

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

Reserved on: 11.03.2014
Pronounced on: 29.08.2014

+ RC.REV. 122/2013 & CM 5176/2013

SAROJ MALIK Petitioner

Through: Mr. Bhupinder Mehtani, Adv.

versus

O.P. GUPTA Respondent

Through: Mr. A.K. Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

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1. This revision petition filed under proviso to Section 25-B (8) of the Delhi Rent Control Act (DRC Act) impugns an order dated 3.10.2012 whereby the learned ARC has dismissed the petitioner's (tenant's) application for leave to defend and an eviction order has been passed in favour of the respondent (landlord) apropos the tenanted premises i.e. a hall on the ground floor in property bearing no.1188, Gali Babu Ram, Kucha Rati Ram, Delhi.

2. Before the learned ARC, it was the case of the landlord that he retired from employment in a bank and had no source of income except his pension; that he wants to start a business but due to paucity of accommodation, unable to do the same; that his grandson along with his mother also want to have their own independent business enterprise but due to paucity of

accommodation were unable to do so; that he does not have any alternate suitable accommodation. Therefore, for his bonafide need he sought the vacation of the tenanted premises.

3. An application for leave to defend the eviction petition was filed by the tenant wherein it was stated that the landlord had concealed the space available to him on the ground floor i.e., one shop measuring 6 ft x 10 ft and one bed room measuring 8 ft x 10 ft; that the landlord was in possession of first and second floors of the suit property, but those were currently in occupation of tenants; has accommodation at M-39, Greater Kailash Part II where he is residing with his only son but has not made any disclosure about the said property; earns rental income from another godown on the ground floor, which is occupied by a Halwai/Caterer; that the son of the landlord is running a well established business from an office at Kalkaji; that the landlord did not state as to what business he wants to start and what is his source of income; that the landlord has taken a contradictory stand since on one hand he says that he needs the tenanted premises for himself but on the other hand he says that his grandson along with his mother want to do his independent business from it; that the landlord wants to increase the rent from Rs. 600 to Rs. 6000; and concocted false and frivolous grounds to evict the tenant from the tenanted premises. The tenant filed his own version of the site plan and three photographs to show the accommodation available with the landlord on the ground floor.

4. A reply to the application for leave to defend was filed by the landlord wherein it was contended that: the entire ground floor portion was in occupation of tenants; the site plan filed by the tenant was not according to the site; that the landlord does not have sufficient accommodation either on

the first or the second floor; that he does not have any rental income from another godown on the ground floor; that his son has only two accommodations in Delhi from where he is running his business; that the accommodation in Greater Kailash is residential in nature therefore he cannot run a business from it; that all his other properties in Delhi were rental accommodations and rent agreements to this effect were produced. All other averments made in the application for leave to defend were denied by the landlord.

5. A rejoinder to the aforesaid reply was filed by the tenant wherein she denied averments made by the landlord in his reply and reaffirmed her averments as made in the application for leave to defend.

6. After considering the contentions of the parties, the learned ARC held that the tenant had failed to raise any triable issue and accordingly, an order of eviction was passed against her.

7. The learned ARC based on the contentions of the parties, framed four issues for determination i.e., (i) ownership of the landlord in relation to the tenanted premises, (ii) purpose of letting, (iii) alternative accommodation, (iv) bona fide requirement of the landlord.

8. The issue of ownership was decided in favour of the landlord since the ownership and 'landlord-tenant' relationship was not disputed by the tenant. The issue of purpose of letting was also decided in favour of the landlord in view of the law laid down by the Supreme Court in *Satyawati Sharma v. Union of India*.

9. In relation to alternative accommodation, the tenant filed his own site plan and contended that the landlord has two alternate accommodations on the ground floor i.e., a bed room measuring 8ft X 10 ft on the back side of

the tenanted premises in dispute (for the sake of brevity, referred to as **[Property A]**) and another shop measuring 6 ft X 10 ft, situated on the back side of a shop, in possession of another tenant, a Halwai/Caterer (for the sake of brevity, referred to as **[Property B]**). Whereas the landlord in his version of the site plan showed a small portion of 3ft X 9 ft 6 inches as compared to **[Property A]**. Moreover, the landlord had shown the adjacent shop/godown to be just one measuring 8.3 ft X 32 ft whereas the tenant, in his site plan, had shown a partition dividing the adjacent godown/shop into two shops, one measuring 8ft X 22 ft, in occupation of another tenant, a Halwai/Caterer and another shop i.e., **[Property B]** for which no measurements were indicated in the said site plan. The learned ARC held, even assuming that the back side bed room measures 8ft X 10ft, the same could not be considered suitable as it was on the back side. The landlord had filed a rent note of the adjacent godown/shop which showed that it measures 480 sq ft to controvert the site plan and contention of the tenant that the said godown/shop is partitioned into two. The learned ARC relied upon the said rent note and held that the site plan filed by the tenant was false; and that since the said godown/shop is occupied by another tenant, it could not be considered as alternate suitable accommodation available to the landlord. In relation to the tenant's contention that the first and second floors of the property were available with the landlord, the learned ARC held that since it was already occupied by other tenants and first and second floors were not as good as the ground floors for running a business activity. The tenant's contention that the landlord's son has accommodations at Karol Bagh, Nehru Place, Noida etc. were rejected as the said premises were tenanted premises from which the landlord's son carried on his business. In relation

