

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

Judgment Pronounced on: October 04, 2013

+ RC.REV. 115/2013

ARJUN RAI BHAYANA Petitioner
Through Mr.Bhopal Singh, Adv.

versus

SANTOSH HANS Respondent
Through Mr.Sarvagya Sharma, 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”) against the order dated 8th January, 2013 passed by the ARC (North West), Rohini, Delhi in an eviction petition filed by the respondent against the petitioner, whereby the leave to defend application of the petitioner was dismissed.

2. The respondent filed an eviction petition against the petitioner in respect of two shops bearing No.3 and 4 in property bearing No.3397-A, Mahindra Park, Shakur Basti, New Delhi-34 (hereinafter referred to as “the suit premises”) on the ground of her bonafide requirement as per the provisions of Section 14 (1) (e) of DRC Act. It was stated by the respondent that Respondent’s family comprises of herself, her husband, two daughters of whom one is married and a married son. The son of the respondent who had been assisting his father in business at a shop in Kamla Nagar, after his

marriage in December, 2010 has a family of his own and the respondent wanted her son to start his own business. So for starting an independent business for her son, she required the suit premises, also because they had no other alternative accommodation to do so. It was contended by the respondent that petitioner is a habitual defaulter in payment of rent. Also, earlier the petitioner was running a photography shop at the suit premises but now it is lying locked. It was also contended by the respondent that even earlier an eviction petition under Section 14(1) (a) and (j) of the Act was filed against the petitioner whereby relief under Section 14(1) (a) of the Act was granted but relief under Section 14(1) (j) of the Act was dismissed since the petitioner was given the benefit under Section 14(2) of the Act after payment of rent.

3. In the leave to defend application, the petitioner contended that the electricity connection of the suit premises had got disconnected by the respondent malafidely and only because of this he was forced to close his business of photography from the suit premises. Thereafter, the petitioner got a new electricity connection installed in his name in the suit premises and restarted his business. It was further contended that respondent had several alternate accommodations available with her and also her son was very well settled and did not require any independent business as alleged.

4. In her reply to the leave to defend application, the respondent contended that the properties so mentioned by the petitioner were owned by her father and brother and she was not the owner of either of the properties. She further contended that at the time of inception of tenancy, a separate electricity meter was installed and she had no control over the electricity connection of the suit premises. The same was disconnected due to non-

payment of electricity dues. In the rejoinder, the petitioner denied the averments and reiterated the contents of the application for leave to defend.

5. Vide the impugned order, dismissing the application of the petitioner the learned trial court observed that though the petitioner contended concealment of facts by the respondent about the fact of earlier eviction petitions and that of cross-appeals against the order; the perusal of record showed that there was no such concealment. On the issue of disconnected electricity connection, it was observed that the fact of a separate electricity meter at the suit premises and its discontinuation due to non-payment of electricity dues, was admitted. Had the respondent wanted to harass the petitioner by disconnecting electricity then it would have been improbable that she would have got the petitioner to get separate electricity meter installed in his own name. However, the issue of disconnected electricity connection had no bearing on the merits of the case.

6. On the issue of alternate accommodation, it was observed that no document was filed by the petitioner in support of his averments in this regard while as respondent had named the persons who were owners of the alleged other properties as claimed by the petitioner. So it was observed that there was no alternate suitable accommodation available. On the issue of need being bonafide though the petitioner contended that the notices sent to him did not specify any such need and mentioned that the son was well settled and working with the father, the learned trial court observed that it was a settled law that landlord is the best judge of his requirement and tenant cannot dictate terms upon the landlord and in this case, it was the respondent's prerogative to settle her son independent of the father and it cannot be said to be fanciful. It was also observed by the learned trial court that ownership was not disputed in the leave to defend application so the

same could not be taken during the course of arguments. Dismissing the petitioner's leave to defend application, the learned trial court allowed the eviction petition filed by the respondent.

7. Aggrieved with the same, the present revision petition is filed on the ground mainly that though the impugned order was passed on the grounds of bonafide requirement, the son as alleged by the respondent was not jobless and as per the website page of respondent's son, it shows that he is the Director of the Ekta Groups (business) as that allegedly run by the husband of the respondent. It is contended that the business card as well as photographs of the shops show that both the husband and son were the owners of another shop at Kamla Nagar, beside two more showrooms at Kamla Nagar. It is contended that besides the one shop at Kamla Nagar which is admitted by the respondent there are two other shops at Kamla Nagar and one more shop at Rohini. Besides these four shops, there is another hall at Shakur Basti being used as a storeroom to keep the air conditioning equipments. It is contended that it was only after filing the eviction petition that respondent allegedly sold of these properties to her father and brother respectively and there is nothing on record to support the alleged transaction. In view of the aforementioned facts, the petitioner has sought to get the impugned order set aside and prayed that his leave to defend application be allowed.

