

Delhi District Court

Meera vs Also At: on 30 September, 2014

Author: Ms. Namrita Aggarwal

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In the Court of Ms. Namrita Aggarwal
CCJ Cum Additional Rent Controller-1 (Central)
Tis Hazari Courts, Delhi.

Case No. E- 108/12

Unique I.D. No. 02401C0258792012

In the matter of :-

Meera

D/o Sh. Ram Nath Sahni,

R/o 29/27, Old Rajinder Nagar,

New Delhi.

.....Petitioner

Versus

Gulshan Kumar Bajaj

Shop no. 93 (Front portion),

Old Rajinder Nagar Market,

New Delhi.

Also at:

3/60, Old Rajinder Nagar,

New Delhi.

.....Respondent

ORDER

30.09.2014

1. Vide this order, I shall dispose off the application moved by respondent for grant of leave to defend the eviction petition filed by the Page No. 1 of 13 Meera Vs. Gulshan Kumar Bajaj E. No. 108/12 petitioner u/s 14(1)(e) Delhi Rent Control Act, 1956 [in short, 'the Act'].

2. Eviction petition has been filed by the landlord/petitioner Smt. Meera against the tenant/respondent Sh. Gulshan Kumar Bajaj in respect of the tenanted premises, i.e., shop bearing no. 93 (front portion) situated in Old Rajinder Nagar Market, New Delhi, as shown in red colour in the site plan annexed alongwith the petition on the ground of bonafide requirement u/s 14 (1) (e) of the Delhi Rent Control Act (hereinafter referred to as 'the DRC Act').

3. The case of the petitioners is that she became registered owner of shop no. 93 situated in Old Rajinder Nagar, New Delhi by way of Will dated 03.04.1979 executed by Smt. Ram Pyari in favour of the petitioner. The said Will was probated by judgment dated 23.08.1994. Vide letter dated

09.12.2005, mutation cum substitution of the said property was carried out and petitioner became absolute owner of the suit shop. That the respondent was inducted as a tenant in respect of front portion of the suit shop, which was being used by him for Tyre Retreading Work which was later on sealed by the appropriate authority as the said work came within the prohibited category being polluted industry. That the tenanted premises is required by the petitioner to open a boutique with her daughter alongwith the support Page No. 2 of 13 Meera Vs. Gulshan Kumar Bajaj E. No. 108/12 and advice of her relative Mrs. Kamal Bhatnagar, who is having good experience in running the said business. That the petitioner has only one daughter, namely, Shama, who is married and presently a housewife and keen to start boutique business alongwith her. That the petitioner has no other commercial and suitable accommodation except the suit shop to start her business.

4. Summons served upon the respondent who filed his leave to defend application on the following grounds: ☐

a) That the petitioner is only member in her family and has been residing at first floor of property no. 29/27, Old Rajinder Nagar, New Delhi.

b) That she has only one daughter who is married and has been residing with her husband and other family members at Paschim Vihar, New Delhi.

c) That husband of daughter of the petitioner is doing a good service and earning handsomely and said daughter of the petitioner is well settled with her family.

d) That neither the petitioner nor her said daughter is having any qualification or experience for running the boutique business.

e) That Mrs. Kamal Bhatnagar is not a relative of the petitioner Page No. 3 of 13 Meera Vs. Gulshan Kumar Bajaj E. No. 108/12 and that she does not have any experience in the business of boutique.

f) That the petitioner is getting handsome rent from her residential house in which many students have been residing who are preparing for Civil Services Examination and getting coaching in Vajirav Coaching Institute and therefore, there is no bonafide requirement of the petitioner or her daughter to start boutique business.

g) That the petitioner got vacated first floor of the suit property bearing no. 93, Old Rajinder Nagar, Delhi about seven years back and same is in possession of the petitioner which can be used by the petitioner to start her business, if any.

5. Reply to the application for leave to defend has been filed by the petitioner wherein petitioner has denied all the averments made by the respondent in his leave to defend application stating that the tenanted shop is lying sealed as per the admission of the respondent as well since 04.09.2006 and therefore, tenant cannot press any hardship for eviction of the said premises as even otherwise, same is not used by the tenant for the last more than six years to earn his livelihood. Further, it is averred that the hardship of the tenant cannot Page No. 4 of 13 Meera Vs. Gulshan Kumar Bajaj E.

No. 108/12 be a ground of tenant in leave to defend application. The petitioner has denied that daughter of the petitioner is well settled in her family and does not require to carry on business with the petitioner. Further, it is submitted by the petitioner that boutique shop cannot be open at the first floor as the shop on the ground floor would fetch more customers than shop at the first floor. Further, it is averred by the petitioner that daughter of the petitioner is well educated and competent to run boutique business.

6. Rejoinder was filed by the respondent wherein he reaverred what was averred by him in his leave to defend application.

7. I have heard the contentions of both the sides and perused the record.

8. Proviso (e) to Section 14(1) is a special provision which has been enacted by the legislature for the class of landlords who require the premises genuinely and their requirement is bonafide and they do not have any suitable accommodation. The essential ingredients for attracting the proviso (e) of the Section 14(1) are :

a) The said premises are bonafide required by the landlord either for himself or for his family member. Page No. 5 of 13 Meera Vs. Gulshan Kumar Bajaj E. No. 108/12

b) The landlord or the family member has no other reasonable suitable accommodation.

