

Delhi District Court

Sh. Kanwar Pratap Singh vs Sh. Rajbir Pal Etc on 1 June, 2010

Author: Sh. Raj Kumar

IN THE COURT OF SH. RAJ KUMAR : ACJ-cum-ARC :  
(NORTH) DELHI.

In Re : E No. 139/2009.

Sh. Kanwar Pratap Singh.

Petitioner

Versus.

Sh. Rajbir Pal etc.

Respondents.

Date of Institution of Suit : 19.03.2009.

Date on which Order was reserved : 29.05.2010.

Date of Pronouncement of Order : 01.06.2010.

#### ORDER

Vide this order, I shall dispose of an application filed by the respondents under 25 B (5) DRC Act for grant of leave to contest the eviction petition u/S 14 (1) (e) DRC Act.

2. In the present application as well as in the accompanying affidavit, the respondent has stated that the respondents were served with the notice of the present petition on 01.05.2009 and the present petition is within the prescribed period. It has been further submitted that petitioner has filed the present eviction petition with malafie E No. 139/2009 Page no. Page numbers / Statistics intention to harass the respondents as the low rate of rent is pinching the petitioner. It has been further submitted that petitioner does not require the premises under tenancy for bonafide need as alleged by th petitioner. It has been further submitted that the provisions of section 14 (1) (e) DRC Act are not applicable to the facts of the present suit as the premises in question was let out for commercial purposes and the respondents are using the same for commercial purposes since the inception of the tenancy. It has been stated further that the alleged need of the petitioner for setting up a separate independent office for his ministerial staff and accommodation for workers and attendants, is totally malafide and does not fall within the ambit of section 14 (1)

(e) DRC Act. It has been further submitted that petitioner has deliberately and intentionally not given the complete particulars in paras 12 and 13 of the petition which are mandatory. It has been denied by the respondents that the petitioner is the owner of the property in question and it has been stated that the alleged Will to have been executed by Sh. Surat Singh, father of the petitioner, is forged and fabricated document. It has been denied further that petitioner wants to construct a separate entrance for the upper floors of the building by constructing separate and independent staircase. It E No. 139/2009 Page no. Page numbers / Statistics has been denied further that petitioner requires bonafidely the suit premises for his occupation for the proper running and advancing of his business. It has been further submitted that petitioner has let out three shops of the back side of the property no. 73, Rajpura Gurmandi, Delhi to different tenants, besides selling the

property no. 67 Rajpura Gurmandi, Delhi. It has been further submitted that petitioner is also having one plot in Greater Noida and has also recently purchased the duplex plot no. 105 and there are 12 to 15 rooms. Thereafter the respondents have given the detail of various properties owned / purchased / let out by the petitioner . It has been further submitted that petitioner has sufficient accommodation in his possession to carry on their business and other activities and does not require any additional accommodation for carrying on their business. It has been further submitted that petitioner has not given the dimensions of the entire accommodation / rooms of his properties and as such the site plan filed by the petitioner is not correct. It has been prayed that leave to contest the eviction petition filed by the petitioner in respect of the premises in the tenancy of the respondent be granted to the respondents.

3. Reply to the present application has been filed by the E No. 139/2009 Page no. Page numbers / Statistics petitioner stating therein that the petition relates to the requirement of the petitioner for setting up of a separate independent office for his ministerial staff and accommodation for their workers and attendants. It has been further submitted that respondents have assailed only a part of the requirement thereby admitting the genuineness of the remaining major part of the claim of the petitioner. It has been further submitted that respondents have failed to point out as to how the properties falsely alleged to be owned by the petitioner are capable of fulfilling the said requirements of the petitioner. It has been further stated that none of the properties so mentioned belong to the petitioner except those wherein he is only having an undivided joint share alongwith other legal heirs. It has been further submitted that the said joint properties are distantly located which cannot help the petitioner to fulfill his requirements. It has been denied that the present petition has been filed with malafide intention to harass the respondents. It has been further submitted that petitioner had inducted the respondents as tenants in the suit property at a monthly rent of Rs. 1500/- in the year 1974-75 and in the year 1989 petitioner approached the respondents for enhance the rent but they filed a frivolous suit for perpetual injunction against the petitioner and his E No. 139/2009 Page no. Page numbers / Statistics son in the month of November, 1989 claiming that they were interfering with their peaceful possession and threatening to dispossess them and in the said suit the respondents have pleaded that the rate of rent was Rs. 150/- per month inclusive of electricity charges and that they had paid the same till the end of October 1989, which pleadings were totally false. It has been further submitted that as such petitioner did not collect any rent. It has been denied that the petitioner is not the owner of the property in question or that the Will in question is forged and fabricated. It has been stated further that the said Will was executed in favour of petitioner by his late father Sh. Surat Singh and that the respondents have failed to state as to who else is the owner if the petitioner is not the owner. It has been further submitted that the properties as alleged to have been owned by petitioner are either joint family properties or not owned by the petitioner. It has been denied that the petitioner does not require the tenanted premises for his bona fide requirement. It has been prayed that the application of the respondents be dismissed with costs.

