

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

+ **RC.REV. 404/2014**

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Reserved on: 20th April, 2015

Decided on: 19th May, 2015

RAJ RANI

..... Petitioner

Through Mr. S.S. Jain with Mr. Nikesh Jain,
Advts.

Versus

KASHMIRAN MATHUR @ KASHMIRAN SAHAI & ANR

..... Respondent

Through Mr. Kirti Uppal, Sr. Adv. with Mr.
Ajit Dayal and Mr. Sidharth Chopra,
Advts.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 7th May, 2014 granting leave to defend to the respondents, the petitioner Smt. Raj Rani who filed an eviction petition under Section 14(1)(e) of the DRC Act prefers the present petition.

2. In the eviction petition filed by Raj Rani against Kashmiran Mathur and sons of late G.S. Mathur, Raj Rani stated that she was the sole, exclusive and absolute owner of the property bearing No. 1, Maharaja Lal Lane, Kirpa Narain Marg, Civil Lines popularly known as "Studio Building" forming part of 1, Maharaja Lal Lane vide the sale deeds dated 17th May, 1996, 23rd July, 2001 and the release deed dated 19th January, 1998, all registered documents. The suit property consists of ground floor and first floor which are mutated in the name of Smt. Raj Rani in the records of MCD and she

was regularly paying house tax for the suit premises. The respondents were tenant in respect of half portion of the ground floor (Northern side) of the premises known as “Studio Building” and the last paid rent was ₹ 234/- per month. The tenanted premises comprises of three bedrooms on the (Southern side) on the ground floor. Raj Rani and her family were in occupation of three bedrooms one pooja room, one kitchen, toilet at the first floor. The remaining portion of the first floor i.e. one room was with the tenant Shri Girdhari Lal. The family of Raj Rani comprises of herself, her husband, her son aged 30 years, his wife and a grand-daughter besides her unmarried daughter aged 24 years and unmarried niece aged 26 years. The family also has an old servant Ram Bahadur Thapa who requires a separate room. Thus, the requirement of the family was at least of four bedrooms, one drawing room, one dining room, two guest rooms, one study room, one servant room, one pooja room and one office room besides three store rooms. Therefore, the tenanted premises was required bonafidely.

3. In the leave to defend application the respondents took the plea of material concealment. It is stated that the site plan was wrong. The accommodation available with the respondents were two bedrooms, one bathroom and one drawing-cum-dining room, one common verandah on the ground floor which is half of the accommodation available on the ground floor and the other half is with another tenant. Raj Rani has in her possession four bedrooms. A site plan was filed by the respondents disputing the site plan filed by Raj Rani. It is stated that there was no tenant in the name of Girdhari Lal on the first floor. Even as per the site plan there was a pooja room on the first floor. There was one room above the first floor on the terrace which was being used as a servant room. The daughter

and the niece have one room independent to themselves. The petitioner has a drawing room for visiting guests besides four bedrooms and thus the requirement is not bonafide.

4. The learned ARC vide the impugned order came to the conclusion that in view of the disputed site plan whether there was a tenant on the first floor, a servant room with bathroom on the terrace of the first floor and separate pooja room, triable issues were raised and hence leave to defend was granted.

5. Learned counsel for the petitioner states that in the leave to defend application the need of the petitioner and her dependent family was not disputed and thus leave to defend should not have been granted. Learned counsel for the petitioner relies upon decision of this Court in Manju Devi Vs Pratap Singh RC.REV.375/2014 decided on 11th February, 2015, Shri Sukhbir Singh Vs. Dr. I.P. Singh 2012 2 RCR Rent 409 and Benson Shoes Vs. Chunni Lal Takkar 167 (2010) DLT 678.

6. Learned counsel for the respondent relying upon the decisions in Precision Steel & Engineering Works & Anr. Vs. Prem Deva Niranjan Deva Tayal (1982) 3 SCC 270; Bharat Glass & Plywood Co. Vs. Sushan Pal Soni RC Rev. 46/2013 decided on 21st March, 2014 and Santosh Devi Soni Vs. Chand Kiran JT 2000 (3) SC 397 states that whether there is a bonafide requirement made out or not is an issue which requires trials and the learned ARC rightly granted leave to defend.

7. Heard learned counsel for the parties. Constitution Bench of the Supreme Court in Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh (2014) 9 SCC 78 clarifying the scope of interference by the High Court in a petition under Section 25B(8) DRC Act 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].

