

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

% *Judgment pronounced on: January 06, 2014*

+ **RC. Rev. No.108/2013 & C.M. No.7287/2013**

SANJAY KUMAR Petitioner
Through Mr.S.S.Dahiya, Adv. with
Mr.L.K.Dahiya, Adv.

versus

JANAK RANI SAWHNEY Respondent
Through Mr.N.N.Aggarwal, Adv. with
Ms.Jaya Goyal, Ms.Manpreet Kaur
& Mr.Varun Garg, Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present revision petition has been filed by the petitioner against the two orders dated 29th May, 2012 and 28th January, 2013.
2. The first order dated 29th May, 2012 was passed against the petitioner whereby his application for leave to defend in the eviction petition filed by the respondent/landlord being RC No.03/12 was dismissed. The said order was challenged by the petitioner by filing of the review petition under Section 114 CPC being Misc. No.10/2012. The same was also dismissed by the second order dated 28th January, 2013.
3. The tenanted shop was originally let out by the father and mother (namely Late Sh. Purushottam Das Sawhney and Late Smt. Bhojwanti Sawhney) of the respondent to the petitioner and Sh. Anil Kumar Batra son of Sh. Asa Nand Batra vide written agreement dated 10th January, 1987. The

monthly rent of the demised premises is Rs.780/- per month exclusive of water and electricity charges.

4. After the death of Sh.Purshottam Das Sawhney, his wife Smt. Bhojwani Sawhney became the sole owner and the landlady of the tenanted shop. However, unfortunately she also expired on 20th January, 2007 and left behind a registered Will dated 11th May, 2004 bequeathing the tenanted shop and other portions in favour of the respondent. Thus according to the respondent, she has become the absolute owner and landlady of the tenanted shop, as she has stepped into the shoes of Smt.Bhojwanti Sawhney, her mother.

5. It is alleged by the respondent in the eviction petition that she is living on the ground floor of the property bearing No.C-45, Adarsh Nagar, Delhi, in the portion shown in green colour in the site plan. The respondent is the owner and landlady of the portion shown in green colour and of the tenanted shop shown in red colour in the site plan. A perusal of the site plan shows that the portion in occupation of the respondent consists of two rooms, WC/Bath and kitchen and in between the two rooms, there is the passage. The room which is shown as No.1 in the site Plan is being used by the respondent for her small business of sewing and tailoring purposes.

6. The respondent on 17th February 2012, filed an eviction petition under Section 14(1)(e) read with Section 25B of Delhi Rent Control Act (hereinafter referred to as “the Act”) alleging bonafide need of the tenanted shop i.e. shop shown in red colour in the site plan filed as Annexure A.

7. The respondent stated in his eviction petition that he is 68 years old, unmarried and living on the ground floor of the property and the portion in occupation of the petitioner consists of two rooms, bathroom and kitchen

and in between two rooms there is a passage and one room is used by the respondent for her living and second room is used by her for sewing and tailoring purposes and there is no space for expanding tailoring work. The respondent averred that more and more girls/women of the locality are interested in joining her sewing school but she is unable to accommodate them in the available space and she is planning to install two sewing machines, one for picko work and another for embroidery. The respondent also wants to give her trainees coaching classes in embroidery and by this she would be able to generate more income for herself which would help her to meet daily expenses and medical bills.

8. The respondent stated that she at present is using one room as her bedroom, drawing room-cum-pooja room-cum-guest room and after vacating the tenanted shop, she is planning to install wooden partition in second room and proposing to shift her drawing room/guest room to that room where she can entertain her relatives who can also stay overnight without interfering her privacy. After getting the tenanted shop vacated, the respondent would be able to have a pooja space in her bedroom and would shift her sewing and coaching work to a portion of the second room and to tenanted shop which has direct access from the main road.

9. The petitioner filed an application seeking grant of leave to defend by stating that the respondent is not running any tailoring business in her house and she is residing with her brother at D-64, Lord Krishna Road Adarsh Nagar Delhi-110033. She has a limited right to receive the rent for life only as per the Will dated 11th May, 2004, the petitioner right of tenancy has been confirmed by the Bhojwani Sawhney in Will itself and after the death of respondent the property would devolve upon Smt. Sneha Lata Sawhney and Hemant Sawhney i.e. grand children of Bhojwani Sawhney.

