

. * IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: November 06, 2013

+ RC. Rev. No.256/2012 & C.M. No.10561/2012 (for stay)

MOHINDER KUMAR KHANDELWAL Petitioner
Through Mr.S.R. Mehta, Adv.

versus

GULSHAN KUMAR ANAND Respondent
Through Mr.J.S. Bakshi, Adv. with Mr.A.S.
Bakshi, Adv.

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

MANMOHAN SINGH, J.

1. The petitioner/tenant, Mohinder Kumar Khandelwal has filed the present revision petition under Section 25(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the “DRC Act”) against the order dated 13th January, 2012 whereby his application for leave to defend was dismissed in the eviction petition bearing No.E-451/09 filed by the respondent/landlord under Section 14(1)(e) of the DRC Act.

2. Brief facts, as recorded in the eviction petition, are that the respondent is the owner of the property bearing No.39-40/2988, Beadon Pura, Karol Bagh, New Delhi. He is Senior Citizen aged about 71 years. The petitioner is the tenant in respect of one shop on the ground floor of property No.39/2988, Beadon Pura, Karol Bagh, New Delhi-110005 on a plot of land measuring 41.5 Sq. Yards, as shown in red in the site plan (hereinafter referred to as the “Suit Premises”). The suit premises was let out for commercial

purposes. The shop in question out of the three shops is on the front side and the middle one. The measurement of the tenanted shop is 5'.3" x 13". The family of the respondent consists of himself, his wife, one son and his wife who owns the adjoining property. The son and the wife of the respondent are carrying out independent business. The respondent was initially a partner in the firm M/s R.K.Jewellers and after dissolution of the said firm, the respondent is out of the aforesaid firm which was a renowned firm in the market and shifted to a shop in the adjoining property under the ownership of his wife. The wife of the respondent owns the adjoining property but his son is dependent upon the respondent and the family of the respondent does not own any other commercial property in Delhi. The respondent requires the front shop for his showroom as the earlier firm was running its business from the showroom located on the corner of Hardhiyan Singh Road and he is carrying out his business of goldsmith for the last 25 years. The present shop is in the lane and is affecting the business to a great extent. Therefore, the respondent requires the suit premises bonafide for the use of the business/ commercial purposes for himself and other family members dependent on him. A prayer was made for passing the eviction order in respect of the suit premises.

3. Upon service, the petitioner/tenant filed the application for leave to defend along with his affidavit wherein it was admitted that the petitioner is a tenant and the respondent is the owner of the suit premises. The respondent is not carrying out any business of goldsmith. In fact, he was a bank employee in Bank of India and had voluntarily retired in December, 2000 after opting VRS owing to his ill-health. The respondent wants to enhance the rent or to sell the suit premises after getting eviction of the

petitioner. It was further stated that earlier major portion of the property i.e. marked A, B, C and D in the site plan has been let out by the respondent to various tenants from the year 2000 onwards at the market rate after getting the eviction from earlier tenants. Sh. Loveneesh Duggal is the tenant in shop 'A'. Smt. Draupdi Devi is the tenant in shop 'B'. Sh. Jitesh Kumar is the tenant in shop 'C' as shown in the site plan of the petitioner. The adjoining property, of which the wife of the respondent is owner, has been let out to various tenants and whatsoever portion remains with the wife is being used for running a jewellery shop and if the respondent requires the suit premises for commercial purposes, then the alternative space is available in the adjoining property of his wife. It was also stated that the major portion of respondent's wife's property i.e. marked E (some portion), E (remaining portion), F and G in the site plan has also been let out to various tenants from the year 2000 onwards at the market rate after getting the eviction of the earlier tenants which shows that the respondent has no bonafide requirement of the suit premises.

4. Reply/counter-affidavit was filed by the respondent to the application for leave to defend, admitting therein that the respondent was a bank employee in Bank of India. He resigned from the said Bank and joined his father in the family business in April, 1996, wherein the wife of the respondent was already a partner from 1981 and doing the business in the name and style of M/s R.K. Jewellers. The said firm is in the business of goldsmith for the last more than 50 years. The photocopies of the partnership deeds and dissolution deeds as well as sales tax registration certificates were also placed on record. It was denied by the respondent that he wants to let out the suit premises on enhanced rent after getting the petitioner evicted from

the same. It was submitted that the premises marked B in the site plan is most suitable to the respondent as the same is on the ground floor and in the front portion of the building facing the main road. The premises marked C in the site plan is located in the side lane of the building and moreover the said premises would be vacated in December, 2009 and the same would also be utilized in the showroom from the front side i.e. the tenanted premises. It was not denied by the respondent that he has got commercial space in his wife's property but the same is available to the wife of the respondent who is also carrying out the business as proprietor of her firm and the respondent is carrying out his business from the shop of his wife only as he does not have a proper place for his own business. It was further stated that the petitioner himself is the President of Beadon Pura Handloom Traders Association (Regd.) of the area Beadon Pura, Karol Bagh, New Delhi.

