

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

% *Judgment pronounced on: October 04, 2013*

+ **RC.REV. 548/2012 & CM No.18936/2012**

RAJ KUMAR KHANNA Petitioner
Through Mr. M.S. Ahluwalia, Adv.

versus

PARDUMAN SINGH Respondent
Through Mr. Sanjeev Soni, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Section 25 B (8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”), the petitioner has impugned the order dated 12th July, 2012 passed by the learned ARC (North), Tis Hazari Courts, Delhi, dismissing the petitioner’s application of leave to defend in an eviction petition filed by the respondent against the petitioner in respect of one shop at the Ground Floor of the property no. A 90, Kamla Nagar, Delhi- 110007 wherein the petitioner has been running a Car Driving Training Centre (hereinafter referred to as “the tenanted premises”)

2. The respondent stated that the suit premises is required bonafidely for him and his son who are running the business of provision/general store in the adjoining shop and the said space is highly insufficient and therefore the goods of the shop are to be placed outside the shop at the footpath and the time of closure of the shop in the evening, the said goods have to be

dumped/placed un-systematically due to paucity of space causing damage and financial losses to the business. There is a temporary wall between the tenanted premises and the shop of the respondent and now the respondent wants a bigger shop of modern style after removing the partition wall so that he can establish goodwill in the market. It was also contended that neither him nor his son has any other commercial accommodation available with them in entire Delhi and hence the eviction petition was filed.

3. The petitioner however in his leave to defend application contended that he is a senior citizen and a cancer patient. Since the tenanted premises is a very small shop and the only means of earning livelihood for the petitioner, it would cause him hardship if he was asked to vacate the said shop. He contested the claim of bonafide requirement of the property by the respondent stating that the respondent is very rich and wanted to re-let the tenanted premises for higher rent. It was contended that the manner in which the property was required by the respondent had not been clarified by him. It was alleged by the petitioner that the respondent had intentionally concealed his income and accommodation available with him by not placing the balance sheet, income tax records and other relevant documents on record to prove their extent of business and requirement. It was also averred by the petitioner that the respondent was negotiating with a property dealer of that area to re-let after the property was vacated.

4. In the counter affidavit, the respondent deposed that the petitioner was running another car driving training centre from a shop in Ashok Vihar. The respondent also put on record the document to show the paucity of accommodation and the challan receipt issued by MCD to the respondent for putting the goods outside the shop. However, in his rejoinder, the petitioner reiterated the facts alleged in the application for leave to defend.

5. Assailing the impugned order, the present petition is filed on the grounds mainly that the impugned order is illegal, perverse, contrary to law and suffers from material irregularities and that the learned trial court has failed to consider the triable issues so raised by him. The petitioner has contended that since the respondent has sufficient accommodation for running his business, this is a case of additional accommodation, and as per the principle settled by the Supreme Court where an additional accommodation is claimed by the landlord, leave to defend should invariably be granted to the tenant. Further the petitioner also contends that provisions of section 14(1)(e) of the Act are not applicable to a commercial property. It is also contended by the petitioner that the said eviction would mean loss of livelihood to the petitioner as he has no other accommodation available to carry on his business. He reiterated that the respondent is very rich and doing their business satisfactorily and comfortably without requiring any additional accommodation as alleged.

6. I have gone through the petition filed by the petitioner including the grounds raised therein and also carefully examined the submissions advanced by the learned counsel for the parties at the bar. After going examining the records, it appears that the petitioner is merely reiterating and urging the grounds which had been raised before the learned ARC at the time of arguing the leave to defend application and the same has already been adjudicated by the learned ARC with the reasoned order. The petitioner has not been able to point out any legal infirmity in the impugned order which makes the order not in accordance with law warranting interference of the revisionary court. I shall now proceed to answer the grounds of challenge raised by the petitioner which would make it clear that the order passed by the learned ARC is in accordance with law.

7. With regard to the ground taken by the petitioner that the respondent is very rich landlord and he is doing his business satisfactorily. The said plea of the petitioner is totally irrelevant for the purpose of deciding the present suit. It is to be noted that the essential requirements for the satisfaction of the provisions of section 14 (1) (e) of the Delhi Rent Control Act is that the landlord bonafidely requires the premises for occupation for himself or any other person for whose benefit the premises are held and the landlord has no other reasonably suitable accommodation. Thus, the twin requirements have been satisfied by the respondent when the respondent contends that the shop is required bonafidely by him for the extension of the business as the current space is not sufficient and provides material particulars to show the insufficiency of the accommodation and also pleads that there is no alternative accommodation available with the respondent. In response thereto, the petitioner has merely raised the pleas that the respondent is rich and leading goodlife and also stated that the respondent has alternative accommodation but no where furnished the details of the same which can be called as reasonably suitable accommodation to falsify the stand of the respondent. Under these circumstances, the plea of the petitioner that the respondent is rich and doing business satisfactorily does not by itself cast any doubt as to the genuineness of the need or for that matter provide any hint as to the availability of the reasonably alternative accommodation. Thus, the said plea does not raise any triable question and the learned ARC is legally correct in rejecting the said plea.

8. It has rightly been decided by the Apex Court in the case of ***Shamshed Ahmad & Ors. Vs. Tilak Raj Bajaj (deceased)*** 152 (2008) DLT 301 (SC), wherein the Apex Court affirmed the order of the trial court which was reversed by the HC, that the requirement of section 14(1)(e) is 'bonafide

requirement' and it has to be seen as per the requirement of the petitioner(landlord) , even if the petitioner is very rich and having other properties at different places that does not affect his requirement of the premises, as alleged in the petition. And the leave to defend application was dismissed.

