

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

% *Order delivered on: October 29, 2013*

+ **RC.REV. 504/2012 & CM No.17395/2012**

KAMAL BHUSHAN BHATNAGAR Petitioner
Through Mr.J.C. Mahindro, Adv.

versus

RAMWATI Respondent
Through Mr.Saurabh Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The present petition is contested by the petitioner under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) against the impugned order dated 11th July, 2012 passed in eviction petition No.E-01/2012 by the Court of ARC, Rohini, Delhi.

2. The brief facts of the case are that the respondent/landlady filed an eviction petition against the petitioner/tenant under Section 14(1)(e) of the Act on the ground of bonafide requirement of the property bearing No.B-3/264, Sector 6, Rohini, Delhi-110085 (hereinafter referred to as the “tenanted premises”). It was stated in the eviction petition that the respondent is the owner of the tenanted premises which she purchased from its previous owner Devender Kaur vide registered sale deed and agreement to sell dated 14th December, 2005. It was stated that the respondent and her family has been residing in one room of property bearing No.LD-194,

Pitampura, Delhi-110088 in which they have been living has caretaker/missible user since 2003. However, the owner of the said premises where she resides wants her and family to leave that house and so the respondent is in an urgent need of her own house.

3. It was stated that the respondent had earlier filed a petition under Section 14(1)(a) of the Act which was rejected under Order 7 Rule 11, CPC and subsequently she again filed an eviction petition which is pending disposal. The respondent earlier also filed an eviction petition under Section 14(1)(e) of the Act which was dismissed as withdrawn with a liberty to file a fresh one as per law. It was further stated that in a petition filed by the petitioner under Section 27 of the Act for deposit of rent, the petitioner himself admitted the respondent as his landlady.

4. It was further stated that the respondent's family consists of 6 persons i.e. herself, her husband, son, daughter-in-law and two daughters aged 22 and 10 years. One room each is required by the son of the respondent alongwith his wife, the elder daughter and the younger daughter for studying. Since the respondent is residing in just one room alongwith her entire family and also that the owner thereof wants them to vacate the same, the respondent pleaded an urgent need of getting the tenated premises vacated.

5. The petitioner in his leave to defend application contested the ownership title and the need of the respondent and stated that the respondent is in the habit of filing false petitions one after other. It was stated that there is no new ground or change in the situation since earlier petition filed under Section 14(1)(e) of the Act which was ultimately dismissed as withdrawn by the respondent as the leave to defend was granted to the petitioner. It was

stated that in a notice issued by the respondent, there was a demand is to increase the rent from the petitioner w.e.f. February 2011 and that there was not even a whisper about the respondent's alleged need to get the premises vacated or her desire to shift to the tenanted premises. It was averred that there is no bonafide need of the respondent as she has sufficient accommodation and that the flat where she is residing is a four room MIG flat, whereof she herself is the owner.

6. It was averred by the petitioner that the respondent and her family are very rich and have number of properties in Pitam Pura. Her son is a property dealer and apart from the present residence, the respondent also has one house in Karol Bagh.

7. The learned ARC after hearing both parties and considering the pleadings and documents placed on record rejected the petitioner's application for leave to defend observing that the petitioner had failed to disclose as to which material particulars were not disclosed by the respondent or which rule is violated by the respondent in framing the eviction petition.

8. On the contention of the petitioner that the respondent had no right to file a fresh petition after withdrawal of the earlier one, it was observed by the learned Trial Court that the respondent in his eviction petition and in reply to leave to defend application has stated that the earlier eviction petition filed by her under Section 14(1)(e) of the Act was dismissed as withdrawn vide order dated 20th May, 2010 with liberty to file the fresh suit on same cause of action and that the respondent had also placed on record the certified copy of the said order.

9. On the contention of the petitioner regarding absence of any mention of the bonafide requirement in the notice sent by the respondent, it was observed by the Learned Trial Court that what is to be noted is that the eviction petition is filed before the said notice and the earlier legal notice filed by the respondent in earlier eviction petition was for non-payment of rent. As per the provisions of the Act, the respondent is not under any obligation to serve any notice upon the respondent/tenant before filing of eviction petition. Therefore, even the non-mentioning of bonafide requirement by the petitioner in the demand notice does not affect the validity of the petition.

10. On the contention that the respondent is having sufficient accommodation and that the residence of the respondent is a four room MIG flat and she is the owner thereof, it was observed that while the petitioner had not placed on record any document or reason for him to say so, the respondent had specifically stated that she is residing as caretaker in one room and the flat is owned by one Smt. Sarla Mehta and placed on record a copy of the registered sale deed, original electricity bill and the return of property tax in the name of Sarla Mehta to support her contention. It was further observed that the tenanted or licensed premises cannot be considered as alternative accommodation.

11. The Learned Trial Court observed that the petitioner has failed to disclose any particulars of the property allegedly owned and possessed by the respondent in Pitam Pura or Karol Bagh.

