

. * IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: February 21, 2014

+ RC. Rev. No.156/2011, C.M. Nos.7718/2012 & 14388/2012

ASHOK SEHGAL & ANR Petitioners
Through Mr.Satish Sahai, Adv. with
Mr.Rajesh Baweja, Mr.Ankit Baweja
and Mr.Ankur Aggarwal, Advs.

versus

SUBHASH CHANDRA SHARMA Respondent
Through Mr.Siddharth Bambha, 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 28th January, 2011, passed by Additional Rent Controller, North Delhi District, Tis Hazari Courts, Delhi.

2. Brief facts of the case are that the respondent filed an eviction petition against the petitioners in respect of a shop forming part of the ground floor of the property No. 5-F, Kamla Nagar, Delhi-110007 (hereinafter referred to as the “tenanted shop”). It was stated in the eviction petition that the tenanted shop is required by the respondent to start his business of footwear and that the tenanted shop is in the commercial market wherein there are a number of other footwear shops.

3. It was further stated that there are small portions on the first and the third floor of the said property which were rented out to various persons by the respondent but the same were not suitable for the proposed business of footwear of the respondent. It was averred that the petitioner owned a commercial space in Karol Bagh and also a big shop in Pitampura, details of which were given and the same was rented out by the petitioners for about Rs.1,00,000/-.

4. In the leave to defend application filed by the petitioners, the bonafide requirement of the respondent was denied and it was contended that the respondent wanted to get the tenanted shop vacated to re-let the same at a higher rate. It was contended that the respondent had concealed the fact that he is working as a senior officer with Myna Tube Lights C/o M/s. Taneja Sales Corporation, A-83, G.T. Karnal Road Industrial Area, Delhi at a monthly salary of not less than Rs.50,000/-. It was further contended that the respondent had retired from services and had no experience of business at all so he could not be expected to start the business of footwear.

5. It was averred that the respondent had sold the other portions of property that had fallen to his share on partition in the year 2000 and he ought not to have done so in view of the fact that he was to retire in 2006. It was averred that the said other portion instead of being sold should have been let out for a limited period and then could have got vacated at the time of the retirement of the respondent to utilize the same for his alleged proposed business. It was further also averred that the portions on the first and the third floor which is owned by the respondent and let out to other persons could be used by the respondent for any sort of business.

6. In the reply to the leave to defend application, the respondent contested and denied the contentions of the petitioners and also explained the selling and letting out of his other portions of the property as alleged by the petitioners.

7. The learned Trial Court while dismissing the leave to defend application of the petitioners vide the impugned eviction order observed that the apprehension of the petitioners that the eviction petition had been filed with a view to re-let the tenanted shop at a higher rate is protected under Section 19 of the Act. With regard to the contention that the respondent was working as a Senior Officer at a Corporation drawing a salary of not less than Rs.50,000/-, it was observed that the said contention could not be accepted as even if it is assumed that the respondent was working as alleged by the petitioner, he had admittedly retired from his service and was not supposed to sit idle till the time the tenanted shop was vacated.

8. With regard to the contention that the respondent had sold the other portions of property that had fallen to his share on partition in the year 2000 and that he ought not to have done so in view of the fact that he was to retire in 2006, the learned Trial Court observed that the property sold by the respondent in the year 2000 had no bearing on the facts and circumstances and decision on the application for leave to defend.

9. The learned Trial Court further observed that the petitioners though had disputed the site plan filed by the respondent, they had not filed any counter site plan and so the site plan filed by the respondent was deemed to be admitted as correct.

10. With regard to the contention of the petitioners that various portions on the first and the third floor which was owned by the respondent and let

out to other persons could be used by the respondent, the learned Trial Court observed that the petitioners had nowhere stated that the said portions were suitable for the purpose of business of foot wears.

11. Accordingly, in the light of these observations, the learned Trial Court opined that the petitioners had failed to disclose such facts so as to disentitle the respondent from obtaining the order for eviction and so the leave to defend application was dismissed vide the impugned order. Aggrieved thereof, the petitioners have filed the present petition.

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 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.”

13. In the case of (i) ***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.”

14. In ***Ramesh Chand vs. Uganti 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”.

15. In ***Shanti Sharma and Ors. vs. Ved Prabha & Ors.***, (1987) 4 SCC 193, the 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 7/13 Janak Rani Sawhney Vs. Satish Kumar & Another RC no.03/12 interpreted in broader sense and held such landlord come within meaning of 'owner' under Section 14 (1) (e).”

16. The main contention of the petitioners is that the respondent has not disclosed the factum of his employment after the retirement. Secondly, he argues that certain property at the first floor and third floor of the property have been sold in the year 2000. During the pendency of the present revision petition, an application, being CM No.14388/2012, has also been filed by the petitioners under Section 151 CPC for permission to place the record of few documents in which the additional grounds have been taken other than in the application for leave to defend.

