

Delhi District Court

Sh. Gopal Das Jethani vs Sh. Joginder Chhabra on 6 October, 2018

IN THE COURT OF SH. AJAY NAGAR, COMMERCIAL CIVIL
JUDGE-CUM-ADDITIONAL RENT CONTROLLER (WEST), TIS
HAZARI COURTS, DELHI.

ARC No.- 25576/2016

Sh. Gopal Das Jethani
S/o Late Sh. Chandi Ram
R/o 33, Ground Floor, Rear side,
New Market, West Patel Nagar,
New Delhi-110008.

...Petitioner

VERSUS

1. Sh. Joginder Chhabra
S/o Late Sh. K.C. Chhabra
R/o 46/23, 2nd Floor,
East Patel Nagar,
New Delhi-110008.
2. Sh. Narender Chhabra
S/o Late Sh. K.C. Chhabra
R/o 37/4, Ist floor,
East Patel Nagar,
New Delhi-110008.
3. Sh. Gagan Chhabra
R/o E-138, West Patel Nagar,
New Delhi-110008.

..Respondents

Date of Filing : 10.10.2013
Date of Order : 06.10.2018

ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors.
ORDER ON LEAVE TO DEFEND

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1. Present petition U/Sec. 14 (1) (e) of Delhi Rent Control Act, 1958 (hereinafter referred to as "DRC Act") has been filed by the petitioner for eviction of the respondents from the premises i.e. one shop (admeasuring 13' x 20') on the ground floor, situated in building bearing Municipal No. 33, New Market, West Patel Nagar, New Delhi-110008 more fully shown bounded by red colour in the site plan annexed with the petition (hereinafter referred to as 'tenanted shop') in favour of the petitioner and against the respondents.

2. It is averred by the petitioner that the petitioner is the sole owner/landlord (subject to the terms of the perpetual lease deed dated 20th October 1966 in respect of the landlord underneath) of the property bearing Municipal No. 33, New Market, West Patel Nagar, New Delhi-110008 having acquired title thereto in terms of a deed of conveyance dated 2 nd May, 1990 executed by the erstwhile owner Sh. Krishan Lal Khattar. It is further averred that the tenanted shop is an integral part of the aforesaid property, being one shop more fully shown bounded by red colour in the site plan.

It is further averred that the family of the petitioner comprises of the petitioner himself, Smt. Kamla Devi wife of the petitioner, Sh. Pawan Kumar the elder married son of the petitioner, Smt. Sonia daughter in law of the petitioner, Sh. Vijay Kumar the unmarried son of the petitioner, Ms. Jaya the unmarried daughter of the petitioner, one minor daughter (Kumari Divyanshree) of the said Sh. Pawan Kumar and Smt. Sonia (the minor being the grand daughter of the petitioner).

ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 2 / 29 It is further averred that the wife, the sons, the daughter and the daughter-in-law of the petitioner (and particularly the sons of the petitioner) are wholly dependent upon the petitioner for accommodation, residential as also non residential. The sons of the petitioner namely Sh. Pawan Kumar and Sh. Vijay Kumar are unemployed and are in serious need to start their own independent avocation/business separately (at their own) so as to become self dependent (instead of being a burden, as at present, upon the petitioner and /or petty business of the petitioner carried one by him at the site of 26, West Patel Market, New Delhi-110008).

It is further averred that the sons of the petitioner in order to meet their own personal expenses carry on business from the pavement in front of the shop of the petitioner, as also from the pavement in front of the adjoining/ adjacent temples and in partcular the Radha-Krishan Temple at West Patel Nagar, New Delhi-110008. Both the sons of the petitioner sell (on the pavement) 'pooja items' and other consumables used in temples as well as at home. It is further averred that the petitioner also carries on business inter alia in pooja items i.e. his family business since long. It is also averred that the shop in which the petitioner is carrying on business (in which the sons of the petitioner being unemployed are occasionally assisting the petitioner) admeasuring merely 200 sqare feet.

