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HIGH COURT OF DELHI : NEW DELHI

RC. REV. No. 137/2010 & CM No. 11116/2010

% Judgment reserved on: 27th August, 2010

Judgment delivered on: 06th October, 2010

Tarsem Singh,
S/o Gurbachan Singh,
C/o Shop No. WZ-152,
Mukarjee Park,
Tilak Nagar,
New Delhi.

....Petitioner

Through: Mr. Pramod Ahuja, Adv.

Versus

Gurvinder Singh,
S/o Sh. Harbhajan Singh,
R/o WZ-152, Mukarjee Park,
Tilak Nagar,
New Delhi.

....Respondent

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |

3. Whether the judgment should be reported
in the Digest?

Yes

V.B.Gupta, J.

Present revision petition under Section 25B (8) of the Delhi Rent Control Act, 1958 (for short as 'Act') has been filed against order dated 8th February, 2010, passed by Additional Rent Controller (for short as 'Controller') Delhi. Vide impugned order, application of petitioner/tenant for leave to defend was dismissed and eviction order was passed in favour of respondent/landlord and against petitioner.

2. Respondent filed eviction petition under Section 14 (1) (e) read with Section 25-B of Act on the ground that he is the owner and landlord of premises bearing no. WZ-152, Mukherjeet Park, Tilak Nagar, New Delhi. Petitioner is his tenant in respect of shop in above said property as shown in red colour in the site plan, at monthly rent of Rs.715/- exclusive of other charges. Respondent is a trained and qualified technician who has obtained three years T.V., V.C.R. servicing course certificate and is capable of repairing and servicing of mobile phones by virtue of his twenty years experience in this filed. He and his family is facing financial hardship due to his low income

whereas, persons who are less qualified and competent than him are generating very good income because they are running their own workshops. Respondent is unable to open his own workshop due to non availability of space. He does not have any other space, except the shop in question to start his own business. Since, respondent is desirous of starting workshop for repair of TV, music systems, remote control and mobile phones etc., thus, the shop in question is required for his bonafide need so that he can earn good income in order to meet out the requirement of his family.

3. In affidavit filed along with leave to contest by the petitioner, it is stated that respondent has not come with clean hands and is seeking relief for bonafide requirement on false ground.

4. It is also stated that respondent is having his own shop bearing no. 111, at Gaffar Market, Karol Bagh, where he is doing business of mobile phone, sale, repair etc. Respondent is also having own mobile repairing institute in the name and style “ V.H.B. Mobile Tech Institute & Repairing Center.”

5. It is further stated that, in the premises there is more space for

work, if respondent needs to do work in the premises which space has been shown open in the site plan.

6. In reply to application for leave to contest, it is stated that respondent doesn't own shop No. 111, Gaffar Market, Karol Bagh, New Delhi. Rather he has taken the said shop on lease from its owner Smt. Neelu Arora and running the business in partnership with other partner Shri Harish Kumar, under the name and style of M/s V. H. B. Electronics and is running the mobile repair shop from the said shop only. It is pertinent to mention here that, besides respondent and his partner, 2-3 people are also working in the said shop.

7. It is contended by learned counsel that respondent is having a shop at Karol Bagh on lease and also institution on the second floor, which fact he did not disclose in the eviction petition. Only on this sole ground, petitioner is entitled to have leave to defend and contest the eviction petition, which fact has been admitted by respondent in his reply filed to leave to defend application.

8. Other contention is that, respondent has stated he is the owner/ landlord of the premises and is employed and is getting salary, but he has not stated as to how much salary he is getting. Thereafter,

respondent has come up with the plea that he has a tenanted shop. Thus, respondent has concealed this fact that, he has an institution of mobile at the second floor of the same premises.

9. It is also contended that respondent has covered verandah which can easily be used for the purpose for which he is seeking eviction.

10. In support, learned counsel for petitioner cited ***Deena Nath Vs. Pooran Lal 2001 (5) SCC 705***, in which it has been laid down that;

“A landlord having no alternative accommodation in the town concerned may file for eviction.”

11. There is no dispute about relationship of landlord and tenant between the parties. As far as letting purpose is concerned, same is for non residential purpose. In ***Satyawati Sharma Vs. Union of India, 2008 (5) SCC 287*** it has been held,

“The premises let out either for residential or commercial purposes can be got vacated by the landlord for bonafide requirement”.

12. Present petition has been filed under Section 25B (8) of the Act. A Full Bench of this Court in ***Mohan Lal Vs. Ram Chopra and***

another, 1982 (2) Rent Control Journal 161 exhaustively considered the provisions of Section 25B of the Act. On the scope of the proviso to sub-section (8) of this Section, after examining the judgment of Supreme Court in *Hari Shanker and others. Vs. Rao Girdhari Lal Chowdhury*, A.I.R. 1963 S.C. 698 and *Bell and Co. Ltd. Vs. Waman Hemraj*, AIR 1938 Bombay (223) it was laid down as follows:-

“In our opinion the jurisdiction of the High Court under proviso to section 25B (8) has to be interpreted, keeping in view the legislative intent. The revision under section 25B (8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B (8) of the Act.”

13. Upon examination of above judgment it may safely be held that this court in exercise of the powers vested by proviso to sub-section

(8) of Section 25B of the Act may reappraise the evidence only for a limited purpose of ascertaining whether the conclusion arrived at by the Rent Controller were wholly unreasonable that no reasonable person acting with objectivity could have reached on the material available to test the order of the Rent Controller on the touchstone of whether it is in accordance with law.

