

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

+ **R.C.Rev.303/2012**

Date of Decision: 06.08.2012

PAWAN KUMAR AND ORS.

..... PETITIONERS

Through: Mr G.P.Thareja, Advocate

Versus

SANT LAL AND. ANR.

.....RESPONDENTS

Through: None.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. Present revision petition under section 25B (8) of the Delhi Rent Control Act, 1958 (for short 'the Act') seeks assailing of order dated 27th March 2012 of Senior Civil Judge-cum-Rent Controller, North, Delhi, whereby leave to defend application of the petitioners herein, was dismissed.

2. The petitioners are joint tenants in respect of one shop measuring about 10 ft x 15 ft abutting the main road on the front, with entry and exit to it from the roadside, in the suit premises No. 2/7, Roop Nagar, Delhi. The tenanted premises was shown in red colour in the site plan filed with the eviction petition. The suit premises was stated to be let out to the petitioners vide agreement dated 10.09.1992 for carrying on the business of motor car accessories etc. The petitioners' eviction was sought by the

respondents, who are brothers, and are living with their families in first and second floors of the suit premises. The tenanted premises was sought to be required for the son of respondent No. 2 Kailash Chander, who is a Doctor with MBBS degree and registered with Delhi Medical Council and was unemployed. He intended to set up his clinic in the tenanted premises. The entire ground floor, except the tenanted premises, was let out to Indian Overseas Bank. It was the case of the petitioners that since they did not have any other suitable commercial premises, the tenanted premises was required for setting up a clinic.

3. The petitioners filed leave to contest application supported with an affidavit. They had taken several pleas to seek leave to defend, the foremost being that the respondents have several properties available with them which would be sufficient to satisfy their requirements. They have mentioned about nine such properties. With regard to the plea of the tenanted premises being required for Doctor Ankit, the son of respondent No. 2 Kailash Chander, the petitioners alleged the same to be a created need. It was averred that Doctor Ankit has his clinic on the first floor, and he being an expert in Anesthesia, was working in hospitals and having good earnings, and hence did not require space for clinic. It was alleged that a specialist in anesthesia has to work in hospitals and need not set up a clinic. It was averred that in any case, there was a shop available with the respondents on the back side of the ground floor, the possession of which has been concealed by the respondents.

4. It was also the petitioners' case that the portion measuring 3000 square feet, adjoining to the tenanted premises on the ground floor, was given on rent in the year 2008 to the Indian Overseas Bank @ Rs.2,52,000/- per month and also the open space on the ground floor given for ATM, whereas the requirement of the bank was 2000 square feet only. This was alleged to be malafide on the part of the respondents to create paucity of space. On all these grounds, the petitioners alleged having raised triable issues.

5. The respondents refuted all the averments of the petitioners. The basement and the entire ground floor, except the tenanted premises and passage to the first floor, was stated to be under the tenancy of the bank since 1984. The first and second floor of the premises, were stated being used by the respondents for the residence of their families. It was averred that since Dr. Ankit could not get any suitable job, nor he had any space for his clinic, he joined two years diploma course in anesthesiology at Dehradun in the year 2010 as additional qualification, which he will be completing in the year 2012, and thereafter he intends to set up his clinic in the tenanted premises. It was denied that Dr. Ankit was working in any hospital or had good income. It was also denied that they had let out any additional space to the bank in the year 2008 or any part of the open space to the bank for ATM in 2008. With regard to other properties, allegedly owned by the respondents, it was specifically stated that properties mentioned at Serial No. (ii) to (vi) are owned by Sushila Gupta, wife of respondent No. 1, and his brother-in-law S.K. Mittal, and

that respondent No. 2 or any of his family members had no interest or right in them. Similarly, properties mentioned at Serial No. (vi) to (viii) were stated to be vacant residential plots of Smt. Sushila Gupta, but, these had already been sold in the year 2004-2005. The contention of the petitioner that the properties mentioned at Serial No. (viii) and (ix) are owned by the respondents, is stated to be vague and false.

6. The learned Rent Controller, vide the impugned order declined to grant leave to contest the eviction petition and consequently passed eviction order.

7. This order is assailed by the petitioners on several grounds including those which were raised before the Rent Controller.

