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MUKESH SHARMA

..... Petitioner

Through Mr.Pardeep Gupta, Adv. with
Mr.Vishal Gupta and Ms.Poonam,
Advs.

versus

HARMESH SINGHAL

..... Respondent

Through Mr.Pradeep Aggarwal, Adv. with
Mr.Ajit Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) against the order dated 27th February, 2012 passed by learned ARC (East) Delhi in an eviction petition filed by the respondent in respect of a shop at the ground floor of the property bearing No. 27/48, Gali No. 6, Vishwas Nagar, Shahadra, Delhi- 110032 (hereinafter referred to as “the tenanted shop”) whereby the application of the petitioner for leave to defend was dismissed.

Findings of the Trial Court

2. The learned trial court by the impugned order observed that though the relationship of the parties is contested by the petitioner, he has neither stated to whom had he been paying rent nor has he stated who was the landlord/owner of the said property and who received rent from him. On the

contrary, the petitioner on his affidavit submitted that the respondent had recently let out the back portion of the said property to the scrap dealer and that the only motive to vacate the petitioner from the tenanted shop was to receive an enhanced rent. In fact the petitioner himself had stated that the third shop is being used by the respondent to run his business, however, did not state that the respondent is doing so in capacity other than that of the owner. The learned Trial Court opined that the contradictory statement given by the petitioner with respect to the relationship between the parties was merely to negate the plea of the respondent without any basis.

On the averment of the petitioner that the respondent had neither placed on record any document showing that his elder son is going to be terminated shortly nor was he able to show what kind of business will his younger son would run or would take up employment in some multinational company, it was opined by the learned Trial Court that the petitioner had no locus to seek such explanation from the respondent. The petitioner had neither disputed that the respondent had two sons as per the description in the petition nor that they were major and without any accommodation for the purpose of running their business. It was observed that it was sufficient for the respondent to state that his sons required the space to establish their business and to say that they are dependent upon him for such accommodation. It was the discretion and prerogative of the respondent as well as his sons to decide whether they wanted to do service or start their own business. Neither the court nor the tenant could dictate the respondent as to how his sons should establish themselves or as to how they should build their carrier.

The learned Trial Court opined that the apprehensions of the petitioner that the respondent would let out the tenanted shop at an enhanced rent after

getting it vacated from the petitioner, are taken care of by Section 19 of the Act. On basis of mere apprehension and anxiety of the petitioner, the respondent cannot be non suited.

With these observations, the learned Trial Court passed the impugned eviction order against the petitioner. Aggrieved thereof the petitioner filed the present petition.

3. This Court is conscious about the fact that 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) of the Act, this Court does not act as a Court of appeal. This Court has only to see whether the learned Additional Rent Controller has committed any jurisdictional error and has passed the order in ignorance of material available before it which makes the order not in accordance with law and 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.

4. At the same time, it has also been observed in various cases that if in the process of landlord trying to prove his bonafide requirement the tenant is able to raise any triable issue then the Court has to allow the leave to defend application. It has been held in the case of ***Ram Dass vs. Ishwar Chander & Ors***, AIR 1988 SC 1422, that while exercising the power of revision, in

appropriate cases the High Court can reappraise evidence if findings of the trial court are contrary to law. Under these circumstances, it has been observed in various cases that by allowing the leave to defend application an opportunity should be given to the tenant to try and test the contention of the landlord as the bonafide requirement is the state of mind and unless a person claiming requirement is subject to cross-examination, requirement without his evidence cannot be established.

5. By applying the said tests, as mentioned above, the issue before this court is whether on the basis of the grounds made in the application for leave to defend, the petitioner/tenant was entitled for relief or not.

6. The main argument advanced by the petitioner's counsel before this Court is that the respondent has concealed the true and material facts in the eviction petition which are of serious nature and the same were not considered and dealt by the learned Additional Rent Controller, otherwise, leave to defend ought to have been granted as per the settled law. Thus, the impugned order is not sustainable in law.

7. Let me now deal with the matter in view of the submissions made by both parties. First of all, it is necessary to refer para 18(a) of the eviction petition whereby the respondent sought the eviction of the tenanted premises of the petitioner on the grounds stated in the petition. The same are reproduced here below:-

“(a) Petitioner is doing the business of property dealer but he has neither any office nor other place to carry on his business and entire dealings are being carried out from his residence and he needs the tenanted premises to establish his office for the proper and better functioning of his business.