12. With regard to the issue of ownership of the tenanted premises, it was observed that the respondent had filed on record the registered agreement to sell and purchase and rectification GPA to prove her ownership qua the tenanted premises. The petitioner had not disputed the existence of landlord-

tenant relationship between the parties and that once the relationship of landlord and tenant is admitted then the presumption under Section 116 of Indian Evidence Act is raised. Even otherwise, the petitioner had not disclosed the name of any other person as owner of tenanted premises.

13. With these observations, the Learned Trial Court passed the impugned eviction order and aggrieved thereof, the petitioner filed the present petition.

Scope of Revision

14. 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.

14.1 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.*”

14.2 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.”

14.3 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 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."

14.4 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.

15. It appears to the Court that on one hand, the petitioner Kamal Bhushan Bhatnagar, himself admitted the respondent/landlady as her landlord throughout the litigation and her tenancy period and is now trying to challenge the ownership of the respondent/landlady through this revision petition. The petitioner/tenant even admitted that the tenanted premises was let out by the respondent to the petitioner in various court proceeding and before the learned Trial Court who after considering each and every fact and law passed an eviction order in favour of the respondent and against the petitioner.

16. It is admitted to the extent that the respondent/landlady withdrew the earlier petition filed under Section 14(e) of the Act with the liberty to file afresh. It is categorically denied that on the objection raised by the petitioner/tenant the said liberty was not given as no formal defect was found in the said petition. In fact, the petitioner/tenant stated incorrect facts before this Court on affidavit, as are apparent from the order dated 20th May, 2010 in the eviction petition bearing No.40/09, passed by the learned ARC, Rohini Courts, Delhi in which the Court of ARC had given the permission to the respondent/landlady to file a fresh petition.

17. During the course of hearing, it is not denied by the petitioner that the respondent is now evicted from the house of Smt. Sarla where she and her family members were residing as licensors/caretakers in the flat No.LD-194, Pitampura, Delhi-1100 58.

18. Now the respondent with her family are residing at a flat bearing No.178, on ground floor, Block LD, situated at Pitampura, Delhi at a monthly rent of ₹15,000/-. The certified copy of the lease deed executed between Smt. Madhu Bala and Sh. Pati Ram, husband of the respondent having registration No.64, in Book No.1, Vol. No.4,501, on pages 190 to 195 dated 4th January, 2013 showing that the respondent is now living on rent is placed on record.

19. It is informed by the respondent that Smt. Sarla Mehra, peacefully passed away on 1st September, 2012 and had executed in her life time, a registered Will dated 19th April, 2011 in which she had expressly desired and stated that after her death, her immovable property bearing No.Flat No.LD-194, Sardar Patel Apartments, Pitam Pura, Delhi-34 be sold, and, the sale proceeds received from the sale would be given/donated to the beneficiaries of the Will including the Ramkrishna Mission Sevashrama. She also appointed Secretary of the Ramkrishna Mission Sevashrama, Swami Vivekananda Marg, P.O.-Vrindaban, Mathur, Uttar Pradesh-281181 as the executor who shall be responsible and in charge of the distribution of her assets, and, thereby, now, after her death, Ramkrishna Mission Sevashrama is in sole and exclusive possession of the premises, and the respondent had surrendered the possession of the aforesaid premises in which she was living as the care taker of Smt. Sarla Mehra. The death certificate of Smt. Sarla Mehra and the copy of the Will of Smt. Sarla Mehra, registered in the office of Sub Registrar VI A, New Delhi having registration No.2029, in Book No.3, Vol. No.212, on pages 9 to 12, dated 19th April, 2011, are also placed on record.

20. As per subsequent events also, the respondent requires the tenanted premises. The respondent and her family are now living on rent and are paying the rent of ₹15,000/- per month to Smt. Madhu Bala and are suffering from huge financial crises and have no home of their own and now even a baby girl is born from the wedlock of the respondent's son and daughter in law and thereby additional expenses of rent and other charges creates additional burden to the respondent and her family.

21. The need of the respondent is genuine and bonafide and the eviction petition filed by the respondent contain all the true facts and after considering all the facts and law, the learned Trial Court has rightly dismissed the leave to defend application of the petitioner. In fact, the petitioner had not made out any case or even a single ground where the learned Trial Court has erred.

22. The petitioner has not disputed the relationship of tenancy with the respondent and also impliedly not challenged the title of the respondent. The petitioner/tenant also admitted that he paid rent under Section 27 of the Act in the learned Trial Court. He is just disputing the title of the respondent when the respondent let out the tenanted premises to the petitioner in the month of May, 2005. The fact is that the previous owner has given the possession of the tenanted premises in the month of April, 2005 and gave all the possessory and rental rights to the respondent/landlady, and, it was agreed between the respondent and the previous owner that the transfer papers will be executed in December, 2005 when the respondent would pay full consideration amount to the previous owner.

23. In fact, in leave to defend application the petitioner has not disputed the needs of the respondent and the needs of her family members. He has

not challenged the existence of the family members, and, also admits the changed position from the earlier petition, which was withdrawn by the respondent herself with the separate statement before the predecessor of this Court to file afresh.

24. In view of the above said facts and circumstances, I do not find any merit in the petition. The impugned order does not suffer from any infirmity. The present petition is accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

OCTOBER 29, 2013