10. It is also stated that the respondent has not approached the learned Trial Court with clean hands and concealed the material facts. The case of the respondent based on the written agreement dated 10th January, 1987, and Will dated 11th May, 2004. Clause 6 of the rent agreement dated 10th January, 1987 provides that the respondent has no only right to get the premises vacated. Similarly in the Will dated 11th May, 2004, Clause C provides that the respondent is given right to reside in 2 rooms having a common kitchen and after her death, the property will reserve back in the name of Smt. Sneh Lata Sawhney and Hemant Sawhney. Clause D of the Will provides that the respondent is entitled only the rent from the petitioner and after her death only, Smt.Sneh Lata Sawhney and Hemant Sawhney, will be entitled to receive the rent. The petitioner states that in view of the admitted position, the testator of the Will has even crystallized by mentioning that even after the death of respondent the subsequent legal heirs are also entitled to receive the rent from the petitioner. Therefore, the eviction petition filed by the respondent was not maintainable as she is not the exclusive owner and landlord of the tenanted shop.

11. The learned Trial Court in view of the facts of the case and the settled law in this regard, has given its finding that the respondent is the owner of the tenanted shop by virtue of the Will filed by her and that the tenanted shop is bonafidely required by her for her personal use to earn her livelihood by expansion of her business of tailoring and to earn more money therefrom. With regard to the contention of the petitioner that the respondent has enough space to open her sewing school as she has two rooms of big space which are sufficient for running her school, the learned Trial Court opined that the respondent is the best judge to decide her bonafide need and that the petitioner cannot dictate as to what is more suitable for the respondent and

what is not. With regard to the apprehension of petitioner that the respondent might re-let the tenanted shop on higher rent after getting it vacated, the learned Trial Court opined that Section 19 of the Act gives protection to the petitioner in this regard. In view thereof the impugned order was passed against the petitioner dismissing the leave to defend application

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 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.”

13. The petitioner during the course of his arguments relied upon the aforesaid rent agreement to argue that the suit shop could be vacated with the consent of the petitioner only. It is submitted that this document cannot be considered by this Court as it was neither referred to nor relied upon in the leave to defend application but was filed alongwith the review application. Therefore, this Court exercising its jurisdiction of revision cannot refer or rely upon any document which was not on the record of the rent controller while considering the leave to defend application because the court of the rent controller is to look into the leave to defend application and the affidavit filed by the respondent/tenant under Section 25B(4) of the Act, and cannot look into any other fact or document. Moreover, perusal of the entire agreement does not make out any case as set up by the petitioner.

14. Counsel for the petitioner has also relied upon the WILL and tried to argue that as per the Will especially para 'D' at page 115 of the paper book of the revision petition, the respondent/landlady was given only life interest and also the right to receive the rent only as mentioned by the petitioner in his leave to defend application. Thus the eviction petition filed by the respondent is not maintainable. The petitioner has also denied the ownership of the respondent and stated that the respondent is not a legal owner of the tenanted shop and as per the Will filed by the respondent herself, she is only entitled to receive the rent of the tenanted shop till her death. However, the petitioner has admitted in para 5 of his application for leave to contest that he was paying the rent to the respondent upto 30th April 2011.

15. (i) It is held by this Court in ***Rajinder Kumar Sharma and Ors. Vs. Leelawati & Ors. 155 (2008) DLT 383*** that where a tenant denies ownership of landlord, he is obliged to disclose who was owner/landlord and to whom rent was being paid. The respondents have not disclosed the name of any person who according to them is the owner of the premises in question and they baldly denied the ownership of the petitioner. For deciding an application under the provisions of clause (e) of sub Section (1) of Section 14 of DRC Act, the relationship of landlord & tenant is to be seen and not the ownership of the petitioner qua the premises. It is submitted by the respondents that they are paying the rent to the petitioner and in my opinion there exists the relationship of landlord and tenant between the parties. The respondent has not disclosed the name of any person who according to him is the owner of the premises in question & he baldly denied the ownership of the petitioner.

