

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

% Judgment pronounced on: January 06, 2014

+ **RC. Rev. No.147/2013 & C.M. No.6148/2013**

DARSHAN PANJALI Petitioner
Through Mr.Randhir Jain, Adv. with
Ms.Ruchika Jain, Adv.

versus

RAJ DULARI Respondent
Through Mr.Dalip Anand, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present revision petition is filed by the petitioner under Section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) against the eviction order dated 23rd January, 2013 passed against the petitioner by the ARC (North), Tis Hazari Courts, Delhi in respect of one room situated in the property bearing No.147, Katra Mashru, Dariba Kalan, Chandni Chowk, Delhi-110006 (hereinafter referred to as the “tenanted premises”).

2. Brief facts for the purpose of adjudication of the present petition are that the tenanted premises was let out for residential purpose to the petitioner orally in the year 1973 by the husband of the respondent, who was the owner and landlord of the property bearing No.147, Katra Mashru, Dariba Kalan, Chandni Chowk, Delhi-110006 (hereinafter referred to as the “suit premises”). After the death of the husband of the respondent in the year

1982, the respondent continued to receive rent from the petitioner. The respondent in the eviction petition stated that the petitioner had paid the rent up to 1st April, 2009 and thereafter stopped making payment of rent.

3. An eviction petition was filed by the respondent in respect of the tenanted premises stating therein that the respondent's family which consists of herself, her son, son's wife, two grand-daughters, one grand-son and other relatives of the respondent, are residing only in three rooms. It was further stated that one of her grand-daughters, namely, Priya Sharma who was pursuing C.A. (Final Year) (when the eviction petition was filed) intended to open her own office in the vicinity after completion of her C.A. course. It was stated that the tenanted premises was required bonafidely by the respondent for opening an office for her grand-daughter, and she had no other suitable alternative accommodation. It was also stated that her other grand-daughter, namely, Shefali Sharma was pursuing career in Company Secretaries and her grand-son was a student. The accommodation available with the respondent was not sufficient for their studies. Besides this, it was stated that the relatives of the respondent also used to visit her and stay with them.

4. It was averred in the eviction petition that the petitioner is not using the tenanted premises by himself and had given the same to one Sh. Anil Sharma who had been misusing the same for running a property dealer shop and for running the office of Akhil Bhartiya Swarankar Sangh. The said misuse had not been stopped by the petitioner despite the notice dated 25th May, 2011.

5. In the leave to defend application filed by the petitioner, the ownership of the tenanted premises was disputed. It was stated that the tenanted premises was let out by the husband of the respondent as a

caretaker/landlord of the tenanted premises which does not belong to her. It was averred that the tenanted premises was let out for commercial purposes. There is a shutter fitted on the main entrance of the suit premises for the last 25 years. The petitioner had started the business of property dealing therein since the very inception of tenancy. It was further alleged that the petitioner had started running the office of society namely Akhil Bhartiya Swarankar Sangh from the tenanted premises in the year 1999. As the petitioner has become old and is not keeping in good health, he entered into an agreement with Anil Sharma who became partner with him under the name and style of M/s Dogra Properties. It was stated that Sh. Anil Sharma is not the sub-lettee of the petitioner but is a partner. The electricity and the water connection which were installed in the tenanted premises, as well as payment of property/house tax were in the name of M/s. Dogra Properties.

6. The allegation of default of payment in the rent was disputed by the petitioner who averred that the rent was being paid to either the respondent or her son, however, the son of the respondent failed to issue receipts from the year 2009 with malafide intentions to create false evidence against the petitioner. It was further averred that the rent was sent through money-order but the same was refused by the respondent. Thereafter, the rent was deposited in Court upto March, 2011 in favour of the respondent.

7. The respondent had four other shops which were let out to other tenants at the ground floor of property bearing No.148 and other adjacent property. Besides this, the respondent had let out other rooms in her properties on rent. The receipt of the notice was also disputed by the petitioner.

8. In the reply to leave to defend application, the contentions in the eviction petition were reiterated and most of the averments made in the leave

to defend application were denied. Though it was admitted that a shutter had been affixed on the main entrance of the suit premises, however, it was denied that the same had been fitted since last more than 25 years. It was stated that the shutter was affixed for the purpose of safety and security to replace a wooden door which had deteriorated. It was averred that the petitioner had various other suitable accommodations and his son is also settled abroad.

9. The learned trial Court after hearing the parties, on the issue of ownership, it was opined that the respondent was the owner/landlord of the tenanted premises in view of the fact that the petitioner himself had made an admission with regard to the fact that he used to pay rent qua the tenanted premises to the respondent or son of the respondent and that the petitioner had himself deposited the rent in the Court in favour of the respondent.

10. With regard to the other let-out shops and rooms by the respondent, it was observed by the learned trial Court that no documentary proof had been annexed by the petitioner in this regard. It had not been stated by the petitioner as to when these shops and rooms were let out by the respondent. The learned Trial Court opined that it had not been alleged by the petitioner that the respondent has in her possession any vacant shop/room near the suit premises where an office as required for the grand-daughter of the respondent could be opened. Further the educational status of the grand-daughter as detailed by the respondent was not denied by the petitioner and it was not pleaded that the respondent is in possession of any vacant alternative, reasonable and suitable accommodation from where she can open office of CA for her grand-daughter, who during the pendency of the petition, completed her CA.

11. The averments with regard to the fact as to whether the tenanted premises were let out initially for residential purposes or commercial purposes was opined to be irrelevant in view of the judgment of *Satyawati Sharma (Dead) by LRs vs. Union of India & Anr.*, AIR 2008 SC 3148. The averments with regard to arrears of rent, subletting of the tenanted premises and receipt of legal notice were opined to be irrelevant for the purposes of an eviction petition for bonafide requirement.

