

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

+ **RC.REV.65/2015**

% **Decided on: 7th May, 2015**

MALLO MAL MALHOTRA Petitioner
Through: **Mr. Bhaskar Tiwari, Adv.**

Versus

SURESH KUMAR Respondent
Through: **Mr. Rakesh Kumar with Mr. Naveen
Gaur, Mr. Raj Jaiswal, Adv.**

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Vide the impugned order dated 23rd September, 2014, the learned ARC in an eviction petition filed by the petitioner, Mallo Mal Malhotra against Suresh Kumar, the tenant under Section 14(1)(e) of the Delhi Rent Control Act (in short 'DRC Act') granted leave to defend. Learned ARC vide the impugned order agreed with the contention of Suresh Kumar that when the projected need of the eviction petitioner is for securing the financial future of his widowed daughter then the eviction petitioner has to at least prima facie place on record the substantive documents to prove that indeed his widowed daughter is not left with any financial support either by her deceased husband or her in-laws and since no such supportive documents were placed, leave to defend was granted. Learned ARC also noted that the plea of Suresh Kumar has not been countered by Mallo Mal. In light of these findings of the learned ARC it would be necessary to note the

averments in the eviction petition, leave to defend application and the reply thereto.

2. In the eviction petition, Mallo Mal stated that he was owner/landlord of the tenanted premises which was a shop measuring 130 sq.ft. on the ground floor of property bearing No.22-F, Kolhapur Road, Kamla Nagar, Delhi which was let out jointly to Krishan Lal and his son Suresh Kumar. Krishan Lal has since passed away and thus there was single tenancy with Suresh Kumar at a monthly rent of Rs.150/- including all other charges. To put the facts straight, the following paragraphs of the eviction petition would be relevant-

“(v) That the petitioner requires the premises in the question for the bonafide need and requirements for the purpose of setting up and carrying out business for his widowed daughter who has no livelihood and is presently striving to earn her basic means of livelihood i.e. food.

(vi) That the son-in-law of the petitioner Late Ashok Khattar died on 01.02.2011 leaving behind his wife i.e. the daughter Smt. Geeta Khattar of the Petitioner and their children. It is respectfully submitted that the widowed daughter of the petitioner has no means to earn her livelihood for herself and her children who are striving for food and as such the tenanted premises is required by the Petitioner for setting up a small business for her daughter so that she may earn bread and butter for herself and her children and to lead her life with respect and dignity. It is pertinent to mention herein that widowed daughter of the Petitioner has to be settled and as such the tenanted premises is required so as to enable the petitioner to set up a small business for his daughter so that the widow daughter including her children may maintain and lead a respectable life. A copy of the death certificate of the Late Ashok Khattar is annexed to this petition as ANNEXURE-P/5.

(vii) *That the widowed daughter of the petitioner has got two unmarried children and the premises in question is required by the Petitioner so that he can give it to his daughter for running a business for her and her children's livelihood and the Petitioner has no alternative space available with him. The son and daughter of the widowed daughter of the petitioner are school and college going children and the widowed daughter requires requisite money for their proper upbringing.*

(viii) *That the family members of the petitioner are also dependent upon the petitioner for the purpose of their livelihood and at present both the unemployed son and the widow daughter with her children of the Petitioner is staying and is dependent on the petitioner for their livelihood.*

(ix) *The petitioner has requested the respondent to vacate the premises after explaining him everything as per the submissions made above however, the Respondent has not vacated the same in spite of assurances.*

(x) *That the petitioner has no other suitable and reasonable premises to setup and carry out the business for the livelihood and maintenance of his dependents in Delhi.*

(xi) *That the family of the petitioner is quite big and comprises of wife and three married daughters and one married son. One of the daughter as discussed above has become a widow due to the unfortunate death of her husband. As a matter of fact all the daughters and son have two children each and stay in Delhi only."*

3. It was further stated in the eviction petition that the need of Mallo Mal was bona fide in view of the facts and circumstances mentioned above and the petitioner has every right to settle his widowed daughter and for that the premises in question which is in possession of Suresh Kumar was required to be vacated.

