

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

% *Judgment pronounced on: January 06, 2014*

+ **RC.REV. 103/2012 & CM No.4122/2012**

SMT SARIKA JAIN & ORS Petitioners
Through Mr.Ajay Veer Singh, Adv. with
Ms.Divya Garg, Adv.

versus

SARAN SINGH CHHABRA Respondent
Through Mr.Mahesh K. Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioners 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 22nd December, 2011 passed by Additional Rent Controller, North, Delhi.

2. Brief facts of the case are that the respondent filed an eviction petition against the petitioners in respect of a shop bearing No. 52-A, Kucha Sukha Nand, Chandni Chowk, Delhi-110006 (hereinafter referred to as the “tenanted shop”) on the ground of bonafide requirement of expansion of business for himself, his son and grandson. It was stated that the respondent and his son started the business of fancy lights from shop No. 53 (first floor), Kucha Sukha Nand, Chandni Chowk in the year 2000, however, due to financial losses, the said business was closed. In the year 2007, the respondent and his son again started the business of sarees, ladies suit and

lehngas in shop No. 52(ground floor), Kucha Sukha Nand, Chandni Chowk, while they started storing leather goods and also stocks of ladies suit, sareers and lehngas in the shop No. 53 on the first floor and also constructed a staircase in the said shop No. 52 on the ground floor leading to the first floor. The respondent and his son were stated to have been carrying on the business of leather goods in the name and style of M/s Chhabra Leather Emporium.

3. It was stated in the eviction petition that with the passage of time, the business of ladies suits etc. had expanded and entire space available on the ground and the first floor was being used for the said business and therefore, there was hardly any space available with the respondent for running the leather goods business. Though the business of leather goods was being managed somehow from shop No. 52 with great difficulty, the respondent wanted to seek eviction with regard to the tenanted shop, it being just adjacent to the business premises of the respondent and therefore, most convenient for the respondent and his son to run their business of leather goods separately from the tenanted shop. It was stated that the respondent has no other reasonable suitable accommodation available with him and that the grandson of the respondent had also recently joined the family business and therefore the respondent wanted to expand his business.

4. The petitioner No.1, who was allowed to be appointed as the guardian ad-litem for petitioners No.2 and 3, in the leave to defend application raised the objection that since the tenanted shop was let out for commercial purpose, therefore, the eviction petitioner was not maintainable. It was averred that respondent has a large commercial property to carry out the business and that the tenanted shop is a very small shop and is the only

source of livelihood of the petitioner No.1, who is a widow. It was averred that the eviction petition had been filed by the respondent either to sell the tenanted shop or to re-let it at a higher rate of rent.

5. In the reply to the leave to defend application, the respondent denied all the material allegations of the petitioners and his stand was reiterated.

6. The learned Trial Court while dismissing the leave to defend application of the petitioners vide the impugned order observed that there was no denial of relationship of landlord and tenant between the parties or regarding the ownership by the petitioners. In view of the Satyawati case, the learned Trial Court opined that the ground taken by the petitioners that the petition in respect of the tenanted shop being a commercial property was not maintainable thus, had become infructuous.

7. The contention of the petitioners that the respondent has a large space in his possession which is sufficient for running his business, the learned Trial Court observed that in the entire leave to defend application, there was neither any denial that the respondent was running the business of ladies sarees and suits as well as leather goods, nor that the grandson of the respondent has also joined the business of the respondent, nor that with the passage of time, the business of the respondent has expanded. In the opinion of the learned Trial Court, from the fact that the grandson of the respondent had also joined the business, requirement of the respondent for more space could be said to be genuine. The learned Trial Court observed that according to the sale deed, the tenanted shop as well as the shop in occupation of the respondent consisted of 42 sq. yards and considering the number of members running the business, it could be said that the space already with the respondent cannot be said to be sufficient for running the business of

ladies sarees and leather goods separately. Moreover, since one new member had joined the business with the respondent, i.e. the grandson extra space must be required by the respondent in the opinion of the learned Trial Court.

8. With regard to the apprehension of the petitioners that after the vacation of the tenanted shop, the respondent would either sell it or re-let it at a higher rate, the learned Trial Court opined that there is a protection available under Section 19 of the Act in this regard.

9. Accordingly, in the light of these observations, the learned Trial Court opined that the petitioners had failed to raise triable issues and so the leave to defend application was dismissed vide the impugned order. Aggrieved thereof, the petitioner has filed the present petition.

10. The question before this Court is, as to whether said findings call for any interference by the Courts in revisionary jurisdiction or not in view of the facts and circumstances of the present case.

