

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

Date of Decision: 06.01.2014

+ **R.C.REV.5/2014**

NARENDER KUMAR JAIN

..... Petitioner

Through: Mr. Ganesh Kumar, Sharma, Adv.

versus

R.S. SEWAK

..... Respondent

Through: Mr.G.B. Sewak, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI (Open Court)**

1. This is a revision petition filed under Section 25-B of the Delhi Rent Control Act, 1958 (“**Act**”), challenging the order of 9th September, 2013 of the learned ACJ-cum-CCJ-cum-ARC(E), Karkadooma Courts (“**impugned order**”). By the impugned order, the learned ARC dismissed the application of the petitioner-tenant (“**tenant**”) seeking leave to defend and passing an order of eviction against the tenant in Eviction Petition No. E-113 of 2012.
2. The dispute can be traced back to an eviction petition filed by the respondent-landlord (“**landlord**”) before the learned ARC, wherein the landlord sought eviction of the tenant from the suit property – a shop –

on the grounds of his *bona fide* requirement. The case of the landlord, who was himself an advocate of about 80 years of age, was that he required the suit property for setting up a law chamber for his son – an advocate practicing since 2004 – to practice from. It was admitted by the landlord that he had one other shop apart from the suit property, being the adjoining shop no. 2. He submitted that however, the said shop is only 6' x 10' and would not be suitable for setting up a chamber. The landlord had proposed to take the wall between the suit property and the said shop no. 2 and use the larger space of 12' x 10.3' as the chamber for his son. It was stated, on affidavit before the learned ARC, that the son does not possess any other chamber.

3. The tenant filed an application seeking leave to defend the petition on various grounds, which this court need not go into in the present matter; the challenge in the revision is not *qua* those findings. Germane to the present *lis*, it was contended before the learned ARC that the landlord's requirement was not *bona fide* and that the landlord has indulged in *suppressio veri* and *suggestio falsi* as it is inconceivable that the landlord's son could have operated without a chamber. It was also contended that the landlord was already in possession of a property out of

which his son could have operated his chamber and hence the claim that the suit property was required for that purpose is not *bona fide*. Lastly, it was contended that since the petitioner – having himself operated without a chamber – has operated out of the Central Hall of the Tis Hazari Courts Complex, it would be possible for his son to so do as well. Thus, it was argued that there was no *bona fide* requirement on the part of the landlord. It is clarified that although other contentions were raised before the learned ARC, they are not being recounted herein as (a) the findings *qua* those contentions have not been specifically challenged by the tenant before this court in this petition, and (b) the findings are, in the opinion of this court, in accordance with law.

4. The learned ARC, after considering the above contentions of the tenant, held *inter alia* that the landlord has indeed come to the Court with clean hands inasmuch as he has admitted to the availability of the other shop and has explained why the suit property is needed despite the availability of the second shop. The learned ARC reasoned that the desire of the landlord to join the suit property and the vacant shop adjoining the same to create a larger space to operate the chamber out of is fair, reasonable and well within his prerogative and it would not be for the tenant to

impose his will on the landlord by insisting that the chamber be operated out of a smaller area. As a logical sequitur, the learned ARC held that the contention that the landlord's son ought to be compelled to operate out of the Central Hall of the Tis Hazari Courts Complex, the way his father had, is meritless and undeserving for grant of leave to defend, on that basis.

5. Accordingly, the leave to defend was rejected which has been impugned in this petition.
6. However, before this Court, the tenant has sought to raise certain new facts / grounds. He contended that the landlord already possesses a chamber, which has been allotted to him in Rohini District Courts and this fact has been suppressed from the learned ARC and by stating that he is not in possession of any chamber. In this regard, the tenant, before this Court, produced a copy of a list issued by the Rohini Court Bar Association regarding members held not eligible for allotment of chambers. Especial reliance was placed on this list to contend that it indicates that the landlord was indeed allotted a chamber by the Rohini District Courts. It is also contended in the petition that the shop adjoining the suit property would be more suitable for running a lawyer's chamber

out of, in view of its onlooking a wider road than the suit property and hence the requirement of the landlord is not *bona fide*. Additional grounds that were raised including: (a) that of lack of explanation as to why the landlord's son did not seek to start his chamber from the suit property or the adjoining property till 2012, even though he was practicing since 2004, and (b) that of lack of explanation as to why the landlord's son – who has, allegedly, till date been practicing out of his elder brother's chamber – would now need to practice out of his own chamber.

7. The counsel for the respondent, appearing on advance notice, submitted that the grounds in the petition are frivolous, baseless and have, in any case, been considered and adjudicated upon by the learned ARC. He submitted that the document now sought to be relied upon by the tenant – the list issued by the Rohini Courts Bar Association – was not before the learned ARC and hence cannot be considered. He submitted that in any case, the list does not indicate that the landlord is in possession of any chamber. He also submitted a certificate issued by the Delhi Bar Association that states that the respondent does not have any chamber in the Tis Hazari Courts. A copy of the certificate is also handed over to the

counsel for the petitioner in the course of the hearing. He reiterated that the landlord does not have any other chamber or office to facilitate his or his son's legal practice anywhere in the NCT of Delhi.

