

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

% *Judgment Pronounced on: October 04, 2013*

+ **RC.REV. 185/2013**

VIJAY DUTT SHARMA & ORS Petitioners

Through Mr.Surendra Mishra, Adv. with
Ms.Sonal Mishra, Adv.

versus

PRAHLAD RAI JALTHURIA & ORS Respondents

Through Mr.Sanjay Sehgal, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 25 B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the eviction order dated 5th December, 2012 whereby the leave to defend application of the petitioner was dismissed in an eviction petition filed by the respondents in respect of the suit property i.e. one shop forming the part of property No.75/5578-79, Regharpura, Karol Bagh, New Delhi.
2. The three respondents filed the petition under Section 14(1)(e) read with Section 25B of Delhi Rent Control Act on the ground of bona fide requirement.
3. The brief facts as stated in the petition are that the respondents are the owners as well as the landlords of the premises bearing No.75/5578-79, Regharpura, Karol Bagh, New Delhi and the petitioners are tenant in respect

of one shop forming part of property No.75/5578-79, Regharpura, Karol Bagh, New Delhi. It is further stated that the suit premises was originally let out to late Sh.Shiv Charan Sharma by virtue of agreement dated 19th March, 1962. It is further stated that the respondents are residing in the property No.75/5580 and first floor of property bearing No.75/5578-79, Regharpura, Karol Bagh, New Delhi. The ground floor of the property bearing No.75/5578-79, Regharpura, Karol Bagh, New Delhi consists of two rooms. One room is in possession of respondent No.1 which was let out to his father late Sh.Shiv Charan Sharma. The other room is under the tenancy of Sh.Ashok Kumar and Sh.Om Prakash. The respondents have one room with attached toilet-cum-bathroom on the first floor of property No.75/5578-79, Regharpura, Karol Bagh, New Delhi. The No.75/5580 consists of ground floor and first floor only. On the ground floor, the respondents are having two rooms and a toilet. One room is being used as kitchen during the day time and at night it is used for sleeping by the children of the respondents. On the first floor there are two rooms only. It is further stated that the family of respondent No.1 consists of his wife, two married sons and their wives and children. One son of respondent No.1 is residing in property No.75/5576, Regharpura, Karol Bagh, New Delhi due to paucity of space available with the respondent No.1. The family of respondent No.2 consists of his wife, three children of the age group of 24 to 19 years and they have only one room on the first floor of property No.75/5580. The family of respondent No.3 consists of his wife, two sons of the age of 21 and 17 years and they have only one room on the first floor of property No.75/5580. All the women members of the family of respondents use only one bath room available in property No.75/5578-79, Regharpura, Karol Bagh, New Delhi. It is further stated that the respondent

are not having any other accommodation in Delhi except the property in question. The accommodation available to the respondents is neither suitable nor sufficient for them as well as for their family members. It is further stated that the petitioner No.1 has unauthorizedly and illegally encroached an area of 6 ft in front of the shop by raising a tin shed and counter on the pavement in front of the shop thereby obstructing the way of the pedestrians.

4. As per petition, it is clear that the families of the respondents are as follows:

- (i) respondent No.1 has a wife, two married sons and their wives and children.
- (ii) respondent No.2 has a wife and three children (aged 24-19 years).
- (iii) respondent No. 3 has a wife and two sons (aged 21 and 17 years, respectively).

5. One son of the respondent No.1 resides in another property No.75/5576 due to paucity of space available with his father.

6. It is the case of the respondents that the accommodation available with them is neither suitable nor sufficient for them or their family members and they do not have any other accommodation in Delhi except the ones mentioned. So on the ground of personal bonafide necessity for residential purpose, they require the tenanted shop. It is contended that the petitioner No. 1 unauthorizedly and illegally encroached an area of 6 ft. in front of the shop by raising a tin shed and counter on the pavement in front of the shop thereby obstructing the way of the pedestrians. It is also contended that he tenanted shop, which was originally let out to the father of the petitioner was

for merely selling of sweets, was after the father's death being illegally and unauthorisedly used by the petitioner no.1 for manufacturing of sweets.

7. In their leave to defend application, the petitioners disputed the ownership of the respondents by contending that neither the respondents nor their predecessor interest were the owners of the suit property. They also contended that prior to the filing of the eviction petition, the respondents were not accepting the petitioners as tenants and so the latter were depositing the rent under Section 27 of the Act in the Court. It is also contended that on denial of the demand of the respondents for payment of rent @ ₹ 4,000 per month (in contrast to the original payable rent agreed @ ₹ 484 per month), the respondents wanted to evict the petitioners to sell or re-let the tenanted property on higher rate. It was further contended that the respondents failed to disclose their other properties and they had also not filed the correct site plan of the suit property. The averments of encroachment are stated to be false and the alleged need of the respondents stated as malafide.

