

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

+ **RC.REV. 283/2014**

% Reserved on: 23rd April, 2015
Decided on: 20th May, 2015

SMT. LADO Petitioner

Through: Mr. S.K. Bhaduri and Ms. Kirti
Parmar, Advocates.

versus

NANNU RAM Respondent

Through: Mr. Baljeet Singh, Advocate with
Respondent in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Aggrieved by the order dated 2nd August, 2014 whereby leave to defend was granted to the Respondent Nannu Ram in an eviction petition filed by the Petitioner Smt. Lado under Section 14 (1) (e) of Delhi Rent Act, 1958 (in short 'the DRC Act'), the Petitioner prefers the present petition.

2. In the eviction petition Smt. Lado stated that she was the owner and landlord of Shop measuring 8' x 12' situated in property bearing No.G-85, Aruna Nagar, Majnu Ka Tilla, Delhi. The suit property originally belonged to her mother-in-law Smt. Parvati who executed a Will dated 30th July, 2008 whereby she bequeathed the entire ground floor and two shops on the ground floor adjacent to the narrow gali and the entire floor which was yet to be constructed to Lado. The Will specifically stated that Yaad Ram, husband of Smt. Lado was addicted to liquor and was not looking after the family and thus to take care of her daughter-in-law and the grand children, Parvati was bequeathing the property on her daughter-in-law. Similarly, the other two shops on the first floor and the second floor of the suit property was

bequeathed by Parvati to her younger daughter-in-law Smt. Kamlesh. Smt. Parvati expired on 27th March, 2009 and thus by virtue of the 'Will' Smt. Lado became the sole and absolute owner of the tenanted premises. During the lifetime of Parvati Devi, the tenanted premises had been let out to Nannu Ram, the Respondent herein at a monthly rent of Rs. 300/- including electricity charges. However, he neither paid nor tendered any rent to Parvati Devi and thus she issued a legal notice dated 8th August, 2002 to Nannu Ram which was replied back. After a further legal notice dated 7th August, 2005 a petition under Section 14 (1) (a) of the DRC Act was filed by Parvati Devi which is still pending adjudication. After the death of Smt. Parvati Devi, Smt. Lado has been impleaded as the Petitioner in the petition under Section 14(1)(a) DRC Act.

3. In the eviction petition under Section 14(1)(e) DRC Act which is the subject matter of present petition, it was stated that Smt. Lado has two sons namely Mukesh and Rajinder. The elder son of Smt. Lado Mukesh was aged 30 years and the younger son Rajinder was aged about 20 years. Since the husband of Smt. Lado was not in position to work properly, Mukesh was working as a painter with a contractor however, he wants to open a shop of paint material and Smt. Lado also wants to assist her son in the said work by sitting in the said shop. She has got no other reasonably suitable accommodation available for running the said business. Along with the tenanted premises there is another small shop which was occupied by other tenant for which eviction petition was being filed by Smt. Lado as the same was required for opening a shop for the younger son. The Petitioner also placed on record the Rent Agreement between Parvati Devi and Nannu Ram

and the site plan of the suit property along with the copies of the Will and the Death Certificate of Smt. Parvati Devi.

4. In the leave to defend application Nannu Ram claimed that Smt. Lado was not the owner of the property and thus the petition was not maintainable and that Yaad Ram, the husband of Smt. Lado was the landlord qua Nannu Ram. The elder son of Smt. Lado was employed with a hospital near Chirag Delhi, New Delhi and getting handsome salary and was not interested opening the shop or doing any business. Smt. Lado was 50 years of age and being house lady was not capable to do any business. Further the younger son was studying in ITI and was not also capable to commence the business. It is stated that Smt. Lado had kept one shop locked since last many years wherein no business was commenced and the petition was mala fide to raise the rent of the tenanted premises. The suit property is a three storied and the upper floor is the residential portion having four tenants and on the ground floor there are three tenants.

5. In the reply to leave to defend application Smt. Lado clarified that her son was a painter with a Contractor who was doing the paint work of a hospital and was not employed in the hospital. It was stated that her son because of dearth of accommodation was doing work under one contractor and sometimes he gets work, sometimes he doesn't. Further her son is getting very less salary and is not interested in doing the work with the contractor. Further even though Smt. Lado was approximately 50 years of age she was still capable of doing her own business. The requirement of the other shop is also for the younger son was also reiterated and it was stated that he had completed the course of mobile repairing from ITI Jahangirpuri

and is interested in setting up his own shop. It was also denied that any shop was lying vacant.

6. The learned ARC vide the impugned order dated 2nd August, 2014 held that triable issues were raised as evidence was required to be led to prove the ownership over the tenanted premises and whether there was any need for the elder son of the Petitioner to start his own business and about the alternate vacant shop.

7. Learned counsel for the Petitioner Smt. Lado vehemently contends that all material placed in the form of Will, earlier petition admitting landlord tenant relationship, the death certificate of Smt. Parvati Devi have not been considered by the learned ARC and without discussing the contentions of both the parties vide a cryptic order, finding that triable issues have been made, has been returned.

8. Learned counsel for Nannu Ram on the other hand contends that since Nannu Ram denied the ownership of Smt. Lado the same itself is a triable issue. Yaad Ram, the husband of Smt. Lado is the owner of the premises and thus no eviction petition is maintainable by Smt. Lado. Smt. Lado aged 50 years was a house lady was not capable of doing any business, thus her capacity to do business was a triable issue. Further since the son was in employment there was no need to open a shop.

9. I have heard learned counsel for the parties.

10. Before going into the facts of the case, it would be appropriate to note the legal position with regard to interference in revisional jurisdiction granting leave to defend to the tenant by this Court. 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 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 reappraise 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].”*

11. Thus if the finding of the Trial Court ignores the material placed before it then the impugned order warrants interference as laid down by the Supreme Court.

