

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **RC.REV.No. 209/2010**

+ **Date of Decision: 12th October, 2011**

RAJBIR PAL & ANR.**Petitioners**
! Through: Mr. G.P. Thareja, Advocate

Versus

\$ **KANWAR PRATAP SINGH****Respondent**
Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Rajiv Khosla, Advocate.

CORAM:
* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. **Whether Reporters of local papers may be allowed to see the judgment? (No)**
2. **To be referred to the Reporter or not? (No)**
3. **Whether the judgment should be reported in the digest? (No)**

ORDER

P.K BHASIN,J:

In this petition under Section 25-B(8) of the Delhi Rent Control Act, 1958('the Act' in short) the petitioners-tenants challenge the legality of the order passed by the Additional Rent Controller dismissing his application for grant of leave to contest the eviction petition filed against

them by their landlord, the respondent herein, in respect of premises under their tenancy and consequential eviction order passed against them.

2. The respondent-landlord had pleaded the facts in his eviction petition based on which eviction of the petitioners-tenants from the tenanted premises was sought and the relevant averments are re-produced below:

“1.The petitioner is the owner/landlord having inherited the suit premises from his late father Ch. Surat Singh by virtue of the will executed by him. However, the petitioner who was looking after and managing the suit property on behalf of his father had inducted the respondents as tenants in the suit premises comprising of one big room and open space in the year 1974-75.....

3. The petitioner also owns the adjoining properties bearing no. 94-95, Village Rajpura, Gurmandi, Delhi-110007 adjoining the suit property and the suit property is enclosed and covered from three sides by the boundaries of properties no. 94-95, Village Rajpura, Gurmandi, Delhi and on the fourth side it has an opening on the narrow road facing it. The petitioner had raised three storeyed building comprising of about 100 living rooms in properties bearing no. 94-95, Village Rajpura, Gurmandi, Delhi, which he is using for providing residential accommodation to college girls for the last several years.....

4. That because of the laudable services rendered to the customers, the business of the petitioner has flourished manifold thereby necessitating the setting up of a separate independent office for his ministerial staff and accommodation for the workers and attendants of different categories on duty to maintain their availability and prompt services with all the regularity. The effecting of the said changes and the creation of the said facilities are extremely necessary for providing independence, privacy and exclusiveness to the college girls from the working staff.

5. The petitioner further wants to construct a separate entrance for the upper floors of the building by constructing separate and independent staircases to smoothen the entry and exits of the occupants,

which is urgently required for proper use of the main building and the progress and advancement of business by creating additional facilities for the convenience of the occupants.

6. The petitioner thus bona fide requires the suit premises for occupation for himself for the proper running and advancing of his business by creating the said necessary facilities. The suit property is strategically most suited for creation of the said facilities, which have gained foremost importance for the advancement of his business and the petitioner has no other reasonably suitable alternative accommodation available with him to satisfy his said urgent requirements.”

3. The petitioners-tenants had sought leave to contest the eviction petition on several grounds which have been noticed, dealt with and rejected in the impugned order by the learned Additional Rent Controller.

The relevant parts of the impugned order are re-produced below:-

“10. The first objection of the respondent in the present application is that the premises under the tenancy of the respondent was let out for commercial purposes and as such the provisions of section 14 (1) (e) DRC Act are not applicable. In view of judgment of Hon'ble Supreme Court of India in case titled as Satyawati Sharma (Dead by LRs) vs. Union of India & Another (supra), the aforesaid limb of arguments does not survive any more. The second ground taken for by the respondents in the present application is that the petitioner is not the owner of the property in question. It has to be seen that in the entire application, the respondents have not specified as to who else is the owner of the suit property if the petitioner is not the owner of the property in question. The petitioner in the present petition has clearly stated that he has inherited the suit premises from his late father Sh. Surat Singh by virtue of the Will executed by him. It has been further submitted that petitioner inducted the respondents as tenants in the suit premises i.e. 82, Village Rajpura, Gurmandi, Delhi 07 comprising of one big room and open space. It has to be seen further that the petitioner has stated further the respondents have filed a false and frivolous suit for perpetual injunction against the petitioner and the filing of the said suit has also not been denied by the

respondents. As such, I have no hesitation to hold that the aforesaid ground taken for by the respondents is not tenable.

The third ground taken for by the respondent is with respect to the bona fide requirement of the petitioner. It has been stated by the respondents that the need of the petitioner is mala fide and the petitioner has other accommodations as well, the details of which have been given on page no. 5 and 6 of the application for leave to contest the present petition. The alleged properties available with the petitioner have been detailed by the respondents as under :

1. Property no. 73, Rajpura, Gurmandi, Delhi.
2. Property no. 67, Rajpura, Gurmandi, Delhi sold by petitioner.
3. Plot in Greater Noida.
4. Duplex Plot no. 105 comprising of 12 to 15 rooms.
5. Aparna Hostel having more than 165 rooms.
6. Property no. A83, Gurmandi Delhi.
7. Properties purchased by petitioner in Rajpur in the names of his relations.
8. Land over 3000 square yards encroached by petitioner.
9. Farm House near Delhi Border.