It is further submitted that the petitioner and his family are constrained to reside in the aforesaid accommodation of two rooms, which is more fully shown bounded in green colour in the site plan Annexure A (as the residential portion on the rear side of the suit premises) and they carry on the business (of the sons of the petitioner) from the pavements, as aforesaid. It is also averred that the marriage of the second son of the petitioner, who is apparently quite advanced in age is being delayed.

ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 3 / 29 It is submitted that the only other accommodation available with the petitioner is at site of Shop No. 26, Ground floor, New Market, West Patel Nagar, New Delhi-110008 where the petitioner is carrying on business of selling the miscellaneous items, paper plates, napkins, 'pooja' items and other disposable goods of

daily use in every household.

It is further submitted that the petitioner's elder son Sh. Pawan Kumar and his family want to start his own independent business from the tenanted shop, which is situated in the suit premises where the petitioner and his family reside. As such, most ideal location for the petitioner's two sons to start, establish and run their joint business as well as take care of the family including the petitioner and his wife.

As such, the petitioner (and/or the members of his family) requires the tenanted shop for commercial use. Therefore, an eviction order be passed in favour of the petitioner and against the respondents in respect of the tenanted shop.

3. Notice of this eviction petition was sent to the respondents in the prescribed format which was duly served on the respondents. In response to which respondents filed their leave to defend accompanied by separate affidavits of Sh. Joginder Chhabra, Sh. Narender Chhabra and Sh. Gagan Chhabra.

4. In their leave to defend accompanied by affidavit of one of the respondents Sh. Joginder Chhabra, it is contended that the petitioner is not the owner of the tenanted shop and the petitioner is claiming to be the owner of the property in dispute and has alleged to have purchased from Sh. Krishan Lal Khattar but there is no chain of documents filed by the ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 4 / 29 petitioner. It is further contended that the respondents have never recognized the petitioner as owner or landlord of the tenanted shop. And total area of the said property is about 90 sq. yards. and about 775 sq. ft. covered area on each floor. It is alleged that the petitioner is in possession of entire ground floor except small portion under the tenancy of the respondents and the petitioner has wrongly stated about the said area as residential whereas the same is commercial in nature and the entire said area is available. Furthermore, the petitioner has been residing in property No. 26, New Market, West Patel Nagar, New Delhi and not on the ground floor of the property in dispute and the petitioner has alleged to have purchased property No. 33, New Market, West Patel Nagar, New Delhi which consists of ground floor, first floor and second floor.

Respondent Sh. Joginder Chhabra contends that since the petitioner has sold the upper floors to others, this shows that the petitioner is not in need of additional accommodation and need is not genuine and the petitioner could have easily used the back portion of the tenanted shop which is commercial in nature and could have raised on upper floors of the property in dispute.

It is alleged by the respondent Sh. Joginder Chhabra that entire property No. 26, New Market, West Patel Nagar, New Delhi is also owned and possessed by the petitioner and the area of this property and that of property No. 33, New Market, West Patel Nagar, New Delhi is owned by petitioner. It is also alleged that the sons of the petitioner are also jointly running the family business from property No. 26, New Market, West Patel Nagar, New Delhi. The petitioner and his sons are carrying out the said business which is the established business of the petitioner in such large area of premises. It is also contended that the petitioner has not even ARC No. 25576/16 Gopal Das Jethani vs. Joginder

Chhabra & Ors. Page 5 / 29 stated as to what business he wants to start for his sons which shows that there is no such requirement or any such proposal to start any other business as alleged by the petitioner. It is alleged that the petitioner has concealed about his available accommodation and its use and if the need of the petitioner was genuine, the petitioner would not have transferred upper floors of property No. 33, New Market, West Patel Nagar, New Delhi and the petitioner has sufficient accommodation in his possession and does not need any additional accommodation.

