

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

% *Judgment pronounced on: January 03, 2014*

+ **RC. Rev. No.251/2013 & C.M. No.10873/2013**

BALDEV RAJ ARORA Petitioner

Through Mr.Anil Sapra, Sr. Adv. with
Mr.Hirein. Sharma and Ms.Meena
Chaudhary, Advs.

versus

MOHINDER LAL SAHGAL Respondent

Through Mr.Shiv Charan Garg, Adv. with
Mr.Vinay Sharma, Mr.Shashank
Mittal and Mr.Imran Khan, Advs.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) against the order dated 21st January 2013 passed by learned ARC (North-West), Rohini, Delhi, dismissing the leave to defend application of the petitioner in an eviction petition filed by the respondent in respect of one shop on the ground floor of the property bearing no. WZ-916, Rani Bagh, Delhi- 110034 (hereinafter referred to as “the tenanted premises”)

2. The respondent averred that he bonafidely required the tenanted premises for his married son who wanted to start his independent business in the tenanted premises. It was stated in the eviction petition

that the respondent alongwith his wife and daughter were residing in the property bearing no. WZ-916, Rani Bagh, Delhi- 110034 (hereinafter referred to as “the suit property”). it was stated that the respondent has a business of manufacturing and trading of spectacles under the name and style of M/s Imperial Optical Works from a shop in Fatehpuri, wherein his married son helped him, however, now the son of the respondent wanted to stand on his own legs being married with Smt.Megha Sahgal and one baby residing with them. His son is totally dependent upon the respondent for the purpose of accommodation, hence the respondent wanted to provide a separate shop to his son for which purpose the eviction petition was filed

3. The petitioner in his leave to defend application disputed the ownership of the tenanted premises and averred that only the back portion of the tenanted premises fell to the share of the respondent. The petitioner disputed the bonafide need of the respondent and contended that the son of the respondent was well-settled and was engaged in the business of spectacles at Fatehpuri alongwith the respondent for the last 10 years. It was also averred that the respondent has suitable and sufficient accommodation, which was lying vacant in the same area and was seven times more in comparison to the tenanted premises.

4. The respondent denied the averments made by the petitioner in the reply to leave to defend application.

5. The learned Trial Court dismissed the application for leave to defend of the petitioner vide the impugned order, it was noticed by the learned Trial Court that the tenanted premises originally belonged to the respondent's father who expired in the year 1981 leaving behind respondent's mother, respondent's brother and two sisters besides the

respondent. The mother of the respondent also expired in November 1981 and both the sisters had executed a Relinquishment Deed whereby the respondent and his elder brother had become joint owners of the suit property. On perusal of the site plans filed by both the parties, it was observed that both the site plans were similar and the location of the tenanted premises was exactly same in both the site plans. The learned Trial Court observed that the petitioner had failed to explain as to how the tenanted premises did not fall in the share of the respondent and on the other hand, respondent had filed a copy of the site plan annexed with the relinquishment deed whereby the tenanted shop was shown to be falling in the share of the respondent only. On the issue of the landlord-tenant relationship, it was observed by the learned Trial Court that the rent receipts filed by the petitioner showed that they were jointly issued by the respondent and his elder brother. Accordingly as per Section 116 of the Evidence Act, the petitioner was stopped from challenging the ownership of the respondent.

6. On the issue of existence of bonafide need, it was observed that admittedly, the son of the respondent was employed with the respondent and therefore dependent upon the respondent and that it is the prerogative of the landlord to settle his children as he wants. It was observed by the learned Trial Court that the petitioner being a tenant is not in the capacity to dictate terms to the landlord and if the respondent wanted to settle his son independently, the said need of the respondent could not be said to be sham or mere wish. With regard to the contention of the petitioner that besides the tenanted premises, there was sufficient space available in the suit property from where the son of the respondent could start his business, it was observed that as per the site plan, the tenanted premises

was a corner shop and that the remaining portion at the back side consisted of a room, verandah, open courtyard, passage, which was not suitable for running a shop and further it is for the landlord to choose the place from where he wanted to start his business.

7. With these observations, the learned Trial Court passed the impugned order and aggrieved thereof the petitioner filed the present petition.

8. 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.”

9. Mr.Sapra, learned Senior counsel appearing on behalf of the petitioner, has also challenged the correctness of the site plan filed by the respondent along with eviction petition. He argues that the site plan filed by the respondent does not contain the details of three rooms which are constructed at the back side of front portion of the shops.

10. Learned counsel appearing on behalf of the respondent on the other hand has stated in the remaining portion of the suit premises, the respondent is residing with his wife, son, daughter-in-law and granddaughter as mentioned in his pleading. Thus, it is not material fact if the same has not been shown in site plan. Even otherwise, the said

portion cannot be used for commercial purposes. It is submitted by the learned counsel for the respondent that said premises is one way entry and one side i.e. front face of the premises falls at 100 ft. road which is declared as commercial and the other side i.e. face fall on the street is not declared as commercial as the said portion falls on the street from it is being used alone as entry gate of his clients' residence.

11. With regard to divergence in the site plan of the respondent found if yet the case of bonafide is made out, the said omission can be condoned in a peculiar case where such disclosure would not go into the root of the matter.