to the Greater Kailash property, learned ARC held that since the same is a rental premises, it could not be considered for running business activities. In view of the above, the issue of alternate accommodation was decided in favour of the landlord.

10. With respect to bona fide need, learned ARC noted that landlord was not doing any business and wanted to start any business and that it was not necessary for the landlord to explain as to what business he wanted to start. He concluded that the petitioner did not have any alternate suitable accommodation for doing any business and needed the suit premises for himself *bona fide*ly.

11. The learned counsel for the petitioner contends that although the petition was filed on the ground of *bona fide* requirement of the landlord, the same was not proved conclusively and indeed there was no *bona fide* requirement; that the requirement was for the landlord himself, for his daughter-in-law and as well as the grandson, which *ex facie* is a confused state since it does not specify as to for whom it was sought specifically; that the nature of business has not been specified by the landlord, therefore, the alleged need is equally vague; that the nature of business must be specific so that in a summary procedure of the eviction proceedings, the Rent Controller would determine whether the place itself was appropriate and/or adequate. He relies upon a case titled ***Narender Kumar Manchanda & Anr. v. Hemant Kumar Talwar***¹ to contend that the need of any accommodation and also the extent of accommodation required would certainly be dependent upon the nature of business to be carried there from. It further

¹ 197 (2013) DLT 171

held as under:

“8. When admittedly the respondent is in possession of adjoining accommodation from where he is doing business, his so-called need would be nothing, but that of an additional accommodation for setting up a new business or expanding his existing business. In either case, the projected requirement would be required to be tested objectively by the Controller. It is necessary to bear in mind that when leave to defend is refused, the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination.”

12. He further relies upon ***Jafar & Ors. (Mohd.) v. Nasra Begum***² which itself relied upon ***Santosh Devi Soni v. Chand Kiran***³ to hold that in case of requirement of additional accommodation for the landlord, leave to defend should normally not be refused to the tenant and upon ***Inderjeet Kaur v. Nirpal Singh (2001) 1 SCC 706***, where the Apex Court has held that as follows:

“13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction.....”

13. In the same way, he also relies upon a case titled ***Sukh Dev Raj Sharma v. Kuljeet Singh Jass***⁴ which held as under:

“This all needs to be satisfied by examining, evaluating and adjudicating that his projected requirements are not only his wishes and desires to evict the tenant and to deprive him of

² 2012 VI AD (Delhi) 704

³ 2000 AIR SCW 4916

⁴ 195 (2012) Delhi Law Times 56

the statutory protection at the threshold. Wherever the tenant is able to make out a prima facie triable issue, he is required to be protected at least till the time the landlord is able to prove his bona fide requirement, after opportunity is afforded to the tenant to test the same.”

This case further relied upon ***Liaq Ahmed & Ors. v. Habeeb-Ur-Rehman***⁵ which held as under

“from the scheme of the Act, it is evident that if the tenant discloses the grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave to defend his case against the eviction sought by the landlord. The inquiry envisaged for the purpose is a summary inquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. If the tenant brings to the notice of the Controller, such facts as would disentitle the landlord from obtaining an order for recovery of possession, the Controller shall give him leave to contest. The law envisages the disclosure of facts and not the proof of the facts.”

14. To support his contentions, counsel also relied upon the following judgments:-

- a. ***S.K. Seth & Sons v. Vijay Bhalla*, 191 (2012) DLT 722**
- b. ***Mohd. Jafar & Ors. v. Nasra Begum*, 191 (2012) DLT 401**
- c. ***Rakesh Kumar v. Pawan Khanna*, 195 (2012) DLT 341**
- d. ***Aggarwal Papers v. Mukesh Kumar Decd. Thr. LRs.*, 194 (2012) DLT 605**
- e. ***Vinod Ahuja v. Anil Bajaj & Anr.*, 194 (2012) DLT 203**

15. He further states that pursuant to the impugned order, the landlord has

⁵ (2000) 5 SCC 708

now sought eviction of two other tenants on the ground of *bona fide* need and if this be the situation, then it is clear that the landlord is actually greedy and has *mala fide* filed the three petitions for eviction of all the tenants. He further states that if the *bona fide* requirement could be met by eviction from the other two shops then there was no need for the eviction of the present petitioner and it cannot be the case of the landlord that when the *bona fide* need was met by the eviction of the present petitioner, then the subsequent petitions were necessary.