It is submitted that father of the respondents was the tenant for the last 40 years, who was carrying on the business in the tenanted shop. After his death, the respondents inherited the tenancy and respondents are running their family business in the said small area of the shop and earning their livelihood. It is contended that the present petition has been filed with malafide intention to get it vacated so as to re-let the same at higher rent or sell the same. It is also submitted that the petitioner has also got other commercial accommodation at C-17 and C-70, West Patel Nagar, New Delhi. Besides, the petitioner has residential flat on first floor, Sector-6, Rohini and the petitioner has concealed the same.

It is also alleged that the site plan filed by the petitioner is not complete as per site and is manipulated and all the legal heirs of Sh. K.C. Chhabra have not been made party in the present eviction petition.

Respondents Sh. Narender Chhabra and Sh. Gagan Chhabra in their affidavits also took the same plea as taken by the respondent Sh. Joginder Chhabra.

5. Reply to leave to defend along with counter affidavit filed by the petitioner inter-alia stating that the affidavits of the respondents do not ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 6 / 29 disclose any defence or triable issue which entitle them to contest the eviction petition and disentitle the petitioner for obtaining an order for eviction. It is also submitted that the defence taken by the respondents is moon shine and bogus which requires no trial in the matter.

6. I have heard the arguments advanced by Ld. Counsels for the parties at length and gone through the record.

Learned counsel for the respondents inter-alia submits that petitioner is not the owner of the tenanted shop. He further submits that the petitioner has not disclosed all the properties in his possession. He also claims that petitioner does not have any bonafide requirement and the motive of petitioner is to re-let or to sell it out at higher rates. He further submits that the site plan filed by the petitioner is incorrect. He further submits that the sons of the petitioner are also jointly running the family business from property No. 26, New Market, West Patel Nagar, New Delhi which is the established business of the petitioner in such large area of premises. He further submits that the petitioner has not even stated as to what business he wants to start for his sons which shows that there is no such requirement or any such proposal to start any other business as alleged by the petitioner. He also submits that the petitioner has concealed his available accommodation and its use and if the need of the petitioner was genuine, the petitioner would not have transferred upper floors of property No. 33, New Market, West Patel Nagar, New Delhi and the petitioner has

sufficient accommodation in his possession and does not need any additional accommodation.

He further submits that father of the respondents was the tenant for the last 40 years who was carrying on the business in the tenanted shop.

ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 7 / 29 After his death, the respondents inherited the tenancy and respondents are running their family business in the said small area of the tenanted shop and earning their livelihood. He further submits that the petitioner has also got other commercial accommodation at C-17 and C-70, West Patel Nagar, New Delhi and besides, the petitioner has residential flat on first floor, Sector-6, Rohini and the petitioner has concealed the same. He also submits that the site plan filed by the petitioner is not complete as per site and is manipulated and all the legal heirs of Sh. K.C. Chhabra have not been made party in the present eviction petition. He further submits that the petitioner has been residing in property No. 26, New Market, West Patel Nagar, New Delhi and not on the ground floor of the property in dispute and the petitioner has alleged to have purchased property No. 33, New Market, West Patel Nagar, New Delhi which consist of ground floor, first floor and second floor.

On the other hand, Ld. Counsel for the petitioner inter-alia submits that he is the owner as well as landlord of the tenanted shop. Learned counsel further submits that the petitioner has bonafide requirement for his sons to start business. He further submits that the petitioner does not have any alternative reasonable suitable accommodation in Delhi.

