1958](#) (in short 'the Act') has been filed by the petitioner- tenant against the order dated 11th February, 2011 passed by the Additional Rent Controller(West) whereby the eviction petition filed against him by his landlord, respondent herein, under Section 14(1)(e) of the Act to have the possession from him of one shop no. 6 on the ground floor of property no. WZ-297-C, Village Madipur, New Delhi (hereinafter referred to as the 'tenanted shop') has been allowed and he has been directed to vacate the tenanted shop.

2. The relevant facts, as were pleaded by the respondent-landlord in para no. 18 of the eviction petition to secure an order of eviction against the petitioner-tenant, are re-produced below:

"It is stated that the Petitioner is an ex service and is not doing any job and his son namely Hemant Yadav and daughter-in-law had already expired left behind two issues and the Petitioner has to maintain them also and the petitioner requires the tenanted premises under the possession of the Respondent bonafide for himself for running a showroom/shop of fancy light and also for two of the family members dependant upon him for the purpose of commercial accommodation. The Petitioner is senior citizen as the Petitioner is also residing in Madipur therefore he required less time for reaching of the shop and more over the Petitioner has to maintain his family members. The Petitioner is well experienced with dealing in the fancy light business and more over the family members of the Petitioner have grown up hence the family members of the Petitioner has increased and the Petitioner has increased and the Petitioner is unable to meet out the expenses of the family members from his meager income which he is getting from his pension. It is stated that when the Petitioner will start his business, then the income of the Petitioner will also increased and he will be able to meet out the expenses of his family members as deceased son of the Petitioner was having son and daughter, who will be attaining the age of marriage and if the Petitioner would not be able to start his business of fancy light showroom/ shop after evicting the Respondent from the tenanted premises then it will be very difficult to bear the expenses of the marriage of dependants, thus the Petitioner is required the tenanted premises in possession of the Respondent for his bona fide requirement for the purpose of opening a fancy light showroom/shop and also for the bright future of the dependants and the petitioner has got not suitable shop available to him at Delhi except the tenanted premises in possession of the Respondent which is best suited for his business as the dimension of the said shop is best suited for the Petitioner....."

3. The petitioner-tenant had contested the eviction petition after grant of leave to contest to him by the learned Controller. The various pleas which he had raised in his written statement, were noticed, dealt with and rejected by the learned Controller in the impugned order. The relevant parts from that order where the pleas, which were urged before the Controller as well as before this Court, were dealt with are also being re- produced below:-

6. I am taking firstly the issue whether the petitioner seeks the tenanted premises for bona fide requirement. The case of the petitioner is that he is retired from the army and presently have a meager income and he is having liability of two grand children. The petitioner has examined himself as PW-1 and during cross examination he has admitted that he has given 12 shops to the tenants including respondent on rent. He further admitted that he is receiving rent from the tenants who are occupying twelve shops in property bearing no. WZ-297 C, Village Madi Pur, Delhi. From the perusal of testimony of PW-1, it proved that he is having substantial income from rent.

7.So from the perusal of testimony of witnesses, it is proved on record that the petitioner is having substantial income from the rent from the property bearing no. WZ-297-C, Village Madi Pur, Delhi. The question arises whether the income of the petitioner from the tenanted premises or other sources have any hindrances in the bona fide requirement of the tenanted premises by the petitioner. I am of the view that law does not create any hindrance to have income, either from the rented premises or property acquired by the person. Every person has right to increase his income by expending his existing business and by starting a new business. For the sake of argument if it is admitted that the amount received by petitioner either from rent or from pension is a substantial amount. It cannot be presumed that he does not need more income. A person may want more amount to improve his life style. So I am of the considered view that the petitioner have a bona fide requirement of shop, as he is legally entitled to expand his business or to start a new business.

Here, in the present petition, petitioner is not having business except the rental income and pension income. He wants to start a business of fancy light in the tenanted premises. To my mind the requirement is bonafide.

8. The next question arises whether the petitioner has other reasonable, suitable accommodation to start the business of fancy light. While the petitioner was cross examined, he has admitted the site plan, filed by the respondent Ex. PW- 1/R-1 is correct. I have perused the documents Ex. PW- 1/R-1 which show thirteen shops in the premises bearing no. WZ-297-C, Village Madi Pur, Delhi. The document in

itself does not shows the width of the road in front of the tenanted premises and in front of the other shops. The document i.e. site plan Ex. PW-1/A placed on record by the petitioner is showing the width of the road in front of the tenanted premises and in front of the other shops. Here I would like to clear that the document Ex. PW-1/A and document Ex. PW-1/R-1 are correct document. But difference is only that the document Ex. PW-1/A is describing/showing the tenanted premises and adjacent shops while the document Ex. PW-1/R-1 is showing all the shops, situated in property bearing no. WZ-297-C, Village Madi Pur, Delhi.

