

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

% *Judgment pronounced on: January 22, 2014*

+ **RC.REV. 241/2013 & CM No.10457/2013**

S RAVINDER SINGH & ANR Petitioners
Through Mr.Amit Kumar, Adv.

versus

S PIARA SINGH Respondent
Through Mr.S.S. Bhatia, Adv. with Mr.D.R.
Bhatia and Mr.Naveen Arya, 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 (hereinafter referred to as “the Act”) have assailed the eviction order dated 25th February, 2013 passed by Additional Rent Controller, South, Delhi.

1. Brief facts of the case are that the respondent filed an eviction petition against the petitioners in respect of a shop measuring 11’ x 20.9’ft in the front portion of property bearing No. 1666-D, Govindpuri Extension, Main Road, Kalkaji, New Delhi-110016 (hereinafter referred to as the “tenanted shop”), which was let out to the petitioners in the year 1985 for running furniture business and the same is being used for commercial purposes under the name and style of M/s International Furnitures.

2. It was stated by the respondent in the eviction petition that the plot on which the tenanted shop was constructed, was purchased by the respondent

in the year 1972 by a registered sale deed and at the time of letting out the tenanted shop, the respondent had a small family and did not need the entire premises. However, the respondent now required the suit shop for one of his sons namely Dattar Singh who holds a diploma certificate in computers, to start the business of sale and purchase of computers/spare parts or any other allied or suitable business. It was stated that Dattar Singh had lost one eye due to cracker injuries during Diwali days in the year 2001 and the other eye of Dattar Singh had minimal vision by birth. Due to weak vision, Dattar Singh cannot travel or drive independently for business purposes and therefore, cannot do any work or business far away from the house. It was stated that the tenanted shop which is on the ground floor is most suited for the son of the respondent where he can also seek assistance of his wife. It was further stated that the son of the respondent Dattar Singh, is solely dependent upon the respondent because of being handicap.

3. It was stated that the property wherein the tenanted shop is situated consists of lower ground and ground floor wherein the lower ground floor has a drawing room and two bed rooms, a kitchen and two bathrooms plus a hall in front of the ground floor, which is occupied by the petitioners and that the ground floor which has similar accommodation and in addition has one room above the tenanted shop. The family of the respondent was stated to be consisting of three married sons and two married daughters and their respective families. One of his sons resides in England with his family while the second son with his wife and school going children and the third son, Dattar Singh with his wife and two children reside with the respondent in the various portions of the said property. Detailing out the occupation of various portions of the remaining premises by various members of the family of the respondent, it was stated that it was not possible for the respondent to carve

out a separate space for his son Dattar Singh to run his projected business.

4. The respondent stated to have sent notices dated 2nd March, 2010 and 28th April, 2011 terminating the tenancy and also received a reply dated 20th May, 2011. The respondent had filed a civil suit against petitioner no.1 for ejectment and possession claiming the initial rent of Rs.500/- per month being enhanced periodically upto Rs.4,000/- per month in April 2006. In that suit, the petitioner no.1 filed the written statement claiming the rate of rent to be Rs.500/- per month and also claimed petitioner No.2 to be a joint tenant, because of which the respondent withdrew the said suit with the permission of the court and filed the present eviction petition under the Act.

5. Leave to defend applications were filed by both the petitioners separately. The petitioner No.1 averred in his leave to defend application that the respondent himself stated that the rate of rent was periodically enhanced to Rs.4,000/- per month and therefore, the Court had no jurisdiction. It was contended that the tenanted shop was let out to the petitioner No.1 sometime in the year 1985 and an amount of Pagri was charged by the respondent from the petitioner, however, the petitioner No.1 never saw the title deeds in favour of the respondent. The educational qualifications of the son of the respondent, Dattar Singh were refuted. It was stated that admittedly the son of the respondent had a poor vision that too from one eye only and so it was averred that it was impossible for him to deal in computer/computer parts as the same entails handling minute marking on the parts.

6. It was averred that the respondent and his son are engaged in building construction activities as contract and provide shuttering material on rent and huge stock of the shuttering had been stored by the respondent on the terrace of the property and the said business was being run by his son Dattar

Singh and therefore, Dattar Singh did not require the tenanted shop to run computer business. Petitioner No.1 further stated that in the site plan, the respondent had showed an open space opposite to the tenanted shop but the said space was covered with acrylic sheets and the same could be used as a shop. Though it was stated that as per the site plan filed by the respondent, there was no hall on the lower ground floor, however, the fact of tenanted shop being on the ground floor was admitted. The bonafide requirement as stated by the respondent was refuted as also the number of family members residing in the said property.

7. On the other hand, it was averred by petitioner No.2 that he alone is the tenant and that petitioner No.1 is an un-necessary party. Petitioner No. 2 disputed the site plan stating that proper position of the said property and the tenanted shop has not been correctly shown. It was further stated by petitioner No.2 that the site plan filed by the respondent does not suggest that the tenanted shop is on the lower ground floor. Petitioner No.2 filed his own site plan and admitted that the tenanted shop is on the ground floor. It was averred by him that the tenanted shop was let out only to him and that he holds a trade licence issued by MCD in his name when an NOC was issued by respondent in the name of the petitioner No.2 only and further the earlier notices dated 2nd March, 2010 was sent by the respondent to petitioner no.1 only.