4. Rejoinder has also been filed by the respondents to the reply filed by the petitioner, denying the contents of the reply of the petitioner and reiterating and reaffirming the stand taken by the E No. 139/2009 Page no. Page numbers / Statistics respondents in the present application.

5. I have carefully gone through the entire material on record and have heard the rival submissions as made by Ld. counsels for both the parties.

The present petition u/S 14 (1) (e) DRC Act has been filed by the petitioner stating therein that he is the owner / landlord having inherited the suit premises from his late father Sh. Surat Singh by virtue of the Will executed by him. It has been further submitted that petitioner inducted the respondents as tenants in the suit premises i.e. 82, Village Rajpura, Gurmandi, Delhi □b7 comprising of one big room and open space in the year 1974□75 at a monthly rent of Rs. 1500/□ which the respondents paid till the middle of 1989. It has been further submitted that petitioner also owns the adjoining properties bearing no. 94□95, Village Rampura and the petitioner had raised three storeyed building comprising of about 100 living rooms in the said property no. 94□95, village Rampura, which is used to be given college girls for residential accommodation. It has been further submitted that as the business of plaintiff has flourished manifold, the petitioner requires to set up a separate independent office for his ministerial staff and accommodation of workers and attendants of E No. 139/2009 Page no. Page numbers / Statistics different categories on duty to maintain their availability and prompt services with all the regularity. It has been further submitted that petitioner wants to construct a separate entrance for the upper floors of the building by constructing separate and independent staircase to smoothen the entry and exits of the occupants, which is urgently required for proper use of the main building and as petitioner requires the suit premises bona fide for occupation for himself for proper running and advancing of his business by creating the said necessary facilities.

Ld. counsel for the respondents has relied upon the following authorities :

1. 113 (2004) DLT 421 Puran Chand & Anr. vs. Yashpal, wherein it has been held as under :

" Delhi Rent Control Act, 1958 - Section 14 (1) (e) read with Section 25 B - Bona fide requirement : Leave to defend : Self created paucity of accommodation cannot be made basis of relief under Section 14 (1) (e) of Act - Submissions that petitioner living with his son who is not on speaking terms and requires premises in question bona fide for his residence : Not justified - Learned Counsel for respondent contends as and when any room in premises got vacated by petitioner E No. 139/2009 Page no. Page numbers / Statistics he converted same into godowns - Petitioner's son is in possession of two rooms which he is using for commercial purposes and no dispute between father and son who are doing business together - Learned Controller gave cogent reasons that petitioner's requirement not bona fide - Landlord cannot create paucity of residential accommodation and plead he has bona fide need for additional accommodation - No infirmity impugned order."

2. 68 (1997) DLT 430 title as Raj Kumar Bansal & ors. vs. Dina Nath Sharma, wherein it has been held as under :

"Delhi Rent Control Act, 1958 - Section 14 (1) (e) - Bona fide requirement□Disputed ownership - Triable issue - Probate granted in favour of respondent under challenge□Operation stayed by Court of competent jurisdiction - Petitioner to prove ownership of respondent under dispute - Triable issue - To be disposed of on merits by adducing evidence."

3. 1982 (2) RCR 544 SC titled as Precision Steel and Engineering Works and anr. vs. Prem Deva Niranjana Deva Tayal, wherein it has been held as under :

" Delhi Rent Control Act, 1958, Section 25 (5), 25 (4) and 14 (1) (e)

- Leave to contest - Petition for ejectment - Controller has to grant E No. 139/2009 Page no. Page numbers / Statistics or refuse to grant leave on basis of affidavit of tenant - Affidavit of tenant is only relevant document at the stage of granting leave.

