

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

% *Order delivered on: January 24, 2014*

+ **RC. Rev. No.350/2011, C.M. Nos.16333/2011 & 16335/2011**

LAXMI NARAIN SHARMA Petitioner
Through Mr.Sudhir Vats, Adv. with Mr.Sanjay
Aggarwal, Adv.

versus

JAWAHAR GOEL Respondent
Through Mr.V.P. Katiyar, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Section 25B (8) of the Delhi Rent Control Act, 1958 (in short, called the “Act”), the petitioner has assailed judgment and decree dated 14th September, 2012 passed by the Learned ARC whereby an eviction order was passed in favour of the respondent and against the petitioner as well as impugned order dated 18th July, 2011 passed by the learned Addl. Rent Controller whereby the applications moved by the petitioner under Order 9 Rule 13 read with Section 151 CPC and Section 25-B(9) of the Act, Section 5 of the Limitation Act, Section 151 CPC and Section 144 read with Section 151 CPC were dismissed.

2. The brief facts of the case leading to filing of the present petition are as under :-

i) The petitioner is a tenant under the respondent in respect of premises comprising of two rooms measuring (12’ .9” x 7 ½” each),

one kitchen measuring 7'x 5', one store of 7'x3', one latrine, bathroom and common staircase on the first floor in the property bearing No.5868, 2-U.A, Jawahar Nagar, Delhi-110007 (hereinafter referred to as the "Tenanted Premises").

- ii) The respondent filed an eviction petition against the petitioner under Section 14(1) (e) read with Section 25-B of the Act on the ground of bonafide requirement. Vide judgment and decree dated 14th September, 2009, the petition was decided ex-parte and eviction order was passed in favour of the respondent and against the petitioner. On 14th May, 2010, the respondent succeeded in obtaining the possession of the tenanted premises from the petitioner with the help of bailiff.
- iii) The petitioner on receiving the information about the dispossession of the petitioner from the tenanted premises by the respondent with the help of bailiff, filed four applications; one under Order 9 Rule 13 read with Section 151 CPC read with Section 25(9) of the Act for setting aside/reviewing the ex-parte judgment/order dated 14th September, 2009, second application filed under Section 5 of the Limitation Act for condonation of delay, third application under Section 151 CPC for interim relief and fourth under Section 144 read with Section 151 CPC for restoration of possession of the tenanted premises.
- iv) The petitioner stated in the application that the respondent by manipulating the service obtained the ex-parte eviction order dated 14th September, 2009 as he was not residing at the tenanted premises during the relevant period because of old age and health problems and he was residing at Jaipur. The tenanted premises was lying

locked and summons were never served upon the petitioner. The petitioner came to know of the impugned eviction order only on 25th May, 2010 through one of his neighbours when he was dispossessed from the tenanted premises.

- v) Reply to the applications were filed and the respondent denied all the allegations regarding the fraud and non service of the petitioner as well as other allegations on merits and has taken objection that even the application filed under Order 9 Rule 13 CPC read with Section 25-B (9) of the Act is time barred as the petitioner came to know about the eviction order on 25th May, 2010 and thus, the application has not been filed within 30 days from the date of service.
- vi) The learned trial Court in the impugned order dated 18th July, 2011 observed that the perusal of the application makes it clear that the same was filed on 7th July, 2010 and as per own admission the petitioner came to know regarding the eviction order on 25th May, 2010 and at the best he should have filed the application within 30 days or by opening day of the Court but the same was filed on 7th July, 2011 and thus, there is delay in filing of the application. In view of the law settled by the Supreme Court, it was observed that the Court of Addl. Rent Controller is not the Court but is a Tribunal and there is no application of law of limitation and therefore, has no power to condone the delay as statute does not vest in it with such powers and moreover, the provisions under Section 25-B(9) of the Act provides for review of the order in cases wherein there is error apparent on the face of the record, thus the applications were dismissed.

vii) Aggrieved by the said order, the present petition has been filed by the petitioner.