It has been stated further that the petitioner has several accommodations in his possession to carry on their business and other activities.....

It has to be seen that the petitioner has clearly alleged that he owns the adjoining property bearing no. 94-95, Village Rampura and the petitioner had raised three storeyed building comprising of about 100 living rooms in the said property no. 94-95, village Rampura, which is used to be given college girls for residential accommodation. It has been further submitted that as the business of plaintiff has flourished manifold, the petitioner requires to set up a separate independent office for his ministerial staff and accommodation of workers and attendants of different categories on duty to maintain their availability and prompt services with all the regularity. It has been further submitted that petitioner wants to construct a separate entrance for the upper floors of the building by constructing separate and independent staircase to smoothen the entry and exits of the occupants, which is urgently required for proper use of the main building.

It has to be seen that the site plan has been filed on record by the petitioner and the same has not been denied specifically. The suit premises has been shown in red colour in the site plan. The respondents have not filed on record any site plan of their own. I am of

the opinion that Ld. counsel for the petitioner has rightly pointed out that the strategic location of the premises in question has not been denied by the respondents. The petitioner has a flourishing business and same has not been denied by the respondent. The thrust of the respondents is that the petitioner has other accommodations as well as stated by the respondent, but nowhere it has been submitted by the respondents that the aforesaid alleged locations available with the petitioners are strategically located so as to help the petitioner to satisfy his needs for expansion of his business. It is true that in the counter affidavit and reply filed on record the petitioner has not denied that he is the joint owner of some of the properties as stated by the respondents in the present application and the accompanying affidavit but it has been clearly stated by the petitioner that the aforesaid properties are distantly located which cannot help the petitioner to fulfill his requirements. I am of the opinion that it has been rightly pointed out by the Ld. counsel for the petitioner that the respondents have failed to show the title of the petitioner in respect to those properties and as to how the same are strategically located to fulfill the requirements of the petitioner.

4. Feeling aggrieved the petitioners-tenants have invoked the revisional jurisdiction of this Court for the reversal of the impugned order and grant of leave to contest the respondent's eviction petition to them. Mr. G.P.Thareja, learned counsel for the petitioners at the outset questioned the correctness of the judgment of the Supreme Court in the case of "Satyawati Sharma v. Union of India & ors.",(2008) 5 Supreme Court Cases 287, wherein the Supreme Court had given a new look to Section 14(1)(e) of the Act by holding that a landlord could get a tenant evicted on the ground of *bona fide* requirement of the tenanted premises even if the same had been let out for non-residential purpose, which was not permissible under

Section 14(1)(e) earlier to this judgment. Mr. Thareja's argument was that the Supreme Court could only recommend to the Government to amend Section 14(1)(e) so as to make available the remedy of eviction of a tenant on the ground of *bona fide* requirement even in respect of the premise which had been let out for commercial purposes, as is admittedly the position in the case in hand, but it itself could not have passed a judgment to the effect that the existing Section would stand amended to read as if the remedy for evicting some tenant would be available to those landlords also who had let out their premises for non-residential purposes, as has been held in Satyawati's case(supra) relying on which judgment the Rent Controllers' Courts these days are flooded with eviction petitions under Section 14(1)(e) of the Act in respect of commercial properties in the capital city and eviction petitions in respect of residential properties have taken the back seat. Mr. Thareja sought support for this argument from a Constitution Bench judgment of the Supreme Court in "P.Ramachandra Rao vs State of Karnataka", (2002) 4 Supreme Court Cases 578 wherein it was held that legislation by judicial verdicts is not permissible. Mr. Thareja also argued that in view of this Constitution Bench judgment the decision of the Supreme Court in Satyawati's case(supra) is to be

considered to be a judgment *per incuriam* since in that case P. Ramachandra's case, wherein it was held that judicial legislation is not permissible, has not been noticed and considered and if that had been done, perhaps, it might not have been held in Satyawati Sharma's case that Section 14(1)(e) of the Act would be available even in respect of the premises let out for non-residential purposes and, therefore, this Court should hold Satyawati's judgment to be *per incuriam*. Not only that, Mr. Thaeja further contended, applying the dictum of P. Ramachandra's case this Court should reject the eviction petition itself of the respondent – landlord since admittedly the tenanted premises had been let out for non-residential purposes to which Section 14(1)(e), as it stands in the statute book, has no application.

5. On the merits of the petitioners' application for grant of leave to contest, it was argued by Shri Thareja that the petitioners had raised several triable issues in their leave to contest application but the learned Additional Rent Controller has crossed to a great extent the limited jurisdiction vested in him at the stage of consideration of a leave to contest application under Section 25-B(5) of the Act, whereunder it is provided that the Controller shall grant to the tenant leave to contest if his affidavit

discloses such facts as would disentitle the landlord from obtaining the eviction order, by going too deep into each of the pleas raised by them, discussing them threadbare and giving categorical findings thereupon while rejecting them as if final judgment after regular trial was being rendered.