12. With these observations, the impugned eviction order was passed and aggrieved thereof the petitioner filed the present petition.

13. 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 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 vs. 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.”

14. It is the admitted position that the family of the respondent consists of herself, her son, daughter-in-law, two grand-daughters and one grand-son. It was also stated in the eviction petition that the respondent along with her family members are living in a premises consisting of three rooms only. She needs the tenanted premises for the purpose of grand-daughter namely Priya Sharma who was pursuing course of C.A. final year at the time of filing the eviction petition intends to open her own office in the vicinity after completion of C.A. course. Therefore the respondent requires some

accommodation to open office for her grand-daughter as she is not having any other suitable alternative accommodation where she could open office.

15. During the course of hearing, the respondent had also filed an affidavit informing the Court that Priya Sharma has cleared examination in May, 2012 and her membership number is 527014 in the Institute of Chartered Accountants of India and as on 29th July, 2013 she has also obtained the certificate of practice from the Institute of Chartered Accountants of India.

16. I have been informed by the learned counsel for the respondent that the office of Chartered Accountant is necessary for the purpose of practice. Relevant copies of the final examination certificate of Institute of Chartered Accountants of India and practice certificate has also been filed along with the enrolment in the register of members.

17. In reply to the leave to defend, the respondent has denied most of the grounds taken by the petitioner in his application. It was stated in the reply that the husband of the respondent was owner and landlord of property the premises i.e. property No.147, Katra Mashru, Dariba Kalan, Chandni Chowk, Delhi. The petitioner was inducted as tenant in portion of the said property situated at first floor consisting of one room for residential purpose only but the petitioner had sublet, assigned and parted with possession of the suit property to one Sh.Anil Sharma without consent and permission of the respondent who is using suit property for running property dealer shop in the name and style of Dogra Properties and is also running an office in the name of Akhil Bhartiya Swarankar Sangh. The husband of the respondent Sh.Kishan Sharma died on 9th May, 1982 and after his death the respondent became the owner and landlord of the suit premises. The petitioner herein did not pay the rent after April, 2009. Nothing contrary by way of cogent

evidence was produced by the petitioner before the learned trial court. Therefore, the learned trial court after hearing both the parties dismissed the application for leave to defend mainly on the reasons given in paras 31 and 32 of the impugned order which read as under:

“31. Ground is taken that petitioner is not having any bonafide requirement of suit property as there are four other shops of petitioner which have been let out by petitioner to other tenants and petitioner has also let out other rooms in her properties. No documentary proof in this regard has been annexed by respondent. It has not been stated by respondent as to when these shops and rooms were let out by petitioner. It has not been alleged that petitioner has in her possession any vacant shop/room near the address where she is residing from where she can open an office for her grand daughter Priya Sharma. The case has not been pleaded by respondent that shops/rooms have been let out by petitioner recently and that present petition is nothing but a sham in these circumstances. It has not been denied that grand daughter of petitioner namely Priya Sharma is in final year of C.A and that petitioner is in possession of any vacant alternative, reasonable and suitable accommodation from where she can open office of C.A for her grand daughter Priya Sharma. In these circumstances, to my mind, no triable issue in this regard is made out particularly in the circumstances when factum of requirement of grand daughter of petitioner on completion of C.A course has as such not been denied (During pendency of present petition, it appears that grand daughter of petitioner namely Priya Sharma has passed final examination of C.A regarding which final examination certificate has been filed by petitioner).

32. The averments with regard to the fact that as to whether suit property was let out initially for residential purposes or commercial purposes and that petitioner requires the same for putting into use for commercial purpose is irrelevant after judgment of Hon’ble Supreme Court of India in Satyawati Sharma (Dead) by LRs Vs. Union of India & Anr. Case (AIR 2008) SC 3148). The averments with regard to the fact as to

whether respondent is in arrears of rent or has paid or deposited the same are irrelevant for the purpose of present case. The averments as to whether respondent has subletted suit property is also not relevant for ground of bonafide requirement. The averments as to whether respondent received legal notice issued by petitioner is also not relevant in the ground of eviction on the ground of bonafide requirement as no legal notice is required to be given before institution of case on the ground of bonafide requirement.”

18. In **B.K. Suri vs. Sh. G.D. Chopra and Ors.**, RC. Rev. No.04/2007 (Decided On: 6th October, 2009), this Court took a view that the respondent, a widow landlady being alone without the company of her spouse, needs constant care and attention of her children and grandchildren. She needs sufficient accommodation not only to accommodate the family of her son and his children, but also to accommodate herself, her widowed married daughter, and her other children/grandchildren as and when they desire to come and live with her and spend time with her overnight.

19. Admittedly, in the present case, the respondent is a widow lady and it is also the admitted position that the grand-daughter of the respondent is residing with the respondent and that she is also dependent upon the respondent, who treats her as a family member. Even, the petitioner’s review application was also dismissed by the learned trial Court.

20. This Court in **S. Kumar vs. 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.

21. In **Sain Dass Berry vs. 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.

22. 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.

23. Considering the facts and circumstances of the case as well as settled law on the issue involved, I am not inclined to interfere with the impugned order dated 23rd January, 2013 which does not suffer from any infirmity. The present petition has no merit and the same is dismissed along with pending application. The petitioner is directed to hand over the peaceful and vacant possession of the tenanted premises to the respondent within one month from today. During this period, the petitioner shall not sublet or create any third party interest in the tenanted premises.

24. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 06, 2014