

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

% *Order pronounced on: November 11, 2013*

+ **RC. Rev. No.582/2012 & C.M. No.20269/2012 (for stay)**

CONTINENTAL ADVERTISING PVT LTD. Petitioner

Through Mr.D.R.Bhatia, Adv. with
Mr.Rishi Manchanda, Adv.

versus

RAJ RANI AGGARWAL Respondent

Through Mr.Sudhir K.Makkar, Adv. with
Ms.Meenakshi Singh & Mr.Divij
Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present petition under Section 25-B(9) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the “DRC Act”) against the judgment dated 16th August, 2012 passed by the Addl. Rent Controller in eviction application bearing No.E-68/11 by which the application filed by the petitioner (respondent in the eviction petition) for leave to defend was dismissed.

2. Brief facts which are necessary to decide the present petition are that the respondent Smt.Raj Rani Aggarwal filed an application for eviction under Section 14(1)(e) read with Section 25B of the DRC Act on the following grounds:-

(a) The respondent and her husband had let out the premises, i.e. bearing No.609, Gagan Deep Building, Rajendra Place, New Delhi, as shown in red colour in the site plan attached with the application (hereinafter referred to as the “Tenanted Premises”) and left India in the middle of 1978. The petitioner used to deposit the rent in the account of the respondent. The husband of the respondent, Sh.S.N.Aggarwal is Chartered Accountant (C.A.) & Company Secretary (C.S.) from his profession. Now, the respondent and her husband came back to India permanently about 4 years back. The husband of the respondent wants to set up his own office at Delhi for the practice of C.A. and to do other activities for the livelihood of the respondent and her husband.

(b) The respondent is not having any other place to start the professional activities by her husband. The tenanted premises is let out for non-residential purpose to the petitioner and is required bonafidely by the respondent for the start of the office of practicing the C.A. work and to do other commercial activities by the respondent’s husband who is not having any other reasonable or suitable accommodation to start the said practice and other commercial activities.

3. The prayer was made in the eviction application that the eviction order be passed against the petitioner in respect of the tenanted premises detailed above.

4. The petitioner/tenant filed the application under Section 25-B(4) & (5) of the DRC Act, seeking leave to defend the case, mainly, on the grounds that the respondent is not the owner of the tenanted premises. The same belong to DDA who has granted the lease to the owner of the property, i.e.

in favour of Punjab Properties. The allotment of the same was cancelled and the property has been reverted back to the DDA. The proceedings under the relevant provisions of the Public Premises (Eviction of Unauthorized Occupants) Act are pending. Thus, the petition is liable to be dismissed.

5. The second ground taken by the petitioner in the application for leave to defend was that the husband of the respondent is more than 73 years of age. Both have no son, but only a daughter who is also married. The respondent and her husband have no intention and also do not require the tenanted premises for any bonafide purpose and it is highly improbable that the husband of the respondent who is an aged person and also medically unfit due to old age, would have gone to start his practice from the office premises which is located more than 20 km away from his house, i.e. Noida. Further, the tenanted premises is located on the 6th floor and there is no lift facility available in the building. Thus, there is hardly any chance to do the business by the respondent or her husband in the tenanted premises.

6. With regard to the first objection, the case of the respondent was that there is a written lease deed between the petitioner and the respondent in which the petitioner has admitted that the respondent is the landlord and is receiving rent for herself. Even, the petitioner was depositing the rent in the account of the respondent. Thus, the objection raised by the petitioner has no substance in view of the said admitted position between the parties. The petitioner cannot raise any such objection if some dispute is pending between the respondent and the DDA. In fact, the petitioner has no concern in view thereof.

7. As regards the second ground raised by the petitioner about the age of the respondent's husband, it is settled law that the tenant cannot give his

opinion about the health condition or previous experience if the bonafide grounds are genuine and truthful. Even otherwise, the tenant cannot make his opinion that since the landlord or her husband, who is aged about 73 years, cannot climb on the 6th floor, even if he is not medically fit or no lift facility is available. The said ground is also flimsy.

8. Even, the third ground is not available to the petitioner, as it is not permissible to the tenant to assess that the tenanted premises is located more than 20 km away from the house of the landlord, so the landlord has no intention to start the business from the tenanted premises.

9. Lastly, the submission of the learned counsel for the petitioner is also rejected that it is a commercial tenanted premises, therefore, the petition for eviction under Section 14(1)(e) is not maintainable, as under the provisions of Section 14(1)(e) of the DRC Act, the mandate is only qua bonafide requirement for residential purposes. The said argument also has no force, as in the case of *Satyawati Sharma (dead) by LRs. vs. Union of India & Another*, 2008 (6) SCALE 325, the words “Non-residential Purposes” are included under the said provision, as the Court felt that the said provision is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between premises let out for residential and non-residential purposes when the same are required bonafide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter’s right to seek eviction of the tenant from the premises let for residential purposes only.

10. The learned trial Court has rightly held that the landlord is not required to prove absolute ownership for the purpose of eviction under the DRC Act as held in the case of *Rajender Kumar Sharma & Ors. vs.*

Leelawati & Ors., 155 (2008) Delhi Law Times 383. In the present case, the respondent had leased out the tenanted premises vide a registered lease deed and the rent was paid to her on a regular basis. Hence, the contention raised by the petitioner disputing the ownership of the respondent was absolutely unfounded and the same was rightly rejected.

11. The learned trial Court has also rightly held that the application for leave to defend does not raise any triable issues and has rightly dismissed the said application. No particulars were given in the application regarding other commercial properties owned by the respondent. Moreover, it has been held in various judgments by this Court as well as by the Apex Court that the bonafide need of the landlord is to be determined by him only. Reference is also made to the judgments reported in ***Nem Chand Daga vs. Inder Mohan Singh Rana***, 94 (2001) DLT 683; ***G.C.Kapoor vs. Nand Kumar Bhasin & Ors.***, AIR 2002 S.C. 200; ***Sait Nagjee Purushotham & Co. Ltd. vs. Vimalabai Prabhulal and Ors.***, (2005) 8 SCC 252; ***Bata India Ltd. vs. Anil Kumar Bahl***, 189 (2012) DLT 680; ***M/s A.S. Patel Trust vs. Shri Shiv Shankar Gupta***, 2012 (1) RLR 215; and ***Smt. Pratibha Devi vs. T.V. Krishnan***, 1987 (12) DRJ 258.

12. 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 of 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.

12.1 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 litigation. The object is to introduce a ‘summary trial’ in place of full length trial.*”

12.2 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.”

12.3 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. Tirath 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 Shankar 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.”

12.4 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.

12.5 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.”

13. The learned trial Court has correctly rejected the plea advanced by the petitioner that the husband of the respondent being a senior citizen is unable to travel from Noida to Delhi. The husband of the respondent is a qualified Chartered Accountant and has various assignments to handle in his professional capacity. In any event, the petitioner ought not to be allowed to raise the plea that the husband of the respondent being a senior citizen is unable to pursue a professional career, particularly, when the respondent's husband is in a fit state of mind and body and desirous of making use of his professional qualifications and acumen.

14. The learned trial Court has also rightly rejected the plea of the petitioner that the respondent has not permanently returned to India, based on sound reasoning. There was nothing on record to substantiate the said plea besides the bald averment that the respondent has not permanently returned to India.

15. 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. However, in the interest of justice, equity and fair play, the petitioner is granted six months time from today to handover the peaceful and vacant possession to the

respondent. During this period, the petitioner shall not sublet or create third party interest in the suit property during this period. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 11, 2013