

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

+ **RC.REV.272/2012 & CM 11007/2012 (STAY)**

% **Decided on: 30th January, 2015**

MAHAVIR PRASAD Petitioner

Through **Mr. Sanjeev Narula, Adv.**

versus

DEVINDER KUMAR SHARMA Respondent

Through **Ms. Rajani Chauhan and Mr. Vaibhav Mehra, Adv.**

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition, the petitioner challenges the order dated 16th January, 2012 whereby leave to defend was declined to the petitioner in an eviction petition filed by the respondent under Section 14(1)(e) of the Delhi Rent Control Act (in short 'the DRC Act).

2. In the eviction petition filed by the respondent it was only stated that the respondent was the owner/landlord of one shop forming part of property No.371, ground floor, Naya Bans, Khari Baoli, Delhi-110066 shown red in the site plan and that he needs the same for running a clinic by his elder daughter who had completed P.G. Diploma in Dietetics and Public Health Nutrition (DDPHN) from Delhi University and was pursuing M.Sc. in Food and Nutrition (DFSM) from IGNOU. She has already completed 9 months internship from St. Stephen Hospital and thus intends to start her own clinic as a consultant and that no other reasonably suitable accommodation was available except the tenanted premises.

3. On a notice being issued, the petitioner entered appearance and in the leave to defend application challenged the bona fide requirement of the respondent and the availability of alternative accommodation stating in para 3(j) that the respondent had not disclosed all the relevant facts in the eviction petition. The petitioner pointed out that the respondent had 14 shops in property bearing Nos.365 to 372 A and B. Besides the same, the respondent has other properties including residential and commercial properties in the NCR. The petitioner further sought leave to file additional affidavit on complete facts being disclosed by the respondent.

4. In the reply affidavit to the leave to defend application of the petitioner, the respondent disclosed the possession and status of various properties bearing municipal Nos.365 to 372 comprising of four storeyed building with roof rights situated at Naya Bans, Khari Baoli, Delhi which had fallen to the share of respondent as under-

- (i) The property bearing No.365 consists of only one shop, on ground floor, which is on rent with Shri Naresh Kumar.
- (ii) The third floor of property bearing municipal no.366 has about eight shops. Out of these shops petitioner is the owner of three shops, which too have been on rent. Remaining five shops had been sold to different persons which are as follows:-
 - a. Two shops on third floor bearing municipal no.366 was sold by petitioner to Shri Tej Ram vide registered sale deed dated 14.01.2004.
 - b. Two shops on third floor bearing municipal no.366 was sold by petitioner to Smt. Komal Gupta vide registered sale deed dated 02.01.2004.
 - c. One shop on third floor bearing municipal no.366 was sold by petitioner to Smt. Ram Bai vide registered sale deed dated 20.01.2004.

- (iii) Entire second floor of property bearing municipal no.366 along with the portion above shops No.365, 367 to 368 on second floor was sold by petitioner to M/s Raj Empirez vide registered sale deed dated 23.10.2001.
- (iv) Entire first floor of property bearing municipal no.366 was sold by petitioner to M/s Raj Empirez vide registered sale deed dated 30.08.2001.
- (v) Entire ground floor of property bearing municipal no.366 was sold by petitioner to Shri Rinku Nigam vide registered sale deed dated 16.05.2001.
- (vi) Only one shop exists on ground floor in municipal no.367 which was sold by petitioner to Shri Jitendra Soni vide registered sale deed dated 01.08.2007 which was earlier on rent with Sat Narayan.
- (vii) Only one shop exists on ground floor in municipal no.368 which was sold by petitioner to Shri Praveen Soni vide registered sale deed dated 01.08.2007, which was earlier on rent with Gopi Ram Laxmi Narayan.
- (viii) In property no.369 there exists staircase, which leads to first floor.
- (ix) In property no.370 there exists shop on ground floor, which is in possession of Shri Om Prakash Gupta.
- (x) In property no.371 there exists one shop on ground floor, which is in possession of respondent and is facing on main road.
- (xi) In property no.372 there exists one shop on ground floor, which is in possession of Shri Sri Kishan Kumar Kapil Kumar which is facing side gali.
- (xii) In property no.372A on ground floor there exists one shop, which is also in possession of tenant and is too facing the side gali.
- (xiii) Petitioner is in possession of first and second floor above these shops no.370 to 372A, which is being used by him, exclusive for residential purposes.