4. (2001) 1 SCC 706 titled as Inderjeet Kaur vs. Nirpal Singh, wherein it has been held as under :

"Rent Control and Eviction - Bona fide requirement of landlord - Leave to defend - Cautious and judicious approach plus balanced view in respect of competing claims, held, necessary - Though a landlord in bona fide need should not have to wait for long to evict a tenant, held, a tenant cannot be thrown out summarily if he has a prima facie case that the landlord's claim is not bona fide or is untenable - Refusing leave in such a situation would result in great hardship to the tenant - Comparative hardship."

5. 1998 RLR 217 titled as Mohd. Shamim vs. Naseeban, wherein it has been held as under :

" Delhi Rent Control Act, Ss. 25 B (4) & (5) While deciding an application for leave to defend of the tenant, Controller has to consider the affidavits of both parties. While it is optional for tenant to file rejoinder□affidavit and he omits then facts stated by landlady in her affidavit remain uncontroverted and deserve due consideration."

E No. 139/2009 Page no. Page numbers / Statistics Ld. counsel for the petitioner has relied upon the following authorities :

1. 2004 (2) RCR 77 titled as Ram Swaroop (dead) through LRs vs. Mahesh Chandra Jain & others, wherein it has been held as under :

" U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, Section 21 (1) (a) - Bona fide requirement - Landlord wanted shop for his son to expand clinic and better professional service - Need bona fide.

2. 2004 (2) RCR 239 titled as P.S. Janakavalli Ammal vs. Regional Manager, Tamil Nadu Handloom Weavers' Co-Op Society Ltd., Vellore wherein it has been held as under : "Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), Section 10 (3) (a) (iii) - Bona fide requirement - Landlady doing business in a portion of residential premises - Landlady required premises for herself and her grandson for expansion of business - Need bona fide.

3. 2008 (1) RCR 227 titled as R. Periyasamy vs. T. Bhagyam and another, wherein it has been held as under "Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section E No. 139/2009 Page no. Page numbers / Statistics 10 (3) (e) Bona fide requirement - Trust□Wife of landlord creating a

trust and running a school in the building owned by landlord - Wife sole trustee of the trust and correspondent of school - Additional accommodation required by School - Landlord entitled to evict tenant.

4. 1999 (2) RCR 229 titled as Davis vs. Sebastian wherein it has been held as under :

" Kerala Buildings (Lease and Rent Control) Act, 1965, Sections 11 (8) and 11(10) □ Bona fide requirement - None □ residential building - Landlord running hotel □ cum □ bar □ Landlord required additional accommodation in same building for jewellery and textile business - Need of landlord bona fide □ It is choice of landlord to use non □ residential building either for expansion of existing business or for new business - The expression "personal use" in S. 11 (8) includes any business."

5. 2005 (2) RCR 436 titled as M/s Sait Nagjee Purushotham & Co. Ltd. vs. Vimalabai Prabhulal & Ors., wherein it has been held as under :

" Kerala Buildings (Lease and Rent Control) Act, 1965, Section 11 (3) □ Bona fide requirement □ Landlords doing business at place 'A' □ E No. 139/2009 Page no. Page numbers / Statistics They wanted to expand business at place 'B' □ Need of premises at latter place bona fide □ It is privilege of the landlord to choose the nature of the business and the place of business □ Tenant cannot advise the landlord. 1992(2) RCR (Rent) 213 (SC) and 2001 (1) RCR (Rent) 221 (SC) relied."

6. 2009 (2) RCR 105 titled as Ashok Kumar and Another vs. Curudwala Cinema Road, Batala and Another, wherein it has been held as under :

"East Punjab Urban Rent Restriction Act, 1949, Section 13(3) (a)(i) □ Eviction of tenant □ Bona fide need □ Demised premises required for constructing the Jaura Ghar in the Gurudwara □ Contention of tenant that another shop which is lying vacant can be used by Gurudwara for constructing a Jaura Ghar □ Concurrent findings that tenant failed to prove that the second shop is lying vacant □ Contention rejected □ Eviction upheld."