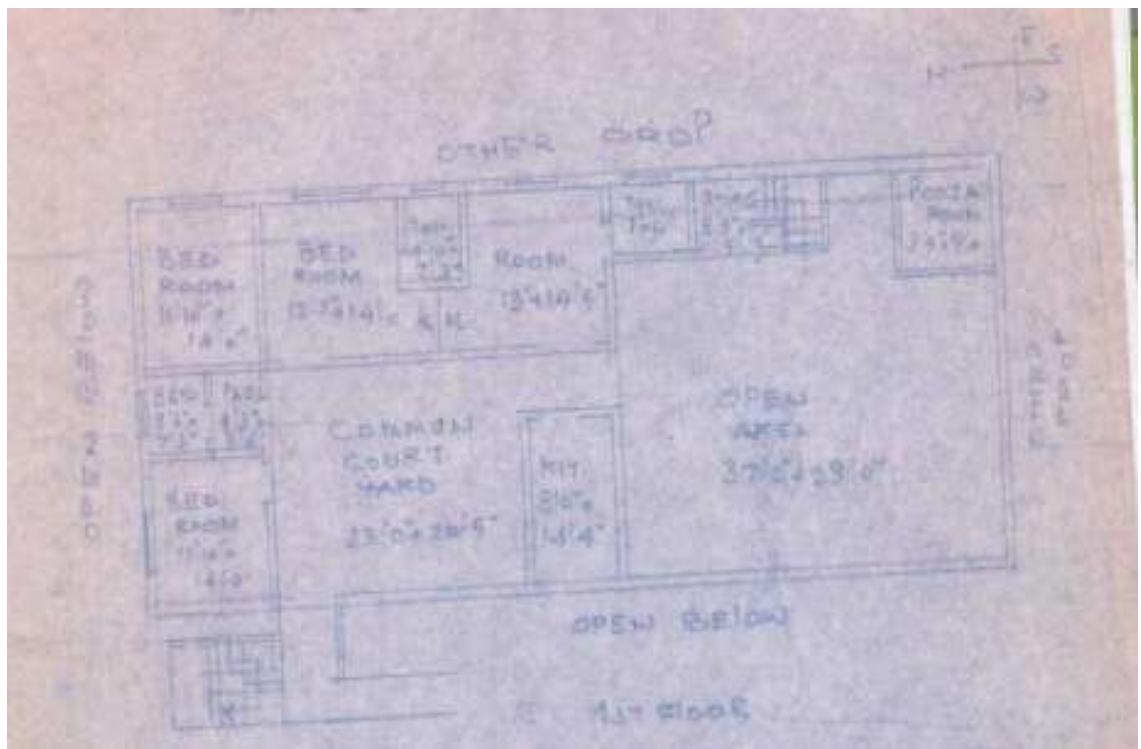
33. Rai Chand Jain [Rai Chand Jain v. Chandra Kanta Khosla, (1991) 1 SCC 422] that follows Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] also does not lay down that the High Court in exercise of its power under the Rent Control Act may reverse the findings of fact merely because on reappreciation 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