5. Thus, the stand of the respondent was that though he owned substantial properties including shops, however either they had been sold off or there were tenants in them. In the affidavit dated 1st November, 2011 in

response to this counter affidavit of the respondent, the petitioner specifically pointed out that erstwhile tenant of shop bearing No.372-A Shri Sanjay Gupta who was resident of 375, Naya Bans, Khari Baoli was the tenant from 12th January, 2002 to 31st January, 2003. After Shri Sanjay Gupta vacated the said shop, it was lying vacant for approximately 5 years with the respondent and thereafter one Shri Bhondu Ram was inducted in the property as a tenant but he also remained for only a few months and vacated the premises in September, 2010. Shri Bhondu Ram expired on 22nd November, 2010 whereafter the property was rented out to Shri Mohan Lal, who was the tenant in Shop No.372A. In response to this additional affidavit of the petitioner, again a vague counter affidavit was filed by the respondent though admitting that Shri Sanjay Gupta was earlier tenant of shop bearing No.372A however it was denied that the shop ever remained vacant for approximately 5 years or that the property had been rented out to Mohan Lal in 2010. A perusal of the counter affidavit of the respondent would show that the respondent has still not disclosed that whether Shri Mohan Lal was a tenant in the premises and if not Shri Mohan Lal, who was the tenant and since when. In fact, it was not even the case of the petitioner that shop bearing No.372A was rented out to Shri Mohan Lal on 22nd November, 2010. From the perusal of the affidavit itself it is apparent that the respondent initially concealed facts and even on the petitioner disclosing that shop bearing No.372A was let out after 22nd November, 2010 i.e. after filing of the eviction petition on 24th September, 2010, the respondent has not disclosed as to who was the current tenant in the premises and since when.

6. The contention of learned counsel for the petitioner is that having let out the premises bearing No.372A on the ground floor to a tenant after September, 2010, the petitioner could not have claimed on 25th September, 2010 when the eviction petition was instituted that he has no alternative suitable accommodation. In any case, the respondent has nowhere stated that this vacant shop was not an alternative suitable accommodation for running the clinic and thus the petitioner has succeeded in raising a triable issue.

7. It is trite law that in a revision petition under Section 25B(8) of the DRC Act the scope of interference by this Court is limited and only if the learned ARC fails to exercise the jurisdiction vested in it or exercise the jurisdiction arbitrarily, this Court would interfere in the matter. In Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta AIR 1999 SC 2507 it was held-

“The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation 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 re-appraisal 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 that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion from the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to Sub-section (8) of Section 25B of the Act. A judgment leading to miscarriage of justice is not a judgment according to

law. [See; *Sarla Ahuja v. United India Insurance Co. Ltd.*, (1998) 8 SCC 119; (1998 AIR SCW 3451) and *Ram Narain Arora v. Asha Rani*, (1999) 1 SCC 141.]”

8. In *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh* AIR 2014 SC 3708 the Constitution Bench of the Supreme Court held as under:

“45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

9. Learned ARC failed to notice this material concealment in the affidavit of the respondent rather learned ARC held that the petitioner herein was changing his stand regarding availability of alternative accommodation. It may be noted that in fact the respondent/landlord did not disclose complete facts in the eviction petition and it is only after the details of the properties of the Respondent were disclosed by the petitioner in the leave to defend application, the respondent disclosed about various properties and even therein as regards shop No.372A he was silent as to when the property was let out and in whose possession it was.

8. Consequently, this is a fit case where leave to defend is required to be granted to the petitioner. Ordered accordingly. Leave to defend application of the petitioner is disposed of. Written statement be filed within four weeks. Rejoinder affidavit be filed within four weeks thereafter. List the matter before the learned Rent Controller on 9th April, 2015.

9. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 30, 2015
‘v mittal’