8. In their counter affidavits, the respondents denied the averments made by the petitioners. In the rejoinder to the counter affidavits, the petitioners reiterated and reaffirmed their stand.

9. Prior to the passing of the impugned order, there were certain events of litigation which are also noteworthy to mention in order to decide the present petition. The said events are :

- (i) On 23rd March, 2011, the first eviction order against the petitioner was passed, which was assailed in a revision petition and vide order dated 31st January, 2012, the same was set aside in the revision with the direction that the respondents be granted an opportunity to cure defect in the eviction petition,

thereupon the trial court shall proceed to hear the eviction petition and the application filed by the tenant seeking leave to defend a fresh and dispose it on its merits.

- (ii) On 15th February, 2012, the affidavits filed by the respondents were defective and the same were pointed out by the petitioners in the court on 26th March, 2012.
- (iii) By an order dated 11th July, 2012, the learned trial court allowed the application of the respondents for taking the affidavits on record which was challenged by the petitioners by way of a Civil Misc. Main petition on the question of jurisdiction of the learned trial court for allowing the application under Section 151 CPC for taking on record the affidavits filed on an earlier date (i.e. 26th March, 2012).
- (iv) An observation was made by this court vide order dated 1st October, 2012 against the conduct of the respondent and the learned trial court.
- (v) On 6th October, 2012, when the petitioners moved an application before the learned trial court for filing an SLP in the Supreme Court, the same was rejected and the arguments of the respondents were heard and the petitioners were given liberty to argue the matter on any day on or before 15th October, 2012.
- (vi) Due to loss of faith in the trial court, the petitioner filed a transfer petition under Section 36 of the Act, which was rejected.
- (vii) An additional affidavit filed by the petitioner for seeking leave to defend the eviction petition on the ground of subsequent

enhancement of rent beyond ₹ 3,500/- was declined to be taken on record.

(viii) On 5th December, 2012, when the petitioner sought an adjournment because the appeal was fixed for hearing, the learned trial court dismissed the application of adjournment and passed the impugned order.

10. The petitioner relied upon all these events as an attempt to demonstrate that the order passed by the learned RC suffers legal infirmity as the case of the petitioner was not considered properly by the trial court.

11. The learned trial court passed the impugned order wherein it has been observed that the relationship of landlord-tenant existed between the parties. On the question of alternative accommodation and establishment of bonafide requirement, the trial court observed that mere contentions of the petitioners that the respondents had other alternative accommodations was of no consequence in the absence of any prima facie material on record. Considering the number of family members in comparison to the number of rooms available with the respondents, the learned trial court observed that the available accommodation was highly insufficient. The contention of the petitioners that the site plan filed by the respondents was not correct, was rejected on the ground that they did not produce any counter site plan. In view of the same, the eviction order was passed by the learned trial court on 5th December, 2012.

12. The petitioner by way of the present petition has sought setting aside of the impugned order and prayed for remanding back the matter to the learned trial court with a direction to take on record the additional affidavit dated 30th November, 2012. After hearing both the parties, it appears to the court that the petitioners on one pretext or the other are trying to drag the

proceedings before the learned Trial Court as well as before this Court by raising false and flimsy grounds which are not permissible in law. The procedure envisaged under the provisions of Section 14 (1) (e) read with Section 25 B of the DRC Act is a summary procedure and thus the said procedure has to be adhered to strictly so that the legislative intent behind the providing the summary procedure is respected and fulfilled. Therefore, the procrastination of the matter by seeking remand on the ground of consideration of the one affidavit or the other may not be correct approach atleast not in the revisionary jurisdiction. If the petitioners are able to demonstrate that the impugned order is not passed in accordance with law, only then the revisionary court shall interfere or in the case where the non consideration of the material shall go into the root of the matter and shall vitiate the order as illegal. I find that no such infirmity has been pointed out by the petitioners while seeking remand on the basis of the consideration of the affidavit. Even if such affidavit is considered, the same shall not turn the case of the petitioners.

13. The question before this Court is, whether said findings call for any interference by this Court in revisionary jurisdiction or not in view of the facts and circumstances of the present case.

i) 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.”

ii) In the case titled as *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, 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."

iii) 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 held 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.