6. On the other hand, Shri Sandeep Sethi, learned senior counsel for the respondent-landlord supported the conclusions of the Additional Rent Controller and contended that since the various pleas raised by the petitioners-tenants were totally frivolous the same have been very rightly and for cogent reasons rejected and there is no scope for this Court to exercise the limited revisional jurisdiction vested in it under Section 25-B(8) of the Act.

7. As far as the first argument advanced by the learned counsel for the petitioners to the effect that decision of Satyawati Sharma's case was rendered *per incuriam* is concerned and this Court should hold so the same cannot be accepted for the simple reason that the Supreme Court has, on a couple of occasions, held that no judgment of Supreme Court can be assailed before the High Court on the ground that certain aspects were not considered or relevant provisions were not brought to the notice of the

Supreme Court. Those decisions were noticed by a Division Bench of this Court in the case of ***“Indian Airlines vs. UOI & Others”***, 128 (2006) DLT 505 and the Division Bench of this Court also held that the High Court cannot decline the law laid down by the Supreme Court as *per incuriam*. Para no. 23 of the judgment of the Division Bench, which deals with this aspect, as reproduced below:

“27. There is another reason also why the contention raised by the learned Counsel for the petitioner cannot be accepted. The issue, whether Standing Orders and/or the Standing Orders Act will apply to "air transport services", has already been decided by a Division Bench of this Court as well as the Supreme Court. A decision of the Supreme Court is binding under Article 141 of the Constitution of India. In view of the binding nature of the judgments of the Supreme Court we cannot hold and declare the law laid down by the Supreme Court as *per incuriam* or take a contrary view on the ground that the Supreme Court has failed to deal with certain aspects or some relevant provisions of law were not brought to its notice or some argument was not raised/examined. Merely because certain aspects of a matter were never examined or considered by the Supreme Court, does not entitle a High Court to refuse or follow the said decision. Decisions of the Supreme Court are binding under Article 141 of the Constitution of India and cannot be assailed before the High Court on the ground that certain aspects were not brought to the notice of the Supreme Court or considered by it. High Courts are duty bound to follow the judgment of the Supreme Court and it is only for the Supreme Court to re-examine and reconsider its earlier judgments. The Supreme Court in the case of Director of Settlement A.P. and Ors. v. [M.R. Apparao MANU/SC/0219/2002](#) : [2002]2SCR661 has examined Article 141 of the Constitution of India and has unequivocally held that the law laid down by the Supreme Court is binding on all Courts in India and it cannot be assailed on the ground that certain aspects were not considered or relevant provisions were not brought to the notice of the Supreme Court. When an issue is decided by the Supreme Court it is the duty of the High Court or the subordinate Court to follow the said decision. Similarly, the Supreme Court in the case of Suganthi Suresh Kumar v. [Jagdeeshan MANU/SC/0037/2002](#) : 2002CriLJ1003 has held as under:

It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. It was pointed out by this Court in *Anil Kumar Neotia v. Union of India* [MANU/SC/0027/1988](#) : [1988]3SCR738 that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court.”

8. In view of the afore-said legal position, this Court is bound to follow the judgment of the Supreme Court in *Satyawati's case*(supra) irrespective of the fact that P. Ramachandra's judgment was not noticed.

9. Coming now to the merits of the respondent – landlord's case regarding *bona fide* requirement I find that this is a case where the respondent – landlord is running a girls' hostel comprising of about 100 rooms in his adjoining property which he claims to be his property though the petitioners dispute that fact. He has sought eviction of the petitioners to utilize the same for accommodating his employees. The respondent – landlord has been running his girls' hostel in the adjoining property for years. Suddenly he has felt the need for having additional accommodation. This, thus, is a case of requirement of additional accommodation by a landlord who already is well settled in his business. The Supreme Court

has held in the case of ***“Santosh Devi Soni vs. Chand Kiran”, CA No. 412 of 2000, decided on January 17, 2000*** that when it is a case of additional accommodation of the landlord leave to defend should normally be not refused to the tenant. While rendering that judgment and granting leave to the appellant – tenant of that case, who had lost in the trial Court as well as the High Court, the Supreme Court had also referred to its earlier decision in ***“S.M. Mehra vs. D.D. Malik”, CA No. 120 of 1990 decided on January 11, 1990*** wherein the landlord already in occupation of some accommodation sought eviction of a tenant from other portion of his property and the Supreme Court had held that where the landlord actually required additional accommodation or not could be properly determined only by granting leave to contest the eviction petition to the tenant and there was no need to take a summary procedure.

10. In view of the afore-said decision of the Supreme Court, the petitioners – tenants in the present case also deserve to be granted leave to contest the eviction petition filed against them by the respondent – landlord on the ground that he required additional accommodation for better running of his existing business.

11. This revision petition is accordingly allowed. The impugned order passed by the learned Additional Rent Controller is set aside and the case is remanded back to the trial Court for disposal of the eviction petition in accordance with law. The parties shall appear before the trial Court now on 29th October, 2011 at 2 p.m.

(P.K. BHASIN), J

October 12, 2011