

BHUPINDER SINGH BAWA

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v.

ASHA DEVI

(Civil Appeal No. 9941 of 2014)

NOVEMBER 08, 2016

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[SHIVA KIRTI SINGH AND R. BANUMATHI, JJ.]

Rent Control and Eviction:

Delhi Rent Control Act, 1958 – s. 14(1)(c) – Eviction – Bona fide requirement – Eviction petition by respondent-landlady – Ground of bona fide requirement of tenanted premises for the purpose of business of her son – Allowed by the courts below by recording concurrent findings – On appeal held: Additional Rent Controller and the High Court rightly held that no alternative premise was lying vacant for running business of respondent's son – It was perfectly open to the landlady to choose a more suitable premises for carrying on the business by her son and that the respondent cannot be dictated by tenant as to from which shop her son should start the business from – Concurrent findings recorded by the courts below based on evidence and materials on record – Thus, no infirmity warranting interference with the impugned judgment.

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Anil Bajaj & Anr v. Vinod Ahuja 2014 (6) SCALE 572 – relied on.

Case Law Reference

2014 (6) SCALE 572 relied on Para 12

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9941 of 2014.

From the Judgment and Order dated 28.07.2014 of the High Court of Delhi at New Delhi in R. C. Rev. No. 245 of 2014

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Sunil Gupta, Sr. Adv., Rajesh Yadav, Vinay Garg, Jaspal Singh Sethi, Dhananjay Mehlawat, Advs. for the Appellant.

Dr. Rajeev Dhawan, Sr. Adv., Arunabh Chowdhury, Vaibhav Tomar, Ms. Barnali Chowdhury, Ms. Shruti Choudhry, Anupam Lal Das, Karma

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A Dorjee, Anirudh Singh, Advs. for the Respondent.

The following Order of the Court was delivered

ORDER

B 1. The present appeal has been filed by way of special leave against the final judgment and order dated 28.07.2014 passed by the High Court of Judicature of Delhi in R.C. Rev. No.245 of 2014 dismissing the revision petition filed by the appellant affirming the order of eviction passed by the Tribunal and ordering his eviction from the suit scheduled premises.

C 2. Briefly, the facts are as follows: The suit scheduled premises, bearing No. C-1 (old property No. 285) Basai Dara Pur, Sharda Puri, Ring Road, New Delhi – 110015 comprises of two big rooms and one small room as shown in red colour in the site plan Ex. PW-1/2. Appellant/tenant was inducted as tenant in the suit scheduled premises by the erstwhile owner of the premises vide Rent Deed dated 20.07.1989. D Subsequently, the respondent/landlady acquired the premises under a registered sale deed dated 11.12.2002. The respondent sought eviction of the appellant from the suit premises by filing a petition under Section 14(1)(e) of Delhi Rent Control Act, 1958 on the ground of *bona fide* requirement. Respondent claimed that her son Sh. Vaibhav Maheshwari required the premises for running his separate business of sanitary and hardware products as the suit premises has a prime location for the said business. E Respondent's son was pursuing MBA at the time of the filing of the eviction petition and completed the same in June, 2011.

F 3. The appellant controverted the claim of *bona fide* requirement set up by the respondent by maintaining that the son of the landlord is employed as a Director in the company M/s. Jaishree Granites Pvt. Ltd. and earns Rs.50,000/- per month. The appellant further contended that respondent's husband is running business of marble and granite from several locations in the city which can be preferably used to accommodate the business of respondent's son. Following premises were suggested as an alternative accommodation for running sanitary and hardware business of respondent's son: G Property No. 285-B, Basai Darapur, Sharda Puri, Ring Road, New Delhi owned by husband of the respondent, Property No. A-2/53, W.H.S., Kirti Nagar, New Delhi owned by husband of the respondent, Property No. D-201, Mansarovar Garden, New Delhi owned by husband of the respondent, Property Nos. 43, 44, 45 and 46 H situated at Block-A-1, W.H.S., Kirti Nagar, New Delhi owned by the

company M/s. Jaishree Granites Pvt. Ltd, Property No. D-12, Rajouri Garden, Ring Road, New Delhi which is the registered office of the M/s. Jaishree Granites Pvt. Ltd. A

4. On a proper appreciation of facts and evidences available on record, the Additional Rent Controller *vide* order dated 26.02.2014 in E. No. 249/2011, passed an eviction order in favour of the respondent and directed the appellant to vacate the suit scheduled premises in accordance with law. The Additional Rent Controller held that the respondent has established that the tenanted premise is required for her dependant son and that there is no alternative vacant accommodation suitably available for her son for his business. Aggrieved thereof, the appellant filed revision petition before the High Court challenging the order of eviction passed by Additional Rent Controller. The High Court *vide* impugned order dismissed the revision petition holding that no case is made out to interfere with the detailed order passed by the Additional Rent Controller decreeing the eviction petition of *bona fide* necessity. It was held that the respondent-Landlady and her son are at liberty to decide which premise is more suitable for running business of sanitary and hardware. B C D

5. We have heard the parties at considerable length. No new contentions have been put forth by the parties before us. The appellant has alleged that the High Court erred in affirming the eviction decree passed by the Addl. Rent Controller as no case of *bona fide* necessity was established by the respondent. Allegedly, alternate accommodations were available for occupation of respondent's son which were not suitable for running sanitary and hardware business which the respondent neglected to consider. Moreover, the appellant alleged that the High Court erred in not noticing that the respondent did not set up her *bona fide* requirement; rather she set up a case of *bona fide* requirement of her son and thus, no relief should have been granted to her without keeping in view the comparative hardship to the appellant/tenant. E F

