

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

Reserved on: 03.03.2014
Date of Decision: 24.09.2014

+ RC. REV. No.471 of 2013; CM Nos.19951 of 2013 & 2583 of 2014

PRABHU DAYAL Petitioner
Through: Mr. G.P. Thareja, Adv.

versus

MOHAN BABU SHARMA & ANR. Respondents
Through: Mr. O.P. Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This revision petition under proviso to Section 25 (8) of the Delhi Rent Control Act, 1958 (DRC Act) impugns an order dated 22.07.2013 whereby the petitioner (tenant) has been ordered to be evicted from the tenanted premises i.e., Shop No. 1, Ground Floor in property bearing no. 1/2766, Main Mandoli Road, Near Shanti Building, Ram Nagar, Shahdara, Delhi-110032.

Brief facts

2. The dispute arose with the respondents (landlords) filing an eviction petition under Section 14 (1) (e) of the DRC Act. It was stated that their father was the absolute owner of the property and he passed away on 20.12.1993 leaving behind his wife, four sons and two daughters as legal heirs; that the deceased father had let out the tenanted premises to one Mr. Udai Veer Singh and after his demise, his legal heirs inherited the

tenancy as the present tenants; that a family settlement was executed between the heirs of the deceased father by which the landlords became co-owners of the tenanted premises; that they were previously doing business on the rear portion of the premises but the same was demolished by the MCD; that they were unemployed; that they intended to start a shop from the tenanted premises and had no alternative suitable accommodation in Delhi; that since the size of the three shops were small, they wanted to convert them into two; that the tenanted premises was required urgently and was most suitable for them.

3. An application for leave to defend was filed by the tenant. Since the landlords did not object to the grant of leave, leave was granted to the tenant to contest the eviction petition. Thereafter, the tenant filed his Written Statement (WS). The case of the landlords was denied entirely. It was stated that the landlords had not come to the Court with clean hands and had concealed material facts; that the eviction petition was bad for misjoinder of necessary parties; that the family settlement of August, 2000 was a fabricated document, unregistered and did not bear the requisite stamp; that the landlords wanted to get the tenanted premises by hook or crook; that the landlords had withheld the electricity connection; that the landlords in connivance with the MCD, got the demolition done; that the landlords were in possession of four other vacant shops on the ground floor of the property; that the landlords were allotted an alternative site at Bawana as per the scheme of the Government; that the landlords possessed a factory at Seema Puri, Delhi where they carried on their business. In view of the above, the tenant prayed for dismissal of the eviction petition with costs.

4. Replication was filed by the landlords whereby the averments of the tenant made in the WS were controverted and the averments made in the eviction petition were reiterated and reaffirmed. Thereafter, parties were directed to lead their evidence. The landlord no. 2 was examined as PW-1 and he was duly cross examined. The landlords had also relied upon various documents in support of their case. For the tenants, Sh. Brahmanand, LDC, MCD was examined as RW-1; the tenant was examined as RW-2 and was duly cross examined; Sh. Mohd. Zafar, a neighbouring tenant was examined as RW-3 and was duly cross examined.

Impugned Order

5. The learned ARC, after hearing the learned counsel for the parties, framed three issues and decided them, as discussed below.
6. **Ownership:** The tenant had challenged the ownership of the landlords on the ground that only a photocopy of the family settlement had been filed which was neither registered nor bore the requisite stamp. It was therefore, submitted that there was no transfer of title in favour of the landlords. On the contrary, the landlords submitted that the property had come to their share by way of a family settlement of August, 2000. The learned ARC opined that the landlords were not required to prove absolute ownership and were only required to prove that they were more than a tenant. With regard to the tenant challenging the family settlement of August 2000, the learned ARC held that the tenant was not entitled to raise such a challenge. For this, the learned ARC placed reliance on *A.K.Nayar v. Mahesh Prasad*.¹ The learned ARC further noted that

¹ (2008) 153 DLT 423

paragraph 3 of the family settlement specifically states that the suit property shall be owned by the landlords collectively and jointly. It was further observed that though the property was not mutated in favour of the landlords but the electricity connection was in the name of PW-1 i.e., landlord no. 2. In relation to the contention of the tenant that the eviction petition was bad for non-joinder of necessary parties, the learned ARC held that one of the co-owners can file a suit for eviction of a tenant and relied on three judgments of the Supreme Court.² Consequently, after appreciating the evidence, the learned ARC was of the view that the landlords were the owners of the tenanted premises and the plea of the tenant in this regard was held to be bogus and without substance.