7. 2008 (1) RCR 457 titled as Satyawati Shara (Dead by LRs vs. Union of India & Another, wherein it has been held as under :

"Classification of buildings into residential and non residential buildings struck down □ Landlord entitled to evict tenant whether let E No. 139/2009 Page no. Page numbers / Statistics for residential purpose or non □ residential purpose on ground of bona fide requirement."

8. 2009 (2) RCR 246 titled as State of Maharashtra & Anr. vs. M/s Super Max International Pvt. Ltd. & Ors., wherein it has been held as under:

"Delhi Rent Control Act, Section 14 (1)(e) □ Rent Act gave protection to tenants from evictions □ Court were over protective of tenants in earlier years at the time of partition of country due to acute shortage of housing accommodation □ But after about three quarters of a century and three generations later when things are no longer the same and the urban centers are faced with newer

problems, some of those having their origin in the Rent Act itself, there is the need to take a relook on the Court's attitude towards the relationship between the landlord and the tenant and to provide for a more level ground in the judicial arena, 2008(2) RCR(Civil) 805: 2008 (1) RCR (Rent) 457 (SC) relied."

9. 2009 (2) RCR 485 titled as Mukesh Kumar vs. Rishi Prakash wherein it has been held as under :

"Landlord entitled to evict tenant on the ground that he required premises for office of his Advocate son. Delhi Rent Control Act, E No. 139/2009 Page no. Page numbers / Statistics Section 14 (1) (e) Leave to defend Bona fide required Landlord filing petition for eviction of tenant on the ground that he required the premises for office of his Advocate son Contention of tenant that son was having his office in certain other property This was a bold statement without supporting material and does not give rise to a triable issue entitling tenant for leave to defend Held".

10. 2009 (1) RCR 16 titled as Maganlal son of Kishanlal Godha vs. Nanasaheb son of Udharao Gadewar, wherein it has been held as under :

"Central provinces and Berar letting of House and Rent Control Order, 1949, Section 13 (3)(vi) Bona fide requirement Landlord already running business, but wanted to expand his business Held: It is always a prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business, this is no ground to say that the landlords are already having their business. 2005 (2) RCR (Rent) 436 (SC) relied."

The first objection of the respondent in the present application is that the premises under the tenancy of the respondent was let out for commercial purposes and as such the provisions of E No. 139/2009 Page no. Page numbers / Statistics section 14 (1) (e) DRC Act are not applicable. In view of judgment of Hon'ble Supreme Court of India in case titled as Satyawati Sharma (Dead by LRs) vs. Union of India & Another (supra), the aforesaid limb of arguments does not survive any more.

The second ground taken for by the respondents in the present application is that the petitioner is not the owner of the property in question. It has to be seen that in the entire application, the respondents have not specified as to who else is the owner of the suit property if the petitioner is not the owner of the property in question. The petitioner in the present petition has clearly stated that he has inherited the suit premises from his late father Sh. Surat Singh by virtue of the Will executed by him. It has been further submitted that petitioner inducted the respondents as tenants in the suit premises i.e. 82, Village Rajpura, Gurmandi, Delhi 11007 comprising of one big room and open space. It has to be seen further that the petitioner has stated further the respondents have filed a false and frivolous suit for perpetual injunction against the petitioner and the filing of the said suit has also not been denied by the respondents. As such, I have no hesitation to hold that the aforesaid ground taken for by the respondents is not tenable.

E No. 139/2009 Page no. Page numbers / Statistics The third ground taken for by the respondent is with respect to the bonafide requirement of the petitioner. It has been stated by the respondents that the need of the petitioner is malafide and the petitioner has other accommodations as well, the

details of which have been given on page no. 5 and 6 of the application for leave to contest the present petition. The alleged properties available with the petitioner have been detailed by the respondents as under :

1. Property no. 73, Rajpura, Gurmandi, Delhi.
2. Property no. 67, Rajpura, Gurmandi, Delhi sold by petitioner.
3. Plot in Greater Noida.
4. Duplex Plot no. 105 comprising of 12 to 15 rooms.
5. Aparna Hostel having more than 165 rooms.
6. Property no. A-33, Gurmandi Delhi.
7. Properties purchased by petitioner in Rajpur in the names of his relations.
8. Land over 3000 square yards encroached by petitioner.
9. Farm House near Delhi Boarder.