14. The petitioners have disputed the ownership of the respondents. The learned trial court in paras 8 and 9 of the impugned order has discussed the rival submissions of the parties and decided the said issue against the petitioners for the following reasons:

"8. Ownership & Purposes of letting

The respondents have disputed the ownership of the petitioners over the premises in question. It is further stated that prior to the filing of the present petition, the petitioner were not accepting the respondents as their tenants, therefore, the respondents were depositing the rent under Section 27 of DRC Act in the court. Thus, it is clear that the respondents have admitted the petitioners their landlords in respect of suit premises. On the other hand, the petitioners stated that the suit premises were let out to Sh. Shiv Charan Sharma vide agreement dated 19.03.1962 and the petitioners are owner/landlord of the suit premises. The petitioners have even filed the certified copy of compromise deed dated 28.01.1993 executed between Sh. Shiv Charan Sharma, father of the respondents and Sh. Kishan Lal, father of the petitioners as tenant and landlord respectively. It has been categorically stated in the said compromise deed that Sh. Shiv Charan Sharma was tenant in shop no.75/5578-79, ground floor, Regharpura, Karol Bagh, New Delhi and Sh. Prahalad

Rai was son of the landlord/owner of the said property. Thus, it is established that there is relationship of landlord and tenant between the parties. It is well settled law that the landlord is not required to prove the absolute ownership in respect of tenanted premises as required under the Transfer of Property Act. It was held in *Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors.*, 155 (2008) Delhi Law Times 383 that “A landlord is not required to prove absolute ownership as required under the Transfer of Property Act. He is required that he is more than a tenant”. It has also been held in *Ramesh Chand Vs. Uganti Devi*, 157 (2009) DLT 450 by the Hon’ble High Court of Delhi that, “It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control At, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner howsoever imperfect his title over the premises cannot stand in the way of an eviction petition under Section 14(1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly”.

9. The respondents further contended that the premises in question was let out for commercial purposes and the petitioners requiring the same for residence purpose therefore, the petition is not maintainable. I do not find any substance in these contentions of the respondents. A landlord is entitled to seek eviction of tenant for the premises which were let out for commercial purposes. It is prerogative of the landlord how does he want to use his property. A tenant cannot dictate terms to the landlord how to use his property. It has been held by Hon’ble Supreme Court in *Satyawati Sharma Vs. Union of India* (2008) 5 SCC 287, that an eviction petition under Section 14(1)(e) of DRC Act is also maintainable in respect of tenanted premises which were let out

for commercial purposes. Hence both these ingredients are decided in favour of the petitioners and against the respondents.”

15. On the issue of bona fide requirement as alleged by the petitioners that the need of the respondents is malafide on account of alternative accommodation, the learned trial court has dealt with the argument of the petitioners in paras 10 and 11 which read as under:

“10. **Alternative accommodation & Bona fide requirement**

The respondents further contended that the need of the petitioners is malafide and the petitioners have their independent flats in their own names and in the names of their wives and children. The respondents have not filed any document to substantiate their claim that the petitioners have other alternative accommodation. The respondents have even not given any particular of the property available with the petitioners. The mere contentions of the respondents that the petitioners have other alternative accommodations, is of no consequence in the absence of any prima facie material on record. It was held in *Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors.*, 155 (2008) Delhi Law Times 383 that “Mere assertion made by the tenant in respect of landlords ownership of other buildings and in respect of alternative accommodation are not be considered sufficient for grant of leave to defend. Only those averments in affidavit are to be considered by Rent Controller which have some substance in them and are supported by some material”. Respondents have further contended that the petitioners have given two different addresses in the petition which shows that they have not approached the Court with clean hands. On the other hand, the petitioners have stated that one son of the petitioner No.1 is residing in property no.75/5576 along with his wife therefore, the question of concealing any material fact does not arise. So far as the bonafide needs of the petitioners are concerned, the petitioner No.1 is having six family members excluding one son of the petitioner who is residing in property no.75/5576, but they have only two rooms in their possession. Two rooms for two married couple along with children are highly insufficient. The family of petitioner No.2 consists of five members. All are adults but they have only one room. Again this shows that petitioner No.2 is not having sufficient accommodation.

Similarly the family of petitioner No.3 consists of four members but they have only one room. The children of the petitioner used to sleep at night in the kitchen on the ground floor of property no.75/5580 and all the women members of the family are using only one bathroom. It is further established that the petitioners are not having sufficient accommodation. The further contention of respondents that major family members of petitioners are in government service or in private job therefore, they do not depend upon petitioners again has no force because it is settled law that major family members, who are earning, can depend on their parents for their residential needs. It was held in *M.M. Mehta Vs. Chaman Lal* 1980 RLR, (Note) 30 that it is well-settled that a member of the family although not financially dependent on the landlord but living together with him, is covered by the word dependent used in Section 14(1)(e).

