

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

+ **RC.REV. 133/2012 & CM Nos. 5133/2012 and 17713/2014**

% Reserved on: 3<sup>rd</sup> February, 2015  
Decided on: 11<sup>th</sup> February, 2015

DAVINDER KUMAR CHADHA & ANR ..... Petitioners  
Through: Mr. Kirti Uppal, Sr. Advocate with  
Mr. Jatin Singh, Mr. Akhilesh  
Aggarwal and Mr. Aman, Advocates.

versus

PUSHPA RANI SAHANI ..... Respondent  
Through: Mr. Rajendra Dutt and Mr. Vineet  
Kumar, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. Aggrieved by the order dated 2<sup>nd</sup> March, 2012, whereby the Petitioners' leave to defend application in an eviction petition filed by the Respondent under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') was dismissed, the Petitioners prefer the present petition.

2. In the eviction petition, the Respondent stated that she was the owner and landlord of one shop and almirah in the property bearing No.WZ-678, Rishi Nagar, Shakur Basti, Delhi (hereinafter referred to as 'tenanted premises') which was let out to the Petitioners herein on a monthly rent of ₹1,050/- excluding the electricity charges. The Respondent's husband Shri Kishan Kumar Sahni has retired from service on 30<sup>th</sup> November, 2007 and the Respondent also retired on 28<sup>th</sup> February, 2011 thus both of them want to settle their business in the tenanted premises. It is further stated that neither

the Respondent nor her husband were having any accommodation for the purposes of running their business and the same was required for their bona fide need for commercial activities.

3. In the leave to defend application filed by the Petitioners it was pointed out that the Respondent was the owner of the property (in short 'the suit property') bearing No.WZ-678, Rishi Nagar, Rani Bagh comprising of the ground floor and the first floor with roof rights. The said property is a 'U' shape corner property (three side plot) having dimensions of 60 ft x 30 ft. On the ground floor of the suit property, the Respondent has constructed/developed various shops and the suit property is commonly known as 'Sahni Market'. The suit property consists of 14 shops of various dimensions and 8 almirahs/window shops. It was further stated that the Respondent was in possession of various shops, that is, Shop Nos. 4, 5, 9, 12, 13, 14, 15, 3A, 4A, 7A, 8A and 10A. Besides the Respondent and her husband Kishan Kumar Sahni has been working and selling ladies suits, shawls and dress material from the said shop under the name and style of M/s Shakshi Vastra Bhandar and M/s Guru Kripa since 22 years. The poly bags carrying the names of the shop M/s Shakshi Vastra Bhandar and M/s Guru Kripa were also enclosed besides the site plan of the suit property. It was further stated that the husband of the Respondent Shri Kishan Kumar Sahni for whose business the tenanted shop is sought to be vacated is already working from other shops in their possession specifically with the name 'Guru Kripa'. The visiting card of the shop with the name and address of the husband of the Respondent was also enclosed. Further the Petitioners were inducted as tenants in Almirah No.9A admeasuring 165 cm x 46 cm at monthly rent of Rs. 200/- and on payment of Pagri for the said almirah shop.

Thereafter the Petitioners were given another shop bearing No.10 admeasuring 10'.6" x 4'.8" in the suit property on a monthly rent of Rs.200/- on 1<sup>st</sup> November, 1987 on a Pagri of Rs.42,000/-. Later the Petitioners took another shop bearing No.11 admeasuring 10'.6" x 6' in the same suit property on 1<sup>st</sup> January 1989 on a monthly rent of Rs.250/- and Pagri amount of Rs.73,000/-. The Petitioners have been selling ladies suits, dress material and shawls from the said shop and presently the Petitioners are paying the rent of Rs.1,050/- per month towards the two shops and one Almirah/window shop. In the leave to defend application the Petitioners have given the details of the various shops and the possession of the same as under:

| <b>SHOP NO.</b>     | <b>POSSESSION</b>              |
|---------------------|--------------------------------|
| 1.                  | Tenanted to Monga Garments     |
| 2.                  | Tenanted to Advance Fashion    |
| 3.                  | Tenanted to Skylark Properties |
| 4-5, 9.             | Possession of petitioner       |
| 6.                  | COMMON PASSAGE                 |
| 7.                  | Tenanted to Gupta Jewellers    |
| 8.                  | Tenanted to Pummy Tailors      |
| 10 & 11             | Tenanted to Respondents        |
| 12 to 15            | Possession of Petitioner       |
| 1A                  | Tenanted to Novelty Corner     |
| 2A                  | Tenanted to Mr. Rajiv Sharma   |
| 3A, 4A, 7A 8A & 10A | Possession of Petitioner       |
| 9A                  | Tenanted to Respondents        |

4. Thus the case of the Petitioners in the leave to defend application was that the Respondent was in possession of Shop Nos. 4, 5, 9, 12, 13, 14 and 15 besides the window shops being 3A, 4A, 7A, 8A and 10A. Further the Petitioners got registered FIR No.1027/2004 on 13<sup>th</sup> November, 2004 at PS Saraswati Vihar under Sections 323/341/427/34 IPC against the Respondent, her husband and her son. The Respondent also got registered a counter FIR against the Petitioners and their employees being FIR No.1028/2004 at PS Saraswati Vihar under Sections 323/341/462/34 IPC. In FIR got registered by the Respondent, that is, FIR No.1028/2004 the Respondent herself has admitted that she was doing the business from shop in name and style of 'Shakshi Vastra Bhandar'.

