

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

% Judgment pronounced on: November 23, 2015

+ **RC. Rev. No.243/2010**

MST SHAHEEN & ORS Petitioners
Through Mr.S.D.Ansari, Adv.

versus

FATIMA BEGUM Respondent
Through Mr.Satwant Singh, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present revision petition has been filed by the petitioners under Section 25-B(8) of the Delhi Rent Control Act against the order dated 30th July, 2010 passed by Sh.Ajay Goyal, ARC, Tis Hazari Courts, Delhi, in Case No.E-184/08, titled as '*Fatima Begum v. Mst. Shaheen*', by which the trial Court dismissed the application for leave to appear and contest the petition, with directions to handover the vacant possession of the shop in question to the respondent.

2. The respondent-landlord filed an eviction petition under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act, *inter-alia*, alleging that she is the owner of the Shop No.3174, Phatak Teliyan, Turkman Gate, Delhi (hereinafter referred to as the "suit premise") having purchased the same from its previous owner. She or any of her family members has no business/non-residential accommodation in Delhi apart from 3169, Turkman Gate and her husband is doing the motor kabari work at the said property. She and

her husband wants to increase the business so, they require the suit premises. It was also stated in the eviction petition that the respondent (petitioner therein) has four sons, namely, Raisuddin, Jalauddin, Sijauddin and Rehasuddin. The younger sons of the respondent are not doing any work/business as they have no place to work or do the business. The suit premise is also required by the sons of the respondent for doing their work/business.

3. Upon service, the petitioners (respondents in the eviction petition) filed an application for leave to defend, *inter-alia*, disputing the relationship of landlord and tenant between the parties. It was submitted by the petitioners that the respondent-landlord has the sufficient accommodation with her. It is stated that Jalauddin son of the respondent has been residing in property No.833, Rang Mahal, Chandni Mahal, Delhi and is running his shop in property Nos.2180 and 2181, Rang Mahal, Chandni Mahal, Delhi. Another son of the respondent, namely, Raisuddin is residing in property No.3133, Phatak Telian and running his business on the ground floor in the same property. The other two sons, namely, Sijauddin and Rehasuddin are running a shop in Meena Bazar, bearing No.136, Jama Masjid, Delhi. Sijauddin has been residing at property No.L-4, DDA Flats, Turkman Gate, Delhi and is also running a shop in the same flat. He is also having another house bearing No.3174, Phatak Telian, Turkman Gate, Delhi.

4. It was also stated in the application for leave to defend that all the four sons have been residing separately and they are not at all dependent upon their mother as well as for residence purposes.

5. Reply to the above said application was filed by the respondent who has specifically denied that her sons are doing their own business

at separate places as mentioned by the petitioners in their application for leave to defend. It was also denied that the husband of the respondent has a big shop, rather it was stated that it is a very small shop. It was stated that there is a clear relationship of landlord and tenant between the parties. The petitioners have sublet the suit premises and they have been receiving a huge amount as rent to the tune of Rs.18,000/- per month from the tenant. The said fact is denied by the petitioners.

6. Admittedly, the petitioners also filed the rejoinder to their application for leave to defend before the trial court who after having gone through the eviction petition as well as pleadings of the said application has passed the eviction order against the petitioners. It was held that the petitioners have not been able to show the existence of any triable issue, as the respondent was able to show that she has no alternative place available for her to meet out the requirement of accommodation for commercial purposes and she bonafidely required the suit premises for her own use as well as her family members.