8. Petitioner No.2 contended that the averments made by the respondent regarding the residence of the family members of the respondent are irrelevant. It was stated that though the earlier civil suit was filed only against the petitioner No.1, the rent receipts filed therein showed that the petitioner No.2 is the only tenant. It was further contended that with the kind of eye injuries as stated by the respondent, his son cannot carry on any

business of computer or computer parts. It was averred that respondent is maintaining a high and luxurious standard.

9. It was also contended by petitioner No.2 that since he remains away from the tenanted shop to procure business and petitioner No.1 remains in the tenanted shop, the respondent has connived with the petitioner No.1 to file the eviction petition.

10. The respondent in a joint reply to both the leave to defend applications and besides denying and contesting other averments made in the leave to defend applications, the respondent stated that both the petitioners are real brothers and are managing the business of M/s International Furniture. It was stated that both of them were made a party in the eviction petition because the petitioner no.1 in the previous suit had contended that petitioner No.2 is a joint tenant in the tenanted shop.

11. Petitioner No.1 filed the rejoinder to the reply filed by the respondent and reiterated his stand and controverted the stand taken by the respondent in his reply.

12. The learned Trial Court while passing the impugned eviction order against the petitioners dismissing their leave to defend applications, observed that the objection of the petitioner No.1 regarding jurisdiction of the Rent Controller was not maintainable as though the respondent in his earlier suit had stated that the rent after periodical increase was Rs.4,000/-, the petitioner No.1 had denied the same and claimed the rent to be Rs.500/- per month and sought to oust the jurisdiction of the civil court. The respondent in that suit conceded to the stand of the petitioner No.1 and treating the rent to be Rs.500/- per month, withdrew the said civil suit with a liberty to file the petition before the rent controller. The learned Trial Court noticed that perusal of the last order of the Civil Court in the previous civil

suit also reflected that there was no objection by the petitioner No.1 to the liberty as prayed by the respondent. The learned Trial Court opined that once the petitioner No.1 had claimed the rent to be Rs.500/- per month, now he was estopped from resiling from the stand taken by him in the civil suit so as to oust the jurisdiction of the rent controller as well.

13. With regard to the relationship of landlord-tenant between the parties, the learned Trial Court observed that the said relationship was not disputed by either of the petitioners. Though the petitioner No.2 had taken the stand that he alone is the tenant and that petitioner No.1 is an unnecessary party and that the respondent connived with the petitioner No.1 to file the eviction petition, the learned Trial Court noticed that both the petitioners were represented through the same counsel, so in the opinion of the learned Trial Court, they could not be allowed to blow hot and cold in the same breath. The learned Trial Court further opined that the contradictory stand taken by the petitioners regarding who is the actual tenant did not affect the case of the respondent in any manner so long as the respondent admittedly was the landlord of the tenanted shop. It was also observed by the learned Trial Court that though the petitioners had disputed ownership of the tenanted premises, the petitioners had not stated who is the owner thereof and even otherwise once the petitioners had admitted the respondent to be the landlord, the landlord is not required to prove that he is the absolute owner of the tenanted shop.

14. With regard to the issue of bonafide requirement, in the opinion of the learned Trial Court what as per the petitioners was the limitation of the son of the respondent, Dattar Singh, had in fact become a compelling necessity to open the business at the tenanted shop being situated in the front portion of the residence of the respondent. The learned Trial Court observed that

contention of the petitioners that the respondent and his son Dattar Singh are doing the business of shuttering and that shuttering material had been kept on the roof of the said building had been properly explained by the respondent who stated that earlier the respondent was a contractor and now is leading a retired life and that his other son Kirpal Singh is doing the business of shuttering and has stored the shuttering material on the roof in this regard. Even the petitioner No.1 in his rejoinder had admitted that Kirpal Singh was working as a contractor. The learned Trial Court observed that on one hand, the petitioner contended that Dattar Singh being virtually blind cannot do any business and on the other had claimed that Dattar Singh was doing the business of shuttering, in the opinion of the learned Trial Court this plea was sham, and also nothing was placed on record in this regard by the petitioners to support their contention.

15. With regard to the site plan, the learned Trial Court observed that though the petitioners had disputed the site plan filed by the respondent and had also filed their own site plan, but during arguments, it was admitted by the counsel for the petitioners that as far as the tenanted shop is concerned, there was no ambiguity. With regard to the question of alternative suitable accommodation, the learned Trial Court observed that though the petitioners contended that respondent has other alternative properties, but no other details of any property thereof were given.

16. With these observations, the learned Trial Court passed the impugned order in favour of the respondent and aggrieved thereof the petitioners have filed the present petition.

17. 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.”

