

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

+ **RC.REV. 94/2015 & CM 3597/2015**

% **Reserved on: 20th May, 2015**
Decided on: 30th June, 2015

SANTOSH KUMARI MEHRA SINCE DECEASED THR LRS ... Petitioner

**Through: Mr. Rajesh Yadav, Mr. Neeraj Yadav
and Mr. Sidharth Arora, Advocates.**

versus

OM PRAKASH

..... Respondent

**Through: Mr. B.B. Gupta and Mr. Sanyam
Khetarpal, Advocates.**

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 13th January, 2015 whereby leave to defend was granted to the respondent Om Prakash in an eviction petition filed by Smt. Santosh Kumari Mehra since deceased, the petitioners legal heirs of Smt. Santosh Kumari Mehra prefer the present petition.

2. In the eviction petition, Santosh Kumar stated that she was owner of shop bearing No.4515-A, Arya Samaj Road, Near Hathi Wala Chowk, Karol Bagh, New Delhi (in short "the tenanted premises") which consists of a big hall and had been let out to Om Prakash for commercial purposes initially at a rent of Rs.480/- per month which was increased 10% by notice dated 20th April, 2013 and the present rent was Rs.522/- per month. The eviction petitioner stated that her son Rajinder Prasad Mehra was doing the business

of Surgical Goods and Equipment in the name and style of M/s Vikas Surgical & Medical Devices as a sole proprietor and the concern was registered under the Sales Tax Act, Drug Control Department etc. Since there was no independent place of business, Rajinder Prasad was constrained to take a basement floor of property No.8-A/30-G, situated at W.E.A. Karol Bagh, New Delhi on rent and is paying a rent of Rs.19800/- per month. It was stated that basement was not suitable for running the said business as the basement was meant for storage of the goods and thus the tenanted premises which is a shop on the ground floor is required so that Rajinder Prasad can store the goods and entertain the customers easily. Further grandson of eviction petitioner namely Hemant Mehra was also doing the business of surgical goods and equipments in the name and style of Life Line Surgical Co. as a sole proprietor which was also registered with the concerned authorities. Hemant Mehra had no independent place of business and thus he is constrained to keep the goods in one part of the drawing room of the suit property bearing No. 4515-A, Arya Samaj Road, Near Hathi Wala Chowk, Karol Bagh, New Delhi which was also being used for residential purposes by the family of the eviction petitioner. It is stated that other son of the eviction petitioner Rajeshwar Prasad Mehra was partially disabled since birth and is completely dependent on Rajinder Prasad, elder son of the eviction petitioner for his livelihood. The tenanted premises is located in the prime location, on the front portion of the building and was suitable for business purposes.

3. In the leave to defend application, Om Prakash took the plea that the grandson of the eviction petitioner could not be said to be a dependent member of her family. It is stated that the son of eviction petitioner Rajinder

Prasad was also carrying on business at another place i.e. 11732-A, (Basement) Street No.3, Sat Nagar, Karol Bagh, New Delhi which fact has been deliberately concealed. The said basement was purchased by Rajinder Prasad and thus there is no bonafide requirement of the tenanted premises. Om Prakash also stated that Rajinder Prasad was carrying on his business on the first floor of the suit property since the very inception of his business which is now being carried out by the grandson of eviction petitioner and they have sufficient accommodation on the first floor and only additional accommodation was required by the eviction petitioner. The first floor portion of the suit property where the business is being carried out by Rajinder Prasad was about 900 sq.ft. which is more than sufficient for the need of Rajinder Prasad to carry on the business. The suit property is a 3½ storeyed building and entire building including first, second and third floor are in occupation of eviction petitioner wherein business is being run from the first floor whereas upper floors are being used for the residential purposes by the eviction petitioner and her family members. Further there are five members in the family of the eviction petitioner and thus four rooms on second floor and two rooms on the third floor are sufficient to meet their residential requirement and four rooms constructed on an area of 900 sq.ft. on the first floor are sufficient for business purposes.