5. In the counter affidavit to the leave to defend application the Respondent denied the averments in the leave to defend application. It is stated that the correct site plan was annexed by the Respondent and as per which Shop Nos. 12, 13, 14 and 15 are one shop. Similarly, shop Nos. 10 and 11 were one shop and Shop No.6 was in possession of the Respondent but the same was being used as a passage for them. Further there were no walls in the Shop Nos.4, 5 and 9 which were in the possession of the Respondent's daughter. It was stated that there were only two shops, that is, Shop Nos. 4, 5 and 9 together and Shop Nos. 12, 13, 14 and 15 together whereas 3A, 7A, 8A and 10 A were almirahs and not shops. The fact that the Respondent and her husband were working and selling dress material, ladies suit and shawls under the name and style of M/s Shakshi Vastra Bhandar and M/s Guru Kripa since 1995 was denied. It is stated that the business was started under the name of M/s Shakshi Vastra Bhandar but

subsequently, the name was substituted with M/s Guru Kripa and the same was being run by Ms. Ritu Sahni, daughter of the Respondent. Since the Respondent and her husband were in service they were not doing any business. The allegations regarding receipt of Pagri amount was denied. However, it was admitted that Shop No.1 was in tenancy of Shri Anil Kumar Monga, Shop No.2 in the tenancy of Ashok Kumar, Shop No. 3 in tenancy of Shri Braham Dutt Khattar and Smt. Ishwar Devi Khattar, Shop No.7 in tenancy of Shri Sudarshan Kumar Gupta while Shri Hari Singh Verma was tenant in Shop No.8. Similarly Almirah No.1A was in tenancy of Parminder Wadhwa while Almirah 2A was in the tenancy of Shri Rajeev Sharma. It is reiterated that the business was being run by their daughter since 1995.

6. A rejoinder affidavit was filed to this counter affidavit of the Respondent by the Petitioners however, no new facts were brought and the issues raised in the leave to defend application were reiterated.

7. On the basis of the pleadings of the parties the learned ARC came to the conclusion that the Petitioners had raised the issue of the Respondent having sufficient alternative available accommodation in the property. However, the Petitioners have failed to disclose any of the suitable alternate accommodation. Reliance was also placed on the decision of Krishan Lal vs. R.N. Bakshi, 169 (2010) DLT 769 wherein it was held that it is not for the tenant to dictate the terms to the landlord as to how and in what manner he should adjust himself. The learned ARC noted that the registration of the FIR and for filing the suit for permanent injunction were not valid grounds for grant of leave to defend and thus in the facts and circumstances of the case the Court was of the opinion that the Petitioners have not been able to disclose any ground on which the Respondent would not be entitled to grant

of relief under Section 14 (1) (e) of the DRC Act and hence declined to grant leave to defend vide the impugned order.

8. Learned counsel for the Petitioners has taken two main pleas before this Court, firstly that there was concealment of material facts by the Respondent in the eviction petition and secondly the Petitioners had been able to show that additional accommodation was available to the Respondent which was in their possession and that the plea of the Respondent that shops were being run by their daughter Ms.Ritu Sahni was incorrect. The Petitioner seeks to place on record the list of voters prepared by the Election Commission wherein the age of Ms.Ritu Sahni was shown as 42 years in 2013 and thus contends that having admitted that the shops in the name of M/s Guru Kripa were being run by Ms. Ritu Sahni since 1995 cannot be relied upon as in the year 1995 the daughter would be 8 years old. Learned counsel for the Petitioners pointing out to the various facts relies upon the decision in Inderjeet Kaur vs. Nirpal Singh, 2001 (1) SCC 706; Kishan Chand vs. Jagdish Pershad and others, 2003 (9) SCC 151 and Mohd. Jagar and others vs. Nasra Begum, RC Rev. No.279 of 2011 decided on 9<sup>th</sup> July, 2012.

9. Learned counsel for the Respondent on the other hand contends that in the eviction petition the Petitioner is not supposed to disclose the accommodation available with each and every family member of the landlord. Suffice it to state that the landlord and the dependent person for whom the additional accommodation is required do not have any other alternative suitable accommodation with them. The Petitioners having admitted that the Respondent and her husband have retired thus the need to establish themselves was admitted. The relationship of landlord tenant was

not disputed and the landlord being the best judge of its requirement there is no merit in the contention of the Petitioners. Reliance is placed on Labhu Lal vs. Sandhya Gupta, 173 (2010) Delhi Law Times 318; Ruparel & Company vs. S.Avtar Singh Puri (Decd.) Thr. LRS and others, 159 (2009) DLT 101; Krishan Lal vs. R.N.Bakshi, 169 (2010) DLT 769; Tagore Education Society Regd. Vs. Kamla Tandon and another, 161 (2009) DLT 332; Bharat Sanchar Nigam Ltd. vs. Renewable Energy System Ltd. and others, 161 (2009) DLT 247 and Kharati Ram Khanna and Sons vs. Krishna Luthra, 172 (2010) DLT 551.

