

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

% *Judgment pronounced on: January 22, 2014*

+ **RC.REV. 275/2013 & CM NO.11668/2013**

VIPAN KUMAR Petitioner
Through Mr.B.P. Dhalla, Adv.

versus

SIMMI GABA & ANR Respondents
Through Mr.J.P. Sengh, Sr. Adv. with
Mr.Mukesh Anand and Ms.Ankita
Gupta, 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 22nd April, 2013 passed by Additional Rent Controller, East, Karkardooma Courts, Delhi.
2. Brief facts of the case are that the respondents filed an eviction petition against the petitioner in respect of premises bearing No. B-20/21, East Krishna Nagar, Delhi-110051 (hereinafter referred to as the “tenanted shop”) which was let out to the petitioner at a monthly rent of ₹ 1,000/- and wherein the petitioner was doing the business of Auto Mobile.
3. It was stated by the respondents that the tenanted shop was bonafidely required by the son of respondent No.1 namely, Ankit Gaba who had

completed his MBA from the University of Northumbria, New Castle (UK) and wished to run an independent business of adhesives in the tenanted shop.

4. In the leave to defend application filed by the petitioner, it was contended that the respondents are in possession of suitable alternative accommodation which could be utilized by the son of respondent no.1 for running his business. Reference was made to three such properties. It was contended that the respondents possess sufficient accommodation within the property No. B-20/21, East Krishna Nagar, Delhi (hereinafter referred to as the “suit property”) as the building comprises of two storeys and the first floor thereof is lying vacant and also there is vacant space on the ground floor thereof. It was also averred that the respondents possess two vacant floors in a building at Bawana Industrial Area and that respondents also own a 400 sq. yards plot in Greater Noida which is also locked and vacant. It was averred that concealment of these alternative accommodations by the respondents show that their need of the tenanted shop is not bonafide.

5. Though the petitioner did not deny the landlord-tenant relationship between the parties, the ownership of the respondents was denied.

6. The contentions of the petitioner were denied and it was stated by the respondents that the site plan filed by the respondents qua the suit property duly depicted the utilization of the entire portion except the tenanted shop. It was stated that there was no concealment by the respondents who had duly revealed in their petition that one portion of the suit property was in possession of “Anmol Motors” under the partnership of respondent no. 2 and the husband of respondent no.1 whereas another portion was in possession of “Anmol Packs” under the partnership of the respective husbands of the respondents.

7. The respondents had disclosed the factory at Bawana Industrial Area and that the operation of the said factory was by the respective husbands of the respondents for their own independent business and that no portion of the said property was vacant.

8. In context to the property at Noida, it was submitted that the same was situated in U.P. and not in Delhi and that there were already several share holders in the Private Limited Company owning the said plot of land.

9. 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.

10. 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.”

11. The learned Trial Court while dismissing the application for leave to defend vide the impugned eviction order observed that since the landlord-tenant relationship between the parties was not denied by the petitioner, the objection on the ground of ownership was perfunctory at best and did not merit trial.

12. With regard to the issue of alternative accommodation, the learned Trial Court observed that there was no concealment in this regard by the respondents and that the duly filed site plan by them clearly showed that one portion of the suit property was under the partnership of Anmol Motors and another portion was under the partnership of Anmol Packs. The petitioner

had not filed any alternate site plan in support of his contention. It was observed that even otherwise the petitioner could not dictate the respondents with regard to utilisation of one portion or the other in the given property. it was further observed that since the tenanted shop was on the ground floor, it would be prudent for a prospective businessman to open a new venture on the ground floor i.e. next to the road rather than the first floor of the suit property.

13. With regard to the property at Bawana Industrial Area, the learned Trial Court observed that the same was disclosed by the respondents in the petition itself. Since as per the stated case of the respondents', the son of the respondent no.1 intended to start an independent business in the tenanted shop, in the opinion of the learned Trial Court, it was not tenable for the petitioner to insist that the proposed business be opened or merged with the existing business of the husbands of the respondents at the factory at Bawana. It was for the respondents' being the best judge of their requirement to decide that the purpose of the son of the respondent no.1 would be better served by opening his business in the tenanted shop in Krishna Nagar rather than in Bawana Industrial Area. So far the property in Noida is concerned, the learned Trial Court opined that it would be imprudent for the respondents to be required to force the son of respondent No.1 to shift his proposed business to another city.

14. i) ***Kharati Ram Khanna & Sons. vs. Krishna Luthra***, 2010 (172) DLT 551, it was observed that *the requirement of the landlord to settle down her two sons separately and independently was found to be genuine and bonafide.*

- ii) ***Labhu Lal v. Sandhya Gupta***, 2010 (173) DLT 318 it was observed that *the landlord's son and daughter in law are dependent for accommodation on respondent the requirement of the landlord's son and daughter in law for expanding clinic being run in premises in question is genuine.*
- iii) ***Sh. Ravinder Singh v Sh. Deepesh Khorana***, RC Rev 3/2011 date of decision 10.12.2012 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) ***Brij Mohan vs. Shri Pal Jain***, 49 (1993) DLT 543, it was observed that *it is settled law that grown up children require separate rooms to live in a manner he or she likes.*
- v) ***Ram Babu Aggarwal v. Jay Kishan Das***, 2009 (2) RCR 455, the court recognized *the right of the landlord for possession of his property for setting up a business for his son.*

15. Accordingly, in the light of these observations, the learned Trial Court opined that the application filed by petitioner did not disclose grounds as would disentitle the respondents from obtaining an order for recovery of possession on the grounds specified under Section 14(1)(e) of the Act and so the leave to defend application was dismissed vide the impugned eviction order.

16. 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. The impugned order does not suffer from any infirmity.

17. 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.”*

18. Considering the hardship explained by the petitioner during the course of hearing and coupled with the fact that it is a commercial property which is being used by the petitioner for the last many years. 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.

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

20. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 22, 2014