8. In the eviction petition it is specifically mentioned that the respondent herein/ petitioner therein was initially running the business of photography for couple of months but thereafter he has closed down the same. The respondent herein/ petitioner wants that her son run his own business as he is jobless and petitioner does not have any shop in Delhi. She wants her son to run while sale fabric trading business. His son is merely helping his father

who is running business under the name Ekta Dupatta from Kamla Nagar, Delhi. The respondent has already sold ground floor of the property bearing No.3397-A, Mahindra Park, Shakur Basti, New Delhi-34 to her father and remaining portion to her brother. The respondent retained only tenanted shops with her. She needs the same for the business of her son who is dependent on his parents.

9. The respondent has denied each and every averment made by the petitioner in the affidavit filed alongwith leave to defend. While passing the impugned order the learned trial court has observed that the petitioner has not even able to produce an iota of prima facie evidence. These are only assertion of the petitioner. The learned trial court point by point has discussed the grounds raised by the petitioner in para 5 to 29 of the impugned order and has come to the conclusion that no triable issues raised by the petitioner. On the ground of concealment, the learned trial court held as under :

- i) that the fact that earlier an eviction petition under Section 14 (1)(a) and (j) of Delhi Rent Control Act was filed by the respondent against the petitioner, in the said eviction petition, relief was granted under Section 14 (1)(a) of Delhi Rent Control Act but the petition under Section 14 (1)(j) of Delhi Rent Control Act was dismissed and petitioner was given benefit under Section 14 (2) of Delhi Rent Control Act after payment of rent and further the fact that cross appeals have been filed by the parties and were dismissed has been concealed by the respondent. Therefore there is no concealment on the part of the respondent. Even otherwise the same does not have any effect on the merits of the case. It is settled law that leave to defend can be granted only if the petitioner discloses such facts which would disentitle the petitioner from obtaining the relief of eviction. The filing of cross-appeals by the parties and dismissal of the same would not have disentitled the respondent in the present case in any manner from seeking eviction if all other ingredients on the part of the respondent are duly established. There is no other fact averred by the

petitioner to be concealed by the respondent. Respondent has given the entire extent of her family and has elaborated all the facts.

In view of the above, I agree with the finding of the learned trial court that said this plea of the petitioner that respondent has concealed material facts is not tenable.

- ii) With regard to the grounds of respondent's conduct of disconnection of electricity connection is concerned, it is not in dispute that the suit premises have a separate electricity meter. Petitioner has stated that a notice was received from NDPL which was wrongly sent in the name of Shiv Dayal. Respondent with the help of said notice has got the electricity disconnected. Petitioner himself has stated that he got the electricity restored and a separate electricity meter in his name was installed in the suit premises way back in the year 2007. Respondent has denied the allegations of the petitioner and stated that she does not have any control over the electricity supply of the suit premises in view of separate electricity meter. The electricity was disconnected by NDPL. The finding of the learned trial court in this aspect are reasonable and logical to the effect.

Firstly, electricity has not been disconnected by the petitioner. Secondly, it is admitted that the suit premises have a separate electricity meter and electricity was disconnected for non-payment of electricity dues. Thirdly, if the respondent wanted to harass the petitioner by disconnecting the electricity then it is improbable that she would have got the respondent to get a separate electricity meter installed in his own name in the suit premises subsequently. In case respondent was harassing the petitioner by disconnecting electricity why the petitioner has not taken recourse to legal remedies available to him. However, as discussed above, even if it is taken as true the same does not have any bearing on the merits of the case.

- iii) The other ground taken by the petitioner was about alternative accommodation. The petitioner in his application has given the following details :

A) Shop No. 1197, Sachdeva Cloth Market, Rani Bagh, Delhi.

B) Ekta Dupatta at F-9, Kamla Nagar, Delhi.

C) Shop No.1 in the property in which the suit premises is situated.

Respondent has denied the fact that she has alternate accommodation with her. Respondent in her reply has given the details and stated that Shop No. 1197, Sachdeva Cloth Market, Rani Bagh, Delhi was earlier owned by her father which has been subsequently sold out.

The learned trial court after having gone through the material placed on record and discussing the arguments of both parties has held that the shop of Ekta Dupatta at F-9, Kamla Nagar, Delhi is run by her husband and belongs to husband of respondent. Further it was stated by the respondent that Shop No.1 in the property in which the suit premises is situated also belongs to her father and therefore she does not have any alternate accommodation. Petitioner has mentioned in his leave to defend that there is a big hall in the property in which the suit premises is situated which is being used as a store room for keeping air-conditioner by the respondent who also stated that said hall also belongs to her father.

