

Delhi District Court

Smt. Shakuntala vs Sh. Sajjan Kumar Sharma on 23 August, 2018

- 1 -

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

ARC No- 26278/2016

Smt. Shakuntala,
W/o Late Sh. Shankar Lal,
R/o D-471-A, J.J. Colony,
Raghubir Nagar,
New Delhi.

....Petitioner

VERSUS

Sh. Sajjan Kumar Sharma,
Prop. Of M/s Sajjan Pan Bhandar,
At Shop on ground floor in property
bearing No.D-471-A, J.J. Colony,
Raghubir Nagar, New Delhi.

.... Respondent

Date of institution : 16.08.2016 Date of order : 23.08.2018 ORDER ON LEAVE TO DEFEND

1. The 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 against the respondent in respect of tenanted premises in property bearing no. D-471-A, J.J. Colony, Raghubir Nagar, New Delhi more specifically shown as red in the site plan attached with the petition (hereinafter referred to as 'tenanted premises') on the ground of bonafide ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma and urgent need of her son namely Sh. Krishan Kumar.

2. It is averred by the petitioner that Late Sh. Shankar Lal, deceased husband of the petitioner, was the exclusive owner of built up property bearing no. D-471-A, J.J. Colony, Raghubir Nagar, New Delhi who with the consent of petitioner let out one shop measuring about 6'x6' (now about 8'x8') as shown red in the site plan annexed herewith in the said property to the respondent.

It is further averred that tenanted premises was let out in July 1980 and on 07.07.1980 a hand written rent agreement was executed/signed between the husband of petitioner and respondent.

It is further averred that all the legal heirs no.2 to 12 as mentioned in petition relinquished their right/share in the property bearing no. D-471-A, Ground Floor, J.J. Colony, Raghubir Nagar, New Delhi in favour of the petitioner vide registered relinquishment deed dated 27.12.2010 and petitioner became the absolute owner of the aforesaid property.

It is further averred that son of the petitioner namely Sh. Krishan Kumar is about 42 years old and is unemployed and having no source of income to maintain himself and his family members and he wants to run/open a general store in the tenanted premises.

3. Notice of this eviction petition was sent to the respondent in the prescribed format which was duly served on the respondent. In response to which respondent filed the leave to defend accompanied by affidavit.

4. It is contended by the respondent that respondent was inducted as ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma a tenant in the tenanted premises in the year 1980 by the husband of petitioner namely Sh. Shankar Lal. It is further contended that after the death of Sh. Shankar Lal, there was dispute between the petitioner and her sons and daughters for the properties. It is further contended by the respondent that after the passage of time, the value of the property increased many fold and now the petitioner wants to sell all the shops including the tenanted premises to the prospective buyers. It is further contended that respondent is a 60 years old man suffering from high sugar and other old age diseases. It is further contended that respondent is running his shop with the help of his son namely Sh. Dinesh Sharma, who also depends upon the earning from the shop/tenanted premises. It is further contended that petitioner has ten shops at the ground floor and that petitioner may utilize the shop having board of Rudra Communication which is a big shop in area in comparison to the tenanted premises to fulfill the bonafide need of her son namely Sh. Krishan Kumar, if the same is genuinely required by her. It is claimed by the respondent that area of the shop/tenanted premises rented out to the applicant/respondent is very small i.e. only 8 x 8 which is not suitable for running any general store. It is also claimed by the respondent that Sh. Krishan Kumar is not in any bonafide need of the tenanted premises as he is working as operator at Apollo Garments Pvt. Ltd. at Second Floor, D-5, Chaudhary Building No.3, Vishnu Garden, Delhi and her son is not unemployed as pleaded by her in the petition.

5. Reply to leave to defend filed by the petitioner stating that the affidavit of the respondent does not disclose any defence or triable issue ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma which entitle him 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 respondent is moon shine and bogus which requires no trial in the matter. It is replied by the petitioner that no shop as alleged is lying vacant in the property in question. Sh. Raj kumar is running a tea stall in the alleged shop with the help of his employee and Sh. Jai Prakash Gupta has nothing to do with the said tea shop.

6. I have heard the arguments advanced by Ld. Counsels for the parties at length and gone through the record. Learned counsel for the respondent inter-alia submits that petitioner is not the owner of the tenanted premises. Learned counsel for respondent submits that the petitioner has not disclosed all the properties in her 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.

