

SUPREME COURT OF INDIA

Anil Bajaj

Vs.

Vinod Ahuja

C.A.No.5513 of 2014

(Sudhanshu Jyoti Mukhopadhaya and Ranjan Gogoi JJ.)

08.05.2014

JUDGMENT

RANJAN GOGOI, J.

1. Leave granted.
2. The appellants, who are the landlords, seek to challenge the order dated 20.09.2012 passed by the High Court of Delhi granting leave to the respondent-tenant to contest the proceedings for his eviction under Section 14(1)(e) of the Delhi Rent Control Act, 1958. The order of the High Court is in reversal of the order dated 02.09.2011 passed by the Additional Rent Controller who had refused to grant leave to defend to the tenant.
3. The matter lies within a short compass notwithstanding the elaborate application filed by the respondent-tenant seeking leave duly supported by an affidavit and the detailed manner in which the appellant-landlords had contested the claim of the tenant.

Briefly stated, leave was sought by the tenant on the ground that the landlords own several other properties in the vicinity of the tenanted premises from where they are carrying on business or have rented out the same. As such, the tenanted premises i.e. No.38-UB, Jawahar Nagar, Kamla Nagar, Delhi is not bonafide

required for the use of the landlords.

In response, the landlords contend that the first appellant, Anil Bajaj is running a kiriyana shop in premises No. 25-UB, Jawahar Nagar, which is located in a lane 15 feet in width. According to the appellants on account of the location of the tenanted premises, the appellant No.1 is unable to generate sufficient business causing acute hardship to his large family. Therefore, the appellants need the tenanted premises which is situated on the main road. According to the appellants they had offered the premises in possession of the Appellant No.1 i.e. No.25-UB Jawahar Nagar to the tenant in exchange for the tenanted premises i.e. 38-UB, Jawahar Nagar which offer has been declined by the tenant. The appellants have further averred that while most of the other properties alleged to be in their ownership are not presently owned by the appellants, some other items of property mentioned by the tenant in the application seeking leave to defend are owned and utilized by other family members of the appellants and the first appellant has no connection with such properties or business carried on by the other members of the family.

4. On the aforesaid broad pleadings of the parties, the learned Additional Rent Controller thought it fit to come to the conclusion that the contentions made by the tenant are mere assertions without any basis and that no triable issue is disclosed warranting grant of leave to defend. In reversal, the High Court held that the precise relationship between the two appellants and the holding/interest of the first appellant in other items of property standing in the name of other family members require a probe for which leave ought to be granted. Hence the impugned order and the present appeal arising therefrom.

5. The principles governing grant or refusal of leave to defend under the Delhi Rent Control Act, 1958 had been squarely dealt with in Charan Dass Duggal vs. Brahma Nand[1]. The issue has been aptly summarized in the following observations of the Court.

5. What should be the approach when leave to defend is sought? 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, 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 (see Santosh Kumar v. Bhai Mool Singh[2]). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively.

7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and prove his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave. May be in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits.

6. In the present case it is clear that while the landlord (appellant No. 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenants case that the landlord-appellant No. 1 does not propose to utilize the tenanted premises

from which eviction is sought for the purposes of his business. It is also not the tenants case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend.

6. We are, therefore, of the view that the impugned order dated 20.09.2012 of the High Court of Delhi is not legally sustainable. We, accordingly, set aside the same and allow this appeal and restore the order dated 02.09.2011 passed by the learned Additional Rent Controller, Delhi.

[1] (1983) 1 SCC 301

[2] 1958 SCR 1211