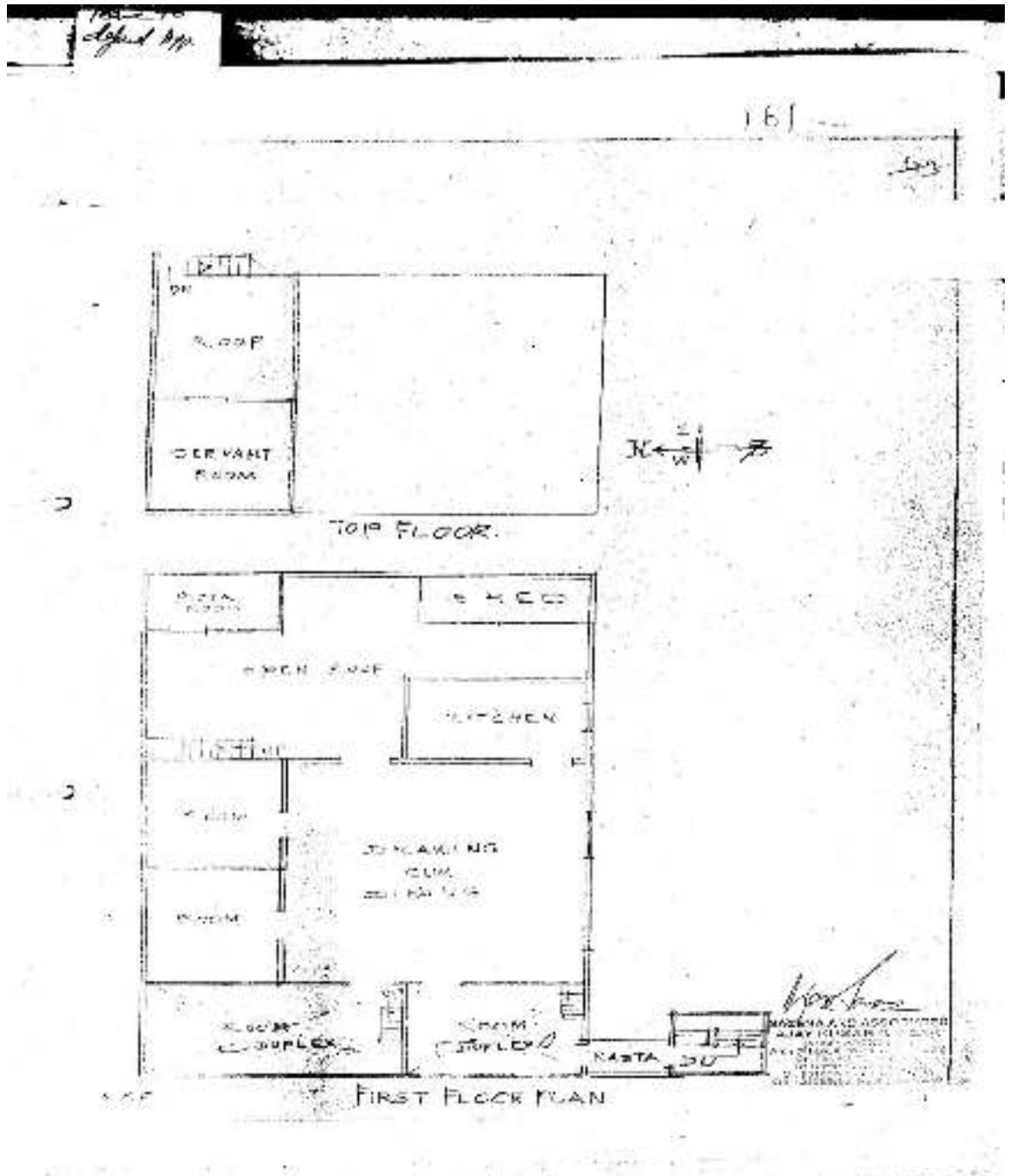
wrong premise of law or derived such conclusion from the established facts which betray lack of reasons and/or objectivity which renders the finding not according to law. Shiv Sarup Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] also does not lay down the proposition of law that in 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].”

8. As noted above, the respondents do not dispute the family size of the petitioner. The dispute revolves around the two site plans. It would be thus appropriate to note the two site plans.

Site Plan filed by petitioner



Site plan filed by respondents



9. In the site plan filed by the petitioner the area shown by the respondent as drawing-cum-dining room is shown as a common courtyard. Undisputedly the entry to all the rooms of the first floor is through this common place and thus it cannot be strictly called as a drawing room but a common living room. Further even as per the site plan filed by the respondent there are stairs in two bedrooms and are shown as duplex rooms. Admittedly the petitioner does not have the ground floor in her possession and thus it is not known how the said two rooms have been shown as duplex rooms. In the site plan filed by the respondent the fourth room is shown through a passage which has an entry outside. The area depicted by both the site plans is same and the arrangement of the rooms is also the same and the only issue is whether they can be used as proper rooms or not and are sufficient for the requirement of the petitioner's family. The respondent has not disputed that the niece of petitioner was not living with her. Thus, even if all the family members have one room each even accepting the site plan filed by the respondent it is clear that there is no room available for the guests and the so-called drawing room in the site plan of the respondent was a common area which could at best be used as a common living room.

10. This Court in Benson Shoes (supra) held that if a room is a passage to the different rooms, the same cannot be termed as a room as nobody can live in privacy in the said room and if other occupants of the room have to pass through the said place the same cannot be termed as a living room, the same would at best be a lobby. Indubitably, even as per the respondent the petitioners are not having a separate drawing room, dining room, separate room for guests and thus it cannot be said that the requirement is not bonafide. The learned ARC failed to notice that the two site plans were

almost identical and even if leave to defend was granted, no material evidence would have come on record.

11. The Supreme Court in *Precision Steel (supra)* relied upon by learned counsel for the respondent noted the various grounds on which leave to defend can be granted. It was held

22.The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in sub-section (5) of Section 25-B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts — no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant leave because the statute says “on disclosure of such facts the Controller shall grant leave”. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.”

12. As noted above, the respondent has not been able to demonstrate that the accommodation with petitioner is sufficient or that he has some other alternative accommodation or that the petitioner has let out some other premises on rent. The only ground urged in leave to defend application is that the petitioner has sufficient accommodation, which as demonstrated above even on the basis of the site plan filed by the respondent himself is not sufficient.

13. Consequently, the petition is allowed. The leave to defend application is dismissed. The respondent would vacate the premises on or before six months from the date of the order.

(MUKTA GUPTA)
JUDGE

MAY 19, 2015
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