16. On the other hand, learned counsel for the respondent states that the landlord is not required to place a project report of his business which he proposes to engage in from the premises in question and that is a settled law that the landlord is not required to disclose or plead the nature of business which he proposes to start from the disputed premises. He places reliance on the decision of the Supreme Court in ***Raj Kumar Khaitan & Ors. v. Bibi Zubaida Khatun & Anr.***⁶ and particularly on the following paragraph:

“We are of the view that the High Court fell into patent error. It was not necessary for the appellant-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody could bind the landlords to start the same business in the premises after it was vacated.”

17. He further places reliance on the decision of the Punjab and Haryana High Court in ***Balwant Singh Chaudhary & Anr. v. Hindustan Petroleum Corp. Ltd.***⁷ to contend that it is not necessary for the landlord to plead and prove the specific business which he wants to set up. Similarly, on this

⁶ AIR 1995 SC 576

⁷ 2004 (1) RCR 487

point, learned counsel also relies upon the decisions of this Court in *Manika Rani Ghosh & Ors. v. Dharwinder Kaur*⁸ and in *Srichand Longani & Sons v. Mala Devi*⁹. Lastly, counsel relies upon *Joginder Pal v. Naval Kishore Behal* to contend that it is the moral obligation of the landlord to settle his dependant family members well in life and to contribute his best to see them economically independent.

18. Before proceeding to analyze the findings of the impugned order, it would be pertinent to discuss the scope of this Court's jurisdiction/powers under proviso to Section 25-B (8) of the DRC Act.

19. This Court in *Ramesh Chand v. Uganti Devi*¹⁰ has held that while exercising jurisdiction under the aforesaid provision, the Court does not act as a Court of Appeal. The Court has to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material available before it.

20. Furthermore, a Full Bench of this Court in *Mohan Lal v. Ram Chopra and Anr.*¹¹ has held 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

⁸ RCR 512/2012 decided on 05.12.2012

⁹ RCR 239/2012 decided on 28.05.2012

¹⁰ 157 (2009) DLT 450

¹¹ AIR 1982 Delhi 405

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.”

21. The Supreme Court in **Ram Narain Arora v. Asha Rani & Ors.**¹² has held as follows:

“It is no doubt that the scope of a revision petition under Section 25-B (8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters or record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter.”

22. This Court would proceed to examine the impugned order within the aforesaid jurisdictional parameters. The only two issues relevant for consideration are the alternative suitable accommodation available with the landlord and his bona fide need.

23. Apropos alternate suitable accommodation, the tenant argued that the landlord had sufficient accommodation on the rear side of the building. In support of his site plan, the tenant had argued that the eviction petitioner had a shop admeasuring 8x10 ft. where the landlord has shown it as 3x9 ft. 6

¹² (1999) 1 SCC 141

inches. The Trial Court found the argument untenable on the ground that even if the area suggested by the tenant was to be admitted, the same would be unsuitable because it was in the rear side. The tenant's second argument in this regard was that the landlord had additional space by 8ft. x 22ft. i.e. 172 sq. ft. by way of a shop/godown. However, the Court rejected this argument on the ground that the petitioner had shown that the godown was in use and occupation of another tenant and the shop of the respondent i.e. half of it was with the landlord was without substance. The Court, however, relied upon the rent note filed by the landlord which showed that the hall on the ground floor had a covered area of about 480 sq. ft. Accordingly, the Court found the site plan submitted by the respondent as correct.

24. The learned counsel for the petitioner/tenant strongly contends that there is no support apropos the need of the premises i.e. it is not clear whether it was needed for the petitioner himself or for his grandson along with his mother. This Court, however, is of the view that the landlord's claim for need is on two counts i.e. for himself to start a business and for his grandson along with his mother to start their own business. The landlord's need for a tenanted premises could be not only on one but on a number of grounds and all of them could well be taken as grounds for eviction. They cannot be treated as competing needs, but would only go to show urgency for the need of the premises on different counts. Insofar as the landlord has shown that need existed both for himself as well as for his grandson along with his mother, nothing further required to be seen in the matter.

25. From the aforesaid discussion what emerges is that (i) the landlord required the premises *bona fide*; (ii) there was no alternate accommodation since all the other properties/accommodation mentioned by the tenant were

shown to be either not in possession of the landlord or otherwise were tenanted premises or were unsuitable; and (iii) finally, that there was no triable issue which could prevent the passing of the eviction order.

26. This Court is of the view that no triable issues were raised. The reasoning for and the conclusion of the impugned order is based upon the record. There is no material irregularity warranting interference by this Court. The petition is without merits and accordingly dismissed.

NAJMI WAZIRI
(JUDGE)

AUGUST 29, 2014/ak/rb