

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

% *Judgment pronounced on: January 02, 2014*

+ **RC. Rev. No.402/2011 & C.M. No.18579/2011**

HARISH KUMAR SHARMA & ORS Petitioners
Through Mr.Ajay Tandon, Adv. with
Mr.Krishan Kumar and Mr.Navneet
Kumar, Advs.

versus

JK CHOPRA Respondent
Through Mr.Rajesh Gupta, Adv. with
Mr.Harpreet Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present revision petition is filed by the petitioners under Section 25B (8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) against the order dated 26th March 2011 passed by the CCJ-cum-ARC, (Central), Delhi whereby the leave to defend application of the petitioners was dismissed in an eviction petition in respect of a shop bearing No.2921, Sir Sayed Ahmad Road, Darya Ganj, New Delhi-110002 (hereinafter referred to as “the tenanted premises”).

2. The respondent had filed an eviction petition against the petitioners in respect of the tenanted premises on the grounds of bonafide requirement stating that since he is a practicing lawyer and neither has his own chamber nor any office elsewhere to attend his clients, keep case files and store the law books so required, he requires the tenanted premises for his own

personal use as office. It was stated that since his aged is 74 years and residing at the first floor of the same building, the tenanted premises, which is at the ground floor and on the main road, is very suitable for his office use.

3. In the leave to defend application, the petitioners admitted the relationship of tenants and landlord between the parties but stated that since the tenanted premises falls under the slum area, necessary permission for filing of the eviction petition ought to be taken from the competent authority, which the respondent had failed to do. Petitioners contested the bonafide requirement of the respondent and contended that respondent and his family members are in possession of two floors besides the one shop on the ground floor and both the floors have about 5-6 rooms besides kitchen, latrine and bathroom.

Further it was contended that the accommodation available with the respondent is more than sufficient as there are only four major and two minor members including the respondent. It was stated that even assuming that the family members are using one room each, then also one room is lying vacant besides other space and the same can be used by the guests and other relatives.

4. It was stated that the respondent had sold half portion of the shop No.2922 and the entire shop No.2923 to a tailor about 3-4 years back, hence, he is in possession of half portion of the shop No.2922, which can be used by him for his office. It was also contended that the respondent intended to sell the property after getting it vacated from the petitioners.

5. Respondent in his counter affidavit denied the contentions of the petitioners and stated that the total number of rooms at both the floors is four besides one bathroom, 2 latrines and 2 stores.

It was stated that there are 5 major members and one minor, studying in class 10th, and besides the respondent has 3 married sisters and 2 married daughter who visit him frequently, so there was no room lying vacant.

6. Dismissing the leave to defend application vide the impugned order, the learned Trial Court with regard to the objection of the petitioners that the respondent ought to have taken permission from the competent authority before filing the eviction petition, observed that in view of the settled law, the respondent was not under any obligation to obtain the said permission. With regard to the issue of bonafide requirement, it was observed that while the respondent had filed a site plan to show the number of rooms/space available with him, the petitioners had not filed any site plan in support of their contention with respect to the number of rooms available with the respondent. Hence, it was assumed that the site plan filed by the respondent was correct and no other space in the entire property was available with the petitioner.

7. With regard to the contention of the petitioners half a portion of shop No.2922 is lying vacant and could be used by the respondent for his office, it was observed that the same would make no difference as it is the choice of the respondent to use this portion for his office or not.

With regard to the contention that the respondent intended to sell the property after getting it vacated, it was opined by the learned Trial Court that

if that so happens, the petitioners would have a remedy under section 19 of the Act.

8. With these observations, the impugned eviction order was passed against the petitioners dismissing their leave to defend application and aggrieved by the same the petitioners have filed the present petition.

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 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 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.”

10. It is the admitted position that the possession of the tenanted premises was taken by the respondent under due process of law through Bailiff who was appointed by the Executing Court.

11. After hearing, Mr.Tandon, learned counsel appearing on behalf of the petitioners has argued that despite of taking the possession, the tenanted premises is not being used by the respondent for running his office. He has filed the affidavit of Ashok Kumar along with photographs taken with the consent of the respondent after the matter was reserved.

12. No doubt, the learned Trial Court in the impugned order has observed that if so happens, the petitioners would have a fresh remedy under Section 19 of the Act. Although, from the photographs, it appears that no full-fledge

office of Advocate is being run by the respondent who otherwise states that for some period, the said premises is being used for office purposes. In view of two different versions, I am not inclined to decide the said issue except it is observed that remedy is available to the petitioners to file petition under Section 19 of the Act.

13. As far as merit of the case is concerned, numbers of decisions were referred by both parties. It is not necessary to refer the said decision, mainly, for the reason of limited jurisdiction of interference as the present petition cannot be regarded as first appeal. The finding by the Trial Court has arrived at on the basis of facts of the matter. The same cannot be reversed in the present proceedings. After having gone through the pleadings and the impugned order, I found that the present case is not a case of additional accommodation. None of decisions would help the case of the petitioners.

14. In ***Sudesh Kumari Soni & Anr. vs. Prabha Khanna & Anr.***, 153 (2008) DLT 652, this court observed that *the suitability of the premises has to be seen from the convenience of the landlord and in Mahender Trivedi vs. Jai Prakash Verma*, 157 (2009) DLT 690, it was observed that *in judging his special needs and convenience, the landlord would have a choice*. In this regard, this Court in ***Kharati Ram Khanna & Sons vs. Krishna Luthra***, 2010 (172) DLT 551, observed that *“the requirement of the landlord to settle down her two sons separately and independently was found to be genuine and bonafide.”* In ***Labu Lal vs. 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."

15. The possession of tenanted premises is with the respondent. Under these facts and circumstances, this Court is not inclined to interfere with the findings of the learned Trial Court.

16. The petition is accordingly dismissed as well as the pending application.

17. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 02, 2014