The petitioner is running a handloom business from the property bearing No.2993-94-95/39, Beadon Pura, Karol Bagh, New Delhi having about 4725 sq. ft. available with him consisting of ground floor, first floor, second floor and third floor i.e. about 80 times space with respect to the tenanted premises available to him. It was further stated that the property bearing No.2994-95/39, Beadon Pura, Karol Bagh, New Delhi is owned by the petitioner and property bearing No.2993/39, Beadon Pura, Karol Bagh, New Delhi is also available to the petitioner as a tenant. The property bearing No.2986-87/39, Beadon Pura, Karol Bagh, New Delhi just adjacent to the respondent's wife's property is also owned by the petitioner and the petitioner is running same business from there.

It was also stated that the respondent is being assessed to income tax as proprietor of M/s G.K.Jewellers. His wife is also being assessed to

income tax as proprietor of M/s K.L.Jewellers and further, his only son Sh.Sumeet Anand is assessed to income tax in his individual name as he does job work related to manufacturing of gold jewellery from the second floor of the building w.e.f. 1994. The portion 'A' shown in the plan of the petitioner cannot be used by the respondent for his business due to shortage of space. Shop 'B' is the tenanted premises. Shop 'C' has dimensions of 4½ ft. width and 12 ft. depth and is lying locked. The tenant of shop 'D' has promised to vacate the same as soon as Shop 'B' is vacated which is the most suitable to the respondent.

5. As far as the ownership and purpose of letting are concerned, the said issues were not seriously disputed by the petitioner before the learned trial Court. After considering the rival submissions of the parties as well as their pleadings, the learned trial Court on the issue of alternative accommodation and bonafide requirement has come to the conclusion that the petitioner has failed to raise any triable issue and on the other hand, the respondent has successfully established that the respondent requires the suit premises bonafide for the use of the business/commercial purposes for himself, as he has no other reasonably suitable accommodation with him except the suit premises.

6. The next objection raised by the petitioner before the learned trial Court was that before filing of the eviction petition the respondent and his wife have been letting out shops from time to time, therefore, the intention of the respondent is to enhance the rent of the suit premises and even otherwise, as per the conduct of the respondent, he is not entitled for the relief as per the details given and, therefore, it was a fit case where triable issues were raised by the petitioner. The learned trial Court after considering

the material placed on the record has come to the conclusion that the petitioner has merely stated that some other shops were let out by the respondent to other tenants from the year 2000 onwards. However, the petitioner has not shown that the respondent has any shop in his possession on the front side of the road, as the petitioner himself stated that the shops A and C are in possession of the tenants, namely, Loveneesh Duggal and Jitesh respectively. When these shops are in possession of other tenants, then how these shops can be said to be alternative accommodation with the respondent. The petitioner had not brought anything on record that the respondent has any alternative accommodation available with him for running his jewellery business except the shop which is in the lane.

7. The submission of the petitioner was also rejected by the learned trial Court that the respondent has falsely stated that he has been in the business of jewellery for the last 25 years, as he was a Bank employee and got VRS in the year 2000. The case of the respondent before the learned trial Court was that he did not get VRS but he resigned from Bank of India in the year 1996 and since then, he is in the business of jewellery and was doing business as a partner in the firm M/s R.K.Jewellers. The learned trial Court found that it does not make any difference whether the respondent is doing business for the last 25 years or for the last 15 years, as the Court has to see at this stage, whether the need of the respondent to get the suit premises was bonafide or not.

8. On the other issue raised by the petitioner before the learned trial Court that the respondent wants to enhance the rate of rent or to sale the suit premises at a higher rate after vacating the suit premises, the learned trial Court has rightly observed that the said argument has no substance, as there

is protection to the tenant under Section 19 of the DRC Act that in case the landlord let out or sell the property within three years of its acquisition, tenant can file a petition to get back the possession.

9. It was also argued by the petitioner before the learned trial Court that the partnership deed and the dissolution of partnership are false and cannot be relied upon. It was held that the said argument has no force, as the respondent has filed the copy of sales tax as well as the copy of dissolution deed which shows that the respondent's name was deleted from the partnership firm M/s R.K.Jewellers in the year 2005 and the respondent is in the business of jewellery since the year 1996 and he has been doing his business as a partner in M/s R.K.Jewellers. The said firm was dissolved in the year 2005 and thereafter, the respondent has started his business from the premises which are owned by his wife and on the backside.