12. Along with the eviction petition the Petitioner placed on record copy of the rent agreement between Smt. Parvati Devi and Nannu Ram in respect of the tenanted premises which has not been denied. Further in the earlier

eviction petition under Section 14 (1) (a) of the DRC Act the finding of fact that the relationship of landlord-tenant between the parties is admitted is also not denied. In the eviction petition Smt. Lado has specifically stated that in the other eviction petition under Section 14 (1) (a) DRC Act, filed by Smt. Parvati Devi against Nannu Ram, Smt. Lado has been impleaded as Petitioner however, this fact is not denied in the leave to defend application. Smt. Lado has placed on record the Will of Smt. Parvati Devi by virtue of which half portion of the suit property has been bequeathed to Smt. Lado and half to her sister-in-law Smt. Kamlesh. Two shops on the ground floor, that is, the tenanted premises and one small shop adjoining thereto abutting the narrow gali had fallen into the share of Smt. Lado and the other two shops have been bequeathed to her sister-in-law as is evident from the Will and the site plan. No material has been placed along with the leave to defend application to show that the Will is not genuine except a bald assertion made that no probate petition was filed for the Will. It is well settled that in Delhi no probate of Will is required. Nannu Ram has also not filed any counter site plan. It is not the case of Nannu Ram that one out of two shops which have fallen to the share of Smt. Lado are vacant as admittedly one is being with Nannu Ram. Thus, no triable issue was raised on these facts as held by the learned ARC. This Court in Meenakshi vs. Ramesh Khanna and another, 60 (1995) DLT 524 dealing with a case where there was mere denial of ownership by the tenant held:

“(6) In these circumstances, I do not consider that this was a case for grant of leave to contest to the tenant. Mere denial of ownership of the landlord does not mean that every case must be sent for trial involving years. The

Controller has to assess the strength of the case of the tenant regarding denial of ownership of the petitioner. For this, guidelines have already been laid down in various decisions. Mere denial of ownership is no denial at all. It has to be something more. For this, first and foremost thing which has always been considered as a good guide is does the tenant say who else is the owner of the premises if not the petitioner? In the present case, the tenant does not say anything except denying petitioner's ownership. The tenant is completely silent on this aspect. Merely by saying that the petitioner is not the owner, the tenant is trying to ensure that the case drags on for years for trial. If leave is granted on basis of such vague pleas, it will encourage the tenants to deny ownership of the petitioners in every case. The tenants are well aware that once leave to contest is granted, the cases go on for trial for years. Their purpose is achieved. Keeping this in mind, the Controllers should rather have positive approach in such matters so as to discourage such vague and frivolous pleas which are most of the time false to the knowledge of persons raising them.

(7) The object of the requirement contained in Clause (e) that the petitioner should be the owner of the premises is not to provide an additional ground to the tenant to delay the proceedings by simply denying ownership of the landlord of the premises and thereby putting him to proof by way of full-fledged trial. The object seems to be to ensure that the provision is not misused by people having no legal right or interest in the premises. Unfortunately, the Controllers have started misreading the provision which results in converting the proceedings into suits as if they are meant to determine title to property. In proceedings under Section 14(1)(e) of the Act, the tenant is never a contender for title to the property. When the tenant does not even aver that there is any other person having a better title to the property, what is the worth of a plea of denial of ownership of the petitioner? While dealing with the question of ownership in cases under Section 14(1)(e) of the Act, the Controllers

should keep these aspects in mind while considering the application of the tenants for leave to contest.

13. It is further well settled that if a person who is working under a contractor wants to start his business neither the Court nor the tenant can dictate his requirement. There can be no trial to see whether he bona fide wants to change over to the business. Merely because Smt. Lado's son is presently doing job, it cannot be held that a trial is required to prove the need of the elder son of the petitioner to start his own business. Supreme Court in Raghunath G. Panhale (dead) through L.Rs. Vs. Chagan Lal Sundarji & Co. (1999) 8 SCC 1 held

11. It will be seen that the trial court and the appellate court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lockout or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as contended by him and hence not entitled to an order for possession of the shop. This test, in our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lockout" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long-drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long-drawn litigation he started some other temporary water business to

sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant. It is not necessary for the landlord to adduce evidence that he had money in deposit in a bank nor produce proof of funds to prove his readiness and willingness as in a suit for specific performance of an agreement of sale of immovable property. So far as experience is concerned, one would not think that a grocery business was one which required extraordinary expertise. It is, therefore, clear that the entire approach of both the courts was absolutely wrong in law and perverse on fact. Unfortunately the High Court simply dismissed the writ petition filed under Article 227 stating that the findings were one of fact. That is why we think that this is an exceptional case calling for interference under Article 136 of the Constitution of India.”

14. Further the contention that since Smt. Lado was aged 50 years and a house lady with no experience of business, the same is a triable issue also deserves to be rejected. No person is born with experience. Only when one starts a business or profession he/she gains experience. Previous experience is not a necessity to start a business/profession. The Supreme Court in Ram Babu Agarwal vs. Jay Kishan Das, AIR 2010 SC 721 repelling the contention that the landlord had no experience to do business held:-

“7. However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business.

That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.”

15. The respondent has not been able to raise any triable issue. Consequently, the impugned order of the learned ARC suffers from gross illegality, hence is set aside. Leave to defend application filed by the Respondent is dismissed. The eviction petition is allowed. The Respondent Nannu Ram will vacate the tenanted premises on or before six months from the date of passing of the present order.

16. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

MAY 20, 2015
‘vn’