18. The respondent/landlord is undisputedly the owner of the tenanted premises by virtue of the registered sale deed executed in his favour on 6th January, 1972. Dattar Singh who is the son of the respondent/landlord is visually handicapped by 75% as per the certificate issued by All India Institute of Medical Science, dated 10th May, 2011. Dattar Singh suffered injuries in eyes due to a cracker burst during Diwali days of 2001. Dattar Singh had graduated from Delhi in the year 1999. He had already obtained a certificate of Business Oriented Software Application from India Education Centre, on 3rd December, 1996. The respondent/landlord wants the tenanted premises vacated by the petitioners/tenant to enable his son Dattar Singh to start sale and purchase of computer and spare parts or any allied suitable business. The tenanted premises being situated on the ground floor is most suitable for the aforesaid business of his son Dattar Singh where he can be helped by his wife.

19. In *Precision Steal & Engineering Work & Anr. vs. Prem Devi Niranjana Deva Tayal*, (1982) 3 SCC 270, the Apex Court has held that the prayer for leave to contest should be granted to the tenant only when prima facie case has been disclosed by him. The court should not mechanically and in routine matter grant leave to defend.

20. The tenant/petitioner has not placed on record any material in support of his averments.

21. The respondent/landlord had purchased a plot measuring 225 sq. Yards on 16th January, 1972 by a registered deed from one Ram Prakash. The construction on the plot was raised thereafter in two phases i.e. in 1972-73 and 1980. The constructed property was allotted Municipal No.1666D, Govind Puri Extension, Main Road, Kalkaji, New Delhi. The constructed property consisted of a lower ground floor and ground floor as also a hall in the front on the ground floor measuring 11 ft. X 20.9 ft. There is one room built above the aforesaid hall. The hall measuring 11 ft. X 20.9 ft. was given on rent to the tenant/petitioners in the year 1985. No written rent deed was executed between the parties.

22. The lower ground floor of the property consists of a drawing room, two bedrooms, two bathrooms. The ground floor consists of a drawing room, two bathrooms plus the hall under the tenancy of the petitioners, situated in the front on the ground floor. A room is also built over the hall under the tenancy of the petitioners/tenant. The respondent/landlord has a large family.

23. The elder son Surjit Singh is ordinarily residing in England. However, he visits the respondent/landlord with his wife and three daughters once or twice a year. Whenever they visit the respondent/landlord, they are lodged in the aforesaid property No.1666D Govind Puri Extension. New Delhi.

24. The second son of the respondent/landlord namely Kirpal Singh is residing with the respondent/landlord in the aforesaid house along with his wife and two children. The second son and his family need atleast bedroom.

The third son is Dattar Singh who is also living with the respondent/landlord with his wife and two minor children and who also needs atleast one bedroom.

25. There are only four bedrooms in the aforesaid house. One bedroom is permanently used for enshrining “Guru Granth Sahib”. The second bedroom is occupied by S. Kirpal Singh and his family. The third bedroom is occupied by Dattar Singh and his family while the fourth bedroom is occupied by the respondent/landlord and his wife. The room above the tenanted shop/hall as shown in the site plan filed with the eviction petition is being used as a store.

26. Whenever the elder son Surjit Singh and his family or the married daughters of the respondent/landlord visit him, he feels paucity of accommodation. To provide space to the visiting families of the sons and daughters, the entire family has to huddle together in the available space which causes great inconvenience to the entire family.

27. In the year 2001, during Diwali days, Dattar Singh, the son of the respondent/landlord lost one eye due to cracker-burst injury. The other eye of Dattar Singh has a minimal vision by birth. Thus Dattar Singh who is a graduate and has had computer training as mentioned in the preliminary submissions, is visually handicapped by 75%.

28. The tenant/petitioners averred that the respondent/landlord should accommodate his son in the parking space shown in the photograph annexed with the application for leave to defend. The parking space is neither sufficient nor suitable for the son of the respondent/landlord as alleged. It has been held by this Court in 2010 (2) RLR 70 that “(i) the landlord is not under any obligation to use the garage as a shop as suggested by the tenant, (ii) requirement of landlord to park the car in garage is not a luxury but a sheer necessity, (iii) more over the landlord is the best judge of his requirement. Tenant cannot compel the landlord to live in a particular fashion and method.”

29. The respondent/landlord is aged about 77 years and would like to rehabilitate his visually handicapped son in a business in the tenanted premises situated on the ground floor of his property which is most suitable for the projected business.

30. It is denied by the respondent that he had got any pagri as alleged by the tenant/petitioners in para 2(vii)(b) of Rs.15 lac was taken by the respondent/landlord from petitioners. Even otherwise under Section 16(4) of DRC Act, giving/taking of pagri is prohibited. In any case, pagri does not vest any additional right on the tenants to resist eviction.

31. 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.

32. 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.

33. Thus there is no prima facie case disclosed by the tenant/petitioner for leave to defend being granted to him.

34. Considering the facts and circumstances of the case as well as settled law, no triable issue is raised by the petitioners, therefore, the impugned order dated 25th February, 2013 does not suffer from any infirmity. The

present petition has no merit and the same is dismissed.

35. In the interest of justice, the petitioners are directed to hand over the peaceful and vacant possession of the tenanted premises to the respondent within six months from today. During this period, the petitioner shall not sublet or create any third party interest in the tenanted premises.

36. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 22, 2014