10. In a nut-shell, it is apparent from the pleadings as well as the material placed on the record that the respondent seeks his own premises which is on the front side to do his business.

11. 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 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. In other words, this Court has only to see whether

the learned Rent Controller has committed any jurisdictional error and has passed the order on the basis of material available before it.

11.1 In ***Frank Anthony Public School vs. Smt. Amar Kaur***, 1984 (6) Delhi Reported Judgment 47, it was held that, “*The legislature has devised a ‘special procedure for the disposal of the application for eviction on the ground of bonafide requirement’. It is modelled on Order XXXVII of the Code of Civil Procedure. The object is to reduce delays in limitation. The object is to introduce a ‘summary trial’ in place of full length trial.*”

11.2 It was laid down in the judgment of the Apex Court in the case of ***Bell and Co. Ltd. vs. Waman Hemraj***, AIR 1938 Bom (223) as under:-

“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 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.”

11.3 In ***Praveen Jain & Ors. (Shri) Vs. Dr. Mrs. Vimla***, 2009 IV AD (Delhi) 653, the High Court observed “the powers of this Court under Section 25B(8) are not appellate powers and this Court has only to see that the trial court had acted in accordance with law and not transgressed the limits of its jurisdiction”.

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 from 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-section (8) of Section 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.

v) The Apex Court in ***Sarla Ahuja vs. 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.”

11.4 In ***Rajender Kumar Sharma & Others Vs. Smt. Leela Wati & Ors.***, 155 (2008) DLT 383, the High Court observed that Section 25 B was inserted by the legislature in Delhi Rent Control Act as a special provision for eviction of the tenants in respect of specified category of cases as provided therein. Where a landlord seeks eviction on the basis of bonafide necessity, a summary procedure is provided and tenant has to seek leave to defend disclosing such facts which disentitled the landlord from seeking eviction.

11.5 It has been held by Supreme Court in ***Baldev Singh Bajwa Vs. Monish Saini***, (2005) 12 SCC 778 as under :

“12. The legislative intent of expeditious disposal of the application for ejectment of the tenant filed by the NRI landlord is reflected from the summary procedure prescribed under Section 18-A of the Act of 1949 which requires the Controller to take up the matter on day-to-day basis till the conclusion of the hearing of an application. The Legislature wants the decision of the Controller to be final and does not provide any appeal or second appeal against the order of eviction, it is only the High Court which can exercise the power of consideration of the case, whether the decision of the Controller is in accordance with law. Section 13-B gives right of ejectment to special category of landlord who is NRI (Non Resident Indian); and owner of

the premises for five years before action is commenced. Such a landlord is permitted to file an application for ejectment only once during his life time. Sub-section (3) of Section 13-B imposes a restriction that he shall not transfer through sale or any other means or lease out the ejected premises before the expiry of the period of five years from the date of taking possession of the said building. Not only that, if there is a breach of any of the conditions of sub-section (3) of Section 13-B, the tenant is given a right of restoration of possession of the said building. Under sub-section (2-B) of Section 19 the landlord has to take possession and keep it for a continuous period of three months and he is prohibited from letting out the whole or any part of such building to any other person except the evicted tenant and any contravention thereof, he shall be liable for punishment of imprisonment to the term which can be extended upto six months. These restrictions and conditions inculcate inbuilt strong presumption that the need of the landlord is genuine. Landlord, after the decree for possession, is bound to possess the accommodation. Landlord is prohibited from transferring it or letting it out for a period of five years. Virtually conditions and restrictions imposed on the NRI landlord makes it improbable for any NRI landlord to approach the Court for ejectment of a tenant unless his need is bona fide. No unscrupulous landlord probably, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him by which practically he is deprived of his right in the property not only as a lessor but also as the owner of the property. There is a restriction imposed even on the transfer of the property by sale or any other manner. The restriction imposed on the landlord by all probability points to the genuine requirement of the landlord. In our view there are inbuilt protections in the relevant provisions, for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of-course, subject to tenant's right to rebut it but with strong and cogent evidence. In our view, the proceeding taken up under Section 13-B by the NRI landlords for the ejectment of the tenant, the Court shall presume that landlord's need pleaded in the petition is genuine and bona fide. But this would not dis-entitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by

documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlords' favour that his requirement of occupation of the premises is real and genuine.”