These twin thresholds are to be satisfied conjunctively in order to attract the provisions of Section 14(1)(e) and the absence of even one of the said ingredients clearly makes the said provision inapplicable.

9. The satisfaction of the two requirements of bonafide need and no reasonably suitable accommodation has been time and again emphasized by the Supreme Court of India in several cases and more recently in the case Deena Nath Vs. Pooran Lal, (2001) 5 SCC 705 wherein the Supreme Court observed thus:

"The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire. The 'bonafide requirement' must be in presenti and must be manifested in actual Page No. 6 of 13 Meera Vs. Gulshan Kumar Bajaj E. No. 108/12 need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in

respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available.

The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind Page No. 7 of 13 Meera Vs. Gulshan Kumar Bajaj E. No. 108/12 to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bonafide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the court has to bear in mind that statutory mandate incorporated in Section 12(1)(f). If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment."

10. Chambers 20th Century Dictionary defines bona fide to mean "in good faith and genuine i.e. without fraud or deceit". Requirement is not a mere desire. The degree of intensity contemplated by "requires" is much more higher than in mere desire. The phrase "required bonafide" is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control Page No. 8 of 13 Meera Vs. Gulshan Kumar Bajaj E. No. 108/12 legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejection of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the court. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by the realities of life. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.

11. The meaning of "bonafide" in the context appears to be in two folds. (a) the need of the landlord must be a genuine one and not a frivolous one. (b) landlord is not motivated by extraneous considerations in trying to recover the possession from the tenant with a view to let it out again to another tenant on higher rent.

12. The landlord-tenant relationship as well as ownership of the Page No. 9 of 13 Meera Vs. Gulshan Kumar Bajaj E. No. 108/12 petitioner over the suit property is not denied by the respondent. The only contention of the respondent is with respect to bonafide requirement of the petitioner. It has been stated by the respondent that petitioner is earning handsome rent from her residential house as the same has been let out to various students and therefore, she does not require to run boutique business. Further, it is averred by the respondent that daughter of the petitioner is married and well settled in life. Her husband is earning handsomely and therefore, there is no bonafide requirement of daughter of the petitioner as well to run boutique business. Respondent has also disputed

capability of petitioner and her daughter to start boutique business stating that they have no experience or qualification to start the said business. The respondent has also disputed relationship of Mrs. Kamal Bhatnagar with the petitioner and capability of the said Mrs. Kamal Bhatnagar to assist the petitioner in the said business.

13. I have heard the arguments of both the sides and also perused the judicial record.

14. The petitioner or her daughter cannot be denied of their right to start their own business in their own premises even if they are well Page No. 10 of 13 Meera Vs. Gulshan Kumar Bajaj E. No. 108/12 settled in their lives because a person cannot be denied to do work or to increase his or her income at any point of time. The contention of the respondent that the petitioner is deriving huge rent from her residential house or that husband of daughter of petitioner is earning handsomely is no ground to restrict them to start their own business. The contention with regard to the fact that the petitioner or her daughter does not have any experience is also no ground as it has been held by the Hon'ble Delhi High Court in Aero Traders Pvt. Ltd. Vs. Mohan Singh & Anr., 2014 (140) DRJ 560, that no experience is required to start a new business and if a landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine. In these circumstances, the dispute of the respondent with respect to the bonafide requirement of the petitioner is of no ground.

15. The respondent has also alleged that the petitioner has also got first floor of the suit property vacated from where she can start her boutique business. It is averred by the petitioner that boutique shop cannot be opened at the first floor as the same is governed by the permissible trade under the Municipal Law.

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16. Having heard both parties, it is clear that there is no other alternative accommodation available with the petitioner on the ground floor to start her boutique business. The petitioner cannot be denied of her right to start her own business from the ground floor as obviously, shop of boutique on the ground floor would fetch more customers than shop at first floor. Further, there is no other alternative accommodation alleged by the respondent in possession of the petitioner.

17. Further, the hardship of the respondent in evicting tenanted premises is no ground for seeking leave to defend and hence, cannot be considered.

18. Thus, in view of the above discussed facts, the respondent has failed to raise any triable issue, which requires evidence to be proved. Petitioner, on the other hand, has clearly established her bonafide requirement qua the tenanted premises. Hence, the application for leave to defend filed by respondent is ordered to be dismissed. Consequently, eviction order is liable to be passed against the respondent u/s Section 25 B (4) of the Act. In view of above, petitioner is held entitled for recovery of the tenanted premises, i.e., shop Page No. 12 of 13 Meera Vs. Gulshan Kumar Bajaj E. No. 108/12 bearing no. 93 (front portion) situated in Old Rajinder Nagar Market, New Delhi, as shown in red colour in the site plan annexed with the petition. However, the petitioner would not be entitled to

initiate execution proceedings for recovery of possession of the tenanted premises before expiration of six months from today in view of provisions given in Section 14 (7) of the Act.

Announced in open Court (Namrita Aggarwal) on 30 Day of September, 2014. CCJ cum ARC□
(Central) th [This order contains 13 pages .] Tis Hazari Courts, Delhi.

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