4. In the leave to defend application, Suresh Kumar stated that the eviction petitioner concealed and manipulated material facts with the sole intention to mislead the Court and to show the paucity of accommodation. Mallo Mal wants to get the premises vacated to re-let the same at a higher rent. Mallo Mal has admitted that he does not need the premises for his accommodation but requires the same for his widow daughter who herself inherited the property of her deceased husband. The other portion of property bearing No.22F, Kohlapur Road, Delhi has not been disclosed. Para 10 of the affidavit with leave to defend application which was considered by the learned Trial Court is noted as under:-

“10. That the petitioner has no cause of action to file the present petition as the petitioner has not disclosed about the other accommodation/shops in his possession where he can easily set up business for her daughter as contended by the petitioner. The petitioner further did not disclose the properties inherited by the widow daughter from her deceased husband who had several properties in Delhi. In fact, the deponent was inducted as tenant by the father of the petitioner in 1978 and a “pugri” of Rs.2 lacs was given at the time of creation of tenancy. It is submitted that the rent agreement filed by the petitioner does not bears the signature of the deponent rather the rent agreement is a fabricated document which ought to be verified by the experts.”

5. In reply to leave to the defend application, Mallo Mal denied the averments of Suresh Kumar and stated that though Suresh Kumar was disputing the site plan, however, he has not filed any counter site plan. Suresh Kumar has only raised general issues and not raised any triable issue. In reply to para 10 of the leave to defend application, Mallo Mal stated:-

“10. The contents of para ten of the application are wrong, false and denied. The contents of eviction petition, however are reiterated

and reaffirmed in reply to the present para. It is denied that the Petitioner has no cause of action to file the present petition. The Petitioner has got only one other shop which is also rented and the Petitioner is already in the process of filing a petition for his eviction also on bonafide grounds. Moreover, without prejudice to its rights and contentions, the Respondent is no body to dictate terms regarding the bonafide requirement of the landlord. It is denied that the widowed daughter has inherited property from her late husband. It is vehemently denied that any pugri was paid to the petitioner whatsoever, in fact by raising this plea the Respondent is admitting the respondent is admitting the case of the Petitioner and he wants money in lieu of quitting the property which is obvious from the plea taken by the Respondent and in the garb of this the Respondent has raised false and frivolous grounds which has got no merits at all. It is denied that the rent agreement is a fabricated document and that the signature is forged. The Respondent has admitted the tenancy and is now holding the agreement to be fabricated which is absolutely an incorrect stand of the Respondent only to create doubt in the mind of this Hon'ble Court."

6. It is thus evident that in the eviction petition Mallo Mal stated that his daughter has no means to learn livelihood for herself and her children and in the reply to leave to defend application, Mallo Mal denied that his widowed daughter inherited any property from her late husband or that Mallo Mal had any other available accommodation. He clarified that he had got only one other shop which was also rented and he was already in the process of filing eviction petition. The tenancy has been admitted though rent agreement is claimed to be forged, the fact that the daughter of Mallo Mal was a widow and having two children has also not been denied. The only issue raised by Suresh Kumar was that in the absence of disclosure of the properties inherited from late husband of widowed daughter, a triable issue was raised by Suresh Kumar, hence leave to defend be granted. As noted above, in the

reply to leave to defend application, Mallo Mal clearly stated that late husband of his widowed daughter left no property to her inheritance. Further n details of the property inherited by the daughter of Mallo Mal from her late husband has been mentioned in the leave to defend application except making a bald assertion that the properties inherited by the widow daughter have not be disclosed and her husband left behind many properties. No details of properties of the late husband have been given. Further Suresh Kumar has not denied that the widow daughter of Mallo Mal along with her children is living with Mallo Mal. Thus, this Court is required to see whether the issue raised is a triable issue.

