

Shri Naveen Kumar vs Smt Rekha Sharma on 28 March, 2025

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision:

+ RC.REV. 53/2025 and CM APPL. 9289/2025

SHRI NAVEEN KUMAR

.....
Through: Mr.Shivam Sharma & Mr.S.K Na
Advocates

versus

SMT REKHA SHARMA

.....Respondent

Through: Mr.M.L. Vashistha, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present revision petition filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter, 'DRC Act'), the petitioner seeks to assail the order dated 12.08.2024 passed by ARC-02 (Central) Tis Hazari Courts, Delhi in Eviction Petition No. RC/ARC No. 370/2021 (hereinafter, 'impugned judgment') with respect to premises being Private Shop No. 40 (old) New No. 10 in property No. 1977, Ground Floor, Katra Lachhu Singh, H.C. Sen Road, Chandni Chowk, Delhi - 110006 (hereinafter, 'subject premises') whereby the petitioner's application seeking leave to defend came to be dismissed.

2. The petitioner/tenant has primarily challenged the impugned order stating that the respondent/landlady has alternate suitable accommodation available. Learned counsel for the petitioner, while referring to paragraph 9 of his application for leave to defend, submits that the petitioner has made a categorical assertion that the first floor of the subject premises has three shops which are lying vacant. He further submits that the respondent/landlady, in her reply to the leave to defend application, did not controvert the aforesaid position. In fact, it is stated that the factum of the aforesaid three shops was neither admitted nor denied and that the same was rather concealed in the eviction petition, making it a triable issue. Reference is made to paragraph 8 of the respondent's reply filed to leave to defend application, which is reproduced hereinunder:

"8. That the contents of Para 9 of the application for leave to defend is wrong and denied. It is denied that the present petition is very much bad in the eyes of law that the petitioner has not mentioned in her entire petition that she has no other

reasonable, suitable accommodation for herself to earn her livelihood. It is submitted that the petitioner has put on record sufficient documents on record to show the properties in her possession. The site plan pertaining to them was mistakenly omitted while filing and the same is being put on record. It is denied that the second floor of the abovesaid property also being used for commercial purpose by the petitioner/landlady. It is submitted that the second floor is residential premises and the Petitioner is residing there."

3. Learned counsel for the respondent, on the other hand, states that the Site Plan filed alongwith the reply to leave to defend application mentions the existence of three shops, therefore, the same was never concealed, and that the said shops are currently under occupation of other tenants. It is submitted that the said three shops are not suitable or available and that the respondent has bona fide commercial requirement of the subject premises for the use of herself and her son, to earn their livelihood.

4. It is a settled position in law that while deciding an application for leave to defend, the Rent Controller must examine only whether a prima facie case is made out by the tenant raising issues which may be triable in nature, irrespective of the final outcome of the pleas so raised. Therefore, at the stage of leave to defend, the threshold to be crossed by the tenant is rather low and there is no need for the tenant to lead incontrovertible evidence proving the same; that is to be determined at the stage of trial. In terms of the burden placed on the landlord, while a presumption may exist in their favour as to the bona fide need claimed, once an averment is made to that effect and landlord-tenant relationship is established, it is still the responsibility of the landlord to make out an apparent case of sufficient and reasonable need as well as an absence of alternate accommodation to meet the same. Any material doubt raised as to those issues become triable in nature, warranting grant of leave to defend in favour of the tenant. Needless to state, such an issue cannot be frivolous in nature or raised for the sake of raising a defence, and must be something tenable, even if it might ultimately collapse at trial. [Ref: Charan Dass Duggal v. Brahma Nand;¹ Santosh Kumar v. Bhai Mool Singh² and Precision Steel & Engg. Works v. Prem Deva Niranjana Deva Tayal³].

5. In other words, while at the stage of leave to defend, the tenant need not establish a fool proof case fit for rejection of the petition for eviction in totality, the grounds raised must also not be mere assertions and must raise a triable issue such that gives rise to a necessity for it to be tested at trial for a (1983) 1 SCC 301.

1958 SCC OnLine SC 62.

(1982) 3 SCC 270.

proper and just adjudication. [Ref: Abid-Ul-Islam v. Inder Sain Dua⁴]

6. Having established the threshold to be crossed by the tenant at the stage of considering an application for leave to defend, it is prudent to examine the contention raised by the petitioner in the present case in that light. A perusal of the record would show that as regards the petitioner's

contention in its application for leave to defend as to the availability of alternate suitable accommodation, neither in the eviction petition nor in the reply to leave to defend, the position as to the occupancy and tenancy of the three aforesaid shops is clarified. In fact, the factum of the three shops being under occupation of other tenants has been raised for the first time before this Court. Moreover, the reference made by the respondent to the Site Plan before the Rent Controller is also vague and the same does not disclose its status of occupancy. Thus, the tenancy/occupancy of the said shops and their adequacy as alternate accommodations is a triable issue in itself which the parties may challenge or defend during trial.

7. Moreover, it is trite law that all material facts must be laid before the Court and any concealment of relevant facts thereof can disentitle the landlord from seeking the relief of eviction, or conversely, can entitle the tenant grant of its leave to contest.⁵ Considering that the respondent/landlady failed to disclose/clarify the exact status of the three shops that were present on the first floor of the subject premises in its eviction petition as well as in the reply to leave to defend application, this Court is of the considered view that the petitioner has succeeded in establishing triable issues.

8. Accordingly, in view of the above, the present petition is allowed and (2022) 6 SCC 30.

North Delhi Municipal Corporation v. Kusum Lata Jain, reported as 2016 SCC OnLine Del 764.

disposed of alongwith the pending application.

9. The parties shall appear before the concerned Trial Court at the first instance on 28.04.2025.

10. A copy of this order be communicated to the concerned Court for information and necessary compliance.

MANOJ KUMAR OHRI (JUDGE) MARCH 28, 2025 na (corrected and released on 08.04.2025)