10. I have heard learned counsel for the parties at length.

11. The calculation of the learned counsel of the Petitioners is prima facie wrong and in any case the availability of the voters list by the Election Commission is not a subsequent event and thus could have been placed on record before the learned Trial Court. It is trite law that the Court can take cognizance of the subsequent event only if they have the effect of wiping out the cause of action and in case additional material which was available to the tenant at the time of filing of leave to defend application is permitted to be placed in the garb of subsequent event then the sanctity of the time prescribed for filing the leave to defend application of 15 days which cannot be extended in view of the decision of the Hon'ble Supreme Court in Prithipal Singh vs. Satpal Singh (Dead) through its LRs, 2010 (2) SCC 15 will be lost.

12. Before adverting to the facts of the case it would be appropriate to note the scope of interference in a revision petition. In Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta, 1999 (6) SCC 222 the Hon'ble Supreme Court laid down:

*“11. Section 25-B of the Delhi Rent Control Act, 1958 finding its place in Chapter III-A of the Act was inserted in the body of the main Act by Act 18 of 1976 with effect from 1-12-1975. It provides for a special procedure to be followed for the disposal of applications for eviction on the ground of bona fide need. Obviously, this ground for eviction of the tenant has been treated on a footing different from the one on which other grounds for eviction of the tenant stand. Section 25-B is a self-contained provision in the sense that remedy against an order passed by the Rent Controller thereunder is also provided by that provision itself. Sub-section (8) provides that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in Section 25-B:*

*“Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law (or not), call for the records of the case and pass such order in respect thereto as it thinks fit.”*

*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] .)*

13. Thus this Court is required to look into the facts of the present case and it is well settled that a document filed with the leave to defend application forms part thereof. In the eviction petition the Respondent stated that they have no alternate suitable accommodation and since the Respondent and her husband have retired from the service they have to settle their business. When the Petitioners pointed out the availability of the shops it was stated that the two shops available were being run by the daughter of Respondents Ms. Ritu Sahni. The learned ARC failed to notice certain admissions on the part of the Respondent. The Petitioners have placed on record visiting cards of the shop ‘Guru Kripa’ wherein the name and mobile number of Shri Kishan Kumar Sahni, place and address of the shop has been

mentioned. Further the learned ARC brushed aside the FIR lodged by the Respondent saying that the same was not relevant for the present proceedings failing to notice that in the FIR No.1028/2004 lodged by the Respondent at PS Saraswati Vihar, the Respondent admitted that she was resident of WZ-678, Rishi Nagar, Rani Bagh where she was staying on the first floor with her family and on the ground floor she was running a shop of clothes and the Petitioners were her tenants. Thus in her own document, the Respondent had admitted that she was running a shop. It is well settled that at the stage of granting of leave to defend application mere bald assertions by a tenant would not be treated as triable issues however, if the tenant places on record some material which prima facie show that the contention raised by the tenant is substantiated then he has to be granted leave to defend and trial has to proceed. In Inderjeet Kaur (supra) the Hon'ble Supreme Court held:

*“13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25-B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter III-A of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to*

him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance, a wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend, but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend *prima facie* show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25-B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25-B(7) speaks of the procedure to be followed in such cases. Section 25-B(8) bars the appeals against an order of recovery of possession except a provision

*of revision to the High Court. Thus a combined effect of Sections 25-B(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for a long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.*

14. Thus the Petitioners are liable to succeed as they have been able to prima facie show the admission of the Respondent about running the shop of cloth thus her averment in the eviction petition that she and her husband have retired and have to settle in the business in the tenanted premises is falsified and a triable issue is raised.

15. Learned counsel for the Petitioners have agitated that the Respondent has concealed the availability of the alternate suitable commercial premises with them. The Respondents in reply affidavit have stated that the said shops are being run by their daughter Ms. Richa Sahni. To rebut the same the Petitioners have placed on record the photographs and the visiting card of the husband of the Respondent which prima facie show that the husband of the respondent was running the shops and the learned ARC failed to notice these material aspects. Indubitably in an eviction petition, the landlord need not disclose all its immovable assets however, it has to disclose those facts which are essential for the Court to ascertain that neither the landlord nor the dependant for whom he is seeking eviction of the tenanted premises has any other suitable accommodation

16. Consequently, the impugned order is set aside. The leave to defend is granted to the Petitioners. The written statement be filed within four weeks. Replication be filed within four weeks thereafter.

17. List before the learned ARC on 23<sup>rd</sup> April, 2015.
18. Petition and applications are disposed of.

**(MUKTA GUPTA)**  
**JUDGE**

**FEBRUARY 11, 2015**  
**‘vn’**