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***, AIR 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 SC 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) SCC 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) In *Sarla Ahuja vs United India Insurance Company Ltd.*, reported in AIR (1999) SC 100 the facts of the matter were that the petitioner who was a widow wanted to shift her residence from Calcutta to New Delhi to occupy her own building which was in the possession of her tenant M/s United India Insurance Company Limited. Though she got an order of eviction from the Rent Controller under Section 14(1)(e) of the Act, a single Judge of this Court non-suited her by reversing the order which she challenged before the Supreme Court by way of Special Leave to Appeal. It was held by the Supreme Court that:-

“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. It is admitted position of law that in the revision petition filed under Section 25B(8) of the Act no fresh plea can be considered without permission. In the present case, the petitioners in the application for leave to defend had taken only the grounds that: the respondent has a large spacious commercial property to carry out his business, the petitioners have a small

shop which is the only source of her livelihood to maintain herself, petitioner is a widow, that the respondent intended to sell the tenanted shop or re-let it at a higher exorbitant rent and that whether petitioner no.1 has sub-letted the tenanted shop and arrears of rent, are triable issues. No other ground was raised in the application for leave to defend.

12. However, during the course of hearing, it was averred by the learned counsel for the petitioners that no permission from the Competent Authority (Slums) was taken by the respondent, hence eviction petition was not maintainable. It was submitted that the landlord had not filed the eviction petition under Section 14 (1)(e) read with Section 25 B of the Act on the basis of the order passed by the Competent Authority (slums) on 2nd July 2010. On the other hand, the learned counsel for the respondent submitted that the respondent had neither based the eviction petition on the aforesaid Order nor there was any requirement for obtaining any permission from the Competent Authority for filing the eviction petition on the ground of bonafide necessity.

13. It is also submitted on behalf of the respondent that the perusal of para 18 (a) of the eviction petition would show that the sub-letting of the tenanted shop has not been made as a ground for eviction in the eviction petition and the petition was filed solely on the ground of bonafide requirement. Therefore, the averments made in the application for leave to defend are without any substance. The petitioners in the application for leave to defend sought leave for default of payment of rent and unauthorized sub-letting. The respondent had not initiated any eviction proceedings on these grounds. The same form a separate cause of action.

14. Even otherwise the admitted case of the petitioner no.1 is that she herself sits in the tenanted shop and she has 2-3 employees working in the

shop. The said employees otherwise cannot become and claim to be sub-tenants even despite of respondent not having alleged at any stage that they are sub-tenants in view of the admissions made by the petitioner no.1 herself.

15. It is further submitted that the Competent Authority (slums) had passed its order dated 2nd July, 2010 allowing the petition/ application under Section 19 of the Slums Areas (Improvement & Clearance) Act, 1956 and the same had attained finality. The petitioners herein did not file any appeal against the said order and accordingly, it is now not permissible on the part of the petitioners to make such submissions to challenge the said order, though no permission from the Competent Authority (slums) is required to be obtained before filing of the eviction petition under Section 14(1)(e) read with Section 25 B of the Act in view of the special and summary procedure under the scheme of the Act. The said objection was not even taken earlier by the petitioners.

16. This Court in (i) ***S. Kumar v. Om Parkash Sharma***, 1980 (1) RCJ 36 (Del) observed that the expression ‘family’ has to be interpreted reasonably and fairly giving due regard to the social and economical conditions of living in our country and particularly the circumstances of the case.

(ii) In ***Sain Dass Berry v. Madan Lal Puri***, 1972 RCJ (SN 8) 7 Del, this Court observed that the word ‘himself’ has to be interpreted to mean “for himself” as living along with his family member, with whom he is normally accustomed to live.

(iii) In ***Natha Singh v. H.V. Nayar***, 1983 (1) RCJ 158 (Del), this Court observed that where the landlord and his wife are aged and he wants his son to live with him to look after them, then it would be reasonable to construe

the word “himself” to include the family of the landlord including his son, son’s wife and their children.

17. In view of the above said reasons explained, I am of the considered view that the bonafide requirement alleged by the respondent is genuine and he was entitled for the relief of eviction, as no triable issues are apparently raised.

18. It is the admitted fact that the petitioner no.1 is a widow occupying the tenanted shop for the last many years and that she has no other source of income for herself and her family members.

19. 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.”*

20. Considering the hardship shown by the petitioner no.1, coupled with the fact that it is a commercial property which is being used by the petitioner for more than 18 years and on the other hand the respondent has already got adjoining shops as well as other shop at the first floor i.e. shop no. 53, and in the interest of justice, equity and fair play, the petitioners are granted one year time from today to vacate the tenanted shop. During this period, the petitioners shall not sublet or create any third party interest in the tenanted

shop and after the expiry of said period, the petitioners shall hand over the peaceful and vacant possession of the tenanted shop to the respondent.

21. The present petition is accordingly disposed of with these directions.

22. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 06, 2013