

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

% Judgment pronounced on: January 02, 2014

+ RC. Rev. No.391/2011, C.M. Nos.18078/2011 & 3189/2012

AERO TRADERS PVT LTD Petitioner
Through Mr.Anil Sapra, Sr.Adv. with
Ms.Ruchi Jain, Adv.

versus

MOHAN SINGH AND ANR Respondents
Through Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.Siddharth Bambha &
Mr.Siddharth Aggarwal, Advs.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The present revision petition is filed by the petitioner under Section 25B (8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) against the order dated 2nd November 2011 passed by the ARC (Central), Tis Hazari Courts, Delhi whereby the leave to defend application of the petitioner was dismissed in an eviction petition filed by the respondents against the petitioner in respect of a shop bearing no. 19 B/2, Ground Floor, New Market, New Rohtak Road, Karol Bagh, New Delhi -110005 (hereinafter referred to as “the tenanted premises”)

2. The brief facts in the present case are that the respondent No.1 after his retirement from the earlier business, he intended to start the business of Auto Spare parts and in absence of any other place, he required the tenanted premises for starting his said business. However, in the leave to defend

application, it was contended by the petitioner that the respondents do not require the tenanted premises for running any commercial activity or for any other purpose. It was stated that respondent no.1 is over 75 years of age and is leading a retired life, while respondent no.2 is a house wife, so there was no intention to use the tenanted premises for any purpose. The only object to file the eviction petition was to get a vacant possession thereof and construct a shopping complex and sell or let out the same. It was also stated that the respondents do not have a son and their only daughter is already married and well settled.

3. The petitioner contended in the leave to defend application that respondents are very rich and least affected by the non-recovery of rent since as per the averments made by the respondents, rent had not been paid since April 2004 and admittedly no steps were taken to recover the same, which implies that the same is a very meagre amount for them. It was contended that the respondents are earning huge income from large number of properties inherited by them from their respective parents. The earlier business as alleged by the respondents, never existed and also that the document regarding the retirement of the respondent is a fabricated document.

4. While in the reply to the leave to defend application the respondents contested the averments so made by the petitioner; in the rejoinder filed by the petitioner the averments made were reiterated and reaffirmed.

5. Dismissing the leave to defend application of the petitioner, the learned trial court observed that there was no dispute regarding the relationship of the parties. On the issue of alternative accommodation, it was observed that though the petitioner had contended that the respondents had a

large number of properties and earning huge incomes thereof, the petitioner had neither stated where the said properties were located nor provided their municipal number. There was nothing brought on record to show that respondents had alternative suitable accommodation for their requirement. On the issue of bonafide requirement, it was by the learned trial court that old age, as alleged by the petitioner, cannot be a bar to do any business. For the purpose of bonafide requirement the court has to see whether a landlord needs the tenanted premises for himself or for his family members, dependent upon him. It was opined that if a landlord is stating that he is not doing any business and he needs the tenanted premises to start his new business of auto spare parts of which he has some experience, then the court has no reason to disbelieve his bonafide need particularly when the tenant has not brought anything on record to show that the landlord is doing any other business and he does not require the tenanted premises for his new business. In view thereof an eviction order was passed against the petitioner.

6. Aggrieved by the impugned order, the petitioner filed the present petition on the ground mainly that the same is based on surmises and conjunctions and was passed in contravention to the settled position of law.

7. **Scope of Interference:**

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) A Full Bench of this Court in ***Mohan Lal v. 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. v. Rao Girdhari Lal Chowdhury*, AIR 1963 S.C. 698 and *Bell and Co. Ltd. v. 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.”

ii) 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."

iii) 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."

8. In the present case, there is no dispute raised by the petitioner regarding the ownership of the petitioners as well as the relationship between the landlord and the tenant.

9. As far as the issue with regard to alternative accommodation raised by the petitioner is concerned, a mere averment was made by the petitioner

which is specifically denied by the respondents-landlord. No details and location even *prima-facie* are mentioned by the petitioner in his affidavit and no document was placed on record.

