

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

% *Order delivered on: October 11, 2013*

+ **RC.REV. 361/2013 & CM No.15135/2013**

MR P I PERUMAL Petitioner
Through Mr.Pradeep Kumar, Adv.

versus

MS KAMLESH BANSAL Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The present revision petition is filed by the petitioner under Section 25B (8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) against the order and judgment dated 16th December 2011 passed by ARC (Central), Tis Hazari Courts, Delhi, dismissing the leave to defend application of the petitioner in respect of 3rd Floor of the property bearing No.7-A/8, Channa Market, Karol Bagh, New Delhi (hereinafter referred to as “the tenanted premises”). A review application filed against the impugned order was dismissed vide order dated 13th August, 2013.

2. The brief facts are that the respondent filed an eviction petition under Section 14(1)(e) of the Act against the petitioner stating that the tenanted premises i.e. one room and bath on sharing basis situated on the third floor of property bearing No.7-A/8, Channa Market, Karol Bagh, New Delhi, was let out to the petitioner. The said property had been purchased by the respondent vide sale deed dated 20th September, 2004 from the erstwhile

owner. The respondent and her husband had been tenant in certain portions of the property.

3. The family of the son of the respondent is residing in a tenanted property in a separate building and is paying the rent. The space available at present with the respondent is not sufficient to meet the minimum requirement of the son. As the said portion does not have bathroom, the respondent needs demised premises to meet the requirement of the family members of her son who is living in a tenanted property. It was also stated in the petition that the petitioner is having residential property in Brampuri of his own which has been given by him on rent. The said fact has not been denied by the petitioner in his reply to the notice issued to him.

4. It was stated in the petition that the demised tenanted premises is being used by the petitioner for illegal purpose besides residential purpose as despite of requests, he had been using the premises for preparing pirated CDs which are being sold at his shop. There were complaints to this effect that he had been making unauthorized copies of the prohibited films. The said illegal and unauthorized activities can attract police raid which may bring bad name to the property as well as to the respondent. Thus, the eviction petition was filed.

5. In the leave to defend application, though the petitioner admitted the landlord-tenant relationship between the parties, he raised certain objections. It was stated that the respondent had levelled a false allegation against the petitioner that he was using the tenanted premises for preparing pirated CDs. It was also stated that the tenanted premises were let out to the petitioner by taking pagri amount of Rs.55,000/- in the year 1986. It was contended that

the respondent has various properties at various places in Delhi besides the tenanted premises, hence her need was not bonafide.

6. In the counter affidavit, the respondent reiterated the averments made in the eviction petition; the petitioner in the rejoinder to the counter affidavit for the first time raised the contention that the husband of the respondent is running flour mills at the ground floor portion of the tenanted premises and one watch shop, one STD shop/booth, sweet shop and another shop is lying vacant on the same floor. It was also averred that on the first floor, three tenants were in possession, while as the family of the respondent was in possession of the second floor, two rooms sets were given on rent and on the third floor, two room sets were in possession of the respondent. It was contended that there are about 10 tenants in the said property.

7. The learned trial court observed that the contention with respect to illegal use of the premises was not relevant for the purpose of a petition filed under Section 14 (1)(e) of the Act. The objection that the tenanted premises were let out to the petitioner by taking the pagri amount were not relevant as the petitioner had an efficacious remedy to file a civil suit for recovery of the same. The objection that the respondent has various other properties at various places in Delhi was not accompanied by particulars of the said properties.

8. So far the vacant shop as alleged by the petitioner in the leave to defend application was concerned, it was observed by the learned Trial Court that requirement of the respondent is of additional accommodation to accommodate his married son who is living in a tenanted property. The said vacant shop is a shop and not a room. Hence, the said shop cannot be used for residential purposes. As far the contentions of the petitioners with respect

to space available on the different floors, taken in the rejoinder for the first time are concerned, it was opined for the reasons stated therein that the neither of them were suitable for the respondent and even otherwise, no details thereof were given by the petitioner. Even otherwise, a tenant cannot dictate the terms to the landlord for his requirement. The landlord is the best judge of his requirement for residential or business purpose.

9. With these observations, the impugned eviction order was passed and aggrieved thereof, the petitioner filed the a review petition under Order 47 CPC read with Section 25 (B) (9) of the Act on the ground that the respondent had misled the court and obtained the eviction order on the basis of false and incorrect grounds and that since sufficient accommodation was available to the respondent on the second and the third floor, the leave to defend should be granted to the petitioner.

10. The learned trial court while deciding the review application vide order dated 13th August, 2013, opined that for obtaining review of eviction order, the petitioner was required to show that there was discovery of new and important matter which was not within his knowledge or even after exercise of due diligence it could not be produced by him at the time when aforesaid order was passed or that there is some mistake or error apparent on the basis of record. In view of the learned trial court, neither of these grounds were raised by the petitioner in his review application. It was observed that the grounds taken by the petitioner in the review application were not disclosed in the leave to defend application, and in case new pleas taken by way of review application were considered, the same would tantamount to entertaining the second application for leave to defend, which is not legally permissible.

11. It is the admitted position that the eviction order was passed on 16th December, 2011. With regard to the tenanted premises situated on third floor of the property as shown in green colour in the site plan Ex.X, six months' time was granted to the petitioner to vacate the same. Thereafter, the petitioner filed the review application under Order XLVII CPC read with Section 25(B)(9) of the Act seeking review of order dated 16th December, 2011 in January, 2012. The said review application was also dismissed by order dated 13th August, 2013. The petitioner in the present petition has challenged both the orders i.e. judgment dated 16th December, 2011 passed in the eviction petition as well as order dated 13th August, 2013 passed in the review application.

12. The issue before this Court is, whether the findings of the learned trial court 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 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. 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.

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

“6. The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

13. I have gone through the petition filed by the petitioner and the grounds stated therein. I have also examined the submission advanced by the learned counsel for the parties at the bar. In the present case, it is the admitted position that the eviction was passed on 16th December, 2011. The petitioner instead of taking the remedy under Section 25(B)(8) of the Act, the petitioner chose to file the review petition under Section 25(B)(9) and under Order 47 Rule 1 CPC. After dismissal of review application, this court is not inclined to interfere with the two orders yet again, by exercising supervisory power of revision, unless the orders are totally perverse or contrary to law. Such situation is not available in the present case therefore, the present challenge does not call for interference by this court as the

petitioner has failed to point out any illegality in the impugned orders. The petitioner has merely reagitated the same grounds which have been argued before the learned Additional Rent Controller who has adjudicated the same with a reasoned order. The petitioner's plea that the respondent concealed some facts when the said aspect has been dealt with by the learned Additional Rent Controller correctly.

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

15. For the aforesaid reasons, the Additional Rent Controller has rightly dismissed the leave to defend application and has given a detailed and reasoned order which neither calls for any interference nor suffers from any infirmity or erroneous exercise of jurisdiction.

16. The present petition is hereby dismissed accordingly. However, in the interest of justice, equity and fair play, the petitioner is granted six months time from today to vacate the tenanted premises by handing over peaceful possession to the respondent. During this period, the petitioner shall not sublet or create any third party interest in the tenanted premises.

17. No costs.

(MANMOHAN SINGH)
JUDGE

OCTOBER 11, 2013