4. In the reply to the leave to defend application, the eviction petitioner denied that her son was carrying on business from 11732-A, (Basement) Street No.3, Sat Nagar, Karol Bagh, New Delhi. It was stated that the basement was taken on rent however the same had to be vacated after the owner terminated the tenancy vide notice dated 9th September, 2012 and only thereafter basement floor of property 8-A/30-G situated at W.E.A. Karol

Bagh, New Delhi was taken on rent of Rs.19800/- per month. No material fact was concealed from the Court in the eviction petition. The first floor of the suit property was not suitable for carrying on the business. Several customers and officials from big hospitals are coming to the drawing room and since the goods are lying in the drawing room, the same creates an embarrassing situation for them as surgical goods consumes substantial space in the drawing room. Even otherwise, the first floor and upper floors are residential in nature and hence cannot be used for commercial purposes. Documents in support of the contention raised in the eviction petitioner and reply to the leave to defend application including the lease deed etc. were placed on record by the eviction petitioner.

5. Vide the impugned order, the learned ARC held that the Om Prakash has been able to raise triable issue as the bonafide requirement was not for the son of the eviction petitioner but of her grandson and they were earning handsomely. Both the son and grandson are admittedly engaged in their respective line of businesses having their own separate distinct business concerns. As per the documents filed by the petitioner herself both the son and grandson are earning well having no dearth of orders for the goods in which they are dealing. Factum of son of the petitioner earning well is also depicted from the petitioner's disclosure that he is paying the rent of Rs.19800/- per month for the basement. The petitioner's son can pay the said amount only, if he is earning well from business. In these circumstances to contend on the part of the petitioner that her son and grandson are dependent upon her for the purposes of their need of commercial space to run their business is an exaggeration and rather can be termed as a futile exercise to stretch the term "bona fide need". The

legislature never intended to cover in the term of bona fide need to include the needs of even such son and grandson of the landlord who are not at all financially/commercially dependent upon the landlord to run their life and business. Hence granted the leave to defend.

6. Learned counsel for the petitioner contends that the finding of the learned ARC that the grandson is not a dependent member of the family of the eviction petitioner is contrary to law and in any case Smt. Santosh Kumari has since passed away and Hemant Mehra is the son of landlord Rajinder Prasad and a dependent member. Merely because the eviction petitioner has taken basement on rent to run the business due to paucity of space and paying a rent of Rs.19800/-, it cannot be held that Rajinder Prasad was earning handsomely, was doing well in business and was thus not dependent on the eviction petitioner for the purpose of need of commercial space. It is stated that the finding of the learned ARC are contrary to the law laid down by the Supreme Court in Joginder Pal Vs. Naval Kishore Behal (2002) 5 SCC 397. The decision in *Joginder Pal (supra)* was rendered in the context of Section 13(3)(a)(ii)(a) construing the expression “for his own use” in East Punjab Urban Rent Restriction Act, 1949 whereas the provisions of Sections 14(1)(e) DRC Act is of wide amplitude and provide for not only the landlord/owner but also persons dependent on him. Regard has to be taken to the social fabric of the family and in a joint family all members including the grandchildren would be dependent on the grandparents. Reliance is also placed on Puran Chand Aggarwal Vs. Lekh Raj 2014 (210) DLT 131. Relying on M/s Khem Chand Ramesh Kumar Vs. Smt. Vijay Mehra & Ors. 2014 (10) AD (Delhi) 558 it is urged that merely because the children are financially independent would not mean that they are not family members or

that they are not dependent for the purposes of accommodation on the parents. Referring to Labhu Lal Vs. Sandhya Gupta 2010 (173) DLT 318 it is stated that it is for the landlord to decide which accommodation is more suitable to him and the tenant cannot dictate the requirement of landlord.

7. Learned counsel for the respondent on the other hand reiterating the findings of learned ARC contends that grandson of the eviction petitioner cannot be a dependent member for the accommodation purpose. It is stated that the present case is of expansion of business as admitted by the eviction petitioner and thus leave to defend was required to be granted. The eviction petition and reply to leave to defend application was full of self-contradictory statements. There is no averment in the eviction petition as to the second and third floor of the premises whether they are sufficient for residential purposes or not so that first floor can be used for the purposes of business. Requirement of the eviction petitioner is not bonafide and is only a ploy to get the premises evicted to let out at a higher rent.