14. In *Praveen Jain & Ors (Shri.) Vs. Dr. Mrs. Vimla, 2009 IV AD (Delhi) 653*, this court observed;

“The powers of this Court under Section 25B(8) are not appellate powers and this Court has only to see that the Trial Court had acted in accordance with law and not transgressed the limits of its jurisdiction.”

15. In *Rajinder Kumar Sharma & Ors. Vs. Leela Wati & Ors., 155 (2008) Delhi Law Times 383* the court observed;

“Section 25B was inserted by the legislature in Delhi Rent Control Act as a special provision for eviction of the tenants in respect of specified category of cases as provided therein. Where a landlord seeks eviction on the basis of bonafide necessity, a summary procedure is provided and tenant has to seek leave to defend disclosing such facts which disentitled the landlord from seeking eviction.”

16. In *Nem Chand Daga Vs. Inder Mohan Singh Rana, 94 (2001)*

Delhi Law Times 683; it was held;

“That before leave to defend is granted, the respondent must show that some triable issues which disentitled the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.

17. In ***Frank Anthony Public School Vs. Smt. Amar Kaur, 1984***

(6) Delhi Reported Judgment 47, it was held;

“The legislature has devised a "special procedure for the disposal of the application for eviction on the ground of bonafide requirement". It is modelled on Order XXXVII of the Code of Civil Procedure. The object is to reduce delays in litigation. The object is to introduce a "summary trial" in place of full length trial.”

18. In ***Sarwan Dass Bange Vs. Ram Parkash, 2010 IV AD (Delhi)***

252, observations made by Supreme Court in ***Baldev Singh Bajwa Vs.***

Monish Saini, (2005) 12 SCC 778 have been quoted as under;

“It was held that the legislative intent is of expeditious disposal of the application for ejection of tenant filed on the ground of requirement by the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from

letting out the premises or disposing of the same but also required to use the same for his own residence only. It was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the Court for ejectment of tenant unless his need is bona fide - no unscrupulous landlord in all probability, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him. It was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the court his requirement shall be presumed to be genuine and bona fide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine. The tenant is required to give all the necessary facts and particulars supported by documentary evidence if available to prove his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord; a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine."

19. Only pleas worth mentioning in the affidavit filed by petitioner are that, respondent is having his own shop no. 111, Gaffar Market, Karol Bagh, Delhi, where he is doing his business of mobile phone sale/repair under the name and style of V.H. B. Mobile Tec. Institute

& Repairing Center. Secondly, there is lot of open space in the premises in question, where respondent can do his work.

20. Trial court in this regard observed;

“The foremost contention of the respondent is that the petitioner is owner of shop bearing no. 111, Gaffar Market, Karol Bagh, New Delhi but it has been vehemently argued by the counsel for the petitioner that the petitioner is not the owner of the said shop rather he is a tenant in the said shop. Petitioner has filed copy of Lease Agreements dated 16.01.2006 and 17.03.2009 executed by Smt. Neelu Arora, owner/landlady of the above said shop bearing no. 111, Gaffar Market, Karol Bagh, situated at MCD Building, Saraswati Marg, Karol Bagh, New Delhi-110005 as per which the petitioner is the tenant in the above said shop. Neither the respondent has denied the factum of petitioner’s tenancy in the above said shop nor has disputed the above said documents i.e. the lease Agreements, as the respondent has failed to file any rejoinder. Thus, it is apparent from these documents that the petitioner is not owner of the above said shop bearing no. 111, Gaffar Market, Karol Bagh, New Delhi, rather he is merely a tenant in the said shop.

Trial court further observed;

“The respondent/tenant could not dictate the petitioner/landlord that he should use the open space for starting his business without getting the tenanted premises vacated from him. Similarly, he cannot also dictate the petitioner to raise any construction in the open space for carrying on his business.”

21. In *M/s John Impex (Pvt.) Ltd. Vs. Dr. Surinder Singh & Ors.*

135 (2006) Delhi Law Times 265 this Court held;

“The conspectus of the aforesaid judgments shows that the broad principles have been set down of the requirement of a landlord not being a mere whim or fanciful but that it should be a genuine need of the landlord. It is only then that the requirement can be said to be bona fide within the meaning of under Section 14(1) (e) of the said Act. This would naturally require all the necessary matrix in terms of the factual averments and the evidence to be adduced in that behalf. Simultaneously it has to be kept in mind that the landlord is the best judge of his requirement and a tenant cannot dictate the terms on which the landlord should live. The bona fide requirement of the landlord would also depend on his financial status and his standard of living. The ARC found in favor of the landlord/owner and thus what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate court though the scope of scrutiny in a rent revision would be more than a revision petition under Section 115 of the Code of Civil Procedure, 1908.”

22. In *Ram Babu Aggarwal Vs Jay Kishan Das. 2009 (2) RCR*

455, Supreme Court observed;

“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.”

23. In *Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal and Others*, (2005) 8 Supreme Court Cases 252; the 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.”

24. Respondent has sought eviction of the petitioner on the ground that he wants to start his work shop for repairing of TV, music systems, remote, mobile phones etc in the shop occupied by the petitioner. He has no other place, where he can start his work. Due to paucity of space, he cannot start his own work. He needs the shop in

question for his personal and bonafide requirement. Further, his poor financial condition does not empower him to get a suitable place on rent for starting his work.

25. 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 premises in question is neither bonafide nor genuine.

26. Thus, petitioner has failed to raise any triable issue in this case, which if proved might disentitle the respondent from getting an order of eviction in his favour. The trial court has given a detailed and reasoned order which does not call for any interference nor the same suffer from any infirmity or erroneous exercise of jurisdiction.

27. Accordingly, present petition is hereby dismissed.

CM No.11116/2010

28. Dismissed.

OCTOBER 06, 2010
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V.B.GUPTA, J.