

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

% *Date of Judgment: 30.05.2012*

+ RC.REV. 249/2012 & CM Nos.10252-53/2012

SHASHI KAPOOR Petitioner
Through Mr. Sunil K. Mittal, Adv.

versus

GOPAL KUMAR GUPTA Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Present petition has impugned the judgment and decree dated 14.12.2011 whereby the eviction petition filed by the landlord Dr. Gopal Kumar Gupta seeking eviction of his tenant Shashi Kapoor from the disputed premises i.e. ground floor in property bearing No. E-6A and the mezzanine Hauz Khas, main market, New Delhi (depicted in red colour in the site plan) had been decreed in favour of the landlord; this was after trial.

2 The averments made in the eviction petition have been perused. The contention of the petitioner is that he is the owner of this property; property was earlier owned by his mother Manorma Gupta who had let it out to the tenant in the year 1988; Manorma Gupta had died on 07.11.1997 leaving behind the petitioner and his other brothers and sisters; the petitioner is the co-owner; the respondent has always been treating him as his landlord and has been paying rent to him; the other co-owners are well settled and they have separate houses; they are not contesting the petition. The petitioner is the only contesting co-owner. He is a registered medical practitioner having done his MBBS from Maulana Azad Medical College and had completed MD in Radiology from All India Institute of Medical Science; he is presently residing on the part of the mezzanine floor, first floor and barsati of the same property i.e. property bearing No. E-6A, Hauz Khas, New Delhi. The ground floor comprises of two shops numbered 1 & 2; present tenant is in occupation of shop No. 2 and mezzanine above it. Shop No. 1 is in possession of the landlord from where he is running his clinic; he is also using part of the mezzanine floor for storage purpose for keeping his records and other goods. The balance portion of the mezzanine floor is

being used by him for drawing-cum-dining room and a toilet for the guests. The space available with the landlord is highly insufficient; he cannot run his clinic comfortably; he has installed two machines i.e. one X-ray machine and ultrasound machine; he has two employees i.e. one receptionist and a technician who assist the petitioner in conducting X-ray tests and in preparing images. In front of shop No. 1, (in occupation of the landlord) there is small covered verandah which is being used as a reception; only one table and chair can be accommodated therein; the petitioner is left with only one bench where two or three patients or their relatives can be accommodated; behind the reception, there is one small room in which the petitioner has made a waiting room where only six patients or their relatives can be accommodated; behind this waiting room, he is having a small passage which leads to the ultrasound room which is also a very small room and a toilet which opens in this ultrasound room; the petitioner has installed one X-ray machine in other room; in the passage which leads from the waiting room to the ultrasound room, the petitioner has put one small table where he has installed one computer and printer in order that the landlord can examine the reports and discuss the problems with his patients; this

space is highly insufficient; the shop presently in occupation of the tenant when added to the existing space will enable the landlord to have an independent cabin of his own which is a necessity for him keeping in view the nature of his profession. The clinic of the petitioner as on date can accommodate only nine persons at a given time; during the clinic timings, there are more than 15-20 persons including patients and relatives who meet him; due to lack of sitting capacity, they have to stand outside the clinic and sometimes even on the main road; place is highly insufficient. There only small toilet in whole of the clinic is also situated in the ultrasound room; if any of the patients or their relative or even the staff have to go to toilet, they have to go through this ultrasound room which cause inconvenience and also makes the clinic unhygienic. With the advancement of technology, the petitioner also proposes to install a digital system to replace the old X-ray machine which has at present but because of paucity of space, he cannot do so; this digital system requires a space of 6'X10' feet. Eviction petition has accordingly been filed.

3 Written statement was filed. The bone of contention urged in the written statement and argued before this Court is largely two-fold; first

submission being that the petitioner is not the owner; even presuming that his mother Manorama Gupta was the owner of the premises, the present petitioner namely Dr. Gopal Kumar Gupta does not automatically get the vested right and interest in the property; there are other co-owners; their interest has also to be watched; they have not been pleaded; this ground has been seriously challenged. The second submission of the learned counsel for the tenant is that a case of bonafide need has not been established; attention has been drawn to the examination and cross-examination of PW-1; contention being that it has nowhere depicted that the accommodation presently available with the landlord/doctor is insufficient; this need is malafide; a 'pagri' had been given to the landlord at the time of initiation of the tenancy and since the rent is meager, this is only reason why the tenant is sought to be evicted.

4 Record shows that this submission of the learned counsel for the tenant is palpably wrong. Only one witness has been examined on behalf of the landlord and the entire case of the landlord has been based on his version. He has on oath reiterated the submissions contained in the eviction petition. Documentary evidence which includes the sale deed of

the suit property is Ex. PW-1/1; death certificate of his father R.B. Gupta is Ex. PW-1/3. Ex. PW-1/4 is the site plan; death certificate of Manorama Gupta is Ex. PW-1/6; relinquishment deed Ex. PW-1/7 is a document dated 03.05.2010 whereby all the other co-owners of the suit property have relinquished their share in favour of the present petitioner; they are other brothers and sisters of the petitioner; this document is a registered document and in fact no query has been put to PW-1 on this score that this document is either false or incorrect.

5 The need of the landlord has also been reiterated in this deposition; his submission that the space presently available is insufficient for running a clinic and he requires additional space as he has only one shop in his occupation; the landlord has installed two machines i.e. one X-ray machine and an ultrasound machine; he wishes to install a modern digital system which because of paucity of space has not been able to do so. He has a staff comprising of a receptionist and a technician who assist him in conducting X-ray tests and in preparing the images. PW-1 has further deposed that there is only one small toilet in the entire clinic situated in the ultrasound room; if any person has to go to the toilet, he has to go through the ultrasound room which also causes

inconvenience and makes it unhygienic for which the practice of the doctor also suffers. He has further deposed that because of paucity of time, the patients have to sit outside the clinic and sometime even on the main road. Perusal of the site plan Ex. PW-1/4 substantiates this submission.

6 Nothing has been elicited in the cross-examination of PW-1 which could shake his credibility; all the necessary ingredients of Section 14 (1)(e) of the DRCA which necessarily entail the following have in fact been satisfied:-

- (a) The applicant has to be a landlord;*
- (b) He has also to be an owner;*
- (c) The premises in question should have been let out for residential or commercial purpose or both;*
- (d) The said premises are required bon fide by the landlord for occupation as a residence for himself or his family dependent upon him and;*
- (e) That the landlord or such person dependent upon him has no other reasonably suitable residential accommodation.”*

7 In 1995 RLR 162 Jiwan Lal Vs. Gurdial Kaur & Ors. a Bench of this Court while dealing with the concept of ownership in a pending eviction petition under Section 14(1)(e) of the DRCA had noted as follows:

“There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises.”

8 There was no reason as to why the eviction petition should not have been decreed. The impugned judgment suffers from no infirmity.

9 This Court is sitting in its powers of revisions. 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."

10 Until and unless there is a patent illegality or a perversity, the Court shall not interfere.

11 The eviction petition thus having been decreed suffers from no infirmity. Petition is without any merit; it is dismissed.

INDERMEET KAUR, J

MAY 30, 2012

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