(b) Elder son of the petitioner, namely Tarun Singhal is presently serving as Engineer in Tata Consultancy Service at

Gurgaon and his tenure is likely to be terminated shortly and the petitioner is as such need some suitable premises to establish his elder son for carrying on his business therein.

(c) Younger son of the petitioner, namely Varun Singhal, aged 22 years is presently studying in MBA of the ICFAI University, Hyderabad at its Gurgaon Centre and after completion of his MBA petitioner is required to establish his younger son and needs proper premises to accommodate him.

(d) The petitioner has no other premises except the premises shown in site plan and the back portion which is in the name of his wife, Smt. Kanta Singhal and is presently being used for residential purposes of the petitioner and his family.”

8. The petitioner upon service filed an application for leave to defend/affidavit of Mukesh Sharma who in paras 9 to 13 deposed as under:

“9. That the petitioner has let out a shop to the scrap dealer on the monthly rent of Rs.10,000/- per month recently and the only motive of the petitioner is to get the premises vacated since the rate of rent is on lower side and as per market value the rate of rent has escalated many fold.

10. That the third shop is being used by the petitioner for his property dealing business and is not carrying out his business from his residence.

11. That the elder son of the petitioner Tarun Singhal tenure is likely to be terminated shortly no document to that effect has been annexed with the petition to show that the tenure is likely to be terminated shortly has only made the ground of eviction for sake to evicting the deponent.

12. That the younger son of the petitioner namely Varun Singhal as contended is studying in MBA and has not suggested that he will be running a shop or will be in employment of some multinational company hence this ground has also been taken for sake of evicting of deponent.

13. That the deponent states that the petitioner knew very well that his two sons requires the premises for their purpose but recently the petitioner has let out on rent the premises on the ground floor to the scrap vendor and has falsely created the ground of eviction to evict the deponent.”

9. In reply to paras 9 to 13 of the application for leave to defend, the respondent has not specifically denied that he has recently let out the shop to the scrap dealer. The respondent has also admitted that the third corner shop is being used by him for his property dealing business and he is not carrying out his business from his residence.

10. In view of above, it is evident that the respondent has not made truthful disclosure in the eviction petition as in para 18(a)(2)(a) to (d). In the eviction petition, the statement was made that the respondent is a property dealer, he has no shop/office on the ground floor and he is earning out his business from his residence, but in the reply to the application for leave to defend, it was admitted that he is operating his business from the office/shop from the ground floor i.e. third shop and is not operating business from his residence. He has also not specifically denied the accommodation let out to the scrap dealer recently. Only explanation given by the counsel is that in the site plan filed by the respondent, the third shop which was in the possession of the respondent is shown. Thus, it is immaterial if the accommodation, i.e. third shop available with the respondent is mentioned in the grounds of eviction petition. In case, this Court finds that it is a non-disclosure of fact, the respondent be granted liberty to amend the petition.

11. In *Indermani Vs. Ajay Prakash Gupta*, 2013 (1) RCR (Rent) 521 among others one of the issue raised by the petitioner tenant was that the respondent landlord had registered for a plot under the Rohini Residential Scheme, 1981 and that a plot bearing No. 11748 has been allotted to him and

that a residential house has already been built. This alleged fact was brought up by the petitioner in the rejoinder to the reply filed against the leave to defend application. The landlord in his eviction petition specifically denied the existence of any other property in Delhi. It was observed that it is only fair that the landlord has to come to the court with clean hands. He cannot conceal relevant information that may go against his favour. In the case of ***Mohd. Illyas v. Nooruddin & Ors.***, 184 (2011) DLT 590, the landlord concealed the fact that he had another property measuring around 300 sq yards. This court held the fact of concealment to be a triable issue. The judgment stated that:-

“The triable issue sought to be raised by the petitioner is that the landlord has not approached the Court with clean hands; he has a huge property measuring about 300 sq. yards at 5310, Sadar Bazar, Delhi which can be fit for the needs of the respondents; this factum has deliberately been concealed.... Submission of the petitioner that this factum of the concealment of this fact as also the area which is in possession of the landlord not having been disclosed, contention of the tenant being that a reasonably suitable accommodation is available with the respondents and this has raised a triable issue.”