8. Heard learned counsel for the parties and perused the record.

9. Before advertng to the submissions made by the learned Counsel for the parties, I must reiterate that the powers of this Court under Section 25 –B (8) of the Act are not as wide as those of the Appellate Court, and in case it is found that the impugned order is according to law and does not suffer from any jurisdictional error, the High 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. In ***Sarla Ahuja vs.***

United India Insurance Co. Ltd. AIR 1999 SC 100 the Apex Court has held as under:

“The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is "according to the law." In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

10. Now, let me examine the facts and circumstances of the case in order to arrive at the conclusion that whether the impugned order confirms to the settled parameters of law or it requires interference by this Court. The foremost contention of learned counsel was that the respondents are possessed of sufficient accommodation on the first and second floors of the suit premises, besides, owning several other properties and thus, the need being that of additional accommodation, the leave to defend ought to have been granted. In this regard reliance was placed on ***Santosh Devi Soni Vs. Chand Kiran, Civil Appeal No. 412 of 2000, decided on 17.01.2000*** and ***S.M. Mehra Vs. D.D. Mallik, Civil Appeal No. 120 of 1990, decided on 11.01.1990***. There is no dispute with regard to the proposition that if it was a case of need of additional accommodation, the leave to defend is to be ordinarily granted to the

tenant in the normal course. However, the case of the respondents is not that of additional accommodation as is sought to be presented by the learned counsel. There is no dispute that both the respondents are living with their families on the first and second floors of the suit premises, which are only meant for residential purposes. It has been outrightly denied by the respondents that any portion of the first floor was being used by Dr. Ankit for his clinic.

11. Moving further, the plea that there was space measuring 3,000 square feet on the ground floor, which had been let out to the bank in the year 2008 and also additional space for the ATM, is entirely misconceived. The respondents have specifically stated about the entire ground floor, except the tenanted premises and the passage, having been let out to the Indian Overseas Bank since the year 1984. They had also denied having let out any space for the ATM of the bank in the year 2008, and specifically maintained that the ATM was set up by the bank at the space already in their tenancy since 1984. The learned counsel for the petitioner tried to demonstrate that the entire area of the ground floor measured about 2590 square feet, and the tenanted portion being only 150 square feet, and the area that was let out to the bank as per the said lease deed being only 1741 square feet, the rest of the area was in the possession of the respondents. This contention apparently, seems to be impressive, but however, a look at the relevant clause of lease deed entered into with the Indian Overseas Bank, would demolish this

contention of the learned counsel. The relevant clauses of lease deed read thus:

“SCHEDULE OF THE PROPERTY ABOVE
REFERRED TO:

1. The entire ground floor bearing No. 2/7, Roop Nagar, Delhi-7 on a plot of land having a total area of 288.11 sq.yds. (Two hundred and eighty-eight point eleven sq.yds.) comprising of the carpet covered area of 1741 sq.ft. consisting of one Banking Hall, one lunch room, one stationery room, three WCs and open courtyard.

2. The entire basement of the building bearing No. 2/7, Roop Nagar, Delhi-7 comprising of the carpet covered area of 1356 sq.ft. consisting of Banking Hall, one strong room and one record-room. The property is bounded as under:

North: Service Road; East: H. No. 2/6

South: Main Road; West: House No. 2/8”

12. This would show that the basement and the entire ground floor (except the tenanted premises) including the open court yard was let out by the respondents to the bank in the year 1984. Thus, the contention that the space measuring 3000 square feet and also additional space for ,ATM were let out to the Bank in the year 2008, is nothing, but frivolous. This is unbelievable that the bank would have taken any portion for setting up of ATM in 2008 without a rent agreement. That would substantiate that the space for ATM, set up by the bank in the courtyard, formed part of the tenanted premises taken on rent by the bank in the year 1984. Similarly, the plea that there was one room on the backside of the ground

floor in the possession of the respondents is nothing, but, vague and imaginary. The pleas which are taken in this regard are not only frivolous, imaginary and evasive, but are also inconsistent. These have been taken only for the sake of creating dent in the bonafide need of the respondents. At one place petitioners have stated the respondents having let out 3000 square feet additional space in the year 2008; at another place, it was stated the additional space has been let out for ATM; whereas it was their own submission that total area on the ground floor was 2590 square feet.

13. With regard to other properties, which are allegedly owned by the respondents, the latter's case was that properties at Sr. No. (ii) to (vii) were owned by Sushila Gupta , wife of Respondent No. 2 and or brother in law S.K. Mittal. It was the submission of learned counsel for the respondents that the properties at Sr. No. (v) to (vii), which were vacant residential plots of Sushila Gupta have already been sold by her in the year 2004-2005, through the petitioners only. It was submitted that the petitioners knew all these facts, being party to those sales, but have tried to mislead the Court by misrepresenting these facts. It was also submitted that the properties at Sr. No. (ii) to (iv), which were owned by Sushila Gupta and brother in law S.K. Mittal, and with which the respondents had no concern, being agricultural and residential and located in far away villages and Rohini, are not at all suitable for the setting up of a clinic. It was out-rightly denied by the respondents that they had any concern with the properties mentioned at Sr. No. (viii) and (ix), of which

even the description had not been given by the petitioners. The mention of these properties is not only imaginary, but mischievous on the part of the petitioners.