7. **Bona fide need:** PW-1 i.e., landlord no. 2 had deposed that they were unemployed and required the tenanted premises to run a shop and in his cross examination, he denied the suggestion that he was running any business. The tenant had argued that the landlords did not disclose the details of the business which was intended to be started; hence, there was no bona fide need. To this contention, the learned ARC held that the landlord is the best judge of his need and it was not open for the Court or the tenant to dictate terms to him and placed reliance on *Tarsem Singh v. Gurvinder Singh*.³ It was further held that non-disclosure of the nature of the business sought to be set up would not render the need of the landlord as mala fide and reliance in this regard was placed on *Bata India Ltd. v.*

² M/s/ India Umbrella Manufacturing Co. v. Bhagbanda Aggarwal (dead) by LRs, (2004) 3 SCC 178; Sri Ram Pasricha v. Jagannath & Ors., (1976) 4 SCC 184; Dhanndu v. Kalawati Bai & Ors., (2002) 6 SCC 16.

³ 173 (2010) DLT 379

Anil Kumar Bahl.⁴ In view of the above, the learned ARC held that the landlords were successful in establishing their bona fide requirement.

8. **Availability of suitable alternate accommodation:** The tenant had contended that the landlords were in possession of sufficient accommodation at the property where the tenanted premises was situated (property) and also factory premises at Bawana and Seemapuri. The tenant's witness, RW-2 had deposed that the landlords were allotted an alternative site at Bawana and had factory premises at Seemapuri where a factory was being run and business was being carried on. He was put a specific question as to whether the landlords were in possession of any commercial accommodation in Delhi and he replied that the landlords had two houses at Babarpur and a factory at Kasana, Greater Noida, UP. He had also denied the suggestion that there were only three shops, in occupation of tenants at the property. He further volunteered that there were five shops facing the main road and a shutter at the rear side where a factory was being run previously. The tenant's other witness, RW-3 deposed that there were seven shops in the property and a factory in the rear portion, which was lying closed but it had been re-started by the landlords. PW-1 had deposed that there were only three shops at the property and were occupied by tenants. A site plan to this effect was also filed by the landlords. The tenant had not filed his version of the site plan. In relation to the factory at the property concerned, RW-2 had deposed nothing in relation to its resumption. No evidence in support thereof was adduced. Furthermore, in relation to RW-3's testimony that the landlords had restarted the factory, the learned ARC held that it

⁴ (2012) 189 DLT 680

would not have been difficult for the tenant to examine any employee or to produce the relevant documents in support thereof and the same had not been done. In view of the above, it was held that the tenant had failed to establish that the landlords were in possession of suitable accommodation at the property.

9. Regarding the plea of the tenant that the landlords had sufficient commercial accommodation, in the form of factories at Bawana and Seemapuri, the learned ARC noted that the tenant had not produced any material whatsoever in support of the same. Merely a bald assertion was made, while RW-2, in his cross examination was put a specific question as to whether the landlords had any commercial accommodation in Delhi to which he had replied that the landlords had two houses at Babarpur and a factory at Kasana, Greater Noida, UP. He had not mentioned anything in relation to the accommodations at Bawana and Seemapuri. Therefore, the learned ARC held that the tenant had falsely raised the aforesaid plea.
10. RW-3 had deposed that the landlords had factories at H-15, Site V, Industrial Area, Greater Noida and Babarpur. In his evidence, there was no mention of properties at Bawana and Seemapuri, which was the contention of the tenant. The learned ARC held that the stand of RW-3 was contradictory to the case of the tenant. It was also noted that the said plea was not incorporated in the tenant's WS and it was for the first time in the examination-in-chief of RW-3, that the tenant had raised the existence of accommodations at Greater Noida and Babarpur. It was held that parties could not go beyond their pleadings and the tenant could not be allowed to change his version by alleging a completely new fact regarding the existence of properties at Greater Noida and Babarpur.

Even assuming that the landlords had a factory at Greater Noida, the learned ARC opined that the same would be irrelevant since it was not in the territory of Delhi.

