

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

% Order Pronounced on: January 03, 2014

+ RC. Rev. No.85/2011

MAHENDER TIWARI Petitioner
Through Mr.Vivek Sharma, Adv.

versus

ISHWARI PRASAD NIGAM Respondent
Through Mr.M.R.Shamshad, Adv. with
Mr.Shashank Singh, 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 (hereinafter referred to as “the Act”) assails the eviction order dated 14th February 2011 passed by the court of Senior Civil Judge-cum-Rent Controller, Karkardooma Courts, Delhi.

2. Brief facts of the case are that the respondent herein filed an eviction petition against the petitioner alleging bonafide requirement for the purpose of residence for himself and his family members in respect of the tenanted shop i.e. Shop no. 1, measuring 2’6” x 5’6”, in the property no. B-254, Gali No. 11, Bhajanpura, Delhi-53 (hereinafter referred to as “the suit property”). It was stated in the petition that that respondent is an old person, aged about 76 years (at the time of filing of the eviction petition) and due to ill health requires assistance of his children, however, accommodation available with him was not sufficient to accommodate them. The family of the respondent consisted of himself, his wife (who is suffering from various old age

diseases) and four married sons and grandchildren. While three married sons of the respondent were living with him at the time of filing of the eviction petition, the fourth son was living on rent after his marriage due to lack of accommodation. It was averred that the respondent was facing difficulty to accommodate sixteen family members and the guests visiting him.

3. It was stated in the petition that though the tenanted shop was let out for commercial purposes, the respondent had now decided to use the same as residence for family members, to accommodate his fourth son who lived on rent and the growing grandchildren of the respondent who required bed room and study room. Besides this, the respondent stated to be requiring one drawing room and one guest room.

4. The petitioner herein moved an application for leave to defend and stated that the tenanted shop is under the staircase in which the petitioner is running his electrical shop and the said shop cannot be used for residential purpose. The tenanted shop is so small that it cannot be used either for bedroom, drawing room, study room or as a room for guests. It was contended that there was a matrimonial dispute between one of the petitioner's son Akash and his wife who is not interested in living with the joint family and as such, they started living in separate rented accommodation.

5. It was further averred that the respondent intentionally showed a store room on the ground floor instead of living room and has also filed an eviction petition against the tenant of shop no. 2. The site plan as well as respondent's lack of sufficient accommodation was disputed. It was also contended that the requirement of the respondent is not bonafide as he wanted to re-let the tenanted shop on a higher rent after getting the same vacated from the petitioner. It was also stated that the son of the petitioner is

mentally retarded and the petitioner would suffer great hardship if he is evicted from the tenanted shop as he is the sole bread earner in his family.

6. In the reply to the said leave to defend application, the respondent denied and contested the averments made by the petitioner and further stated that the petitioner works as agent of Sahara India and earns handsome returns from such agency and most of the time the tenanted shop remains shut.

7. The learned Trial Court while dismissing the application for leave to defend of the petitioner observed that the petitioner had neither denied the ownership of the respondent qua the tenanted shop nor the relationship of landlord-tenant between the parties. In the absence of any such denial the petitioner was deemed to have admitted the same.

8. The learned Trial Court further noticed that the petitioner had not disputed about the family members of the respondent. However, though the petitioner disputed the site plan filed by the respondent, but failed to file a counter site plan. So the learned Trial Court opined that in the absence of any counter site plan to challenge the veracity of the site plan filed by the respondent, the arguments raised by the petitioner were liable to be rejected.

9. With regard to the contention of the petitioner that the respondent wanted to re-let the tenanted shop at a higher rate of rent, the learned Trial Court opined that Section 19 of the Act provides sufficient safeguards to the tenant against mischievous landlords. The contention of hardship liable to be caused to the petitioner was in the opinion of the learned Trial Court of no avail to him for the purpose of deciding the leave to defend application.

10. With these observations, dismissing the application for leave to defend of the petitioner, the learned Trial Court passed the impugned order and aggrieved thereof the petitioner filed the present petition.

11. 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.”

12. From the pleading and record of the case, certain undisputed facts are:
 - (i) The respondent is absolute owner of entire premises No.B-254, Gali No.11, Bhajanpura, Delhi-53. He is 76 years old and he is not having a good health and needs assistance of his children but the accommodation with him is not sufficient to accommodate them comfortably. The respondent has family comprising old aged wife, aged about 63 years and suffering from diabetes and various others diseases relating to old age, four married sons and their children. The petitioner had not denied before the learned Trial Court that respondent’s family comprising 16 members. It is contended by the respondent that the intention of the petitioner is to delay the eviction of the tenanted shop. The education of grand children of respondent is suffered for above said reasons.
 - (ii) The petitioner was inducted as tenant on 14th July, 1985 in respect of the tenanted shop on monthly rent of Rs.150/- excluding water and electricity charges. Current rent is Rs.293/- per month excluding water and electricity charges.

Since then the petitioner is running a shop with style and title M/s Mahender Electrical.

13. The respondent filed the eviction petition for need for separate accommodation for his children who are dependent upon him and pleaded that if his requirement is bonafide and genuine, then an order for eviction can be passed by the Court.

14. In the similar situations, courts have passed the orders of eviction. In this regard, the following decisions are necessary to be referred:

- (i) In ***Kharati Ram Khanna & Sons. vs. Krishna Luthra***, 2010 (172) DLT 551, it was held that *“if respondent wants to establish her sons separately and independently in her property and in the same trade, then by no stretch of imagination it can be said that requirements of respondent are neither bonafide nor genuine.”*
- (ii) In ***Labhu Lal vs. Sandhya Gupta***, 2010 (173) DLT 318 it was held that *“The requirement of the respondents son and daughter-in-law for expanding their clinic being run in the premises in question is most bona fide and genuine since they are dependant for accommodation on the respondent.”*
- (iii) In the case of ***Sh. Ravinder Singh vs. Sh. Deepesh Khorana***, 2013 (1) RCR (Rent) 369, it was observed that *“the son of the respondent is unemployed and is dependent on respondent for his livelihood. It is nothing but bona fide for the respondent to require the suit shop to set up a computer business for his son and to help him find a source of income and subsequently settle down in life.”*
- (iv) In ***Devi Ram & Ors. vs. Ram Kapoor***, 76 (1998) DLT 637, it

was held that “*it is well settled that the landlord cannot be dictated the way he shall reside nor can the mode of division of rooms can be prescribed for each family member. Sometimes the children in the family cannot be accommodated in the rooms used by the adults and it is illogical to hold that minor children can be accommodated with the elders of the family.*”

- (v) In **Waryam Singh Duggal vs. Smt. Savitri Devi**, (1984) 1 RCR 52, it was observed that “*the distinguishing feature of the second alternative is that the landlord does not intend to reside in the premises himself see Sain Dass Berry v. Madan Lal Puri 1971 RCR 887. He needs them only to accommodate a member of his family ‘dependant’ on him. It is in this case that dependence on the landlord is a requirement*”

15. Considering the facts and circumstances of the present case, and in view of the settled law, this Court also is of the considered view that no triable issues are raised by the petitioner. I am not inclined to interfere with the impugned order. Accordingly, the petition is dismissed alongwith the pending application(s).

16. 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 no.1 forming part of property bearing no.B-254, Gali No.11, Bhajanpura, Delhi-53, 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 03, 2014