He further submits that the sons of the petitioner namely Sh. Pawan Kumar and Sh. Vijay Kumar are unemployed and are in serious need to start their own independent avocation/business separately (at their own), so as to become self dependent. He further submits that the sons of the petitioner in order to meet their own personal expenses, carry on business from the pavement in front of the shop of the petitioner, as also from the pavement in front of the adjoining/ adjacent temples. Both the sons of the ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 8 / 29 petitioners sell (on the pavement) 'pooja items' and other consumables used in temples as well as at home. It is further averred that the petitioner also carries on business inter alia in pooja items i.e. his family business since long. It is further submitted that the petitioner and his family are constrained to reside in the aforesaid accommodation of two rooms, which is more fully shown bounded in green colour in the site plan and they carry on the business from the pavements. It is also submitted that the marriage of the second son of the petitioner, who is apparently quite advanced in age is being delayed. He also submits that the only other accommodation available with the petitioner is at site of Shop No. 26, Ground floor, New Market, West Patel Nagar, New Delhi-110008 where the petitioner is carrying on business of selling the miscellaneous items, paper plates, napkins, 'pooja' items and other disposable goods of daily use in every household. Furthermore, the petitioner's elder son Sh. Pawan Kumar and his family want to start his own independent business from the tenanted shop, which is situated in the suit premises where the petitioner and his family reside. As such, most ideal location for the petitioner's two sons to start, establish and run their joint business as well as take care of the family including the petitioner and his wife. As such, the petitioner and/or the members of his family requires the tenanted shop for the commercial use.

THE LAW:-

7. It is well settled that burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 9 / 29 premises on the ground specified in clause (e) are good enough to grant leave to defend.

It is further well settled 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. 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 25 B(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 landlord to recover possession of the premises from a tenant. 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.

It is also well settled 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 where either frivolous, untenable or most unreasonable.

It is also well settled that when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire.

In short and substance wholly frivolous and totally untenable defence ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 10 / 29 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. It would expeditious disposal of eviction petition 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.

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.

8. I have carefully and minutely gone through petition, leave to defend application accompanied by affidavits, reply, documents and material on record as well as case law relied upon by both the Ld.

Counsels for the parties.

9. It is expedient to reproduce the Section 14 (1)(e) of DRC Act which is as under:

Section-14. Protection of tenant against eviction- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by court or any controller in favour of the landlord against a tenant:

ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 11 / 29 Provided that the controller may, on an application made to him in the prescribed manner, make an order for recovery of possession of the premises on one or more of the following grounds only, namely:-

"That the premises are required bonafide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation."

As such, followings are the ingredients of Section 14 (1)(e) of D.R.C.

Act:-

(i) There should be relationship of landlord and tenant between the petitioner and respondent.

(ii) Landlord should be the owner of the tenanted premises.

(iii) That the premises are required bonafide by the landlord for himself/herself or for any member of his/her family dependent upon him/her.

(iv) Landlord should not have other reasonable suitable accommodation.

10. Let us discuss the ingredients of Sec. 14(1)(e) of D.R.C. Act:-

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(i) & (ii). LANDLORDSHIP AND OWNERSHIP:-

11. It is contended by the respondents that the petitioner is not the owner of the tenanted shop and has alleged to have purchased it from Sh. Krishan Lal Khattar but there is no chain of documents filed by the petitioner. It is further contended that the respondents have never recognized the

petitioner as owner or landlord of the tenanted shop.

On the other hand, it is submitted by the petitioner that he is the sole owner/landlord (subject to the terms of the perpetual lease deed dated 20th October 1966 in respect of the landlord underneath) of the property bearing Municipal No. 33, New Market, West Patel Nagar, New Delhi-110008 having acquired title thereto in terms of a deed of conveyance dated 2 nd May, 1990 executed by the erstwhile owner Sh. Krishan Lal Khattar. It is further averred that the tenanted shop is an integral part of the aforesaid property, being one shop more fully shown bounded by red colour in the site plan.

12. I have carefully perused the record and heard both the Ld. Counsels. Record shows that the petitioner has filed copy of the sale deed dated 02/05/1990 executed by Sh. Krishan Lal Khattar in favour of Sh. Gopal Dass Jethani/ petitioner which is registered with the Sub-Registrar office, Delhi. Furthermore, the petitioner has also filed copy of receipt issued by the MCD in the name of petitioner.

In case titled as Jiwan Lal Vs. Gurdial Kaur & Ors. 1995 RLR 162 a Bench of Hon'ble High Court of Delhi while dealing with the concept of ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 13 / 29 ownership in a pending eviction petition under Section 14(1)(e) of the DRC Act had noted as follows:

"There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises."

