

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 05.02.2014

+ RC.REV. No.85 of 2014 & CM No.3533 of 2013

MAN MOHAN DASS Petitioner
Through: Dr. Aurobindo Ghose, Adv.

versus

AJAY TYAGI Respondent
Through: Mr. Nitin Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

This Revision Petition impugns an eviction order dated 5.12.2012, whereby the defendant's application for leave to defend was dismissed and the eviction order apropos property No.WZ-48, Basai Darapur, New Delhi-110015, comprising one hall admeasuring 26.6 ft. X 23 ft. was passed. The case of the landlord/eviction-petitioner was that the tenanted premises were let out in the year 1975 to the deceased brother of the present tenant (petitioner herein) for godown purposes wherefrom the latter had been running a small casting unit at a monthly rent of Rs.225/-. After the demise of the said brother, the present tenant took over the possession of the suit premises, his tenancy was accepted at an enhanced rent of Rs.700/- per month and currently the rental is Rs.800/- per month. The landlord issued rent receipts as and when the rent was paid by the tenant. The last rent was paid on 31.12.2009. The tenant has been in arrears of rent since 1.1.2010.

According to Government policy of relocation of industrial units operating from non-conforming areas an industrial plot bearing No.218/D had been allotted to the tenant in the name of his proprietorship firm, viz. M/s. Janta Foundary Works in the year 1995-96 in Bawana Industrial Area-II (Bhorgarh) measuring 100 sq.mtrs. vide his application No.19488 under the relocation scheme by the DSIIDC to protect the residents of the area from pollution. The eviction-petitioner claimed that he requires the premises for starting his own business of electrical spare parts to meet the demands of his ever-increasing daily expenses and the tenanted premises being a hall would most aptly be suited for the purpose; that the petitioner was a graduate from Delhi University and MBA from Sikkim Manipal University and previously he had worked in the banking sector as well as in sales and marketing; that he had good education but was not gainfully employed to take care of his old and ailing parents, who were living with him and were dependent on him, besides his wife too was not keeping good health, thus, need to augment his income from a business enterprise was most urgent and *bona fide*. The landlord further contended that he had no other suitable accommodation for doing the business; therefore, the eviction of the tenant from the tenanted premises was sought.

In the application seeking leave to defend, the tenant had stated that the landlord had several other residential premises in the same area which were let out for industrial or commercial purposes, therefore, his *bona fide* need was not made out and since the premises were leased out for residential purposes and not required for residential purposes, the same could not be sought for starting a business; that Section 14(1)(e) of the Act does not cover

commercial accommodation, therefore, the petition would not be maintainable; that the tenanted premises did not fall into the share of the eviction-petitioner in the 'family settlement'; that the tenanted premises were let out for non-residential purposes for the last 36 years and being so used; the monthly rental of Rs.800/- was admitted; that the rent was being deposited in the Court of the Rent Controller and stands paid up till 31.5.2011; that the industrial area where the tenant has been allotted an alternate plot is still not developed and, in any case, the unit at the tenanted premises caused almost no pollution for which safety measures had been taken by the Government and it does not cause any inconvenience to the neighbours; that the petition has been filed primarily to evict the petitioner and deprive him of his livelihood and the reasons mentioned in the eviction petition are all fanciful.

The Trial Court found that the respondent/tenant had not disclosed details of any accommodation which could be said to be suitable alternate accommodation available to the landlord. It found that the application for leave to defend failed to raise any triable issue and accordingly it was liable to be dismissed. The Trial Court was of the view that the issue of commercial property coming under the purview of Section 14(1)(e) of the Act was settled by the judgement of the Supreme Court in *Satyawati Sharma (dead) by LRs v. Union of India & Anr. (2008) 1 RCR (Rent) 457 (SC)*. The Trial Court further observed that although the tenant was paying the rent of the tenanted premises to the landlord, he had not disclosed who the owner of the suit property was. In the circumstances, the tenant could not challenge the title of the eviction-petitioner. It is settled law that for

maintaining an eviction petition under Section 14(1)(e) of the Act, all that the eviction-petitioner has to show is that he has a superior right than that of the tenant. Insofar as the tenant himself has accepted the respondent as the tenant, nothing more is required to be established [Ref: ***Rajender Kumar Sharma & Ors. v. Leelawati & Ors.* 155 (2008) Delhi Law Times 383**]. The Trial Court also concluded that the non-issuance of rent receipts against payment of rent was not a triable issue and appropriate redressal in this regard was under Section 26 of the Act. The Trial Court further observed that comparative hardship of the tenant could not be a ground for denial of eviction nor can it be a triable issue as has been set out in ***Sushila v. II Additional District Judge Banda* AIR 2003 (SC) 780**. Accordingly in absence of any triable issue, the eviction order was passed.

I have heard the learned counsels for the parties.

The learned counsel for the petitioner reiterates the same arguments as were raised in the application for leave to defend. The tenant further argued that the landlord was actually in employment when he filed the eviction petition and, therefore, he could not start his own business and thus, there was no *bona fide* need. The respondent/landlord has placed on record a print-out of the e-mail dated 31.10.2011 sent to the Branch Manager, Axis Sales, Delhi, whereby he had resigned from his service and after the notice period of one month the service would cease w.e.f. 30.11.2011. A photocopy of the resignation letter dated 31.10.2011 duly received by the bank, has also been placed on record. This Court notices that the eviction petition was filed after 2nd November, 2011, i.e. after the resignation was tendered. Although property No.WZ-238 has not been mentioned in the

application for leave to defend, the petitioner has explained that it is located at some distance and was not a reasonably suitable accommodation. A perusal of the application for leave to defend shows that no triable issues were raised and no material irregularity can be found in the impugned order in holding so.

In view of the aforesaid discussion this Court is of the view that conclusion arrived at by the Trial Court was based upon the material on record and the view taken by it is plausible in law. The impugned order does not suffer from any material irregularity. There is no infirmity in the impugned order calling for interference by this Court.

The petition is without any merit and is accordingly dismissed.

FEBRUARY 05, 2014
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NAJMI WAZIRI, J.