

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

% *Judgment pronounced on: October 21, 2013*

+ **RC. Rev. No.162/2012 & C.M. Nos.6798/2012, 6799/2012 & 14587/2013**

JASWINDER SINGH Petitioner
Through Mr.Anand Mishra, Adv.

versus

SURINDER KAUR Respondent
Through Mr.K.C. Maini, Adv. with
Mr.Amardeep Maini, Adv.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The present revision petition is filed by the petitioner under Section 25B (8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) read with section 151 CPC against the eviction order dated 29th October 2011 passed against the petitioner by the learned Additional Rent Controller, in respect of premises bearing house no. 5/114, Gali No. 5, Nirankari Colony, Delhi 110009 (hereinafter referred to as “the tenanted premises”).

2. The main grounds taken in the present revision petition filed by the petitioner are that the respondent or her family members have no intention to return to Delhi as they are already settled in Ludhiana where they have flourishing business. Both the sons of the respondent studied and got married in Ludhiana. The husband of the respondent had abandoned the factory owned by him at Delhi and even shifted the machinery of his factory. The husband of the respondent in his cross-examination admitted that they

have their house in Ludhiana of 540 square yards and are in possession of same since 1991. They have a factory in the name of Ghosal Electronics in Ludhiana since 1992. His daughter is married at Mohali and both the sons are married in Ludhiana where they have a double storied house. The similar statement was made by the respondent.

3. In view of the above said reasons, the learned counsel for the petitioner states that the claim of the respondent to return to Delhi is not correct and they may not shift to Delhi.

4. The question before this Court is, as to whether the findings of the learned trial court which were against the petitioner call for any interference by this Court in revisionary jurisdiction or not in view of the facts and circumstances of the present case.

i) In the case of ***Ramesh Chand Vs. Uganti Devi*, 157(2009) Delhi Law Times 450**, it has been held that while exercising jurisdiction under Section 25(B)(8), this Court does not act as a Court of appeal. This Court has only to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material available before it.

ii) A Full Bench of this Court in ***Mohan Lal v. Ram Chopra and Anr.*, 1982 (2) RCJ 161** exhaustively considered the provisions of Section 25B of the Act. On the scope of the proviso to Sub-section (8) of this Section, after examining the judgment of Supreme Court in ***Hari Shanker and Ors. v. Rao Girdhari Lal Chowdhury*, A.I.R. 1963 S.C. 698** and ***Bell and Co. Ltd. v. Waman Hemraj*, AIR 1938 Bom (223)** it was laid down as follows:

“In our opinion the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision under

Section 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act.”

iii) In the case titled as *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, reported in **AIR 1999 Supreme Court 2507**, it has been held as under:-

“.....The revisional jurisdiction exercisable by the High Court under S.25-B (8) is not so limited as is under S.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 reappraisal 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 for 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-sec. (8) of S.25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law.”

iv) The Supreme Court in another case titled as *Chaman Prakash Puri vs. Ishwar Dass Rajput and Another*, 1995 Supp (4) Supreme Court Cases 445 has examined with regard to High Court’s power to interfere in revision against the finding as to bonafide requirement of landlord. It has been held that if the Rent Controller finds that landlord was in bonafide need of premises, the High Court in revision was not entitled to re-appreciate evidence and reverse the finding.

5. Reliance can also be placed upon the case titled as *Sarla Ahuja vs. United India Insurance Co. Ltd.*, reported in AIR 1999 Supreme Court 100. The facts of this matter were that the petitioner who was a widow wanted to shift her residence from Calcutta to New Delhi to occupy her own building which was in the possession of her tenant M/s United India Insurance Company Limited. Though she got an order of eviction from the Rent Controller under Section 14(1)(e) of the Act, a single Judge of this Court non-suited her by reversing the order which she challenged before the Supreme Court by way of Special Leave to Appeal. It was held by the Supreme Court that:-

“.....The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own

occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

6. In the present case, the petitioner during the course of arguments has not countered the issue of ownership of the tenanted premises. The only apprehension of the petitioner is that the respondent may not shift to Delhi even if the premises is vacated by the petitioner. I do not accept the submissions of the petitioner/tenant that the landlord is unlikely to shift to the tenanted premises, as the said submission cannot be accepted at the stage of passing the eviction order because in case, a landlord abuses the process of Court by not shifting or letting out the property on higher rate of rent or selling the same, then the tenant is provided with a remedy under Section 19 of the Act for restitution of the premises.