The petitioner has not filed any documents in support of his averments. Only assertions have been made which are denied by the respondent who has given the name of the persons to whom the said property belongs.

In view of above, there is no force in the submission of the petitioner. I am of the considered opinion that the learned trial court has rightly rejected the argument of the petitioner on this aspect.

iv) With regard to the bonafide requirement of accommodation by the respondent is concerned, it was argued by the petitioner before the learned trial court that the requirement of the petitioner is not bonafide. Two notices dated 16.1.2009 and 20.3.2010 were sent by the respondent referring wherein bonafide need of the respondent was not specified. The trial court in his order observed that the need of the

respondent to start an independent business for her son has arisen only after his marriage on 1.12.2010. Both notices referred by the petitioner have been sent prior to December, 2010 and therefore petitioner had no occasion to mention about her bonafide need in the said notices. The said fact about the marriage of respondent's son is denied by the petitioner in the present matter except it is stated that the son of the respondent is well settled in the business of M/s Ekta Dupatta and as he is one of the Directors of Ekta Groups. However, the respondent has stated that now as her son is married, he wants to start an independent business.

It is the prerogative of the respondent to decide about future of her son. If she wants that her son shall have an independent business after marriage and he also wants to do separate business it cannot be stated that her requirements are meaningless.

The other arguments raised by the petitioner are that as per the averment of the respondent herself, the suit premises is already sold to her father. A conjoined reading of the paragraphs of the eviction petition will show that the respondent has stated that the portion of property shown in green color in the site plan has been sold to her father and the remaining portion shown in yellow color has been sold to her brother. The site plan will show that the suit premises comprising of two shops have been shown in red color and the remaining portion has been shown in green color. The suit premises is well in the ownership of the respondent and the remaining portion has been sold to respondent's father. The respondent has admitted that rent agreement was executed by respondent who is his landlady.

Thus, the said plea of the petitioner has rightly been rejected by the learned trial court.

- v) The last plea of the petitioner is that he has paid Rs.40,000/- to the respondent at the time of letting out the suit premises itself, receipt of Rs.32,000/- was executed her. He has also placed the photocopy of said receipt. A perusal of the copy of said receipt shows that said Rs.32,000/- has been paid as a security which will be refundable at the time of handing over the vacant and peaceful possession of the suit premises. Therefore, even if the receipt is taken to be correct. The respondent cannot be debarred for filing the application for eviction

petition. Thus, even the said ground taken by the petitioner is without any force. on the basis of bonafide need. There is no contract between the parties that the suit premises cannot be got vacated by the petitioner.

10. The issue before this Court is, whether said findings call for any interference by this Court in revisionary jurisdiction in view of the facts and circumstances of the present case or not. It is settled law and it has been held from time to time by various courts 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.

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.

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.

The Apex Court in *Sarla Ahuja versus United India Insurance Company Ltd.*, reported in AIR (1999) SC 100 held as under:-

“6. The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. 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 25-B. 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.”

11. I have gone through the petition filed by the petitioner and the grounds stated therein. I have also examined the submission advanced by the learned counsel for the parties at the bar. Having gone through everything I find that the present challenge does not call for interference of this court as the petitioner has failed to point out any illegality in the impugned order. The petitioner has merely reagitated the same grounds which have been argued before the learned Rent Controller who has adjudicated the same with the reasoned order. The petitioner has merely stated that the respondent concealed some facts when the said aspect has been dealt with by the learned Additional Rent Controller correctly. Merely to reverse the findings

of Rent Controller, the interference of revisionary court cannot be called for if the order is passed in accordance with law. Further, the learned RC has rightly tested the case of the respondent on the provisions of section 14 (1) (e) of the Act and proceeded to conclude that there exists bonafide need and there is no alternative accommodation as the petitioner is not able to show any material particular to support the said plea. Thus, the impugned order is passed in accordance with law.

12. For the aforesaid reasons, the Rent Controller has rightly dismissed the leave to defend application.

13. The trial court has given a detailed and reasoned order which does not call for any interference nor the same suffers from any infirmity or erroneous exercise of jurisdiction.

14. The present petition is hereby dismissed accordingly. However, in the interest of justice, equity and fair play, the petitioner is granted six months time to vacate the suit property, i.e. two shops bearing No.3 and 4 in property bearing No.3397-A, Mahindra Park, Shakur Bhasti, New Delhi-1100 34 by handing over peaceful possession to the respondent. During this period, the petitioner shall not sublet or create any third party interest in the suit property.

15. No costs.

(MANMOHAN SINGH)
JUDGE

OCTOBER 04, 2013