

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

+ R.C. REV. 200/2012

Date of Decision: 10.10.2012

SAGHIR AHMAD & OTHERS

.....Petitioner

Through: Mr.N.N.Sarvaria, Adv.

Versus

MOHD IFRAN

....Respondent

Through: Mr.Rajat Aneja, Mr.S.Sethu,
Advs.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition under Section 25-B(8) of the Delhi Rent Control Act (for short the 'Act') is directed against the order dated 03.01.2012 of the learned ARC, whereby the leave to defend application filed by the petitioners in the eviction petition filed against them by the respondent, was dismissed.

2. The petitioners are the tenants under the respondent in respect of one shop bearing No. 5176-77, Main Road, Ballimaran, Delhi. Their eviction is sought by the respondent on the ground of bona fide requirement thereof for the purpose of storing his material of *Halwai*

business, which he is running in the adjoining shop, where the accommodation available with the respondent is stated to be highly insufficient, being only of 1 square yd.

3. The respondent's case is that due to shortage of accommodation with him, he could not flourish his business of *Halwai*, which he has been doing. It is his case that in the accommodation presently available with him, there is no space for the customers to remain standing, and because of shortage of space, he is not able to expand his business and make proper livelihood for his large family, including that of five school going children. It is stated that he has also filed an eviction petition in respect of the adjoining shop bearing No. 5175.

4. The petitioners filed leave to defend application, alleging the respondent to be interested in increasing the rent only and being in possession of two shops in property bearing Nos. 1353, Haveli Hasamuddin Haider, Ballimaran, Delhi where he is running his *Halwai* and restaurant business. It is alleged that the respondent has also been running a hotel under the name of Abbas Hotel in two properties being 5083, Ballimaran, Chandni Chowk and 5077-A, Kucha Rehman, Chandni Chowk. It is their case that these properties bearing Nos. 5083 and 5077-A, are adjacent and attached with each other measure 200 sq. yds., were in the name of the respondent's sister Gulzar Begum, but now, after her death, the respondent alone is in possession and control of the said hotel. It is also alleged that the suit

premises is situated in slum area and petition was not maintainable without the permission of the Competent Authority (Slums).

5. The respondent/landlord, in reply to the leave to defend application, denied to be the owner of aforesaid shops bearing Nos. 1353 or that of 5083 & 5077-A. With regard to the shop bearing No. 1353, his plea is that this belonged to Slum and J.J. Wing of Government and the respondent has no right, title or interest therein. With regard to the premises No. 5083 and 5077-A, the plea of the respondent is that he has no concern with these properties and that, hotel business was of his sisters Gulzar Begum and Mariam Bi; and that after the death of Gulzar Begum, Mariam Bi continues to be the owner in possession of the said business. On consideration of the averments of the parties, the learned ARC declined to grant the leave to contest to the petitioners and passed eviction order against them vide the impugned order. The same is under challenge in the instant petition.

6. Before adverting to the submissions made by the learned counsels for the parties, I may reiterate that the power of this Court under Section 25–B (8) of the Act are not as wide as those of Appellate Court, and in case it is found that the impugned order is according to law and does not suffer from any jurisdictional error, this Court must refrain from interfering with the same. The power under this provision is limited and supervisory in nature. Only when it is evident that the

Rent Controller has committed grave illegality or came to a conclusion which was not possible, based on the material produced, should this Court interfere in the orders passed by the Rent Controller.

7. With regard to the plea of the petitioner that the respondent is the owner of property bearing No. 1353, the respondent placed on the suit that was filed by the respondent and his brother being Suit No. 130/2000 against one Mohd. Shahjad @ Shahjad Ahmed and DDA & MCD. From the decision of the Civil Judge dated 6.1.2001 rendered in the said case, it would be seen that the respondent and his brother are the tenants in respect of shop bearing No. 1353, Haveli Hasamuddin Haider, Ballimaran, where they were stated to be running Tea stall. The learned ARC has taken note of this, and rightly observed, that the respondent was in possession of the said shop at 1353 along with his brother as a tenant, and there was nothing to controvert the same, and that being so, the said property could not be said to be available with the respondent in his independent right.

8. With regard to the properties bearing No. 5083 & 5077-A, the respondent has stated and maintained that he has no concern with these properties. Property No. 5077-A was stated to be owned by his sister. After the death of his sister Gulzar Begum, the licence of Abbas Hotel now continued in the name of his surviving sister Mariam Bi. The learned ARC observed, and rightly so, that supervising of the business of the sister by the respondent at some point of time, could not be taken

to be as the respondent having interest in those properties or hotel business of his sister. A challan made in the name of the respondent under Section 28/112, D.P.Act wherein the respondent was ultimately acquitted, was only in respect of running of hotel without licence, and was not a document of title of the hotel business or the premises. The challan itself is no ground to hold that the respondent had any interest in those properties or the hotel business of his sister, which admittedly, he was merely supervising and which, undisputedly, belonged to his sister.

9. It is undisputed that the respondent owns two other shops being 5174 and 5175 in the suit premises and both of these are with the tenants and he has already filed a petition of eviction against the tenant in occupation of shop No. 5175. The respondent's case in this regard is that not only he requires the suit shop, but also shop No. 5175 for his *Halwai* business since the present accommodation measuring only 1 sq. yd. is highly insufficient and unsuitable. By any stretch of imagination, the present accommodation of this size available with the respondent, cannot be said to be adequate and suitable for the purpose of running *Halwai* business, which he has been carrying since long. There cannot be any denial that the respondent is well within his rights and entitlement to fulfill his aspirations of expansion of business, particularly, when he owns the shops adjoining the shop where he is presently running his business. Neither the tenant, nor this court can deprive him of his lawful entitlement. The plea that the suit premises

was situated in slum area and the petition, without the permission of the Competent Authority (Slums), was not maintainable, is noted only for rejection. It is settled law that no such permission is required in the case of eviction on the ground of the bona fide requirement of the landlord.

10. In view of my above discussion, I do not see any infirmity or illegality in the impugned order of ARC, warranting any interference by this court. The petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 10, 2012

akb