14. In view of above discussion, I do not see the respondents' case to be of requirement of additional accommodation, from any point of view. Neither premises on the first floor and second floor was available, nor is suitable for setting up a clinic by Dr. Ankit. No space on the ground floor of the suit premises was available with the respondents to enable respondent No. 2 and his son Dr. Ankit to set up a clinic. None of the other properties is owned or possessed by respondent No. 2, and in any case, none of these properties can be said to be suitable alternative for setting up a clinic.

15. The pleas taken by the petitioners disputing the requirement of tenanted premises for setting up clinic by Dr. Ankit, are entirely vague and inconsistent. At one place it was stated Dr. Ankit to be having his clinic on the first floor of the premises, whereas at another place it was alleged that he is working in hospitals and having good earnings. Then, at one place it was even denied that Dr. Ankit is a Doctor having MBBS degree or enrolled with Delhi Medical Council to practice as Doctor. It was also averred that specialist in anesthesia cannot do practice and has to work in hospitals only and cannot set up a clinic. I do not see any force in any of these submissions. The petitioners' own showing that Dr. Ankit was doing his practice on the first floor, would strengthen the case of the

respondents that Dr. Ankit intends to do the practice. After passing his MBBS degree in 2007 and doing practice for sometime, he being unable to get a job, chose to go for higher studies in the year 2010. I do not see any concealment or mala fide on the part of the respondents in this regard. It was not necessary for the respondents to keep telling the tenants about their members' activities. It is not the right of the tenant to question as to why he had gone for higher studies or why he does not want to work in hospitals and why he intends to set up a clinic. It is also not that a specialist in anesthesia essentially has to work in hospitals and cannot set up his clinic. All the contentions raised disputing the need of Dr. Ankit to set up a clinic, are entirely misconceived. The tenant cannot dictate his choices or terms on the landlord. In ***Pratibha Devi vs. T.V. Krishnan 2001 AIR SCW 4661***, the Hon'ble Supreme Court held that it is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. In ***Siddalingamma & Anr. Vs. Mamtha Shenoy(2001) 8 SCC 431***, the Hon'ble Supreme Court while considering the reasonable and bona fide requirement of landlord held that the question to be asked by a judge of facts, by placing himself in the place of the landlord , is, whether in the given facts proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. If the answer be in the positive, the need is bona fide.

16. Further, submissions of learned counsel for the petitioner that Dr. Ankit was not financially dependent upon his father and so the tenanted premises could not be got vacated for his requirement, is also only noted for rejection. It is trite that the landlord is entitled to help his son, establish his business. In ***Labhu Lal Vs. Sandhya Gupta 2011(1) RCR,(Rent) 231 (Delhi)***, it has been held by this Court that the children are very much dependant on the landlord for the purpose of setting up their business and such a requirement is a bonafide one. The right of the landlord for possession of his property for setting up a business for his son has been also recognized by the Apex Court in ***Ram Babu Aggarwal Vs. Jay Kishan Das 2009(2) RCR 455***. The moral duty of a father to help establish his son was also recognized by the Apex Court in ***Joginder Pal Singh Vs. Naval Kishore Behal AIR 2002 SC 2256*** in the following words:

“24.....Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a

close inter-relation or identify nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the overlaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent.”

17. Now I proceed to deal with the submissions of learned counsel for the petitioner regarding the maintainability of the eviction petition for the need of setting up a clinic by respondent No. 2 for his doctor son and the applicability of special procedure prescribed in Section 25 B. The submission of learned counsel is that the case of **Satyawati Sharma (Dead) by LRs Vs. Union Of India & Anr., III (2008) SLT 553** did not lay the correct proposition of law. In making this submission, the learned counsel referred to the decisions of Apex Court in **Union of India and another Vs. Deoki Nandan Aggarwal, AIR 1992 SC 96** and **Gauri Shanker and others Vs. Union of India and others AIR 1995 SC 55**. The learned counsel argued that the legislature has treated the commercial tenancy differently from the residential tenancy and the same was the view of the Supreme Court in the case of **Gauri Shanker** (supra). He submitted that the Court could not enlarge the scope of the legislation when the language of the provision is plain and unambiguous as held by the Supreme Court in the case of **Deoki Nandan Aggarwal** (supra). Elaborating the arguments on these two judgments, the learned counsel