Further, in the case titled as Smt. Shanti Sharma & Ors. Vs Smt Ved Prabha & ors 1987 AIR 2028, the Hon'ble Supreme Court observed :-

"That the meaning of term 'owner' is vis a vis the tenant i.e. the owner should be something more than the tenant."

13. It is well settled that petitioner/landlord should be something more than the tenant. Furthermore, petitioner/landlord is not required to prove the ownership in absolute terms in rent cases. Further, whenever ownership of the petitioner/landlord is disputed by the tenant, it is incumbent upon the tenant to disclose who else the owner of the tenanted premises, if not the petitioner.

Perusal of record shows that petitioner has been able to prove that he is something more than the tenant. On the other hand, respondents have not been able to prove who else is the owner.

14. As such, in view of settled proposition of law and discussion earlier, the ingredients in respect of landlordship and ownership is satisfied.

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(iii) & (iv). BONAFIDE REQUIREMENT AND ALTERNATIVE ACCOMMODATION:-

15. It is alleged by the respondents that the sons of the petitioner are also jointly running the family business from property No. 26, New Market, West Patel Nagar, New Delhi. The petitioner and his sons are carrying out the said business which is the established business of the petitioner in such large area of premises. It is also contended that the petitioner has not even stated as to what business he wants to start for his sons which shows that there is no such requirement or any such proposal to start any other business as alleged by the petitioner.

On the other hand, it is averred by the petitioner that the family of the petitioner comprises of the petitioner himself, Smt. Kamla Devi wife of the petitioner, Sh. Pawan Kumar the elder married son of the petitioner, Smt. Sonia daughter in law of the petitioner, Sh. Vijay Kumar the unmarried son of the petitioner, Ms. Jaya the unmarried daughter of the petitioner, one minor daughter (Kumari Divyanshree) of the said Sh. Pawan Kumar and Smt. Sonia (the minor being the grand daughter of the petitioner).

It is further averred that the wife, the sons, the daughter and the daughter-in-law of the petitioner (and particularly the sons of the petitioner) are wholly dependent upon the petitioner for accommodation, residential as also non residential. The son of the petitioner namely Sh. Pawan Kumar and Sh. Vijay Kumar are unemployed and are in serious need to start their own independent avocation/business separately (at their own), so as to become self dependent (instead of being a burden, as at present, upon the ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 15 / 29 petitioner and /or petty business of the petitioner carried one by him at the site of 26, West Patel Market, New Delhi-110008).

It is further averred that the sons of the petitioner in order to meet their own personal expenses, carry on business from the pavement in front of the shop of the petitioner, as also from the pavement in front of the adjoining/ adjacent temples and in particular the Radha-Krishan Temple at West Patel Nagar, New Delhi-110008. Both the sons of the petitioners sell (on the pavement) 'pooja items' and other consumables used in temples as well as at home. It is further averred that the petitioner also carries on business inter alia of reading in pooja items i.e. his family business since long. It is also averred that the shop in which the petitioner is carrying on business (in which the sons of the petitioner being unemployed are occasionally assisting the petitioner) admeasuring merely 200 square feet.

It is submitted that the petitioner and his family are constrained to reside in the aforesaid accommodation of two rooms, which is more fully shown bounded in green colour in the site plan Annexure A (as the residential portion on the rear side of the suit premises) and they carry on the business (of the sons of the petitioner) from the pavements, as aforesaid. It is also averred that the

marriage of the second son of the petitioner, who is apparently quite advanced in age is being delayed.

16. In "Labhu Lal Vs. Sandhya Gupta" [2011(1) RCR,(Rent) 231 (Delhi)], it has been held by this Court that the children are very much dependant on the landlord for the purpose of setting up their business and such a requirement is a bonafide one.

