

Rk Bansal v. Jag Pravesh Sharma, 2011 PLRonline 0202 (Delhi)

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Delhi High Court

Judge : Indermeet Kaur

Rk Bansal v. Jag Pravesh Sharma

RC.REV. 226/2010 and CM No. 21535/2011

22 December, 2011

Mr. O.P. Khadaria and Mr. Saurabh Pahura, Advocates. Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Sidhartha Bambha, Advocate.

INDERMEET KAUR, J. (Oral)

1. The order impugned before this court is the order dated 18.05.2010 whereby an application for leave to defend filed by the tenant-R.K. Bansal in a pending eviction proceedings filed by the landlord-Jag Pravesh Sharma under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as „the Code“) had been dismissed.

2. Record shows that an eviction petition had been filed by the landlord on the ground of a bonafide requirement as contained in Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as “DRCA”). The demised property comprise of two shops on the ground floor of the property bearing No. 7226/XV, Qutab Road, New Delhi as depicted in blue colour in the site plan annexed with the petition. Petitioner is stated to be the owner of the disputed premises stating that he bonafidely requires the said premises for the use of the said premises by his wife and his two sons, namely, Meenakshi Sharma, Amit Kapila and Sumit Kapila who are residing with him and are dependent upon him for their needs both residential as also for carrying out their business. It is stated that the wife of the petitioner and his two sons have no other property and they require this property bonafidely for running their business. Their partnership firm constituted under the name and style of “M/s. Mahadev Sales Corporation” which is carrying on a wholesale and retail business in marble, pre- laminated article boards etc. from the adjoining premises since April 2000; running stock of the business is more than ` 49 lacs and the accommodation presently available cannot accommodate the said stock. Business cannot be expanded on account of paucity of accommodation; accordingly, disputed premises are required by the petitioner for running the aforementioned business of his wife and two sons.

3. In the application for leave to defend various triable issues are sought to have been

raised and also have been orally urged before this court. It is contended that the submission of the landlord that his both sons are residing with him is false; Amit Kapila is a resident of Canada and is permanently settled there; petitioner has concealed the fact that he has a 100 sq. yds. area at A-1/34 WHS, Kirti Nagar, New Delhi from where petitioner is carrying out his business. It is contended that the stocks worth `49 lacs have been incorrectly averred; all these facts are triable issues; further contention of the present petitioner is that the site plan filed by the landlord alongwith the eviction petition is not correct.

4. Site plan has been perused. In the eviction petition contention of the landlord is that the portion shown in green colour is only under his ownership; the portion shown in blue is the tenanted portion and the remaining part of the property belongs to his brother Bhim Sen Sharma. Contention of the tenant is that this submission is wrong and in fact a godown which is depicted in the site plan behind the portion shown in green is also a part of the share of the landlord; admittedly, this submission now urged before this court does not find mention in the application for leave to defend and neither did it find mention in the rejoinder filed by the tenant to the reply of the landlord. In the reply filed by the landlord, the landlord has vehemently contended that only the portion shown in green colour is the share of the landlord and the blue colour is the tenanted portion and rest of the entire property falls to the share to his brother Bhim Sen Sharma. As noted supra, this submission now urged that another godown/hall behind the green portion also falls to the landlord's share did not find mention in the application for leave to defend and neither was it rebutted or denied in the rejoinder filed by the tenant. As such this submission of the tenant that there is enough accommodation with the landlord in the shape of a godown which fact has been concealed by him is a submission clearly without any merit.

5. Submission of the tenant that one son of the petitioner is settled permanently in Canada is also not borne out; this has been vehemently refuted by the landlord. Be that as it may, the contention of the petitioner in his eviction petition is that these two shops are required by him bonafidely for the running and extension of the partnership business and the partnership deed filed on record shows that this partnership firm comprises of his wife and his two sons; even if one of the partners is in Canada, the business of the partnership firm can be continued in his absence by the other two partners. This submission also thus has also no force.

6. The landlord alongwith his reply to the application for leave to defend had also filed the audited balance-sheet of the partnership firm namely „M/s Mahadev Sales Corporation" wherein the closing stock as on 31.03.2008 of the said partnership firm was more than ` 49 lacs; this had also clearly adverted to in the reply filed by the landlord to which again there is no specific denial in the rejoinder. Documents of „M/s Mahadev Sales Corporation" also show that the partnership firm comprises of three partners namely Meenakshi Sharma, Amit Kapila and Sumit Kapila. Thus, this submission of the tenant that the stock of ` 49 lacs is not available with the petitioner and is again an argument which raises no triable issue.

7. The only other ground which remains to be answered is that the tenant has contended that the petitioner has another accommodation at A-1/34 WHS, Kirti Nagar, New Delhi and

this fact has been concealed. The petitioner in his reply has admitted that he is carrying on his business and he is a proprietorship concern under name and style of „M/s Basudeo“ since 1995; this property is jointly owned by the petitioner and his brother; moreover this property is his sole proprietorship business i.e. of the petitioner himself. In the rejoinder, there is no specific denial to this submission that this is the sole business of the petitioner himself. The tenanted premises comprise of two shops adjoining the shop from where M/s. Mahadev Sales Corporation is carrying on its business.

8. The documents on record of M/s Mahadev Sales Corporation show that it is carrying on its business activities from a portion of property bearing No. 7226/XV, Qutub Road, New Delhi and this green portion as depicted in the site plan is only one single shop with one verandha in front and a hall at the back; the partnership is doing good business and has stocks of more than ` 49 lacs as disclosed in the balance-sheet. The site plan shows that the area in occupation of the partnership firm is one shop measuring about 16 x 12 feet and thus, the submission of the petitioner that the stock of more than ` 49 lacs (which is a business comprised of marble, pre-laminated article boards etc.) which are large building material cannot be stocked in this area and for which he needs the accommodation which is presently under the tenancy of the tenant-R.K. Bansal is an argument which has considerable force.

9. The landlord has been able to show that the premises are bonafidely required by him for the expansion of his business which is being run from a small shop and keeping in view the business assets (evidenced from the audited balance-sheet dated 31.03.2008), he needs more space to accommodate his growing needs in the business. The tenanted premises (as noted supra) are two shops adjacent to the place from where the business of M/s Mahadev Sales Corporation is being carried out.

10. The 100 sq. yds shop in Kirti Nagar is at a distance of 45 minutes by road from the present accommodation is jointly owned by the petitioner and his brother from where the proprietorship work of „M/s Basudeo“ is being carried out. This is a disputed fact.

11. Contention of the petitioner that the aforementioned disputed premises is required by “M/s Mahadev Sales Corporation” for their expansion has thus clearly been substantiated; impugned order dismissing the application for leave to defend thus suffers from no infirmity.

12. In 2009(2) RCR 455 titled as Ram Babu Agarwal vs. Jay kishan Das, 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."

13. In *Sait Nagjee Purushotham and Co. Ltd. v. Vimalabai Prabhulal and Ors.* reported in 2005 8 SCC 252; the Apex Court observed:

"It is always the 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 at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business."

14. Reliance placed upon the learned counsel for the petitioner upon the judgment of the Apex Court reported as *Precision Steel & Engineerign Works vs. Prem Deva*, AIR 1982 SC 1518 is misplaced. It is only when a triable issue has arisen that the application for leave to defend has to be granted. No such triable issue having arisen, the impugned judgment dismissing the application for leave to defend suffers from no infirmity.

15. Petition is dismissed.