7. It is the admitted position that the eviction order was passed after recording the evidence of the parties. It is not in dispute that the respondent is the owner of the House No.5/114, Gali No.5, Nirankari Colony, Delhi. She purchased the plot in the year 1977 and constructed the ground floor and first floor. The first floor was let out by her to the petitioner on 1st April, 1986. The ownership of the house of the respondent is admitted by the petitioner.

8. The case of the respondent before the learned trial court was that the she is in occupation of three small rooms, one kitchen, one store and one bathroom on the ground floor of the house. Latrine is common for the petitioner and the respondent. Occupation of the ground floor by the respondent and her family members is not sufficient for accommodation. She has no other immovable property in Delhi. It is admitted position that petitioner was not able to point out any other property in the name of the respondent in Delhi. The following persons were dependents upon respondent for residence at the time of filing of petition in the year 2003:

- a. Husband, Sardar Nirmal Singh
- b. Two married sons. Further, the elder son having a male child and younger son was expecting a child.
- c. One daughter.
- d. Father-in-law of respondent.

9. The requirement of respondent at the time of filing of petition was one room for husband and wife, one room for daughter, two rooms for two sons and their wives, one room for grandson and one room for father-in-law, one drawing room, one room for servant, one guest room, one room to place Holy Guru Granth Saheb Ji. It was averred that the accommodation with the respondent is not sufficient for herself and her family members.

10. During the pendency of the petition, family members of respondent increased. Her son Kamaljeet Singh got two sons namely Preet Inder Singh and Master Harshinder Singh. Her son Amarjeet Singh also got one daughter Jasnoor Kaur. Harshinder Singh and Jasnoor Kaur born after the filing of the petition for eviction.

11. During the pendency of the petition daughter of the respondent got married and the requirement of the respondent has increased. Separate rooms are also required for grandsons and granddaughter of respondent.

12. Learned counsel for the respondent has relied upon the following judgments in support of his submissions:

- i) *Shiv Sarup Gupta vs. Mahesh Chand*, 1999 RLR 417.
- ii) *Sudarshan Datta vs. Krishan Narain*, 1997 RLR 534.
- iii) *Sarla Ahuja vs. United India Assurance Co.*, AIR 1999 SC 100.
- iv) *Trilochan Singh vs. Daya Shankar*, 2011 (1) RCR (Civil) 283.
- v) *John Impacts vs. Surinder Singh*, 2007 RLR 76.

13. It has been established on record by production of evidence that the respondent and her family members left Delhi due to Sikh riots. They could not flourish at Ludhiana. They decided to come back to Delhi because they were suffering losses in business. Factories of husband and son of respondent at Delhi were suffering losses, so they decided to come back to Delhi. Petitioner in order to delay the proceeding took false pleas of purpose of tenancy as commercial purpose. Initially he also denied the ownership of respondent but later on admitted the same. Petitioner was allowed to defend the ejectment petition on limited question of bonafide. After leading evidence by both the parties, the learned ARC was pleased to pass an ejectment order against the petitioner.

14. In view of the above said facts and circumstances, the bonafide requirement of the respondent cannot be doubted in view of specific averments made in the eviction petition who has also deposed in court to the effect that the respondent made her family members decide to come back to Delhi and live in their own house. As per law, bonafide requirement has to

be seen and considered for from the perspective of the landlord and tenant cannot be allowed to dictate the terms in which portion the landlord should reside. The contention of the respondent is that the business of the family members of the respondent is in loss as the members were not able to control the business effectively from Ludhiana and therefore, they have decided to return to Delhi. It has also come on record that the respondent and her family members are paying income tax from Delhi. The balance sheets of companies were also produced. PAN card of the husband is of Delhi. The similar is the situation of passport, driving licence and bank accounts etc. All these circumstances indicate that respondent and her family members intended to come back permanently to Delhi. Therefore, it appears that the eviction petition was so filed.

15. In view of the aforesaid reasons, facts and circumstances of the present case, there is no merit in the revision petition as the impugned order does not suffer from any infirmity. The revision petition is dismissed. However, in the interest of justice, the petitioner is granted six weeks time to vacate the tenanted premises bearing No.5/114, Gali No.5, Nirankari Colony, Delhi-110009. During this period, the petitioner shall not sublet and create any third party interest in the tenanted premises.

(MANMOHAN SINGH)
JUDGE

OCTOBER 21, 2013