12. Supreme Court in the case of ***Kishan Chand Vs. Jagdish Pershad and Others***, 2003 (9) SCC 151 held that if the landlord is guilty of concealment of residential accommodation owned by him, he cannot seek assistance of the Court.

13. Without saying anything further, law mandates that when a party approaches the Court in order to seek relief, it is presumed that the party would always disclose the true facts. No litigant can derive benefit from a Court of law of his own wrongs. No litigant should be encouraged to invoke the jurisdiction of the Court by concealing material fact. If such attempt is

made, normally such a party would not be entitled to relief as truth is an integral part of the justice delivery system.

14. It is the admitted position that in his counter affidavit to the affidavit filed along with leave to defend the respondent admitted the said facts. The landlord is duty bound to disclose all the accommodation available with him in the suit premises, particularly, where the tenant's rights are affected by not disclosing all portions of the suit property. Failure to do so by the landlord would entitle the tenant to get the leave in order to reveal the hidden truth at the time of trial.

15. In view of the abovesaid facts and reasons, this Court is of the considered opinion that due to non-disclosure of vital facts in the present case, the petitioner is entitled for leave to defend on this ground itself. However, in order to satisfy my conscious, I am also dealing with the other grounds taken by the respondent in his eviction petition. In the present case, the respondent has not disclosed that factum of having the third shop at ground floor in his possession from where he is carrying on his business from the same property. In the eviction petition, he made incorrect statement. He has also not disclosed the fact about the let out portion to the scrap dealer recently.

16. With regard to other ground of eviction on account of requirement of tenanted premises, the respondent has stated that his elder son namely Tarun Singhal is presently serving in Tata Consultancy Service at Gurgaon and his tenure is likely to be terminated shortly as well as younger son namely Varun Singhal is studying in MBA in Hyderabad and he needs tenanted premises to accommodate them.

17. The eviction petition was filed in August, 2011. Even after expiry of two years still the statement of the learned counsel for the respondent is still that they are likely to join their father.

Proviso (e) to Section 14(1) is a special provision which has been enacted by the legislature for the class of landlords who require the premises genuinely and their requirement is bonafide and they do not have any suitable accommodation. The essential ingredients for attracting the proviso (e) of the Section 14 (1) are :

- a) The said premises are bonafide required by the landlord either for himself or for his family member.
- b) The landlord or the family member has no other reasonable suitable accommodation.

These twin thresholds are to be satisfied conjunctively in order to attract the provisions of Section 14 (1) (e) and the absence of even one of the said ingredients clearly makes the said provision inapplicable.

18. The satisfaction of the two requirements of bonafide need and no reasonably suitable accommodation has been time and again emphasized by the Supreme Court of India in several cases and more recently in the case *Deena Nath Vs. Pooran Lal*, (2001) 5 SCC 705 wherein the Supreme Court observed as under :

“The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire. **The 'bonafide requirement' must be in praesenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire.** The legislative intent is made further clear by making the provision

that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available. The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. **Bonafide requirement, on a first look, appears to be a question of fact.** But in recording a finding on the question the court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). **If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment.**” (Emphasis Supplied).

19. From merely reading the grounds of eviction petition, it is doubtful as to whether the respondent is seeking eviction on the basis of desire or bonafide need for his two sons who are likely to join the business of property dealer with the respondent. The said requirement appears to be fanciful and is resting upon too many contingencies and conditions. The learned Controller did not even consider this aspect despite of settled law by the Apex Court while arriving at the finding as to whether the requirement of the respondent exists as genuine or not. Thus, on this aspect also, the impugned order is required to be interfered with by this Court.

20. In my view, the learned Controller has erred in denying the prayer of the application for leave to defend. Actually the aspect of concealment is not dealt with as per law. Thus, the petition is allowed. The leave is granted to the petitioner. The impugned order is set-aside/quashed.

21. The parties are directed to appear before the concerned Rent Controller on 16th December, 2013. In the meanwhile, the petitioner is granted four weeks time to file written statement from today.

(MANMOHAN SINGH)
JUDGE

OCTOBER 04, 2013