8. It is settled law that this court, in exercise of its power under the proviso to Section 25-B of the Act acts only as a court of revision, and not of an appellate court. The Supreme Court, after undertaking an appraisal of the earlier authorities on the issue of the scope of jurisdiction under the proviso, held in *Shiv Sarup Gupta v Mahesh Chand Gupta (Dr)*, (1999) 6 SCC 222:

“The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to sub-section (8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is “for the purpose of satisfying if an order made by the Controller is according to law”. The revisional jurisdiction exercisable by the High Court under Section 25-B(8) is not so limited as is under Section 115 CPC nor so wide as that of an appellate court. The High Court cannot enter into appreciation or

reappreciation 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 on the material available. Ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusion from the established facts as betray a lack of reason and/or objectivity would render the finding of the Controller “not according to law” calling for an interference under the proviso to sub-section (8) of Section 25-B of the Act. A judgment leading to a miscarriage of justice is not a judgment according to law. (See: Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC 119] and Ram Narain Arora v. Asha Rani [(1999) 1 SCC 141] .)”
(Emphasis supplied)

9. Not being an appellate court, this court cannot, at this stage, consider fresh evidence that was not before the learned ARC. The document sought to now be produced before this Court, i.e., the list of the Rohini Courts Bar Association, was not before the learned ARC. To the contrary, the tenant has averred before the learned ARC that, to his knowledge, the landlord was practicing out of the Central Hall, Tis Hazari Courts. Given the same, it would not be a proper exercise of the

powers under section 25-B of the Act if the Court were to now decide this petition on the basis of the said document. In any case, the document merely indicates that the landlord is ineligible to be allotted a chamber in the Rohini Courts Complex and the reason is stated as “not practicing in Rohini, already chamber”. Given that it is admitted that the landlord does not practice in the Rohini Courts, it is understandable that he would not be eligible for allotment of a chamber there – something that the document sets out clearly. This document is *a fortiori* to be ignored by this Court in view of the fact that the suit property is stated to be required for the landlord’s son and not for himself. Given the same, this Court cannot look into the said document.

10. The other grounds of challenge have already been dealt with in detail by the learned ARC. The learned ARC has, in fact, given a reasoned order in this regard and held that it is a *bona fide* request of the landlord, which is reasonable and well within his prerogative. I have already, in R. C. Rev. 6 of 2014 set out in detail how this court exercises limited jurisdiction *qua* findings of facts in exercise of its jurisdiction under Section 25-B of the Act. The issue of whether another property in possession of the landlord is more suitable than the suit property and whether the

requirement of the landlord is *bona fide* are issues of fact that this Court would abstain from getting into. All that this Court is mandated to do is to satisfy itself as to whether the impugned order is in accordance with law – i.e., whether the finding that the requirement of the landlord is *bona fide* is a finding in accordance with law.

11. On the issue of when a requirement of the landlord can be regarded as *bona fide*, the judgement of the Supreme Court in *Shiv Sarup Gupta* (*supra*) itself clearly held:

“13. Chambers 20th Century Dictionary defines bona fide to mean “in good faith : genuine”. The word “genuine” means “natural : not spurious : real : pure : sincere”. In Law Dictionary, Mozley and Whitley define bona fide to mean “good faith, without fraud or deceit”. Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by “requires” is much more higher than in mere desire. The phrase “required bona fide” is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective

determination by the court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself — whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord.”

(Emphasis supplied)

12. In the instant case, as earlier recounted, the learned ARC has held that the requirement of the landlord – i.e., that of the suit property being required for the purpose of setting up a chamber for his son, who is practicing law – is *bona fide* and genuine. It has held that it is reasonable for the landlord to want to use not just the presently available – but smaller – shop, but also the suit property, in order to create a bigger space, out of which to operate the chamber. This, the Court finds, is once again in accordance with the law laid down by the Supreme Court in *Shiv Sarup Gupta (supra)*, where it observed,

“it could not have been the intendment of the rent control law to compel the landlord in such facts and

circumstances to shift to a different house and locality so as to permit the tenant to continue to live in the tenanted premises. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy.”
(Emphasis supplied)

13. Even the finding that the currently available premises would not be suitable in view of its size and the stated profession of the landlord's son – for whom the suit property is stated to be required – is not opposed to the law as laid down by the Supreme Court in *M. L. Prabhakar v Rajiv Singal*, (2001) 2 SCC 355, where, after taking into account the earlier authorities in this regard, including *Prativa Devi v T. V. Krishnan*, (1996) 5 SCC 353, *Ram Narain Arora v Asha Rani*, (1999) 1 SCC 141 and *Shiv Sarup Gupta (supra)*, it held:

“8. It is thus to be seen that the suitability has to be seen from the convenience of the landlord and his family members and on the basis of the totality of the circumstances including their profession, vocation, style of living, habits and background.”

14. It is understandable that a room which is merely 6' x 10' would not be suitable for a law chamber. However, if, so the landlord desires it can be extended by removing the wall separating it from the other adjoining

premises of the landlord, so as to extend its area to 12' x 10.3' then the same could provide a fair amount of space to set up an office/chamber to practice from.

15. Given the above, this Court finds no merit in the petition requiring exercise of its jurisdiction under section 25B of the Act.

16. For the above said reasons, the matter is dismissed.

NAJMI WAZIRI
(JUDGE)

JANUARY 06, 2014