On the other hand, Ld. Counsel for the petitioner inter-alia submits that she is the owner as well as landlady of the tenanted premises. Learned counsel further submits that the petitioner has bonafide requirement for her son Sh. Krishan Kumar as he is unemployed. He further submits that the

petitioner does not have any alternative reasonable suitable accommodation in Delhi.

THE LAW:

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. 26278/16 Shakuntala vs. Sajjan Kr. Sharma 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.

ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma 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. 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.

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

8. 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 ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma of possession of any premises shall be made by court or any controller in favour of the landlord against a tenant:

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.

ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma

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

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

10. Perusal of record shows that the claim of the petitioner is that his deceased husband Sh. Shanker Lal was the owner of the tenanted premises and he let out the tenanted premises to the respondent in the year 1980 by way of written agreement executed by her husband and respondent.

It is further averred by the petitioner that she became the absolute owner of the tenanted premises after the death of her husband as her sons and daughters executed a relinquishment deed in her favour.

On the other hand, the respondent has admitted the landlordship of her late husband but he has claimed that there was a dispute between the petitioner and other legal heirs of deceased husband.

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 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 ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma 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."

In the case titled as Bharat Bhushan Vij Vs. Arti Teckchandani 153(2008)DLT 247 the Hon'ble Supreme Court inter-alia observed as under:-

4. The concept of ownership in a landlord-tenant litigation governed by the Delhi Rent Control Act, has to be distinguished from the one in a title suit. If the premises was let out by a person and after his death, the premises has come in the hands of beneficiary under a Will, the tenant has no right to challenge the title of such a beneficiary. If on the death of the original owner the tenant has any doubt as to who was the owner of the premises, he is supposed to file an interpleader suit impleading all the legal heirs of the deceased and ask the Court to decide as to who shall be the landlord/owner after the death of the original owner. Where no interpleader suit is filed by the tenant and the tenant continues in possession after death of the original owner without demur and without raising an objection against the person, who claims to have inherited the property under the Will, he later on cannot challenge the ownership of such a person. It is not the domain of the tenant to challenge the Will of the deceased landlord. If a landlord is able to show that there is a testament in his/her favour, he/she is deemed to have discharged his/her burden of proving the ownership under the Act. If the tenant takes a frivolous objection about ARC No.

26278/16 Shakuntala vs. Sajjan Kr. Sharma ownership, such an objection cannot be entertained unless the tenant comes forward as to who was the landlord/owner of the premises and to whom he has been paying rent after the death of the original owner.

5. This Court in Ram Chander v. Ram Pyari 109 (2004) DLT 388 and Plashchemicals Company v. Ashit Chadha & Anr. : 114(2004)DLT408 have laid down the law that it was not for the tenant to challenge the Will of the landlord and any such challenge made by the tenant is a baseless and frivolous challenge. I, therefore, consider that even if the learned Additional Rent Controller did not dwell upon this point, such a challenge made by the tenant would not result into non suiting the landlord. Moreover, the evidence led by the landlady in this case makes it clear that she inherited the property, in question, on the basis of Will left by her father in law. There is no other person who has claimed ownership over the property and this objection was raised just for the sake of raising objection."

In the case titled as "Plastic Chemicals Company Vs Ashit Chadha & Ors. 114 (2004) DLT 408, the Hon'ble High Court of Delhi inter-

alia observed as under:-

"4. I have heard counsel for the parties and carefully examined the judgment under challenge as also the material on record. As regards the contentions raised by counsel for the petitioner challenging the Will, the law has since been crystalised by the Supreme Court in Smt. Shanti Sharma vs. Smt. Ved Prabha, as also in Sheela and others vs. Firm Prahlad Rai Prem Prakash, . Once the landlord has been able to show that there is a testament in his favor, the landlord is deemed to have discharged his burden of ownership, vis-a-vis, the Rent Control Act. In the present case, the landlord has been able to prove that a testament has been made in his favor by the previous owner which, at best, could be challenged by the heirs of Smt. Saroj Mohan and certainly not by the tenant. In this view of the matter I hold that the objection of the petitioner herein to the maintainability of the eviction petition by the ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma landlord is frivolous."

11. It is well settled that tenant does not have any right to challenge the ownership of the landlord in such situation.

It is also 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 she is something more than the tenant. On the other hand, respondent has not been able to prove who else is the owner.