6. On the contrary, the respondent has maintained that the courts below have recorded concurrent findings of fact that no suitable accommodation was available for running business of sanitary and hardware by her son and have rightly passed an eviction order in favour of the respondent. More so, the respondent cannot be dictated the terms of occupation of her self-owned properties. G

7. We have carefully considered the rival contentions and perused the impugned judgment and materials on record. H

A 8. Both the courts below have allowed the eviction petition filed
by the respondent against the appellant on the ground of *bona fide*
requirement under Section 14(1)(e) of Delhi Rent Control Act, 1958 by
recording concurrent findings. First and foremost, the landlord-tenant
relationship between the parties is not in dispute. The only dispute relates
B to *bona fide* requirement of the respondent for business of her son and
availability/non-availability of alternative suitable accommodation.

9. The concurrent findings recorded by the courts below are as
follows: Firstly, It was held that the fact that respondent's son is engaged
as Director in the family company M/s. Jaishree Granites Pvt. Ltd. and
earns a salary of Rs.50,000/- cannot be an impediment to his running a
C separate business of sanitary and hardware. The courts held that the
law does not provide that if a landlord/landlady requires the premises for
running business of his/her young son who is an MBA, and is already
engaged in some other business, he is acting malafidely and thus, no
relief should be granted to him/her. Secondly, the courts below considered
D the suitability of every alternative accommodation suggested by the
appellant which can preferably be occupied by the respondent's son for
running his business. The appellant had suggested following alternative
premises: Property No. 285-B, Basai Darapur, Sharda Puri, Ring Road,
New Delhi owned by husband of the respondent, Property no. A-2/53,
W.H.S., Kirti Nagar, New Delhi owned by husband of the respondent,
E Property No. D-201, Mansarovar Garden, New Delhi owned by husband
of the respondent, Property Nos. 43, 44, 45 and 46 situated at Block-A-
1, W.H.S. Kirti Nagar, New Delhi owned by the company M/s. Jaishree
Granites Pvt. Ltd, Property No. D-12, Rajouri Garden, Ring Road, New
Delhi which is the registered office of M/s. Jaishree Granites Pvt. Ltd.
F The courts found that the properties in the name of family company, M/
s. Jaishree Granites Pvt. Ltd. viz. Property nos. 43,44,45 and 46 situated
at Block-A-1, W.H.S. Kirti Nagar, New Delhi and Property No. D-12,
Rajouri Garden, Ring Road, New Delhi were not located in a market
area and thus, they were unsuitable for occupation especially when other
suitable premise was available in the market area.

G 10. The property No. 285-B which was owned by the husband of
the respondent was found already in occupation as a retail outlet for
marble and granite run by the husband of the respondent. The courts
considered the allegation of the appellant that property No. 285-B is
owned by the respondent and not by her husband. The appellant had
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produced a copy of Income Tax Returns of the respondent for establishing his claim. However, the High Court rejected the said claim on finding that the alphabet 'B' appearing after number 285 under the head of rental incomes was wrongly written in the Income Tax Return of the respondent. Moreover, the High Court found that the appellant had himself stated in his pleadings that property no. 285-B belonged to the husband of the respondent and not to the respondent. Also, with regard to property No. A-2/53 at Kirti Nagar which is also owned by the husband of the respondent, the courts found that it is being used by M/s. Jaishree Granites Pvt. Ltd. as godown for the stock of the marble and granite.

11. So far as property bearing No. D-201, Mansarovar Garden, New Delhi is concerned, the appellant made a case that the entire property including the ground floor of property No. D-201 was available to the respondent which could have been suitably used for running her son's business as it was located on the main road and in a market area also. The courts noted that the appellant has admitted in his cross-examination that the first floor and second floor of the property No. D-201 is in occupation of brother-in-law (*Devar*) of the respondent who is carrying on his business in the said premises. The court also noted that in his cross examination, the appellant has suggested that if not on the first or second floor, respondent's son can occupy the basement of property No. D-201. Having so noted, the High Court has observed that the appellant impliedly admitting that the husband of the respondent is not the owner of the ground floor of property No. D-201. The courts also noted that the appellant has not specifically pleaded in his written submissions that the ground floor of property No. D-201 is owned by the husband of the respondent. In such facts and circumstances, the courts recorded concurrent finding of fact that ground floor of property No. D-201 does not belong to husband of the respondent and thus the question of its suitability as an alternate accommodation does not arise in the present case.

12. In light of the above, Additional Rent Controller and the High Court rightly concluded that no alternative premise was lying vacant for running business of respondent's son. The High Court rightly relied on the ratio of *Anil Bajaj & Anr Vs. Vinod Ahuja* 2014 (6) SCALE 572 to hold that it is perfectly open to the landlord to choose a more suitable premises for carrying on the business by her son and that the respondent cannot be dictated by the appellant as to from which shop her son should start the business from.

A 13. The concurrent findings recorded by the courts below are based on evidence and materials on record, we do not find any infirmity warranting interference with the impugned judgment.

 14. In the result, the appeal is dismissed. Time is granted till 31st March, 2017 to the appellant to vacate the premises on filing of usual undertaking in the Registry of this Court within four weeks from today.

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Nidhi Jain

Appeal dismissed.