

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

% *Judgment pronounced on: January 27, 2014*

+ **RC. Rev. No.425/2012 & C.M. No.21586/2012**

YAMEEN @ BOBBY Petitioner
Through Mr.Lal Bahadur Pandey, Adv.

versus

SURESH KUMAR SHARMA Respondent
Through Mr.R.D.Sharma, Adv. with
Mr.Rajat Sharma & Mr.Chetan
Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this order I propose to decide the revision petition filed by the tenant/petitioner under Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as Act) read with Article 227 of the Constitution of India.

2. The facts of the matter are that the respondent filed an eviction petition for eviction of the petitioner on the grounds of bonafide requirement. It was stated that the respondent is the owner and landlord of the property bearing No.1/4935, Balbir Nagar Extn., 60 Feet Road, Shahdara, Delhi-110032. The petitioner is a tenant in one shop on the ground floor, as shown in red colour in the site plan annexed with the petition. The tenanted shop was let-out to the petitioner in the end of December, 1988 and the last paid rent of the tenanted premises was Rs.600/- per month exclusive of electricity charges. It was further stated that the

petitioner is in arrears of rent since December, 2009 and the respondent requires the tenanted shop for the use and occupation of his family members who are dependent on him. Respondent stated that his family consisted of himself, his wife, his son and three daughters. The respondent is doing the business of building material supplier in the name of “Bankey Bihari Builders” in the premises No.1/5279, Balbir Nagar Extension, Shahdara, Delhi, and his son is also doing separate independent business of similar kind in the name of “Shree Bankey Bihari Builders” in the premises No.E-9, Jyoti Colony, Shahdara, Delhi-110032. It was further stated that daughter of the respondent namely Purnima Sharma has obtained Diploma Certificate in Acupressure issued by IAAS, Indore and Diploma Certificate in Naturopathy and Yogic Science issued by AINCF and Vocational Certificate in the trade of Beauty Culture issued by NIOS. His second daughter Kim Sharma has also done similar courses and has obtained various Certificates in the field of Acupressure, Naturopathy, Yogic Science and Beauty Culture from various Institutes/Councils in India and abroad and both of them are now willing to start their own Beauty Clinic Centre but due to lack of commercial space in the property, they are not in a position to start the same. The third daughter of the respondent Ankita Sharma is doing LL.B. course and is going to start the profession very soon after completion of the said course and she also needs the office space for her profession. It was further stated that the respondent is not having any other suitably alternative accommodation available with him and hence, the respondent requires the tenanted shop for her daughters who are dependent on him.

3. Upon service the petitioner filed the application for leave to defend along with the affidavit on the grounds that the need of the respondent is

neither genuine nor honest; the respondent has not approached the Court with clean hands and has concealed the material facts; the respondent has filed the false and concocted petition with the malafide intention to build pressure on the petitioner; the petitioner is a tenant in respect of shop No.1/4935, Ground Floor, Balbir Nagar Extension, 60 feet road, Shahdara, Delhi-110032 and the rent of the shop is Rs.500 per month excluding electricity charges and the respondent is the landlord of the aforesaid property and is residing on the first floor of the said property; the petitioner has regularly paid the rent to the respondent. The petitioner is a poor person and his entire family is extremely dependent upon the said shop and there is no other source of income of the petitioner for survival. The respondent is having influence on the local police. The petitioner is a senior citizen and suffering from various old aged diseases like Ulcer, Sugar, High Blood Pressure, Stones, etc. and the respondent is adamant to dispossess him from the tenanted premises. It was further stated that the respondent is the absolute owner of three other properties namely (a) Durga Puri Chowk, 100 Foota Road, Delhi, (b) Shop No.1/5279, 60 Foota Road, Balbir Nagar, Delhi, in front of Dharamshala and (c) H. No.4936, Gali No.5, 60 Foota Road, Balbir Nagar, Delhi. It was further submitted that the respondent wants to vacate the tenanted premises from the petitioner to let-out the same on higher rent and the respondent is not having any other requirement of the premises.

4. The application for leave to defend was dismissed by the Additional Rent Controller by detailed order against which the present revision petition has been filed.

5. I have heard the learned counsel for both the parties. I am also of the view that the impugned order does not suffer from any infirmity.

6. 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.”

7. Along with the eviction petition, the respondent filed the photocopies of the certificates of his daughters Purnima Sharma and Kim Sharma which establish that the daughters of the respondent have attained qualifications in Acupressure, Naturopathy, Yogic Science besides Beauty Culture. The respondent has also filed the identity card of her third daughter Ms. Ankita Sharma which shows that she is pursuing the studies of LL.B. from Mewar Law Institute and is a student of LL.B., second year.

8. The respondent and his son are running separately an independent business of building material supply from the properties No.1/5279, Balbir Nagar Extension, Shahdara, Delhi, and E-9, Jyoti Colony, Shahdara, Delhi-110032. The claim of the respondent in the eviction petition was that he required the tenanted premises for his daughters for running beauty clinic appears to be genuine. No prima facie contrary evidence is produced by the petitioner.

9. After having considered the grounds of the petitioner made in the application for leave to defend, the learned trial court formed its opinion that the petitioner was not able to raise any triable issue to contest the eviction petition.

10. It is also pertinent to mention here that the respondent has already taken over the possession of the tenanted premises on 10th January, 2013.

11. There is no merit in the petition and the same is hereby dismissed.

12. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 27, 2014