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

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

12. It is averred by the petitioner that the tenanted premises is boanafide required by the son of the petitioner Sh. Krishan Kumar, aged 42 years who is unemployed and wants to run a general store in the tenanted premises.

On the other hand, respondent has claimed that petitioner may utilize the shop having board of Rudra Communication which is a shop in the same area and bigger one in comparison to tenanted premises to fulfill ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma the bonafide requirement of Shri Krishan Kumar.

In reply to leave to defend, the petitioner has stated that no such shop as alleged by the respondent is lying vacant and tea stall is being run by Shri Raj Kumar one of the sons of the petitioner.

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 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."

ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma 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 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 ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma 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.

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 ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma 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 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, ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma 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."

13. The another plea of the respondent is that tenanted premises is very small in size and it can not be utilized by Shri Krishan Kumar for general store.

It is well settled that such issue can not be considered as triable issue as the tenant cannot dictate the landlord to use a premises in a particular manner as the petitioner is the owner of the premises and he can use the premises the way he wants to. As such, this plea of the respondent does not have any force.

The respondent has further contended that other sons of the petitioner already have many shops and businesses.

In my view, this plea does not have any force as the bonafide requirement is of son of the petitioner Shri Krishan Kumar and not of other sons. In my view, every son has a right to stand on his own legs and he has every right to run his business independently. It does not matter if the other sons of the petitioner are already running business profitability. ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma

14. In view of the above case-law, the Court is of the opinion that there is nothing malafide if the son of the petitioner wants to start his own business in the tenanted premises. Rather, the said requirement seems to be bonafide as the son of the petitioner wants to earn his livelihood 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 son of the petitioner wants to run business for his livelihood. The consequent hardship to tenant from eviction order could also not convert otherwise bonafide requirement into malafide requirement.

The another claim of the respondent is that Shri Krishan Kumar is not unemployed and he is working with Apollo Garments at Vishnu Garden, Delhi.

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 sit unemployed till the disposal of the eviction petition. It might take years in disposal of the eviction petition. Every person should work and should accept the assignment even when it does not have

high prospectives.

The Hon'ble Supreme Court has also held that a person is not supposed to be remained unemployed till the disposal of eviction petition.

15. I have carefully gone through the material on record and settled proposition of law on the point as above. In the case titled as Ram Babu Agarwal vs. Jay kishan Das 2009(2) RCR 455, the Apex Court observed ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma 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.

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."

ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma As such, the contention of respondent in respect of employment of Sh. Krishan Kumar does not have any force in view of law as mentioned earlier.

16. The respondent has also contended that petitioner has ten shops and details of which have been mentioned in the leave to defend.

Perusal of record shows that all such shops are not vacant. These are either occupied by other tenants or the son of the petitioners. As these shops even if it is owned by petitioner or other sons of the petitioner can not be used by Shri Krishan Kumar for whom the present eviction has been filed by the petitioner. Respondent has also contended that petitioner has also number of commercial properties at Uttam Nagar and Vishnu Garden. But record shows that the respondent has not given the details of such properties and has merely made bald and vague averments.

17. It is further alleged that the petitioner has malafide intention to get tenanted premises vacated for selling the property in question 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 ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma 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, 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."

18. 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 ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma the respondent does not have any force and cannot be treated as triable issue.

19. Respondent has also contended that respondent and his family are fully dependent upon this tenanted premises.

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."

20. In my view this plea of the respondent 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.

THE CONCLUSION:-

21. 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 ARC No. 26278/16 Shakuntala vs. Sajjan Kr. Sharma be no different than it is today. For this reason also, I find no triable issue in the leave to defend application of the respondent. The application for leave to defend filed by the respondent is thus, dismissed.

22. 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 respondent in respect of the tenanted premises in property bearing no. D-471-A, J.J. Colony, Raghubir Nagar, New Delhi more specifically shown as red in the site plan attached with the petition which is marked as Mark- P1 (Put by the court for the purpose of identification).

23. However, this order shall not be operative before the expiry of six months from today keeping in view Sec. 14(7) of D.R.C. Act.

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

Announced in the open Court

on 23rd August, 2018
(This order contains 22 pages)

AJAY
NAGAR

Digitally signed
by AJAY NAGAR
Date:
2018.08.23
18:40:56 +0530

Smt. Shakuntala vs Sh. Sajjan Kumar Sharma on 23 August, 2018

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

ARC No. 26278/16

Shakuntala vs. Sajjan Kr. Sharma