The moral duty of a father to help establish his son was also ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 16 / 29 recognized by the Apex Court in "Joginder Pal Singh Vs. Naval Kishore Behal" [AIR 2002 SC 2256] in the following words:

"24.....Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identify nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the overlaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent."

In the case titled as Sudesh Kumar Soni & Ors. Vs. Prabha Khanna & Ors. 153 (2008) DLT 652 it was observed that:-

"24. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

25. Suitability has to be seen from the convenience of the landlord and his family members and on the basis of the ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 17 / 29 circumstances including their profession, vocation, style of living, habits and background. Landlord is the best judge of his residential requirement".

In the case titled as Ragavendra Kumar Vs Firm Prem Machinery AIR 2000 SC 534, it was observed as under:-

"It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter, (See: Prativa Devi (Smt.) v. T.K Krishnan, [1996] 5 SCC

353. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted."

In the case titled as Sarla Ahuja Vs United India Insurance Co.

Ltd. AIR 1999 SC 100 , the Hon'ble Supreme Court has held that:

"The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

Hon'ble Supreme Court in Raghunath G. Panhale (dead) through L.Rs.

ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 18 / 29 Vs. Chagan Lal Sundarji & Co. (1999) 8 SCC 1 held that:-

"It will be seen that the trial court and the appellate court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lockout or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as contended by him and hence not entitled to an order for possession of the shop. This test, in our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lockout" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long-drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long-drawn litigation he started some other temporary water

business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant".

In Shiv Sarup Gupta Vs Dr. Mahesh Chand Gupta AIR 1999 SC 2507, at pg-2512 in para 14 & 15, the Hon'ble Supreme Court held that:-

"14. The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 19 / 29 landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of Clause (e) of Sub-section (1) of Section 14 which speaks of non- availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant fact Ors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come."

In the case titled as Metropolitan Book Company Ltd. vs. Ajay Rastogi & Ors. Passed in RC. Rev. No. 484/2013, the Hon'ble High Court of Delhi observed as under:-

"Even assuming the other properties available, and which actually they are not as stated below, these other properties situated far from the present residence of respondent no. 1 and his family members cannot be considered as alternative suitable accommodation."

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17. The respondent has further contended that the sons of the petitioner are also jointly running the family business from property No. 26, New Market, West Patel Nagar, Delhi.

Keeping in view well settled proposition of law, this plea does not have any force as the bonafide requirement is of sons of the petitioner. In my view, every son has a right to stand on his own legs and he has every right to run his own business independently. It does not matter if the sons of the petitioner are already running business jointly.

18. In view of settled proposition of law, the Court is of the opinion that there is nothing malafide if the sons of the petitioner want to start their own business in the tenanted shop independently. Rather, the said requirement seems to be bonafide as the sons of the petitioner want to earn their livelihood independently and want to stand on their own legs independently and the tenant cannot stop the landlord/family member of landlord from starting any business for livelihood. The bonafide requirement of a landlord does not become malafide just because sons of the petitioner are already running the family business jointly. The consequent hardship to tenant from eviction order could also not convert otherwise bonafide requirement into malafide requirement.

19. In my view, every one has a right to excel in the world and start his own business to earn his livelihood and this plea of respondent does not have any force as a person is not supposed to be in same positions for a number of years.

ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 21 / 29 The Hon'ble Supreme Court has also held that a person is not supposed to be remained unemployed till the disposal of eviction petition.

20. I have carefully gone through the material on record and settled proposition of law. In the case titled as Ram Babu Agarwal vs. Jay kishan Das 2009 (2) RCR 455, the Apex Court observed as under:-

"However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also."

In the case titled as Lajpat Rai Vs Raman Jain 2012 Law suit (Del) 1439, it was observed by Hon'ble High Court as under:-

"The facts have been disclosed by the petitioner himself in the eviction petition; the petitioner also being a commerce graduate from the Shri Ram College of Commerce seeks an independent business of his own; thus this need to set up a business of his own cannot be in any manner be said to be imaginative or a need which is moonshine; it is a genuine need; the present petitioner having inherited this shop from his grandmother by virtue of the aforementioned Will wishes to set up his own business of rubber and latex which he was earlier carrying on with his father and in which he has gained expertise and knowledge. Thus in no manner can it be said that this need of the landlord is not a bonafide need.