It is stated in the application that the petitioners now have come across registered lease deeds entered by the respondent in the month of September, 2011 for different portions of the building owned by him. The lease agreement dated 26th August, 2011 was entered by the respondent with Sh.Badal Chitrakar for monthly rent of Rs.9000/- to Rs.9900/- for three years for a portion on the first floor for approximately 230 sq. ft. in the suit property. Copy of the said lease agreement is also placed on record. Admittedly, the said lease agreement is executed by the respondent after filing of the eviction petition against the petitioners. The petitioners have also filed the photograph showing the possession of Badal Chitrakar. Earlier the said portion was in the possession of Elegant Consultants who vacated the premises. Instead of using the said portion, the respondent let out the same to Badal Chitrakar at enhanced rent.

17. Learned counsel for the petitioners has relied upon decisions in the case of *Charan Dass Duggal vs. Brahma Nand*, reported in 1983(1) SCC

301 as well as the decision of *Precision Steel And Engineering vs. Prem Deva Niranjana Deva Tayal*, 1983 SCR (1) 498.

18. As regards the decisions referred by the learned counsel are concerned, it is necessary that when leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and if prima facie case is shown, the Court should grant the leave to defend. And it is not necessary at this stage to make out such a strong case by the tenant which would non-suit the landlord or which if proved would disentitle the landlord from seeking the possession. The tenant's affidavit alone at this stage is relevant document and the controller must confine himself to the averments in the affidavit while examining the question whether there was a proper case for granting the leave.

19. After having gone through the material placed on record by the petitioners, it appears to the Court that the proposed business of footwear of the respondent is not feasible to be started on the first floor in view of the nature of construction and accommodation available at the first floor of the property. It is also immaterial if the respondent is employed somewhere and is getting salary after his retirement. The fact of the matter is the respondent requires the tenanted shop for his personal use to start his business of footwear in a commercial market.

20. In case of *Sait Nagjee Purushotam & Co. vs. Vimalbai Prabhulal and Others*, (2005) 8 SCC 252 the Apex Court held that a person who has started the litigation cannot be expected to sit idle.

21. In case of *Raghunath G. Panhale (dead) by L. Rs. vs. Chaganlal Sunderji and Co.*, AIR 1999 SC 3864 the Apex Court held joblessness is not a condition precedent for seeking to get back one's premises.

22. The petitioners have also pointed out that in the Kamla Nagar market, the shops are allowed to carry on business legally on the first floor. However, even assuming that the first floor is being used for commercial purposes in the adjoining properties, I am doubtful that shop of footwear can be operated from the first floor in view of the nature of construction shown in the photographs.

23. Even otherwise, it depends upon case to case basis as to whether first floor is suitable for any particular type of business. In the present case, the respondent sought eviction to operate a footwear shop. It is apparent from the nature of accommodation available as well as construction of rooms, that business of footwear is not possible unless the structure of first floor is reconstructed or changed. It is not possible for this Court to ask the respondent to do so.

24. In case of *Uday Shankar Upadhyay & Ors. vs. Naveen Maheshwari*, VIII (2009) SLT 429 the Apex Court held “it is well known that shops and business are usually conducted on the ground floor because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business.”

25. In the case of *Viran Wali vs. Kuldeep Rai Kochhar*, 174 (2010) DLT 328 this Court held “Respondent has categorically stated that basement is not suitable for him to carry on business, as same is being used for storage and parking purposes. Any business which runs from ground floor of premises will attract more customers than business being run from basement.”

26. In view of the above said discussion and the principle of law applicable to the present case I find that the petitioners have failed to make out a prima facie case raising such pleas that a triable issue is available to

enable the matter to be sent for trial. The impugned order does not suffer from any infirmity. Leave to defend application has been rightly rejected by the learned Trial Court. The petition is therefore dismissed.

27. 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.*

28. Considering the hardship of the petitioners, coupled with the fact that it is a commercial property which is being used by the petitioners for the last many years and in the interest of justice, equity and fair play, the petitioners are granted one year's time from today to vacate the tenanted shop i.e. a shop forming part of the ground floor of the property No. 5-F, Kamla Nagar, Delhi-110007 subject to the following terms:

- i) During this period, the petitioner shall not sublet or create any third party interest in the tenanted property.
- ii) After the expiry of said period, the petitioner shall hand over the peaceful and vacant possession of the tenanted premises to the respondent and he shall not make any request for extension of time.

29. However, it is made clear that the petitioner will only pay the rent agreed between the parties and not the market rent as recorded in the order dated 11th August, 2011.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 21, 2014