11. The tenant had argued that the landlords had deliberately not disclosed the existence of property at Babarpur Road, Delhi. The learned ARC took note of the deposition made by PW-1, where he stated that they had shifted to K-311, Chajju Gate Gali, Babarpur Road, Delhi after the demolition of the rear portion in the property. The learned ARC further opined that the landlords were not expected to disclose the details of the residential property since eviction was sought for commercial purposes. It was finally argued by the tenant that the landlords wanted to enhance the rent and expressed his apprehension that the landlords would re-let the tenanted premises after getting possession of the same. To this, the learned ARC observed that Section 19 of the DRC Act duly addresses such apprehensions; hence, the apprehension was unfounded. In view of the aforesaid, the learned ARC passed an order of eviction in favour of the landlords.

Submissions before this Court

12. The learned counsel for the parties were heard. Apart from the contentions raised before the learned ARC, the tenant, inter alia has submitted that since the landlords want to convert the three shops into two, an eviction petition would fall under Section 14 (1) (g) and not under Section 14 (1) (e); that the landlords do not have the requisite permission/sanction to reconstruct the property; that a petition under Section 14 (1) (e) would not be maintainable for commercial purposes. On the other hand, the landlords have submitted that the impugned order is well reasoned and does warrant any interference by this Court.

13. The learned counsel for the tenant has placed reliance on *SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Co. Pvt. Ltd.*⁵ wherein it was held as follows:

“(i) The court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument which is compulsorily registrable.”

He has also placed reliance on *Gian Devi v. Jeevan Kumar*⁶ to contend that eviction under Section 14 (1) (e) would not be maintainable for commercial purposes.

Analysis

14. This Court is of the view that the case of *SMS Tea Estates (supra)* would not be applicable to the present case since the facts are different. The aforesaid ruling, as quoted was in relation to an arbitration clause contained in a document, which is not registered. This Court is also of the view that the case of *Gian Devi (supra)* would not help the case of the tenant since the Supreme Court in a later judgment⁷ has partially struck down Section 14 (1) (e), thereby extending the ambit of the same to commercial purposes as well. The contention that a petition under section 14 (1) (e) would not be maintainable for commercial purposes would be totally incompatible with the observation contained in the penultimate paragraph of the said judgment in *Gian Devi (supra)*, wherein the Supreme Court had suggested that the “legislature may

⁵ 2011 (4) Arb. LR 265 (SC)

⁶ (1985) 2 SCC 683

⁷ Satyawati Sharma (Dead) by LRs v. Union of India & Anr., (2008) 5 SCC 287

consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well.”

15. This Court is conscious of the limited jurisdiction that has been conferred upon by proviso to Section 25 B (8) of the DRC Act. Under the said provision, it is well settled that this Court does not act as a Court of Appeal. This Court only has to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material on record. It is also settled that a finding of fact arrived at by the learned ARC cannot be interfered with by this Court unless it is shown that such finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused.
16. This Court is of the view that the argument of the tenant that the petition should have been under Section 14 (1) (g) is untenable. The domains of Sections 14 (1) (g) and 14(1) (e) are different. In the present case, the landlords’ requirement for the tenanted premises was for them to start their own shop. It was also averred that since the size of the three shops were small, they wanted to convert them into two. This would not mean that the landlords’ petition should have been filed under Section 14 (1) (g). Making alterations to the shops was merely ancillary and the landlords’ primary need for the tenanted premises was for them to start their own shop. The landlords needed the space and there is no impediment upon them to refashion it according to their suitability to meet the need. This Court is not persuaded with the other grounds taken by the tenant in this revision petition.
17. This Court notices that the eviction order was passed after a fully fledged trial. The landlords were successful in proving their ownership of the

tenanted premises on the basis of the family settlement of August, 2000. Furthermore, the landlords had categorically stated that they were unemployed and wanted to start a shop from the tenanted premises, thereby establishing their bona fide need. The landlords were also successful in establishing that they had no alternate suitable accommodation to start their own shop. The tenant had merely made bald assertions in relation to availability of alternate accommodation. Moreover, the tenant's witness RW-3 had deposed that the landlords had space available at Greater Noida and Babarpur, which was not the case of the tenant. Where the landlords were successful in establishing the requirements of Section 14 (1) (e), an eviction order necessarily had to follow.

18. Each of the arguments put forward by the tenant have been duly considered by the learned ARC. The views taken in the impugned order are plausible in law; it does suffer from material irregularity or illegality or any infirmity. Consequently, the impugned order does not warrant the interference of this Court in its revisionary jurisdiction. This petition is without merit and is accordingly dismissed.

SEPTEMBER 24, 2014
vmk

NAJMI WAZIRI, J.