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10. The landlord is the best judge of his requirement; it is not for the tenant to dictate terms to him; neither the Court tell him the manner he wishes to set up his business."

21. As such, the contention of respondents in respect of running of family business jointly does not have any force in view of law as mentioned earlier.

22. The respondent has also contended that petitioner has not even stated as to what business he wants to start for his sons. In my view, this contention of the respondents does not have any force as it is well settled proposition of the law that the petitioner is not required to give the details of business to be started in the tenanted premises after eviction of the respondents. It is also settled that the petitioner may start even the different sort of business in the tenanted premises after eviction of the respondents.

As such, the contention of the respondent does not have any merits.

23. It is alleged by the respondents that the petitioner has concealed alternative accommodation available with him and he does not need the tenanted shop for bonafide. It is further contended that the need of the petitioner is not genuine as he transferred upper floors of property No. 33, New Market, West Patel Nagar to others.

In reply to which the petitioner has stated that he transferred the first floor and upper floor of the property No. 33 to third person long years ago and those floors were not meant for carrying on business.

I have gone through the material on record. The contention of respondents does not have any merit in stating that the other properties owned by the petitioner is more suitable for the petitioner and his sons as ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 23 / 29 the landlord is the best judge of his requirement and the tenant can not dictate the terms to the petitioner to use a particular property and in a particular manner.

Perusal of record reveals that the petitioner has sought the tenanted shop for bonafide requirement for himself as well as for his sons which is on the ground floor for business. It is well known that

there is always chances of more footfall on the ground floor than on the first floor or subsequent floors. Furthermore, it is undisputed fact that the petitioner as well as his sons are already carrying out the family business. As discussed earlier, the respondents have not produced any record in respect of ownership of petitioner pertaining to property No. 33 (supra). Furthermore, the respondents have not disclosed the date or even the year of transfer of this property to others. It is well settled that all the properties owned by the petitioner/landlord should be reasonably suitable property and if the respondents/ tenants are able to prove that the property is suitable, only in that situation or case the claim of the petitioner/landlord can be said to be mala fide. In the present case, it is undisputed fact that the tenanted shop is situated on the ground floor and the floors in the property No. 33 (supra) are stated to be upper floors and not the ground floor. Even if it is assumed that these upper floors were available to the petitioner, it cannot be said to be suitable for the point of view of starting a business.

As such, this contention of the respondents does not raise any triable issue.

24. The another contention of the respondents is that they are the tenants in the tenanted shop for the last 40 years and carrying on their business therein which is only source of their livelihood.

ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 24 / 29 In the case titled as Raj Kumar Khanna vs. Parduman Singh passed in RC Rev. No. 548/2012 and C.M. No. 18936/2012 on 04.10.2013; the Hon'ble High court of Delhi observed as under:-

"17. In the case of Mohd. Ayub vs. Mukesh Chand (2012) 2 SCC 155 it was observed that the hardship appellants would suffer by not occupying their own premises would be far greater than the hardship the respondent would suffer by having moved out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be sole determinative factor."

25. In my view this plea of the respondents certainly attracts the sympathy of this court but it is well settled that in deciding the present eviction proceeding, this kind of plea need not be weighed by the court.

26. It is further contended that the petitioner also got other commercial accommodation at C-17 and C-70, West Patel Nagar, New Delhi in addition to residential flat on first floor, Sector-6, which have been concealed.

In reply, the petitioner has stated that the petitioner has no right, title or interest in the aforementioned two properties bearing No. C-17 and C-70 at Patel Nagar. Perusal of record shows that the respondents have not placed on record any document in respect of ownership of petitioner which shows that aforesaid contention of the respondent is a bald and vague averment.

