

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

% *Judgment reserved on : 08.05.2012*
Judgment delivered on : 10.05.2012

+ **RC.REV. 45/2011 & CM No.2811/2011**

MEHAR ELLAHI Petitioner
Through: Mr.Amar Pal and Mr.Niyazuddin,
Adv.

versus

SULTANA & ORS Respondent
Through: Mr. Sidhartha Bamba and Mr.
Nishant Nandan, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Impugned judgment is dated 30.5.2009; eviction petition filed by the landlord Mehar Ellahi seeking eviction of his tenant Sultana and others from the tenanted premises i.e. the first floor of property bearing No.7565, private No.D, Ward No.14, near Bari Masjid, Panchakki, Quresh Nagar, Sadar Bazar, Delhi (as depicted in red colour in the site plan had been dismissed); this was after trial.

2 This Court is sitting in its power of revision. Unless and until a patent illegality or perversity is pointed out in the judgment of the trial court below interference by the High Court is not called for. In this context observations of the Apex Court in AIR 1999 SC 2507 Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, are relevant; which are noted herein as under:-

“The revisional jurisdiction exercisable by the High Court under Section 25-B (8) is not so limited as is under Section 115 CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion from the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to sub-Section (8) of Section 25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law.”

3 It is in this background that the arguments of the respective parties are appreciated.

4 Record shows that the grounds of eviction as contained in the eviction petition are that the petitioner has a large family comprising of three sons; his daughter-in-law, two grand children; he is a resident of 7474, near Bari Masjid, Panchakki, Quresh Nagar, Sadar Bazar, Delhi; the accommodation available with him is one shop on the ground floor and one room, kitchen, latrine and bath room on the first floor and so also the same accommodation on second floor and he thus has only two rooms, two kitchen, two latrine and bathroom in his possession which is insufficient accommodation for the members of his family. Accordingly, eviction petition on the ground of bonafide requirement was filed.

5 Written statement was filed disputing these submissions. It was denied that the need of the landlord was bonafide. Contention was that he has made a active concealment of material facts.

6 Oral and documentary evidence was led. Three witnesses were examined on behalf of the plaintiff. PW-1 was the landlord himself. In para 7 of his affidavit by way of evidence he had deposed that the

premises where he is staying is a three storeyed building having one shop on the ground floor, first floor has one room, kitchen, latrine and bathroom; so also the second floor which is occupied by his two unmarried sons and one unmarried daughter. Contention of the learned counsel for the tenant is that this deposition on oath is contrary to the averments made in the eviction petition. Para 7 of the affidavit when read with the grounds mentioned in the eviction petition show that there appears to be a typographical error in the eviction petition as in the body of the eviction petition [sub para (iv) of para 18(a)] it has been clearly stated that the accommodation available with the landlord is one shop on the ground floor and one room, kitchen and bathroom on the first floor; there appears to be one line missing; the total accommodation described by the landlord is two rooms, two kitchen and two bathrooms which is the same as was stated by him in his deposition on affidavit. There is thus no contradiction on this score.

7 Cross-examination of PW-1 has also been perused. In his cross-examination he has admitted that he is also the owner of the property bearing No.7565; in which there is one shop on the ground floor which has been tenanted out; it is not in dispute that front portion of 7565 on

the first floor is with the present tenant. PW-1 has further admitted in his cross-examination that he has one room on the first floor of property no.7565 which is with Nawabuddin who is an old tenant living there since last 20-25 years; further contention being that Nawabuddin is a tenant with respect to one court and one room; Nawabuddin had come into witness box as PW-2. He has stated that he was an occupant of the first floor of the property bearing No.7565 which is adjacent to the tenant property but he has vacated this property about 20-25 years ago i.e. he lived in the property, only till 1984. Thus on this score the landlord has made a false statement; he has specifically in his cross-examination stated that one room is with the tenant Nawabuddin whereas Nawabuddin (PW-2) has stated that he had vacated this property in 1984; so also a false and incorrect statement has been made by the landlord qua property No.7566. Relevant would it be to state that the landlord had not disclosed that the property No.7566 is also owned by him; this has been elicited in his cross-examination wherein he has admitted that the property No.7566 is also owned by him and Islamuddin was a tenant who has since vacated it; thereafter in the next para of his cross-examination PW-1 has stated that Islamuddin was also

having a shop on the ground of property No.7565. Islamuddin has come into witness box as PW-3. He has deposed that he was a tenant in respect of a shop on the ground floor of property No.7565 which was vacated by him in the year 1990. On this count also the petitioner has made a wrong and false statement; his need is definitely not bonafide as he has not been able to explain why he has hidden from the court the fact that property No.7565 was owned by him as also the property No.7566. Second wrong statement was to the effect that both property No.7565 and 7566 are in occupation of to tenants namely Nawabuddin and Islamuddin; both of whom had come into witness box and disputed this submission; both of them have vacated these premises long ago i.e. in the years 1984 and 1990 respectively.

8 Eviction petition was filed in the year 2000; it was in this context that the impugned judgment has noted these facts in the correct perspective and drawn the conclusion that such a landlord who does not come to the court with clean hands is not entitled to any relief.

9 Impugned judgment in no manner suffers from any infirmity.

10 Reliance by the learned counsel for the petitioners upon the judgment reported in 1998 RLR 528 Ram Nainrain Vs. Asha Rani and

2001 STPL(LE) 29248 SC M.L.Prabhakar Vs. Rajiv Singal are misplaced. Not only there is a suppression of material facts in the instant case but there has been a fraud which has also been played upon the court; wrong statements have been made on oath. Thus these judgments do not in any manner come to the aid of the petitioner. Petitioner was rightly not entitled to the relief prayed for by him.

11 Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MAY 10, 2012
nandan