10. With regard to bonafide requirement of the respondents, it is not permissible for the tenant to raise such issues pertaining to the age of the landlord, his experience and financial status. These issues are not much relevant for the purpose of deciding the application for leave to defend in the eviction petition if it is established *prima facie* that the requirement of the landlord is genuine and bonafide and no triable issues are raised by the tenant.

11. **Old Age**

- (i) In ***Dev Raj Bajaj vs. R.K.Khanna***, 1996 RLR 125, it was observed that “Where a landlord or his wife were unable to climb the stairs due to old age ailments and wanted to shift to the ground floor, such a need of the landlord was bonafide. A landlord can ask for ground floor for his convenience and comfort of his health.
- (ii) In ***Kuldip Mahajan vs. Krishna Uppal and Ors.***, 97 (2002) DLT 619, this Court has observed that “Where landlady filed a petition on the ground of bona fide requirement as she and her husband are of old age and landlady’s intention was to shift residence for better medical treatment of her husband, no malafide was attributed and it was held that a period afflicted by Arthritis would not find it convenient to reside on first floor when ground floor is also owned by her.”

12. **Start new business/no experience required**

- (i) In **Ram Babu Agarwal vs. Jay Kishan Das**, (2010) 1 SCC 164, it was observed that *“A person can start a new business even if he has no experience in the new business that does not mean that his claim for starting new business must be rejected on the ground that it is a false claim. many people start new businesses even if they do not have experience in the new business and sometimes they are successful in the new business also.”*
- (ii) In **Tarsem Singh vs. Gurvinder Singh**, RCR 137/2010, it was observed that *“If the landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine.”*
- (iii) In **Balwant Singh Chowdhary & Anr. vs. Hindustan Petroleum Corporation Ltd.**, 2004 (1) RCR 487, it was held that *“It is not necessary for the landlord to plead and prove the specific business he wants to set up, if the landlord wanted the premises for business purposes.”*
- (iv) In **Gurcharan Lal Kumar vs. Srimati Satyawati & Ors.**, RC. Rev. No. 285/2012 and C.M. No.11263/2012 dated 25th April, 2013 it was observed that *“Merely because the exact nature of business has not been described would not take away their bonafide need to carry out a business (when admittedly both the sons are dependent upon petitioner for this need). It was observed that if the business need is not disclosed this would not wipe away the bonafide need of the*

landlord as has been pressed under Section 14(1)(e) of the DRCA,1958.”

- (v) In ***Raj Kumar Khaitan & Ors. vs. Bibi Zubaida Khatun & Anr.***, AIR 1995 SC 576, it was observed that “*It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody would bind the landlords to start the same business in the premises after it was vacated.*”

13. **Financial status of the landlord not relevant**

In ***Shamshed Ahmad & Ors. vs. Tilak Raj Bajaj (deceased)***, 152 (2008) DLT 301 (SC), the Supreme Court affirmed the order of the trial court which was reversed by the HC, that “*The requirement of section 14(1)(e) is ‘bonafide requirement’ and it has to be seen as per the requirement of the petitioner(landlord) , even if the petitioner is very rich and having other properties at different places that does not affect his requirement of the premises, as alleged in the petition.*” And the leave to defend application was dismissed.

14. **Bonafide Requirement**

- (i) In ***Satyawati Sharma vs. Union of India & Anr.***, 2008 (5) SCC 287, it was held that “*Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family*

dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.”

The Supreme Court further opined that “*Ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under:*

“The premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation.”

15. In view of the abovementioned reasons, I am of the view that the impugned order does not suffer from any infirmity.

16. The present petition is accordingly dismissed along with the pending applications. However, in the interest of justice, the petitioners are granted six months’ time to vacate the tenanted premises which is forming part of property No.19-B/2, New Market, New Rohtak Road, Karol Bagh, New Delhi-110005 and to hand over the vacant and peaceful possession thereof to the respondents.

17. During this period, the petitioners shall not sublet or create third party interest in the tenanted premises and shall not change the nature of construction of the tenanted premises in any manner and shall also pay the agreed rent along with other charges to the respondents regularly.

18. No costs.

**(MANMOHAN SINGH)
JUDGE**

JANUARY 02, 2014