12. In the case of *Net Ram v. Beant Singh*, 28 (1985) DLT 318, there was a vast divergence found in the site plan of landlord showing existing accommodation and the one prepared by the Local Commissioner, the Court however sustained the eviction order finding that the landlord still required bonafide the additional accommodation. In this case, it was also held that absence of municipal water and flush system in tenanted premises by itself would not be a ground to doubt the bonafide need of the landlord when his need for extra accommodation is clearly made out.

13. Learned counsel appearing on behalf of both the parties have referred few decisions in support of their contentions.

14. Before dealing with the relevant decisions, it is necessary to deal with the submission of the petitioner. As far as issue of ownership of the property in question is concerned, it is averred by the respondent that the suit premises belonged to his father who expired in the year 1981 leaving behind petitioner's mother, brother and two sisters. Both the sisters have executed the registered relinquishment deeds in favour of the two brothers i.e. petitioner as well as Jiwan Lal Sahgal who became joint

owners of suit property bearing No.WZ-916, Rani Bagh, Delhi, wherein the tenanted shop is situated. It was contended by the respondent that the portion shown in green, blue and red colour in the site plan have fallen to the share of the respondent. Nothing contrary is available on record. It is also pertinent to mention that during the course of hearing the present petition, the elder brother Jiwan Lal Sahgal appeared before Court and confirmed the factual position of the matter as well as the partition thereof between them. The contention of the petitioner is without any force to the effect that the suit shop does not fall in the share of the respondent. As a matter of fact, the property in question was divided between the respondent and his brother. Copies of the relinquishment deed were also produced. The petitioner is unable to explain to the Court how the tenanted shop will not fall in the share of the respondent. It is also the admitted position that the petitioner was paying the rent to the respondent who has also filed the rent receipts of earlier period. The same were jointly issued by the respondent as well as his elder brother. Therefore, the finding of the learned trial court cannot be interfered with on this issue.

15. With regard to bonafide need as alleged by the respondent is concerned, the petitioner has not disputed the family members of the respondent. It is the admitted position that the son of the respondent is married and has a child and respondent wishes to settle him in his life time.

16. In similar situation, the following decisions are delivered by various courts:

- i) ***Labhu Lal v. 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”.

- ii) ***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.*
- iii) ***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.*
- iv) ***Surinder Singh v. Jasbir Singh***, 172 (2010) DLT 611 where the tenant was in occupation of the premises for 52 years, it was held that *eviction of premises for extension of business by landlord and for his son who is dependent upon him for purpose of business is genuine and bona fide.* In this case, it was also observed that *the mere fact that respondent did not disclose accommodation of basement and first floor available with him in eviction petition would not prove fatal to case, the same cannot be said to be an alternative accommodation for purpose of business.*
- v) ***Kharati Ram Khanna & Sons v. Krishna Luthra***, 172 (2010) DLT 551, it was observed that *the landlord's requirement of two separate shops for running business by her two sons separately and independently is bonafide and genuine requirement.*

vi) *Gurcharan Lal Kumar vs. Srimati Satyawati and Ors.*, 2013(2) RCR (Rent) 120, it was observed:

“14. Present case is also not a case of an additional accommodation as has been argued by the learned counsel for the petitioner. The eviction petition clearly discloses that there is no other suitable accommodation available with the dependent children of petitioner No.2 where they can run their business activity. It is not a case as if they are already running a business and require additional accommodation to expand their business. Reliance by the learned counsel for the petitioner on the judgment of Santosh Devi (supra) is misplaced. Apart from the fact that this is only a one page judgment where the facts can neither be depicted nor deciphered, it is also not as if it is a general rule. The judgment has categorically noted that “looking into facts and circumstances of the case, especially in the light of the additional accommodation which as subsequently been made available to the respondent as mentioned by the appellant, the question of the respondents need was required to be thrashed out on merits by a full-fledged trial.” Facts of the said case are distinct as has been noted in the aforesaid lines. In that case the accommodation has been made available to the landlord subsequently; the facts of that case in that eventuality had justified a grant of leave to defend to defend. Ratio of the said judgment is wholly inapplicable.”

17. The judgments referred by the petitioner do not apply to the facts and circumstances of the present case as no triable issues are raised by the petitioner as in the present case, the son of the respondent is dependent upon the respondent for his livelihood who has filed the eviction petition for bonafide requirement of tenanted shop to set up a business of his son to find a source of income and set in his life. Son is

admittedly married and having a child. On the face of it, the case of bonafide requirement is made out.

18. In view of the above said discussion and the principle of law applicable to the present case I find that the impugned order does not suffer from any infirmity. No triable issue is raised by the petitioner. Leave to defend application has been rightly rejected by the learned trial court. The petition is therefore dismissed.

19. It is stated by the petitioner that he has no alternative shop available with him in the area and has gained goodwill of his shop for more than 35 years and great prejudice would be caused if the impugned order is sustained by this Court. He has no suitable accommodation for the livelihood of himself and his family members and some time they live inside the shop itself.

20. 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.*

21. Considering the hardship shown by the petitioner, coupled with the fact that it is a commercial property which is being used by the petitioner for more than 35 years, and in the interest of justice, equity and fair play,

the petitioner is granted one year's time from today to vacate the suit property 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.

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

23. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 03, 2014