8. Heard learned counsel for the parties.

9. Before going into the facts of the case, it would be appropriate to note the legal position with regard to interference by this Court in revisional jurisdiction challenging an order granting leave to defend to the tenant. The Constitution Bench in Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh (2014) 9 SCC 78 laid down the scope of interference by the High Court in a petition under Section 25B of the 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 reappreciation 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

reappreciation 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. In Joginder Pal (supra) the Supreme Court while construing who is the member dependent on the landlord held that keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation, the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. The tests laid down to be applied are: (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement, and (ii) whether on the facts and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by

the landlord as “his own” occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as “his own” and the person who actually would use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of the claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord’s claim.

11. In the leave to defend application, it is not disputed by Om Prakash that the eviction petitioner Smt. Santosh Kumari since deceased was living in a joint family with her sons and grandson. The eviction petitioner also stated that her other son was physically handicapped and was totally dependent on Rajinder Prasad. These facts are not disputed by Om Prakash. Thus in such a joint family fabric it cannot be held that grandson is not dependent on the grandmother for accommodation and only the son would be held to be a dependent member as held by the learned ARC. Learned ARC failed to realize that rental accommodation had been taken by the son of the eviction petitioner, thus there was a dire necessity of the accommodation. Learned ARC considered the same in a contrary perspective and held that since the son and grandson of the eviction petitioner were financially very well off, they were not dependent on her for the accommodation. It is trite law that even if the family members are doing well in the business and may be financially independent however for the requirement of accommodation they may still be considered to be dependent on the landlord.

12. This Court in OmPrakash Bajaj Vs. Chander Shekhar 2003 I AD (Delhi) 669 held that the wife, son and son’s wife and children are the

members of the family of landlord whose need of accommodation is the need of the landlord. Further in Rishal Singh Vs. Bohat Ram & Ors. 2014 (144) DRJ 633 it was held-

“In the present petition, the tenant raised a contention that the landlord has alternate shops which he has deliberately concealed and that the Court should have considered the concealment while passing the eviction order. It was argued that apart from a shop lying vacant there are two other vacant shops on the same lane, which has not been mentioned in the site plan. Counsel argued that such concealment is not to be taken lightly as it was indicative of landlord trying to extort a higher rent, rather than there being any genuine need for the tenanted premises. When there are alternative accommodations available, the landlord ought to have been granted an eviction order, it was so argued. This Court finds itself in disagreement with the argument made by the Counsel because in an eviction petition filed for bona fide requirement, the landlord's needs are put on a higher footing than that of the tenant. This certainly does not entail that any eviction petition filed under bona fide requirement will lead to an eviction order being passed automatically. When the Court finds that the need of the landlord to file the eviction petition to be a genuine need and not a desire of the landlord, the Court will allow the eviction petition. The impugned order has already taken note of the fact that the respondent No. 2 has verified the submission made by the landlord that the shop which the tenant claiming to vacant does not belong to the landlord but to respondent No. 2. That being the admitted position, this Court cannot overlook such admission and hold to the contrary. When it is shown that the shop, which may be lying vacant as argued by the tenant, does not belong to the landlord, this Court gathers such argument to be irrelevant to determine if the landlord has alternate suitable accommodation. The Court is not vested with the power to question the family settlement whereby the shops lying vacant have fallen into the share of somebody other than the present landlord. On this issue, this Court agrees with the impugned order and sees no reason to interfere with the same. Apropos the contention that the site plan filed by the landlord is incorrect as it fails to disclose two shops lying vacant in the same area, it is without merit as the tenant has not filed any site

plan to show the inconsistency. It is well settled law that when the tenant contents the accuracy of the site plan filed by the landlord, he is required to file a copy of the site plan he believes to be correct so as to guide the Court in finding the discrepancies of the site plan filed by the landlord. Without such site plan being filed, mere contentions raised to this effect will be considered meritless.”

13. In view of the aforesaid discussion, the impugned order is set aside being contrary to the law laid down by the Supreme Court. Leave to defend application is dismissed. The respondent would vacate the tenanted premises on or before six months from the date of this order.

14. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

JUNE 30, 2015
‘v mittal’