12. The other important aspect of the matter is that the respondent while filing the reply to the application for leave to defend has specifically mentioned that the petitioner himself is the President of Beadon Pura Handloom Traders Association (Regd.) of the area Beadon Pura, Karol Bagh, New Delhi. The copy of the relevant extract of the names of the members' directory was filed along with the reply. It was submitted that the petitioner is running a handloom business from the property bearing No.2993-94-95/39, Beadon Pura, Karol Bagh, New Delhi having about 4725 Sq. ft. available with him consisting of ground floor, first floor, second floor and third floor, i.e. about 80 times (approx.) space with respect to the tenanted premises available to him. The property bearing No.2994-95/39, Beadon Pura, Karol Bagh, New Delhi is owned by the petitioner and the property bearing No.2993/39, Beadon Pura, Karol Bagh, New Delhi is also available to the petitioner as a tenant. Telephone bill of Telephone No.28720267 installed in the said property also shows the petitioner as proprietor of M/s. Handloom Fabrics. The property bearing No.2986-87/39, Beadon Pura, Karol Bagh, New Delhi just adjacent to the respondent's wife's property is also owned by the petitioner and the petitioner is running same business from there. The photographs with respect to the premises from where the petitioner is carrying out his handloom business were also filed along with the reply.

13. In the rejoinder, the petitioner has specifically denied the said fact wherein it was stated that the petitioner does not have any property in the same lane. He has also denied the fact being the President of Beadon Pura Handloom Traders Association (Regd.) of the area and also denied the documents filed by the respondent. It was specifically denied by him that the petitioner is running handloom business from the property bearing No.2993-94-95/39, Beadon Pura, Karol Bagh, New Delhi having about 4725 Sq. ft. area available with him consisting of ground, first and second floors as a tenant. He also denied the telephone bill as well as mobile bill filed by the respondent. As regards the property bearing No.2986-87/39, he stated that he does not own the said property and all the photographs filed by the respondent are false, fabricated and forged.

14. It appears from the record that the said statement made by the petitioner is not correct, as the respondent has also filed the following documents in support of his contentions:-

- (i) Sale Deed dated 3rd January, 2000.
- (ii) Sale Deed dated 12th June, 2000.

The respondent has also filed on record telephone bills as well as the photographs in order to show that his property bearing No.2986-87/39 is adjacent to the respondent's wife's property from where he is also doing business. The photographs as well as the sale deeds of the petitioner as well as his father are already on record. There is a specific contention of the respondent that the petitioner is running the businesses from the said premises. In view thereof, it is apparent that the petitioner has not disclosed the full facts in the application for leave to defend as well as in the rejoinder

to the reply filed by the respondent/landlord where the said contentions were made.

15. It is true that while deciding the application for leave to defend only the bonafide requirement of the landlord is to be examined by the court but at the same time, duty is also cast upon the tenant to disclose the true facts in the application for leave to defend because of the reason that it is he who is seeking the relief to defend his case. If tenant in his application for leave to defend does not disclose the true facts about the landlord and himself, it would be difficult for the Court to know the real facts while deciding the application and also to strike the balance between the parties in an appropriate case.

16. 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.

17. Learned counsel for the respondent/landlord admitted that portion A as shown by the tenant in his plan has been handed over but Shop A cannot be used for the business of the landlord in isolation due to very small space, the same can only be utilized along with the two tenancies when vacated along with the portion of the wife.

18. Admitted position as on date of the filing of the petition is that none of the four shops was available to the landlord. As submitted, earlier shop 'C' became available to the landlord in December, 2009. Its dimensions are 4½

ft. (width) and 12 ft. depth and this alone is not sufficient for the needs of the respondent/landlord and is since lying locked/vacant. Shops 'A' and 'C' because of their peculiar dimensions/positions cannot independently/ individually be used for a 'walk in showroom' from the front due to very small area of plot of land.

19. Under these circumstances, there are no disputed questions of facts in the present case, as admittedly, the respondent has no shop to do his business except from the premises in question. No triable issues are raised by the petitioner who has not come to the Court with clean hands in filing the application for leave to defend. In case, the entire gamut of the matter is examined, I am of the view that there is no need for examination and cross-examination in the matter, as admittedly, the respondent is the owner/landlord of the suit premises and he wants to occupy the same for his personal use. No grounds have been made out by the petitioner to interfere with the order passed by the learned trial Court.

20. The present petition is accordingly dismissed. However, since the property involved is a commercial one, in the interest of justice, equity and fair play, the petitioner is granted time up to 30th June, 2014 to handover the peaceful and vacant possession to the respondent. During this period, the petitioner shall pay the user charges as per order dated 1st June, 2012 passed by this Court which was quantified @ ₹40,000/- per month to the respondent directly. The petitioner shall also not sublet or create

third party interest in the suit property during this period. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 06, 2013