3. The question before this Court is, as to whether said findings call for any interference by the Courts in revisionary jurisdiction or not, in view of the facts and circumstances of the present case.

i) In the case of **Ramesh Chand vs. Uganti Devi**, 157(2009) Delhi Law Times 450, it has been held that while exercising jurisdiction under Section 25(B)(8), this Court does not act as a Court of appeal. This Court has only to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material available before it.

ii) A Full Bench of this Court in **Mohan Lal vs. Ram Chopra and Anr.**, 1982(2) RCJ 161 exhaustively considered the provisions of Section 25B of the Act. On the scope of the proviso to Sub-section (8) of this Section, after examining the judgment of Supreme Court in **Hari Shanker and Ors. vs. Rao Girdhari Lal Chowdhury**, A.I.R. 1963 S.C. 698 and **Bell and Co. Ltd. vs. Waman Hemraj**, AIR 1938 Bom (223), it was laid down as follows:

“In our opinion the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. 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. 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.”

iii) In the case titled as ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta***, reported in AIR 1999 Supreme Court 2507, it has been held as under:-

“.....The revisional jurisdiction exercisable by the High Court under S.25-B (8) is not so limited as is under S.115, CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts. 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 could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion for the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller ‘not according to law’ calling for an interference under proviso to sub-sec. (8) of S.25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law.”

iv) The Supreme Court in another case titled as ***Chaman Prakash Puri vs. Ishwar Dass Rajput and Another***, 1995 Supp (4) Supreme Court Cases 445 has examined with regard to High Court’s power to interfere in revision against the finding as to bonafide requirement of landlord. It has been held that if the Rent Controller finds that landlord was in bonafide need of premises, the High Court in revision was not entitled to re-appreciate evidence and reverse the finding.

v) 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.”

It was further held by the Supreme Court that:-

“14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

4. It is an admitted position that the tenanted premises was let out to the petitioner in the year 1974. Through partition in Suit No.129/79 pending before this Court, the properties were partitioned by metes and bounds and

the tenanted premises fell in the share of respondent herein, the petitioner after retiring from business of liver broker of Chandni Chowk, 15 years ago shifted to his native place Jaipur, Rajasthan at House No.98, Nand Puri Colony, Hawa Sadak-22, Godam Jaipur, Rajasthan. The petitioner was using the tenanted premises as guest room for himself and for his relatives who use to come and stay in the tenanted premises.

5. The respondent filed eviction petition under Section 14(1)(e) of the Act, bearing No.E-205/09 dated 2nd February, 2009 giving both the addresses of the petitioner herein and served him twice, through PF and RC, Speed Post, Courier and second time by way of affixation with photographs along with PF/RC, Speed Post, Courier. The petitioner despite of service by way of above modes chose not to appear in the Court and eviction order was passed on 14th September, 2009. After waiting for six months statutory period, the respondent filed the execution and got the possession of the tenanted premises through bailiff of the Court.

6. Thereafter, the petitioner filed the review application on dated 7th July, 2010, bearing No.M-40/10 in the same Court taking various grounds that the respondent manipulated the service obtained the eviction order dated 14th September, 2009 and due to old age, he was residing in Jaipur and further he came to know through one of the neighbourers regarding the eviction order on 25th May, 2010. The Court rejected the ground of manipulation of the service.

7. The respondent took the objection that the review application under Section 25-B(9) of the Act is time barred as it was not filed within 30 days from the date of service. The respondent has also relied upon the cases of ***Vijay Kumar Agrawal vs. Bihar State Electricity Board and Ors.***, AIR

2004 SC 3285, *Prithipal Singh vs. Satpal Singh (dead) through its LRs*, 2010 AD SC 370, *Om Prakash vs. Ashwani Kumar Bassi*, 2010 IX AD (SC) 174 in support of his case on the points of condonation of delay and satisfied the Court that the rent authorities have no power to condone even a single day of delay. The review application was dismissed vide order dated 18th July, 2011.

8. In view of the above, the impugned order does not suffer from any infirmity. The respondent has already taken possession of the tenanted premises under due process of law. The present petition is accordingly dismissed.

9. Pending applications also stand dismissed.

10. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 24, 2014