

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

% *Judgment pronounced on: March 3, 2014*

+ **RC.REV. 475/2012 & C.M. No.16489/2012**

HARPREET SINGH & ORS Petitioners
Through Mr.H.S. Phoolka, Senior Advocate
with Mr.T.C.Sharma, Adv.

versus

PUSHPA WATI Respondent
Through Mr.Sudhir Nandrajog, Sr.Adv. with
Mr.Arun Vohra & Mr.Dilip Kumar,
Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioners by way of the present petition under Section 25B(8) of Delhi Rent Control Act (hereinafter referred to as “the Act”) have assailed the eviction order dated 22nd May, 2012, passed by Additional Rent Controller, North, Tis Hazari Courts, Delhi.

2. Brief facts of the case are that the respondent had filed an eviction petition against the petitioner in respect of one shop on the ground floor in the property bearing No. 4731, Laxmi Bazar, Cloth Market, Fatehpuri, Delhi-11006 (hereinafter referred to as the “tenanted shop”).

It was stated in the eviction petition that the respondent, a senior citizen having three sons and one married daughter required the tenanted shop for commercial purposes as well as for her family members who are facing various problems due to insufficient accommodation. It was stated in

the petition that one son of the respondent and two grandsons aged about 26 years and 22 years respectively were unemployed and neither has any suitable accommodation for running their business nor any source of income. Hence the eviction petition was filed for bonafide requirement of the tenanted shop.

3. The said petition was filed through GPA Mr. Ashwani Kumar, son of the respondent and it was stated in the petition that the property was purchased by the respondent and Smt. Indira Wati through registered Sale Deed dated 10th February, 1992 from Smt. Jyoti Prakash. Further Smt. Indira Wati had given a notice thereof to the petitioners where after the petitioners had started paying rent to them. However, a family settlement had taken place amongst the family members of the respondent through registered deed 10th November, 1997 where after the respondent became the absolute owner of the property.

4. On the other hand, in the reply to leave to defend application the petitioners challenged the maintainability of the petition. It was averred that the respondent had no locus standi to file the petition as she was neither the owner nor the landlady, but Smt. Jyoti Prakash was the owner and the rent was being paid to her.

5. It was further averred that the respondent and her family members owned and possessed more than sufficient residential as well as commercial accommodations in Amritsar, Punjab where they were residing and working for gain, besides a bungalow in Paschim Vihar, Delhi in the name of the husband of the respondent, details of which were given.

6. The bonafide requirement of the grandsons of the respondent as well as his son was disputed. It was also averred that Mr. Ashwani Kumar had no

authority or competence to file the petition and that the GPA dated 17th June, 2010 in his favour was forged.

In the reply to the leave to defend application, the respondent denied the averments made by the petitioners and reiterated her stand.

7. Before the trial court the case of the respondent on merit was that the respondent is a senior citizen aged about 77 years and she is having three sons and one married daughter. The name of her children were as under :-

- a) Ramesh Kumar (son)
- b) Vikramjeet (son)
- c) Ashwani Kumar (son)
- d) Veena Gupta(daughter)

8. It is further submitted before the Trial Court that the double story building having 7 shops on the plot No.3, Bazar Tehsil, Amritsar, Punjab had come in the share of Sh. Shadi Lal as per the aforesaid family settlement and the respondent and her family members or dependent upon her are not concerned with the aforesaid shop with any manner

9. It was also submitted that the building constructed on plot No. 158/160 measuring 100 sq. yards bearing Khasra No.424/425 and 433 at Block A, Ranjeet Avenue, Amritsar, Punjab was given in the share of Vinay Aggarwal and Neeru Aggarwal and this property is also not related with the respondent in any manner. The building No. 849/1/9, 1914,1915,2368,2369 Gali Sunarian, Bazar Tehsil, Punjab has already been divided amongst the family members as per the family settlement clause no.4 of the same. It is further submitted that the property No.55, KT, Sher Singh Scheme No.2, was given to the family of Shadi Lal and same is not related with the

respondent in any manner. In the counter affidavit in respect of rebuttal of various properties as alleged by the petitioner in the application for leave to defend.