sought to argue that the Hon'ble Supreme Court in the case of **Satyawati Sharma** (supra) has laid the law which is not in consonance with the scheme and object of the DRC Act. He submitted that the judgment rendered in the case of **Satyawati Sharma** (supra) can only be taken as precedent and not the statute or the legislation. He thus, alternatively argued that the case of **Satyawati Sharma** (supra) would not apply to all commercial premises sought to be evicted on the ground of bonafide requirement, but, would only confine to those which are let out for residential purposes. He also argued that **Satyawati Sharma** (supra) does not lay down that the special procedure envisaged under section 25B shall apply in the case of need of son of the landlord, since as per the Supreme Court in the case of **Ravi Dutt Sharma Vs. Ratan Lal Bhargava with Swaran Kaur and others vs. Smt. Pushpa Rani, AIR 1984 SC 967** this procedure was to apply only for a particular class of landlords, who fell within the provisions of 14(1) (e) of the Act requiring the tenanted premises only for their personal necessity.

18. With regard to the contentions of the learned counsel for the petitioner as regard to the judgment rendered by the Supreme Court in the case of **Satyawati Sharma** (supra), not being in consonance with the objective of the DRC Act, I may outrightly say to be not in agreement with the learned counsel. Without dwelling further in this regard, being outside the domain of this Court, I may justify myself in disagreeing with the learned counsel from the observations made by the Supreme Court in

the case of **Suganthi Suresh Kumar Vs. Jagdeeshan**, AIR 2002 SC 681 wherein it was held thus:

*“It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that 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 Vs. Union of India**, AIR 1988 SC 1353 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.”*

19. Now coming back to the contention of the learned counsel for the petitioner as regard to non-applicability of **Satyawati Sharma** (supra) in the case if premises let out for commercial purpose, it would suffice to say that this plea is apparently untenable and contrary to the ratio laid down in the said landmark judgment.

20. The next contention of the learned counsel for the petitioner that special procedure envisaged under section 25B would not apply in the case of need of son of landlord, I may proceed to reproduce the relevant observations of the Hon’ble Supreme Court in the case of **Satyawati Sharma** as under:

39. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned Counsel argued that Section

14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under:

“that the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation.”

While adopting this course, we have kept in view well recognized rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible **R.M.D. Chamarbougwalla Vs. Union of India AIR 1957 SC 628, and Bhawani Singh Vs. State of Rajasthan, 1996(3) SCC 105.**

As a sequel to the above, the explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant.”

21. Section 25-B of the Act provides special procedure for the disposal of applications for eviction on the ground of bonafide requirement. On very close examination of section 25-B sub section (1), it would be seen that an application filed by the landlord for recovery of possession of any premises on the ground specified in Clause (e) of the proviso to sub section (1) of Section 14 or under Section 14 (A) or under section 14-B or under section 14-C or under section 14-D, shall be dealt with in

accordance with the procedure specified in this section. Making a conjoint reading of both sections namely section 25-B and section 14(1) (e) of the Act, it could not be said that it was only in the case of landlord seeking eviction for his personal necessity, that the procedure envisaged under section 25-B would apply and it would not apply if the eviction was sought on ground of bonafide requirement of the son or any other dependent family member of the landlord. This contention raised by the learned counsel is apparently contrary to the dominant object of the provisions contained in these sections for providing speedy and effective remedy for a class of landlords contemplated by section 14(1) (e). Any other interpretation restricting special procedure of eviction to the personal and individual necessity of the landlord, would make the provisions of section 14(1)(e) as such meaningless and redundant. In the case of **Prithipal Singh Vs. Satpal Singh (Dead) through LRs.** (2009) 2 SCC 15 , the Supreme Court held that section 25-B (1) clearly shows that any application filed by a landlord for recovery of possession of any premises *inter alia* on the ground of section 14 (1) (e) of the Act, shall be strictly dealt with in accordance with the procedure specified in Section 25-B of the Act. In view of this discussion, I do not find any merit in the contention of learned counsel for the petitioner.

22. To sum up, it has been seen that all the pleas regarding Dr. Ankit or also availability of other suitable accommodation in the suit premises as also the respondent's owning other properties etc., as noted above, are not only illusory as discussed above, but are the attempts made by the

petitioners to shoot in the dark and designed with a view to somehow get leave to defend the eviction petition. The conduct of the petitioner asserting that the respondent owned other properties, whereas some of those properties had been sold by the wife of one of the respondents through the petitioner's only, certainly mars their credibility.

23. In view of my above discussion I could not find any infirmity or illegality in the impugned order of the Rent Controller warranting any interference by this Court under Article 227 of the Constitution. The petition is devoid of any merit and is hereby dismissed.

M.L. MEHTA, J.

AUGUST 06, 2012/awanish