9. The learned trial court vide the impugned order passed an eviction order in favour of the respondent and dismissed the application for leave to defend of the petitioner on the ground that even though the petitioner alleged, it was neither disclosed that the respondent had any other alternative accommodation nor any specific particulars were given regarding any other alternative accommodation. So far as the filing of balance sheet, income tax record and other relevant documents were concerned, the same in the view of the learned trial court, for the reasons stated in the eviction order, were not relevant for the present purpose. On the ground that the petitioner is a senior citizen and critically ill and did not have an alternate place to earn his livelihood, it was observed that under the Delhi Rent Control Act, the principle of comparative hardship had no application. Further, the ground taken by the petitioner that the son was not doing business with the respondent and the shop was sufficient for the respondent to carry on his business was rejected on the ground that dependency of the son of the respondent had no bearing upon the merit of the case as the requirement is that of the respondent himself on the ground of insufficiency of accommodation available with him for running his business which is being run by him as well as his son. I do not find any legal infirmities in the findings arrived by the learned ARC on the counts narrated in this paragraphs in as much as all the pleas raised by the petitioner no where cast any doubt as to the genuiness of the need of the respondent or show any

availability of the alternative accommodation. Till the time the requirements of the provision of proviso (e) to the section 14 (1) of DRC Act have been satisfied and the tenant has not raised any doubtful case in the affidavit in support of the leave to defend application which enable the court or learned ARC to pose a question that “Is the need of the landlord really bonafide or Does he really require the premises in view of the availability of the reasonably alternative accommodation”, the leave to defend application can be conveniently rejected. Therefore in the present case, the petitioner cannot absolve himself from the onus of raising a triable issue by merely raising the sentimental pleas of hardship of the petitioner. The plea of the hardship would come to the rescue of the petitioner only when the petitioner raise some triable issue in the leave to defend application and affidavit supporting the same. In the instant case, the petitioner has failed to cast any such doubt on the bonafides of the requirement of the respondent and also have been able to show the reasonably suitable accommodation available with the respondent which can fulfill the need of the respondent. In the absence of the same, the learned ARC rightly rejected the pleas of the petitioner as frivolous and irrelevant ones.

10. Now I shall proceed to discuss as to whether said findings call for any interference by the Courts in revisionary jurisdiction or not in the absence of any legal infirmity in the impugned order.

i) 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.”

ii) 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."

iii) 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.

iv) 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.”

11. Having considered the entire gamut of the case including the pleadings and material placed on record, it has come on record that the petitioner has also not disputed the photographs of the grocery shop of the respondent as well as the receipt of payment made by the respondent herein towards MCD challan as due to insufficiency of the accommodation, the respondent had to place his goods outside his shop.

12. The petitioner had also not disputed the status of the adjoining shop of the respondent which is being run by him alongwith his son as grocery shop and he has also not disputed the facts as stated in para No.18(a)(ii) to (v) of the eviction petition wall in between the two shops, which segregates the shop of the respondent and the tenanted shop in two separate units and that there is one temporary wooden ceiling below the roof of the tenanted shop and that which temporary wooden ceiling is being used by the respondent and his son for storing the goods etc. of their shop and that the access to the said wooden ceiling/slab is given exclusively through the wooden ladder installed inside the grocery shop of the respondent. Since no denial to the above facts have been made by the petitioner as such the said averments of the eviction petition had absolutely gone unrebutted and unchallenged and which strengthened the bonafide ground of the respondent to the effect that after the vacation of the tenanted shop by the petitioner the said temporary partition wall of two shops will be removed to make a big shop of modern

style, to run the same more conveniently and to make the same flourishing one.

13. The question of adducing evidence for the same does not arise at all as no evidence can be adduced without pleadings. The petitioner in his leave to defend application has failed to give any particulars/descriptions and what to specific particulars regarding the alleged other various properties of the respondent and his family members in Delhi except by making averments to said effect.

14. It is settled law that where a need of the landlord is bonafide and the same is genuine then it is not proper on the part of the tenant to have doubts towards the landlord who cannot attribute any malafide and he cannot be deprived of the bonafide enjoyment of his property.

15. In view of the aforesaid reasons, facts and circumstances of the present case, this court is not inclined to interfere with the impugned order. The impugned order is passed in accordance with law and warrants no interference of this court. Consequently, the present petition is dismissed.

16. At this stage, the counsel for the petitioner prayed that in the event this court is dismissing the petition, the same would cause great hardship to the petitioner being a senior citizen and this court should consider allowing sometime to the petitioner to move out of the premises.

17. In the case of ***Mohd. Ayub Vs. Mukesh Chand***, (2012) 2 SCC 155 it was observed that *the hardship Appellants would suffer by not occupying their own premises would be far greater than the hardship the Respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the Respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that*

circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement.

18. In view of the above and in the interest of justice, equity and fair play, the petitioner is granted twelve months time to vacate the suit property as special case due to hardship explained by the petitioner in his application for leave to defend, the longer time is granted. During this period, the petitioner shall not sublet or create any third party interest in the suit property.

19. No costs.

(MANMOHAN SINGH)
JUDGE

OCTOBER 04, 2013