7. In a revision petition, the Court is not a fact finding Court as on the basis of the facts placed by both the parties, trial court has passed the orders. The scope of interference is only on limited issues. Reliance in this regard can be put on the following judgments:

- (i) **Mohan Lal v. Ram Chopra & Anr.**, 1982 (2) RCJ 161, wherein a Full Bench of this Court exhaustively considered the provision of Section 25B of the Act. On scope of the proviso to sub-Section (8) of this Section, after examining the judgment of Supreme Court in **Hari Shankar & Ors. v. Rao Girdhari Lal Chowdhury**, AIR 1963 SC 698 and **Bell & Co. Ltd. v. Waman Hemraj**, AIR 1938 Bombay (223), it

was laid down that *the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision under Section 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist, the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act.*

- (ii) In ***Praveen Jain & Ors v. Dr. Mrs. Vimla***, 2009 IV AD (Delhi) 653, it was observed that *the powers of this Court under Section 25B(8) are not appellate powers and this Court has only to see that the Trial Court had acted in accordance with law and not transgressed the limits of its jurisdiction.*
- (iii) In ***M/s John Impex (Pvt) Ltd. v. Dr. Surinder Singh & Ors.***, 135 (2006) DLT 265, it was observed that *what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate Court though the scope of scrutiny in rent revision*

would be more than a revision petition under Section 115 CPC.

- (iv) In **Sarla Ahuja v. United India Insurance Company Ltd.**, VIII (1998) SLT 374, it was held that *the satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the rent controller is "according to law". In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the fact is so unreasonable that no Rent Controller should have reached such a finding on the materials available.*
- (v) In **Ramesh Chand v. Uganti Devi**, 157 (2009) DLT 450, it was held that *while exercising jurisdiction under Article 25B (8), this Court does not act as a Court of appeal. This Court has only to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material available before it.*

8. It is the admitted position that though in the application for leave to defend, the petitioners have made the statement that the sons of the respondent are doing independent business and certain addresses are also given, but at the same time, the said plea of the petitioners was denied by the respondent. In the rejoinder, the petitioners had merely reiterated the averments made in the application for leave to defend. No documentary evidence has been filed in order to show that the sons of the respondent are doing their

own businesses or they are not residing with the respondent. Even at the time of hearing of the revision petition, no material was produced.

9. The trial court has dealt with the pleas raised by the petitioners carefully. The petitioner No.1, who appeared before Court from time to time and earlier she was represented by her counsel appointed by the Delhi High Court Legal Services Committee, had informed the Court that she is the widow having children and she has no source of income. Therefore, in case the Court is not satisfied with the arguments of the petitioners, sufficient time should be granted to the petitioners to vacate the suit premises which may be more than three years being the commercial property.

10. On this aspect, the learned counsel for the respondent submitted that not more than two years should be given, as the petitioners are not paying the rent and though the respondent has a sympathy with the petitioner No.1 being the widow, still she needs the accommodation for her husband and children. Therefore, the respondent was agreeable for two years period. However, new counsel for the petitioners has pressed that the leave be granted to contest the eviction petition on merit.

11. As far as the interference in the impugned order is concerned, I find no merit in the arguments of the petitioners in view of the reasons mentioned in earlier paras of my order. The revision petition is accordingly dismissed. However, considering the overall facts and circumstances of this case and the condition of the petitioners, I am inclined to give three years period to the petitioners from today to vacate the suit premises, i.e. Shop No.3174, Phatak Teliyan, Turkman Gate, Delhi, subject to certain conditions for the main reason that it is a commercial premises and the petitioner No.1 is a widow having

children and there is a hardship and during this period, she would be able to adjust herself and also in view of the judgment passed in the case of **Mohd. Ayub v. Mukesh Chand**, (2012) 2 SCC 155 in which it was observed that *"the hardship Appellants would suffer by not occupying their own premises would be far greater than the hardship the Respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the Respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement."*

12. In view of the above and in the interest of justice, equity and fair play, the petitioners are granted time for three years period from today to vacate the suit premises, subject to the condition that the petitioners shall pay the agreed rent to the respondent regularly and all the petitioners will also file an undertaking before this Court within a period of four months that they will hand over the vacant and peaceful possession of the suit premises to the respondent after the expiry of three years from today and they shall not create any third party interest in the suit premises during this period.

13. No order as to costs.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 23, 2015