11. The respondents further contended that the site plan filed by the petitioners is not as per site and the petitioners have wrongly stated that the respondents unauthorizedly and illegally encroached an area of 6 ft in front of the shop by raising a tin shed. It is further contended that the present petition has been filed only for shop in question and whether the front portion of the shop is part of tenancy or not cannot be determined without trial. On the other hand the petitioners have stated that the respondent No.1 has unauthorizedly and illegally encroached an area of 6 ft in front of the shop by raising a tin shed and counter on the pavement in front of the shop, which is more specifically shown in the side plan in blue color thereby obstructing the way of the pedestrians. According to the respondents their father took the shop in question on rent from Sh. Dhana Ram sometime in 1950 and later on the father of the petitioners became landlord. From this it is clear that the respondents are tenants in respect of suit premises. The respondents are using the extended portion because it is in front of shop in question and respondents have not claimed any ownership right over this extended portion, therefore the plea of the respondents that the site plan is not correct has no substance and the same is rejected. The respondents have not filed any site plan of the suit premises. It was held in *Harivansh Lal Vs. Madan Lal*, 1997 RLR 383 that “if landlord produces site plan and tenant does not produce counter site plan then landlord plan has to be accepted as correct”.

16. The other submission of the petitioner is that the respondents would subsequently re-let the suit premises after getting the same vacated from the tenant also cannot be a triable issue in view of Section 19 of the DRC Act. It has been held in the case law titled as *Mrs. Krishna Chopra & Anr. vs. Smt. Raksha & Ors.*, 2000 RLR 83 that if a landlord abuses the process of the Court, obtains an order of eviction and subsequently lets out the property or sells the same, the tenant can always apply for restitution of the premises under Section 19 of the DRC Act.

17. With regard to objections raised by the petitioners about the validity of the affidavit of the respondents verification of the pleadings, the learned trial court in para 13 of the impugned order rejected the objection of the petitioners who also argued that the petition was not maintainable though by order dated 31st January, 2002 this Court has granted opportunity to the respondents to file affidavit as required under the law which was complied by the respondents by passing the order dated 11th July, 2012 to this effect. The petitioners still challenged the said order dated 11th July, 2012 passed by the learned trial court before this Court and this Court dismissed the said petition of the petitioners on 1st October, 2012. Thereafter, the petitioners filed additional affidavit dated 30th November, 2012 despite of completion of pleading of application of leave to defend.

18. The petitioners have not denied that there are 14 members of the respondents' family and many relatives often visit the premises. It is also not disputed that one of the son is residing in another property. Considering the overall facts and circumstances of the case, I agree with the finding of learned trial court that the petitioners have failed to raise any triable issue and on the other hand, the respondents have established that they have no other alternative accommodation for residence and the respondents require

the same for themselves. Thus, the petitioners have not been able to cast prima facie doubts as to genuineness of the need of the respondent or on the non availability of the alternative reasonably suitable accommodation. Thus, the impugned order is passed in accordance with law.

19. Relevant judgments read as under :

- i) **Satyawati Sharma v. Union of India & Anr.**, 2008 (5) SCC 287, it was held that *section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.*

The Supreme Court further opined 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.”

- ii) **Sain Dass Vs. Madan Lal**, 1971 RCR 887, *the need of the appellant who had rooms already with them as just sufficient for his needs and the needs of the sons who were living with him, his need for some more accommodation for the use of any of his other children (including the married daughter) when they visit him, was held to be a bonafide need.*
- iii) **Brij Mohan Vs. Shri Pal Jain**, 49 (1993) DLT 543, it was observed that *it is settled law that grown up children require separate rooms to live in a manner he or she likes.*

- iv) **Sudesh Kumar Soni & Anr. v. Prabha Khanna & anr.** 153 (2008) DLT 652 it was observed that *it is not for the tenant to dictate the terms to the landlord as to how else he can adjust himself without getting possession of tenanted premises- suitability has to be seen for convenience of landlord and his family members and on the basis of circumstances including their profession, vocation, styles of living, habit and background.*
- v) **Mohd. Ayub Vs. Mukesh Chand,** (2012) 2 SCC 155 it was observed that *the hardship Appellants would suffer by not occupying their own premises would be far greater than the hardship the Respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the Respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement.*
- vi) **Naresh Kumar Sharma Vs. Bengali, RC Rev. 227/2012** (Date of Judgment- 21.05.2012) it was observed that *The need of the landlord vis--vis tenant, if balanced, would show that the need of the landlord is much greater which even otherwise is not to be taken into account while dealing with an eviction petition under Section 14 (1)(e) of the DRCA; comparative hardship of the tenant is of little consequence.*
- vii) **P.S.Pareed Kaka & Ors. Vs. Shafree Ahmed Saheb,** AIR 2004 SC 2049, the Apex Court had in fact held that *the comparative hardship of the tenant is of little consequence.*

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

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

22. The present petition is hereby dismissed accordingly. However, in the interest of justice, equity and fair play, the petitioners are granted six months time to vacate the suit property, i.e. one shop forming the part of property No.75/5578-79, Regharpura, Karol Bagh, New Delhi by handing over peaceful possession to the respondents. During this period, the petitioners shall not sublet or create any third party interest in the suit property. Pending applications also stand disposed of.

23. No costs.

(MANMOHAN SINGH)
JUDGE

OCTOBER 04, 2013