(ii) In ***Meenakshi Vs. Ramesh Khanna & Anr. 60 (1995) DLT 524*** it was held that "Mere denial of ownership is no denial at all. It has to be

something more. For this, first and foremost thing which has always been considered as a good guide is does that tenant say who else is the owner of the premises if not the petitioner? In the present case, the tenant does not say anything except denying petitioner's ownership. The tenant is completely silent on this aspect. Merely by saying that the petitioner is not the owner, the tenant is trying to ensure that the case drags on for years for trial. If leave is granted on the basis of such vague pleas, it will encourage the tenants to deny ownership of the petitioners in every case. The tenants are well aware that once leave to contest is granted, the cases go on for trial for years. Their purpose is achieved. Keeping this in mind, the Controllers should rather have positive approach in such matters so as to discourage such vague and frivolous pleas which are most of the time false to the knowledge of persons raising them.”

(iii) In ***Ramesh Chand Vs. Ugani Devi 157 (2009) DLT 450***, this Court has specifically held that “It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14 (1) (e) of the D.R.C. Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppel against such tenant. A tenant can challenge the title of landlord only after vacating

the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly. I, therefore, find that there was no infirmity in the order of learned ARC in this respect”.

(iv) In *Shanti Sharma and Ors. Vs. Ved Prabha & Ors. Civil Appeal no.2935 of 1981* the Hon'ble Supreme Court has held that “In application for eviction on ground of bonafide requirement tenant contended that such landlord cannot be considered to be owner within meaning of Section 14 (1) (e) but contention was turned down & held expression 'owner' does not indicate absolute ownership and the same to be interpreted in broader sense and held such landlord come within meaning of 'owner' under Section 14 (1) (e).”

16. In view of the settled law on the point and considering the fact that the petitioner was admittedly paying the rent to the respondent, I am of the considered view that as far as the present proceedings of eviction are concerned, the relation between the landlord and tenant has been established.

17. It is settled law that in revisional jurisdiction under Section 25B(8) of the Act, the revision petition cannot be regarded as a first appeal and a finding of fact arrived at by the Controller would not be interfered with by the High Court. Hence, in furtherance of the objection raised by the petitioner, the impugned order cannot be interfered with.

18. With regard to the bonafide requirement of the tenanted shop, it is settled that the burden of proof for proving a fact always lies upon the party who asserts it. The argument of the petitioner that the landlady did not produce any evidence except some photographs to show that she is running a sewing school from a portion of the property under her occupation is not correct as the petitioner/tenant himself admitted in para 11 of leave to defend

application that the landlady is having sufficient space to run her sewing school from the existing space as she has got two big rooms. The petitioner nowhere in the leave to defend application denied that presently the landlady is not running a sewing school from the portion of the property in her occupation. The petitioner also did not deny the correctness or authenticity of the photographs filed by the respondent/landlady. Once the tenant himself does not deny a fact the same requires no proof from the respondent. Again it need not be emphasized that the Rent Controller under Section 25B(4) of the Act, is to consider the application and the affidavit filed by the tenant in support of leave to defend application. Once a fact is not denied in the above application or the affidavit then the same is deemed to be admitted and does not raise any triable issue. Therefore, Rent Controller was justified in rejecting the above ground raised by the petitioner.

19. Regarding the plea of the petitioner that the respondent/landlady is not residing in the suit property but at D-64, Lord Krishna Road, Adarsh Nagar, Delhi. The petitioner has not filed any prima facie proof or documents to show that she is not residing at the above address i.e. the suit property. The burden of proof lies on the person alleging a fact and not on the person denying the same. Even otherwise, under Section 25B(4) of the Act, it is for the tenant to disclose in the leave to defend application and the supporting affidavit the existence of an alternative accommodation by placing on record some prima facie proof. However, in the present case except the bald allegation the petitioner did not place anything on record as a proof to show that the respondent/landlady is not residing in the suit property. In view of the above, there is no fault or infirmity in the bare denial of the above fact by the respondent/landlady and the mere plea of the petitioner/tenant does not raise any triable issue.

20. 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.

21. However, in the interest of justice, equity and fair play, the petitioner is granted six months time to vacate the tenanted shop, i.e. shop property bearing No.C-45, Adarsh Nagar, Delhi (shown in the red colour in the site plan) 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.

(MANMOHAN SINGH)
JUDGE

JANUARY 06, 2013