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27. One of the contentions of the respondent is that all the legal heirs of Sh. K.C. Chhabra have not been made party in the present case.

In reply to which the petitioner has stated that there is no substance in the contention of respondents and they have enumerated merely for the sake of objections.

I have perused the record which shows that such contention of the respondent is merely vague and bald averment as the respondents have not mentioned who are the legal heirs of Sh. K.C. Chhabra, deceased left by the petitioner to be impleaded in the present eviction petition.

As such, in my view this contention also does not have any merit and cannot be considered as a triable issue.

28. It is further alleged that the petitioner has malafide intention to get tenanted shop vacated for selling the property or re-letting it out at the higher rate of rent.

"19. Recovery of possession for occupation and re-entry. -

(1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (c) of the proviso to sub-section (1) of section 14 [or under sections 14A, 14B, 14C, 148 and 21], the landlord shall not, except with the permission of the Controller, obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 26 / 29 or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made on him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit."

In the case titled as Ramesh Kumar & Ors. vs. Smt. Neelam Dawar & Ors. Passed in RC (Rev.) 44/2014, C.M. Application 1313- 14/2014, the Hon'ble High Court of Delhi inter-alia observed as under:-

"The tenant's apprehension that upon eviction the tenanted premises would be let out at a higher rent was found to be baseless and prematured since such contingency has been taken care of U/Sec. 19 of the Act."

29. As such, statute clearly lays down that the petitioner/ landlord has to occupy the vacated tenanted premises within two months and the landlord cannot re-let to any person other than the evicted tenant within three years from the date of obtaining possession and in case he does so, the evicted tenant may approach the Rent Controller seeking direction to the landlord to put the tenant in possession of the premises. As such, this contention of the respondents does not have any force and cannot be treated as triable issue.

30. One of the issues raised by the respondents is that site plan of the property in question as filed by the petitioner is incorrect.

ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 27 / 29 In the case titled as R.K. Bhatnagar vs. Sushila Bhargava AIR 1987 Delhi 363; the Hon'ble High Court of Delhi observed as under:-

"He has not filed any site plan wither to show that the site plan filed by the respondent- landlady is incorrect in any way. Hence, I see no reasons to doubt the veracity of the facts stated by the respondent in her affidavit. Likewise, I assume that the site plan filed by her showing the entire accommodation in her occupation is correct."

31. In my view, it is not a triable issue as the respondents had the ample opportunity to file their own site plan in case they found that the site plan filed by the petitioner was wrong.

THE CONCLUSION:-

32. In view of the above discussions and well settled propositions of law, I am of the considered opinion that no purpose would be served, even if, the petitioner is compelled to appear in the witness box the position would be no different than it is today. For this reason also, I find no triable issue in the leave to defend application of the respondents. The application for leave to defend filed by the respondents is thus, dismissed.

33. Hence, as a consequence thereof, an eviction order is passed U/s. 14 (1) (e) of DRC Act in favour of petitioner and against the respondents in respect of tenanted shop (admeasuring 13' x 20') on the ground floor, situated in building bearing Municipal No. 33, New Market, West Patel Nagar, New Delhi-110008 more fully shown bounded by red colour in ARC No. 25576/16 Gopal Das Jethani vs. Joginder Chhabra & Ors. Page 28 / 29 the site plan annexed with the petition which is marked as Mark- P1 (Put by the court for the purpose of identification).

34. However, the landlord/petitioner shall not be entitled to obtain possession thereof before the expiration of a period of six months from the date of order keeping in view Section 14(7) of DRC Act.

35. File be consigned to the Record Room after due compliance.

Announced in the open Court
on 6th October, 2018

AJAY

Digitally signed
by AJAY NAGAR

(This order contains 29 pages)

NAGAR

Date:
2018.10.06
18:14:35 +0530

(Ajay Nagar)
Commercial Civil Judge-Cum
Additional Rent Controller,
West District, THC, Delhi.

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