It has been stated further that the petitioner has several accommodations in his possession to carry on their business and other activities. It has been stated further that the petitioner has not given E No. 139/2009 Page no. Page numbers / Statistics the dimensions of the property in question and that the site plan filed by the petitioner is not correct and same cannot be relied upon.

It has to be seen that the petitioner has clearly alleged that he owns the adjoining property bearing no. 94-95, Village Rampura and the petitioner had raised three storeyed building comprising of about 100 living rooms in the said property no. 94-95, village Rampura, which is used to be given college girls for residential accommodation. It has been further submitted that as the business of plaintiff has flourished manifold, the petitioner requires to set up a separate independent office for his ministerial staff and accommodation of workers and attendants of different categories on duty to maintain their availability and prompt services with all the regularity. It has been further submitted that petitioner wants to construct a separate entrance for the upper floors of the building by constructing separate and independent staircase to smoothen the entry and exits of the occupants, which is urgently required for proper use of the main building.

It has to be seen that the site plan has been filed on record by the petitioner and the same has not been denied specifically. The suit premises has been shown in red colour in the site plan. The E No. 139/2009 Page no. Page numbers / Statistics respondents have not filed on record any site plan of their own. I am of the opinion that Ld. counsel for the petitioner has rightly pointed out that the strategic location of the premises in question has not been denied by the respondents. The petitioner has a flourishing business and same has not been denied by the respondent. The thrust of the

respondents is that the petitioner has other accommodations as well as stated by the respondent, but nowhere it has been submitted by the respondents that the aforesaid alleged locations available with the petitioners are strategically located so as to help the petitioner to satisfy his needs for expansion of his business. It is true that in the counter affidavit and reply filed on record the petitioner has not denied that he is the joint owner of some of the properties as stated by the respondents in the present application and the accompanying affidavit but it has been clearly stated by the petitioner that the aforesaid properties are distantly located which cannot help the petitioner to fulfill his requirements. I am of the opinion that it has been rightly pointed out by the Ld. counsel for the petitioner that the respondents have failed to show the title of the petitioner in respect to those properties and as to how the same are strategically located to fulfill the requirements of the petitioner.

E No. 139/2009 Page no. Page numbers / Statistics Further more, so far as the authorities relied upon by the Ld. counsels for both the parties are concerned, I am of the opinion that there cannot be any deviation from the preposition of law as laid down in the aforesaid authorities. The ratio of the authorities Ram Swaroop (dead) through LRs vs. Mahesh Chandra Jain & others (supra), P.S. Janakavalli Ammal vs. Regional Manager, Tamil Nadu Handloom Weavers' Cooperative Society Ltd., Vellore of Hon'ble High Court of Madras, R. Periyasamy vs. T. Bhagyam and another of Hon'ble High Court of Madras, Davis vs. Sebastian of Hon'ble Supreme Court of India, M/s Sait Nagjee Purushotham & Co. Ltd. vs. Vimalabai Prabhulal & Ors. of Hon'ble Supreme Court of India and other authorities relied upon by Ld. counsel for the petitioner is squarely applicable to the facts and circumstances of the present case.

In the aforesaid authorities it has been clearly held that it is the choice of the landlord to use non-residential building either for expansion of existing business or for new business - The expression "personal use" includes any business. It has been held further that it is privilege of the landlord to choose the nature of the business and the place of business. Tenant cannot advise the landlord.

In the light of the aforesaid discussion, I am of the E No. 139/2009 Page no. Page numbers / Statistics opinion that the respondents have failed to raise any triable issue and as such the application of the respondents for leave to contest the present petition is hereby dismissed and as such I hereby allow the present eviction petition and pass an eviction order in respect of suit premises i.e. 82, Village Rajpura, Gurmandi, Delhi - 11007 comprising of one big room and open space, as shown in red colour in the site plan, which is hereby exhibited as Ex. C by me while deciding the present order. However, it is made clear that as per provisions of section 14 (7) DRC Act, petitioner shall not be entitled to get executed the present order within six months from today i.e. 01.06.2010.

File be consigned to Record Room.

Announced in the open court on this 01st Day of June, 2010.



(RAJ KUMAR) ADMINISTRATIVE CIVIL JUDGE cum ADDL RENT CONTROLLER (NORTH)  
DELHI E No. 139/2009 Page no. Page numbers / Statistics