9. From the perusal of these two documents it proved on record that the width of the road before the tenanted shop is 60 feet. The width of the road in front of the shop, shown in green in document Ex.Pw-1/R-1 is of 20 feet. Although it has been brought on record that only one shop is vacated and other shops are occupied by the tenants including the respondent in property bearing no. WZ-297- C, Madipur, Village Delhi. The question is whether the tenanted premises in occupation of the respondent is more suitable, reasonable accommodation to the petitioner for starting his business for fancy light. The road in front of tenanted premises is 60 feet and width of the road in front of the vacant shop is 20 feet. The tenanted premises is also suitable on the main road where there are chances that more and more customers may approach the tenanted premises if the business is started by the petitioner. The road in front of tenanted premises is wide and the parking of the vehicle may be more convenient for the customer. The petitioner further deposed that width and length of the tenanted shop is more than other shops which is 15 feet by 20 feet. This fact has been denied by the respondent. The counsel for petitioner argued that the petitioner may start the business from shop which is lying vacant. But it is settled law that tenant cannot dictate the landlord as to how else he should adjust himself without getting possession of the tenanted premises.

10. As I have discussed above, I am of considered view that requirement of the petitioner is bona fide as well as he has no suitable/reasonable accommodation to start the business. Petition of the petitioner is allowed and eviction order is passed....."

4. Feeling aggrieved with the direction of the Controller requiring him to vacate the tenanted shop the petitioner-tenant approached this Court by filing this revision petition since no remedy of appeal is provided to an unsuccessful tenant against whom eviction order is passed by the Controller in an eviction petition which has been tried in accordance with the special procedure under Section 25-B of the Act. The High Court, however, has been conferred with the power under Section 25-B(8) to examine if the order passed by the Controller for the eviction of the tenant is in accordance with law or not and so I shall now examine that aspect.

5. The learned senior counsel for the petitioner argued that the respondent-landlord had concealed the fact from the trial Court that he was having three vacant shops and also that his income of rent from various tenants in the same property who were running their businesses was around ` 60,000 p.m. which facts he had admitted only in his cross- examination and so the eviction petition should have been dismissed on this grounds alone. On the other hand, learned counsel for the respondent argued that there is no infirmity in the impugned order justifying interference by this Court.

6. From the fore-going narration of the facts of the case as well as the findings of the learned Additional Rent Controller it is clear that the eviction petition was filed by the landlord - respondent only on the ground that he was having only pension income which was also too meager with which he could not support his family comprising of himself and two minor grandsons and, therefore, he had decided to start a business in the tenanted shop. The petitioner - tenant had categorically claimed in his written statement that the respondent - landlord had apart from pension income rental income also from various other tenants in the property in question. Earlier to that, the petitioner - tenant had taken the same stand in his leave to defend application also and at that stage the respondent - landlord also had denied this allegation of the petitioner - tenant. However, the learned Additional Rent Controller had come to the conclusion that the case of the landlord that he was having no other income apart from meager pension was falsified because of the admission made by the landlord during the course of arguments that he had 13 shops none of which was lying vacant (and during trial he had admitted that he was getting about ` 60,000 per month as rent of other portions in

the same property). At that stage, petitioner - tenant had also claimed that the respondent herein was having possession of three vacant shops also with him in the property in question and that fact was also denied by the respondent - landlord. That controversy was also considered to be a triable issue by the Additional Rent Controller and so leave to contest was granted to the petitioner-tenant. However, when the case was put to trial, the petitioner - tenant, as noticed in the impugned order also, was successful in establishing the pleas that his landlord was having rental income of about ` 60,000 per month and also that he was having three vacant shops with him. After having accepted these pleas put forth by the petitioner - tenant, which had entitled him to the leave to contest the eviction petition, the learned Additional Rent Controller, in my view, was not justified in allowing the eviction petition by making out a new case for the respondent - landlord that even if the respondent - landlord had sufficient income apart from the pension income he could desire to have more income also since no such case was pleaded in the eviction petition by the respondent - landlord. Similarly, the learned Additional Rent Controller was also not justified in coming to the conclusion that even though the respondent - landlord had with him three vacant shops, as was being claimed by the petitioner - tenant, on the ground floor (which fact had been categorically denied by the respondent - landlord during the trial) the respondent - landlord could still decide to have the tenanted shop vacated from the petitioner - tenant because it was more suitable for the business which he intended to start there. Since this was also not the case pleaded by the respondent - landlord in his eviction petition that though he had other shops available at his disposal but the same were not suitable for the kind of business which he intended to start, the order of eviction could not have been passed in his favour on the ground that the tenanted shop was more suitable for the respondent - landlord. When the respondent had sufficient rental income and he also had three vacant shops in his property he could have very well averred these facts in his eviction petition and claimed that he wanted to earn more money and also that the vacant shops available with him were not suitable for the kind of business which he wanted to start. He had, however, chosen not to plead these facts in the eviction petition, perhaps under the impression that if he would plead these facts in the eviction petition itself his case of bona fide requirement of the tenanted shop

may not be accepted by the Rent Controller. Concealment of these material facts by the respondent - landlord, in fact, should have been considered by the learned Additional Rent Controller to be sufficient by itself to doubt his case of bona fide requirement. For this view, I find support from a decision of the Supreme Court in "Kishan Chand vs. Jagdish Pershad", 2003 (9) SCC 151, wherein the Supreme Court had upheld the High Court's judgment dismissing the eviction petition only on the ground of concealment of material facts.

7. For the afore-said reasons, this revision petition is allowed. The impugned eviction order is set aside and consequently the eviction petition of the respondent - landlord stands dismissed.

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