

. * IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Order delivered on: December 16, 2013*

+ RC.REV. 441/2012 & C.M. No.15129/2012

RAJENDER @ RAJENDER KUMAR Petitioner
Through Mr.Abhishek Kumar, Adv.

versus

RAJ BALA Respondent
Through None

**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 eviction order dated 9th February, 2012 passed against the petitioner by the ARC-01, East, Karkardooma Courts, Delhi.

2. Brief facts for the purpose of adjudication of the present petition are that the respondent filed an eviction petition against the petitioner under Section 14(1) (e) of the Act in respect of one room situated on the ground floor of the property bearing No. P-106, Gali No. 6, Shankar Nagar Ext., Delhi-110051 (hereinafter referred to as “the tenanted premises”). It was stated that the tenanted premises was let out for residential purposes and that the rate of rent at the time of filing the eviction petition was ₹2,000/- per month.

3. The respondent stated in the eviction petition that there are 10 tenants occupying different portions of the property bearing no. P-106, Gali No. 6,

Shankar Nagar Ext., Delhi-110051 (hereinafter referred to as “the suit property”), details of which are as under:

- (i) Ground floor consists of 4 rooms, 2 kitchens, 2 shops, 1 common bathroom and 1 toilet.
- (ii) First floor consists of 5 rooms, 2 kitchens, 2 bathrooms and 1 toilet.
- (iii) Second floor consists of 5 rooms, 2 kitchens, 2 bathrooms and 1 toilet.
- (iv) Third floor consists of 3 rooms.

4. It was stated that the family of the respondent consisted of 14 members, including herself, 3 married sons (one of whom had expired), their wives, grandchildren of the respondent and a married daughter. It was stated that while both the sons of the respondent were residing on rent alongwith their families, details of the rental accommodations being given; the respondent and her other family members were in occupation of 4 small rooms on the second floor and one store room on the third floor.

5. It was stated in the petition that the respondent required the entire suit property for the residential use for herself and for her family as well as for the purpose of opening her own shop of general store to earn her livelihood with the help of her grand-children and widowed daughter in law. It was further stated that there was paucity of residence for the respondent and for her family members due to which the two sons of the respondent were not able to shift to the suit property alongwith their families.

6. The requirement of the respondent was stated to be of 4 pooja rooms in each block, 4 store rooms on each floor and the arrangement of how each floor would be required by all the sons of three families was mentioned in detail in the eviction petition.

7. In the leave to defend application, the petitioner disputed the ownership of the respondent with respect to the suit property. It was contended that the petition was based upon a General Attorney dated 2nd April, 1982, which was not a registered document and hence, not admissible in law. It was averred that the respondent was appointed only as attorney by her principle Ram Dass that too in respect of one room, open courtyard and boundary wall.

8. It was contended that the respondent had sufficient accommodation in her possession and it was averred that she was in possession of more rooms than stated in the eviction petition, details of which were given. It was averred that as such the accommodation of the respondent had been lying locked and that the respondent had been residing most of the times with one of her sons.

9. It was averred that the two sons of the respondent had as such never resided in the suit property nor did they desired to live therein. It was also contended that the accommodations of the two sons were owned by them and not rented, as alleged by the respondent.

10. All the other averments made in the eviction petition were denied and contested and it was also contended that after the death of the husband of the respondent in October, 2010, both the sons of the respondent alongwith the respondent had been negotiating for sale of the suit property through local property dealers and that the eviction petition had been filed since the suit property being in occupation of the tenant does not get an attractive price.

11. In the reply and counter affidavit, the respondent stated that she is the owner of the suit property having purchased the same through GPA, agreement to sell, receipt through the previous owner Ram Dass and that the

suit property was constructed after the said purchase. The other contentions of the petitioner were denied and contested.

12. The learned Trial Court on considering the matter observed that though the petitioner had contested the title of ownership of the respondent, the relationship of landlord-tenant was not disputed and that once the said relationship was accepted, the petitioner was estopped from denying the title of the respondent by virtue of Section 116 of the Indian Evidence Act. It was also observed that the respondent is not required to prove her absolute ownership over the tenanted premises, and is to show that her title is better than the petitioner over the tenanted premises.