10. It was argued by the respondent on the issue of bonafide requirement of the tenanted premises for the purpose of non-residential of the respondent as well as his family members, who are facing various problem, due to insufficient and reasonable accommodation as the son of the respondent namely Ashwini Kumar and her two grandsons namely Manu Aggarwal aged about 26 years and Mohit Aggarwal aged about 22 years are unemployed person and her above said son and two grandsons have no suitable accommodation for running their business. It is further submitted that the respondent and her above said son and two grandsons have no source of income and there is bonafide requirement for the tenanted premises.

11. The learned Trial Court while dismissing the leave to defend application vide the impugned eviction order with regard to landlord-tenant relationship between the parties observed that the photocopy of the deposit slip of payment through cheque of the rent in favour of the respondent on behalf of the petitioners was filed and even the rent receipts issued in favour of the petitioners on behalf of the respondent was filed and that the said fact had not been denied. So the said contention with regard to the landlord-tenant relationship was opined to be merely a bald allegation.

12. With regard to challenge to the bonafide requirement of the respondent, the petitioners alleged that there were several properties with the respondent and her other family members. The learned Trial Court observed that none of the properties at Amritsar, as detailed by the petitioners that had fallen to the share of the respondent or her family members was shown to be

commercial property. With regard to the Bungalow at Paschim Vihar, Delhi the learned Trial Court observed that the same had fallen into the share of the husband of the respondent and he was 1/3rd sharer of the said bungalow, however, there was no allegation in the entire leave to defend application that the said bungalow could be used for commercial purpose or was in the exclusive occupation of the respondent or her husband or any other family member. It was further observed that admittedly, there was no other property in Delhi and that it is commonly known fact that business prospects in Delhi are far better than Amritsar.

13. On the contention of the petitioners that the son as well as the grandson of the respondent are running their business in Amritsar which was denied by the respondent, the learned Trial Court observed that even if the said business is being run by the son and grandsons of the respondent, the same cannot be ground that the respondent has no right to get the tenanted shop vacated for running the business by her grandsons and son.

Accordingly, in the light of these observations, the learned Trial Court opined that the petitioner had failed to raise any triable issues and so the leave to defend application was dismissed vide the impugned order. Aggrieved thereof, the petitioner has filed the present petition.

14. 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.”

15. It is argued by the respondent that no tenant can hold the tenanted premises only to harass the landlord and it is the duty of the tenant to hand over the vacant possession of the tenanted premises to the landlord, if tenant is not using the same for last many years and premises is lying locked and the electricity has already been disconnected by the electricity department due to non making of payment of electricity charges.

16. It is the case of the respondent that at the time of purchasing the said property M/s Sechdeva Manufacturing Co. through Man Mohan Singh was already the tenant under the tenancy of previous owner namely Smt.Jyoti Prakash in respect of the tenanted premises in question and in this respect of tenanted shop on 3rd June, 1992, the previous owner Smt.Jyoti Prakash had given notice (letter of attornment) to Sh. Man Mohan Singh / tenant regarding changing the ownership of the aforesaid property mentioning therein specifically that Man Mohan Singh would have to pay the rent of the tenanted premises to the respondent and said Indrawati w.e.f.10th February 1992 and Man Mohan Singh gave his consent and accepted the tenancy of the respondent and started to pay rent to the respondent and earlier the rent of the tenanted premises was Rs.50/- per month and after commencement of time it became Rs.100/- for electricity charges.

17. It was submitted by respondent that Mr. Man Mohan Singh duly accepts the tenancy of respondent and accordingly he has paid the rent for ten years to the elder son of the respondent on behalf of respondent through cheque bearing No.7014 of Rs.12000/- drawn on Bank of India which was duly encashed on and against the rent her son issued rent receipt to the

Sachdeva Manufacturing Co. Ltd. and Man Mohan Singh paid the rent upto 31st March, 2003 and the respondent had mentioned the aforesaid income of rent in her income tax return for the financial year 2004 to 2005 and therefore the relationship as owner and tenant is duly established. Sachdeva Manufacturing Co. Ltd. was in arrear of rent since 31st March, 2003 at Rs 100/- per month. However, the demand of arrears of rent was made many times, but Man Mohan Singh did not pay the rent.