7. The Full Bench of this Court in Mohan Lal Vs. Tirath Ram Chopra & Anr. (1982) 2 RCJ 161 dealing with the requirement of Section 25B DRC Act held-

“Reading the aforesaid provisions of the Act, it appears to us, that the landlord, when he initiates proceedings for eviction on the ground of bona fide requirement has to plead and state all the material facts which are required to be stated under clause (e) to the proviso to section 14(1) or section 14A, as the case may be, which would entitle him to get an order of eviction. Mere reproduction of the words used in the statute is not enough. The petition must disclose a cause of action based on the bundle of material facts for, in the event of the leave being refused, the statements made by the landlord in the application for eviction are to be deemed to be admitted by the tenant. The statements of fact may be as elaborate as the landlord may desire to make, but it will be enough for the landlord to state, in application for eviction, that he is the landlord and owner of the premises and that the same were let for residential purposes. These are averments of facts. It is not necessary for him to state as to how he became the owner, either by sale, gift, transfer or by will or a family arrangement etc. The law requires the disclosure of all material facts in the pleadings and not the evidence by which they have to be proved. It is for this reason that it is not necessary for the

owner of a property to state as to how he became the owner thereof but as bona fide requirement of the landlord or absence of other reasonably suitable accommodation has to be inferred from all the facts and circumstances, he must plead all such facts and circumstances in his application. He has to show as to how the need for getting the recovery of possession of the premises exists. In this connection he may have to plead the accommodation available with him, the non existence of any alternative suitable accommodation, the extent of the members of the family dependent upon him and the extent of the need of alternative or additional accommodation. Once such an application is filed the landlord would be entitled to an order for eviction at an early date, on the ground of bona fide requirement if the tenant does not appear or does not obtain leave to contest. After the service of summons it is for the tenant to disclose such facts as would disentitle the landlord from obtaining an order for recovery of possession. For the purpose of sub-sections (4) and (5) of section 25B the affidavit filed by the tenant disclosing such facts would be, in a way, original proceedings independent of the application of the landlord for eviction on the ground of bona fide requirement. It will be for the tenant to disclose facts which would disentitle the landlord from obtaining an order for recovery and if he fails to disclose such facts the Controller is bound to refuse leave, whereupon an order for eviction is to follow. We may notice here that though section 25B(4) does not contemplate any application for leave to contest being filed by the tenant but the form of the summons, set out in the Third Schedule to the Act, requires the tenant to obtain leave on his filing an application supported by an affidavit. It appears, therefore, that a formal application for leave has to be filed, which may even be a brief application, but the grounds on which leave to contest is sought have to be set out in detail in the affidavit. Section 25B does not specially provide for the landlord being given an opportunity to file a reply to the affidavit filed by the tenant. Under Subsection (5) the Controller can pass an order granting leave to contest. The passing of such an order would, obviously, be to the prejudice of the landlord. Can it be envisaged that such an order can be permitted to be passed without affording the landlord an opportunity of rebutting the allegations made by the tenant in his affidavit? In our opinion the answer to this must necessarily be in the negative. Our jurisprudence does not

postulate the possibility of an order being made against a party without affording him an opportunity of meeting the case of the opposite party. The consideration of the affidavit of the tenant without having given an opportunity to the landlord to file a reply would be clearly contrary to the principles of natural justice. We are, therefore, firmly of the belief that a landlord has to be given an opportunity of filing a reply. In exceptional circumstances the Controller may even give further opportunity to the tenant to file a rejoinder, but such an opportunity has to be a limited one and restricted to enabling the tenant to give an answer to what is stated by the landlord in his reply i.e in the rejoinder the tenant cannot raise any new grounds or state fresh facts.”

8. It is thus evident that after the landlord pleads his bonafide requirement and non-availability of an alternative suitable accommodation, the onus shifts to the tenant to show that a triable issue which if proved would non-suit the landlord has been pleaded. In the present case the landlord has pleaded all essential facts including the fact that his widowed daughter has no means to support herself and her husband. The tenant has only stated about non-disclosure of properties inherited by the widowed daughter from her husband which have been denied by the landlord in rebuttal. No details of the properties of the widowed daughter inherited from her husband have been stated by the tenant. Thus it cannot be said that a triable issue has been raised.