13. On perusal of the two site plans filed by the each party, the learned Trial Court observed that there was no material difference in them and that the difference between the two did not make out any triable issue for the purpose of the case of the petitioner. The location of the room under occupation of the petitioner was same in both the site plans.

14. On consideration of the requirement of the respondent, it was observed by the learned Trial Court that the description of the family of the respondent was not disputed by the petitioner and that the petitioner had only pleaded that the family members of the respondent were not dependent upon her for residence purpose, however, did not explain that despite them being children and grand children of the respondent, why they were not assumed to be dependent upon the respondent. It was observed that the petitioner had not disputed that there are only 17 rooms in the said property and on noticing the requirement of the respondent as stated in the eviction petition, it was observed that the total number of rooms available in the said property fell short of the projected requirement of the respondent. Therefore,

the projected requirement of the respondent could not be termed as exaggerated requirement at all.

15. With regard to the contention of the petitioner regarding the properties owned by the sons of the respondent, it was observed by the learned Trial Court that in absence of any sufficient material placed on record, the said contention could not be sustained.

16. On the contention of the petitioner that the sons of the respondent did not want to reside in the said property, it was observed by the learned Trial Court that the said plea was based merely on assumptions of the petitioner and that the said assumption could not raise a triable issue.

17. On the contention regarding sale of the suit property, it was observed that Section 19 of the Act takes care of such apprehensions and the same also could not be treated as triable issue.

18. With these observations, the learned Trial Court passed the eviction order against the petitioner, and aggrieved thereof, the petitioner has filed the present petition.

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

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

ii) A Full Bench of this Court in ***Mohan Lal vs. 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. vs. Rao Girdhari Lal Chowdhury*, A.I.R. 1963 S.C. 698 and *Bell and Co. Ltd. vs. Waman Hemraj*, AIR 1938 Bom (223) it was laid down as follows:

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

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

“.....The revisional jurisdiction exercisable by the High Court under S.25-B (8) is not so limited as is under S.115, CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts. However, the High Court is obliged to test the

order of the Rent Controller on the touchstone of 'whether it is according to law'. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion for the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to sub-sec. (8) of S.25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law.

iv) The Supreme Court in another case tilted 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.”

20. Having heard the learned counsel for the petitioner as well as the written synopsis filed by the petitioner and after going through the pleadings and impugned order, I am of the opinion that the same does not suffer from any infirmity. In view of following finding arrived in para 21 of the impugned order the present petition is liable to be dismissed :

“21. Therefore, I came back to the question of requirement of the petitioner for the purpose of residence of herself and her family members. The respondent has not disputed that there are only 17 rooms in this property. The petitioner wants whole second floor for the purpose of residence of her widow daughter-in-law and her family. The second floor has 05 rooms, two kitchens, two bathrooms and one toilet. The suitability of the requirement has to be seen in accordance of convenience of the petitioner because of the simple fact that respondent and her family for the sake of his living in the property as a tenant. If petitioner wants to have a pooja room on every floor alongwith one store room and study cum drawing room, then such requirement of the petitioner cannot be termed as malafide or non bonafide. The court has to assess the requirement of the petitioner as per growing need of her family. The family of widow daughter in law as well as other two sons of the petitioner do require a comfortable space for the purpose of their living. They are well entitled to have a Pooja room, store room and drawing room. Besides this, petitioner is also entitled to have a guest room in order to maintain and provide shelter to her guests in a dignified manner. Similarly the requirement of petitioner to provide complete first floor to her elder son and his family cannot be termed to be malafide requirement. The three

rooms on the top floor and four rooms on the ground floor cannot be termed to be exaggerated requirement of the petitioner for the purpose of her own residence, residence of family of her second son Sh. Sanjeev Verma and for having pooja room, store room, guest room as well as drawing room. In fact, the total number of rooms available in the property falls short to the projected requirement of the petitioner. Therefore, her projected requirement cannot be termed as exaggerated requirement at all.”

21. The possession of the tenanted premises has already been obtained by the respondent with due process of law. Thus, no further orders are required.

22. The present petition and pending applications are accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

DECEMBER 16, 2013