

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

% *Judgment pronounced on: February 4, 2014*

+ **RC.REV. 88/2012 & C.M. No.3384/2012**

SUNIL SRIVASTAVA Petitioner
Through Mr.Anil Misra, Adv.
versus

ARUN NAYYAR Respondent
Through Mr.Abhas Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner by way of the present petition under Section 25B(8) of Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) has assailed the eviction order dated 9th December, 2011, passed by Additional Rent Controller, Central District, Tis Hazari Courts, Delhi.

2. Brief facts of the case are that the respondent filed an eviction petition against the petitioner in respect of two rooms alongwith kitchen, bathroom and toilet on the 2nd floor of property bearing No.12-A/38, WEA Karol Bagh, New Delhi (hereinafter referred to as “tenanted premises”) which was let out to the petitioner by father of the respondent for residential purpose. The respondent alleged himself to be the exclusive owner of the property bearing No.12-A/38, WEA Karol Bagh, New Delhi (hereinafter referred to as “suit premises”) by virtue of a Will executed by his father in his favour on 27th January, 2004 and that the suit premises have been mutated/transferred in his name by DDA.

3. Respondent has stated to have got retired in January, 2007 as Director General of Naval Academy at Ezhimale in Kassargode District of Kerala. After his retirement, he came back to Delhi alongwith his family. It is for the bonafide requirement for his and his family's residence that the respondent filed the eviction petition. The respondent stated that he is in occupation of one bed room, drawing room, dining cum pooja room on the first floor, kitchen and a room being used as store room on the second floor of the suit premises.

4. It has been further stated that the respondent's only son has been operated for Craniopherrongioima (brain tumor) at AIIMS which is followed by radio therapy. The child therefore, not only requires frequent check up for tumor but is also undergoing Hormonal Replacement Therapy and is stated to being monitored by Research and Referral Army Hospital at Delhi. It has been thus stated that the respondent and his family including his child require to be accommodated in Delhi for regular and correct treatment of his child.

5. On the other hand, the petitioner in his leave to defend application averred that in a notice dated 1st December, 2006 being served upon the petitioner, the respondent had not claimed eviction for his bonafide necessity. It has been averred that earlier an eviction petition under Section 14(1)(e) of the Act was filed by the father of the respondent against the petitioner with the same allegations made by the respondent in the present eviction petition but the same was dismissed in default under Order 9 Rule 8 CPC vide order dated 14th February, 2007 and that the present petition being on the same cause of action is barred under Order 9 Rule 9 CPC.

6. The petitioner denied that the son of the respondent had been operated for brain tumor at AIIMS. It was averred that the respondent is the owner of residential cum commercial flat No.5, second floor, Greater Kailash, New Delhi and that the respondent has four living rooms, kitchen, bath, toilets on the first floor and two living rooms on the second floor of the suit premises besides the tenanted premises. It has also been averred that the respondent has been negotiating with the builders for either entering into agreement of collaboration or by outright sale in order to commercialize the suit premises.

7. In the counter affidavit, the respondent denied all the contentions raised by the petitioner and reiterated the averments made in the petition.

8. Accordingly, in the light of the abovementioned facts, the learned Trial Court opined that the petitioner had failed to reveal any fact which could raise any triable issues and so the leave to defend application was dismissed vide the impugned order. Aggrieved thereof, the petitioner has filed the present petition.

9. 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. 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. 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 would have reached on the material available before him. 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.”

10. While dismissing the application for leave to defend vide the impugned eviction order, the learned Trial Court with regard to the

contention of the petitioner that in the notice dated 1st December, 2006, the respondent had not claimed eviction for his bonafide need, observed that in para 8 of the said notice, the respondent had stated that he was no more interested to keep the petitioner as tenant, being in urgent need of the vacant possession of the tenanted premises for the use of his personal residence as the respondent was retiring from services in the month of January, 2007 and that no other suitable accommodation was available with him in Delhi further, in para No.9, it has been stated that the respondent terminated the tenancy of the petitioner and also called upon him to pay the rent due alongwith the interest. In the opinion of the learned Trial Court, it was clear that vide the said notice, the respondent had claimed his bonafide requirement.

11. On the contention of the petitioner that the present eviction petition was barred under Order 9 Rule 9 CPC in view of an earlier eviction petition filed by the father of the respondent being dismissed under Order 9 Rule 8 CPC, the learned Trial Court observed that the petitioner himself had admitted that the father of the respondent had filed the eviction petition which got dismissed in default. The said eviction petition was filed by the father of the respondent for his own bonafide need i.e. he wanted to live and enjoy his peaceful retired life alongwith his wife in the suit premises and that both the father and mother of the respondent were around 80 years old, so they bonafidely required someone their only son's family to look after them in Delhi and also that their grandson i.e. the son of the respondent required regular check up at AIIMS, New Delhi. However, after the death of the father of the respondent, the cause of action entirely got changed as the

respondent has now become the owner of the suit premises and needs the tenanted premises due to his own bonafide requirement.