9. The Constitution Bench in Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh (2014) 9 SCC 78 clarified the law in relation to scope of interference by the High Court in a petition under Section 25B(8) DRC Act and held-

“32. Insofar as the three-Judge Bench decision of this Court in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] is

concerned, it rightly observes that revisional power is subject to well-known limitations inherent in all the revisional jurisdictions and the matter essentially turns on the language of the statute investing the jurisdiction. We do not think that there can ever be objection to the above statement. The controversy centres round the following observation in *Ram Dass* [*Ram Dass v. Ishwar Chander*, (1988) 3 SCC 131] , “... that jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also....” It is suggested that by observing so, the three-Judge Bench in *Ram Dass* [*Ram Dass v. Ishwar Chander*, (1988) 3 SCC 131] has enabled the High Court to interfere with the findings of fact by reappreciating the evidence. We do not think that the three-Judge Bench has gone to that extent in *Ram Dass* [*Ram Dass v. Ishwar Chander*, (1988) 3 SCC 131] . The observation in *Ram Dass* [*Ram Dass v. Ishwar Chander*, (1988) 3 SCC 131] that as the expression used conferring revisional jurisdiction is “legality and propriety”, the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the statute is wider than the power conferred on it under Section 115 of the Code of Civil Procedure; it is not confined to the jurisdictional error alone. However, in dealing with the findings of fact, the examination of findings of fact by the High Court is limited to satisfy itself that the decision is “according to law”. This is expressly stated in *Ram Dass* [*Ram Dass v. Ishwar Chander*, (1988) 3 SCC 131] . Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. *Ram Dass* [*Ram Dass v. Ishwar Chander*, (1988) 3 SCC 131] does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the appellate court or the appellate authority or such power is coextensive with that of the appellate authority or that the concluded finding of fact recorded by the original authority or the appellate authority can be interfered with by the High Court by reappreciating evidence because Revisional Court/authority is not in

agreement with the finding of fact recorded by the court/authority below. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the court/authority below. Rather, it emphasises that while examining the correctness of findings of fact, the Revisional Court is not the second court of first appeal. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not cross the limits of Revisional Court as explained in Dattonpant [Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval, (1975) 2 SCC 246].

33. Rai Chand Jain [Rai Chand Jain v. Chandra Kanta Khosla, (1991) 1 SCC 422] that follows Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] also does not lay down that the High Court in exercise of its power under the Rent Control Act may reverse the findings of fact merely because on reappraisal of the evidence it has a different view on the findings of fact. The observations made by this Court in Rai Chand Jain [Rai Chand Jain v. Chandra Kanta Khosla, (1991) 1 SCC 422] must also be read in the context we have explained Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131].

34. In Shiv Sarup Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222], the observations of this Court with reference to revisional jurisdiction of the High Court under the Delhi Rent Control Act that the High Court, on the touchstone of “whether it is according to law” and for that limited purpose, may enter into reappraisal of evidence must be understood in the context of its observations made preceding such observation that the High Court cannot enter into appreciation or reappraisal of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts and the observations following such observation that the evidence is examined by the High Court to find out whether the court/authority below has ignored the evidence or proceeded on a wrong premise of law or derived such conclusion from the established facts which betray lack of reasons and/or objectivity which renders the finding not according to law. Shiv Sarup Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] also does not lay

down the proposition of law that in its revisional jurisdiction under the Rent Control Act, the High Court can rehear on facts or reappreciate the evidence to come to the conclusion different from that of the trial court or the appellate court because it has a different view on appreciation of evidence. Shiv Sarup Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] must also be understood in the context we have explained Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131].”

10. Thus on the facts noted above without the tenant disclosing any property inherited from the deceased husband by the widowed daughter of Mallo Mal, no triable issue was raised by Suresh Kumar and the learned ARC thus proceeded on a wrong premise of law which warrants interference by this Court.

11. Consequently, the impugned order is set aside. Leave to defend application of the respondent is dismissed. The respondent will vacate the premises within six months from the date of present order.

12. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

MAY 07, 2015
‘v mittal’