18. However, the petitioner has denied the ownership of the respondent as well as the relationship of landlord and tenant. It is stated by the petitioners that the petitioners are not sure as to whether Mrs. Jyoti Prakash is still the owner of the suit property or not. It is alleged that the respondent has not produced the copy of the sale deed in her favour. No evidence has been produced, even prima facie, about attornment of the petitioners. In a nut shell, it is argued that the petitioner has never attorned nor paid rent to the respondent at any point of time. The petitioners have even not paid rent to Smt. Jyoti Prakash or to anyone else. Thus, the issue of relation is subject matter of triable issue, thus leave to contest was to be allowed.

19. The petitioners have denied having paid any rent to the respondent as alleged. It is stated by the petitioners that the said rent receipt and copies of the said alleged cheques issued in favour of the respondent are manipulated documents. The petitioners have filed additional submission by filing of an application in support of their submissions. The petitioners have made other submissions i.e. the respondent does not require the suit properties for her two grandsons. The learned trial court has held in this regard that even if the said business is being run by the son of the respondent it is no ground that the respondent has no right to get the suit property vacated for running the

business by her grandsons and there is allegation that grandsons are running the business independently or otherwise gainfully employed. Thus, the respondent has bonafide requirement of suit shop for running business by her grandsons.

20. The respondent has placed on record a copy of family settlement which shows that on 6th November, 1997 a family settlement was executed among the family members of the petitioner and the same was registered on 10th November, 1997 vide document No. 6573 book No.1, volume 7696 page No. 68-75 with Registrar of Amritsar, Punjab and after family settlement, the respondent became the absolute owner/ land lady of the aforesaid property as Smt. Indrawati had got the ownership of another properties.

21. A copy of registered sale deed has also been handed over by the learned counsel for the respondent which discloses that the respondent and Smt.Indirawati had purchased the aforesaid property from Smt.Jyoti Prakash through sale deed dated 10th February, 1992.

22. So far as ownership of suit property is concerned, it has been established on record that the respondent is the owner of the suit property. As regard the relationship between the tenant and landlord is concerned, even the petitioner was not attorned or paid any rent to the respondent as alleged by the petitioner, still the respondent was entitled to file the eviction petition under Section 14(1)(e) being the owner of the suit property. Thus, the argument of the petitioner in this regard are false, frivolous and without any substance.

23. It was submitted by the respondent that the respondent has no other alternative suitable and reasonable accommodation except the tenanted premises and the respondent and her family members with whom she is residing are in trouble due to the reason mentioned above. It is further submitted that the son of the respondent attorney to this case and her two grandsons are young in age and therefore the tenanted portion is essential to be evicted for the requirement of the respondent. It is submitted that other sons of the respondent is running the business at Amritsar and the grandsons are unemployed.

24. In *B.K. Suri vs. Sh. G.D. Chopra and Ors.*, RC. Rev. No.04/2007 (Decided On: 6th October, 2009), this Court took a view that the respondent, a widow landlady being alone without the company of her spouse, needs constant care and attention of her children and grandchildren. She needs sufficient accommodation not only to accommodate the family of her son and his children, but also to accommodate herself, her widowed married daughter, and her other children/grandchildren as and when they desire to come and live with her and spend time with her overnight.

25. In *Natha Singh v. H.V. Nayar*, 1983 (1) RCJ 158 (Del), this Court observed that where the landlord and his wife are aged and he wants his son to live with him to look after them, then it would be reasonable to construe the word “himself” to include the family of the landlord including his son, son’s wife and their children.

26. In view of above referred reasons, the respondent was able to make a strong case of bonafide requirement.

27. Admission of the petitioner has also come on record that the tenanted premises is remained closed since last 7 years and the petitioner closed his business in the tenanted premises and this fact admitted by the petitioners in the application under Order 5 Rule 12 and 22 Rule 4 read with Section 151 CPC in para No. 2. “That Shri Manmohan Singh Sechdeva Proprietor of M/s Sechdeva Manufacturing Company, the tenant in the premises in question has died on 21st November, 2004 and thereafter certain dispute has arisen amongst his legal heirs therefore no business activities is going on the shop in question and the same is lying locked.

28. Thus there is no prima facie case made out by the tenant/petitioners for leave to defend being granted to him.

29. Considering the facts and circumstances of the case as well as settled law, no triable issue is raised by the petitioners, therefore, the impugned order dated 22nd May, 2012 does not suffer from any infirmity. The present petition has no merit and the same is dismissed. Pending application is also dismissed.

30. No Costs.

(MANMOHAN SINGH)
JUDGE

MARCH 03, 2014