12. On denial of the petitioner that the son of the respondent had been operated for brain tumor at AIIMS, the learned Trial Court opined that the petitioner had merely denied that the averment of the respondent that his son has been operated from brain tumor at AIIMS while denying so, the petitioner had not even mentioned that son of the respondent is hale and hearty. Further the learned Trial Court opined that if the respondent wanted the tenanted premises so that he can stay therein when he visits Delhi for check up of his ailing son then the Court could not prevent him to do so.

13. On contention of the petitioner that the respondent is the owner of the property at Greater Kailash, the learned Trial Court observed that while raising the said contention, the petitioner did not file any document or photograph to show that the respondent was in possession of the said property and that same is lying vacant and available to the respondent.

14. With regard to the contention of the petitioner regarding accommodation available at the first and the second floors of the suit premises, the learned Trial Court noticed on submissions of the parties that litigation with respect to the first floor of the suit premises was going on between the respondent and one Anju Madan, therefore, the said floor could not be said to be lying vacant and available to the respondent for satisfying his needs. With respect to the second floor of the suit premises, on perusing the site plan as well as submissions of the parties in this regard, the learned Trial Court opined that keeping in view the requirement of the respondent, the respondent could not be forced to accommodate in the said one room on the second floor which was not suitable to him.

15. The petitioner also averred that the respondent had admitted that he is residing in Noida and therefore has sufficient alternate accommodation available with him, to which the respondent admitted but submitted that the same was situated in UP and it is most inconvenient to him when he used to visit AIIMS for the check up for his ailing son as he has no alternative accommodation to reside in Delhi. The learned Trial Court dismissed the said contention of the petitioner since in its opinion the respondent had no alternate accommodation to reside in Delhi during the days when he comes to Delhi for the check up of his ailing son.

16. Even as per site plan filed by the petitioner who has shown one room in yellow, no doubt respondent's father tried to raise two additional rooms i.e. one on first and another on second floor of the property in question for his domestic help and driver but the said rooms are still in unfinished condition and are not habitable. As regard another property being Flat No.8 and 9 Ajit Arcade, Lala Lajpat Rai Marg, New Delhi is concerned, the same is not occupied by him but in occupation of tenant Sh. V.K. Tara against him a suit for eviction and recovery of arrears of rent is pending. Certified copy of plaint has been filed by the respondent.

17. With regard to the contention of the petitioner that the respondent has been negotiating with builders by either entering into agreement of collaboration or by outright sale in order to commercialize the same, the learned Trial Court opined that the petitioner had a remedy under Section 19 of the Act in this regard.

18. In the case of ***Sudesh Kumar Soni & Anr. v. Prabha Khanna & Anr.*** 153 (2008) DLT 652 it was observed that - i) *it is not for the tenant to dictate the terms to the landlord as to how else he can adjust himself without*

getting possession of tenanted premises- suitability has to be seen for convenience of landlord and his family members and on the basis of circumstances including their profession, vocation, styles of living, habit and background.

ii) In the case of **Kishan Lal vs. R.N. Bakshi**, 169 (2010) DLT 769, it was held that *it is settled law that it is not for a tenant to dictate the terms to the landlord as to how and in what manner he should adjust himself, without calling upon the tenant to vacate a tenanted premises. While deciding the question of bonafides of requirement of landlord, it is quite unnecessary to make an endeavor as to how else the landlord could have adjusted. When the landlord shows a prima facie case, a presumption that the requirement of the landlord is bonafide, is available to be drawn. It is also settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter and it is no concern of the Courts to dictate to landlord how and in what manner, he should live or to prescribe for him a residential standard of their own. The tenant cannot compel a landlord to live in a particular fashion and method until and unless the requirement shown is totally mala fide or not genuine.*

iii) In the case of **Harbant Singh & Anr. vs. Smt. Vinod Sikari**, 189 (2012) DLT 215 it was observed that *it is for the landlord to show his need since he is the best judge of his requirement. It is not for the court to dictate terms to him.*

iv) In the case of **Khalil Khan vs. Amiruddin**, RC Rev 145/2010, RC Rev 146/2010, RC Rev 147/2010 date of judgment 16.04.2012 it was observed

that The landlord is the best judge of his requirement. It is not for the tenant or even for the court to dictate to the landlord the manner in which he should set up his residence to satisfy the need of his family.

19. In view of the above, the petitioner has failed to make out any case for interference in the impugned order passed by the learned Rent Controller which does not suffer from any infirmity or perversity. Therefore, the revision petition of the petitioner is dismissed.

20. However, in the interest of justice, equity and fair play, the petitioner is granted six months time to vacate the tenanted premises i.e. two rooms alongwith kitchen, bathroom and toilet on the 2nd floor of property bearing No.12-A/38, WEA Karol Bagh, New Delhi 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 shop.

21. The petition is dismissed. Pending application also stand dismissed.

22. No costs.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 4, 2014