

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

+ **RC.REV. 375/2014**

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Reserved on: 11th February, 2015

Decided on: 23rd February, 2015

MANJU DEVI

..... Petitioner

Through Mr.J.K. Jain, Adv.

versus

PARTAP SINGH

..... Respondent

Through Mr. S.L. Sharma, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the judgment dated 24th September, 2014 whereby the eviction petition under Section 14(1)(e) read with Section 25B(4) of the Delhi Rent Control Act, 1958 (in short the DRC Act) was dismissed, the petitioner prefers the present petition.

2. In the eviction petition, the petitioner claimed that the suit property being 48/29, Anand Parbat, multi-storied building was purchased by the petitioner vide sale deed dated 3rd March, 2008. At the time of the purchase of the property the respondent was a tenant in respect of a shop on the ground floor which had been let out by the erstwhile owner @ ₹200/- per month. After the petitioner purchased the property, the respondent started paying the rent to the petitioner. Eviction of the respondent from the tenanted premises i.e. a shop measuring 6 feet 5 inches x 9 feet 8 inches was sought as the step son of the petitioner Vivek Kumar, who was aged 21 years

and had passed 12th standard and was unemployed, wanted to run a provisional store. The petitioner had no issue from the wedlock. The petitioner further stated that the respondent had unauthorizedly and illegally constructed a tin-shed in front of the shop on public passage and the room adjacent to the shop in question had been let out to a tenant in order to get some additional income in the form of rent as it was difficult to run the house with the meager salary of the husband of the petitioner. The first floor and upper-ground floor of the suit property was used for the residential purposes by the petitioner, her husband and the son. Further the father-in-law of the petitioner also used to often visit his son and live in the premises besides sister-in-law. It was further stated that on the second there is only one room, bathroom and kitchen which were also under the tenancy for the residential purposes. Thus, the petitioner had no other alternative accommodation for setting up the shop of the son and he was financially dependent on the petitioner and her husband for the purpose of accommodation. Learned counsel for the petitioner relies upon a decision of this Court in Shri Dina Nath (Now deceased) Through His Legal Heirs Vs. Shri Manohar Lal Kapoor RC.REV.300/2012 decided on 7th November, 2014.

3. On the leave to defend application being allowed written statement was filed by the respondent wherein the respondent took the plea that the petitioner has various properties in Delhi i.e. property bearing No.717-B/17-G, Faridpuri, Anand Parbat which comprises of a big hall on the ground floor, one room, kitchen, bathroom, latrine at the first floor and another residential-cum-commercial house in Sagarpur, New Delhi. It was stated

that tenanted shop was in occupation of the respondent before the petitioner purchased the property since 1970. Further the petitioner has another shop in the above said property at ground floor adjoining the shop of the respondent which has been let out to a tenant @ ₹400/- per month and Shri Niranjana is doing the business from the said shop. The petitioner has wrongly shown this shop which is under the tenancy of Shri Niranjana as a room on the ground floor in the site plan. It was stated that the second floor was in use and occupation of the petitioner where she is residing with her family members and first floor and third floor portions have been let out to tenants. Thus, the petitioner has concealed real and true facts from the Court. It was further stated that Vivek Kumar was the step son of the petitioner and was living with his maternal grand-parents in village Madipur, New Delhi, attending school at Madipur and that he has not been living with the petitioner nor is he a member of the petitioner's family. The petitioner has filed false documents and the shop was not required for the alleged bona-fide need.

4. In the replication the petitioner clarified that Niranjana was not a tenant in a shop but in a room at the back of the tenanted shop which was hardly 5 feet x 10 feet and thus no work could be done over there, though it was admitted that Niranjana was admitted as a tenant after purchasing the property to get some additional income in the form of rent as it was difficult to run the house with the meager salary of the husband of the petitioner. Further first floor accommodation could not be used for opening a shop. The petitioner denied that she herself or any of her family member owned property 717G Faridpuri, Anand Parbat. It was stated that the husband of the petitioner has

a small property at 717G Faridpuri which was measuring 50 sq.mtr. which consisted of a hall on the ground floor and is already being used as a go-down by the tenant. On the first floor also there was an old tenant. Since property was not vacant and available, the petitioner's son cannot start any business there. With regard to the residence of the petitioner's son it was stated that Vivek Kumar was earlier living with his maternal grand-father at village Madipur when his mother died when he was three years old. He lived at Madipur up till Class 10. During this period he used to come and live with his father off and on. After passing 10th class he started living with his father and used to attend school from the suit property itself.

5. The parties led their evidence. The learned ARC held that admittedly a portion of the suit premises had been let out to Niranjana who makes and sells auto parts from there meaning thereby a shop adjoining to the tenanted shop was available and not a room as mentioned in the site plan as well as in the eviction petition and the said shop was bigger in area from the tenanted shop, as reflected in Ex.PW-1/1. It also held the property at 717G Faridpuri which was in the name of the husband of the petitioner not disclosed. However, these non-disclosures were not fatal to the petitioner as both the premises were under tenancy and the respondent/tenant cannot dictate as to which shop has to be got vacated. However, on the issue that the petitioner bonafidely required the premises for use of her step son the learned ARC held that for the reason that neither the photocopy of the CBSE certificate nor the school certificate of the petitioner's son or the Voter ID Card, Adhar Card etc. was produced to show that he had been living with her, it was required to be presumed that if such evidence was produced the same would

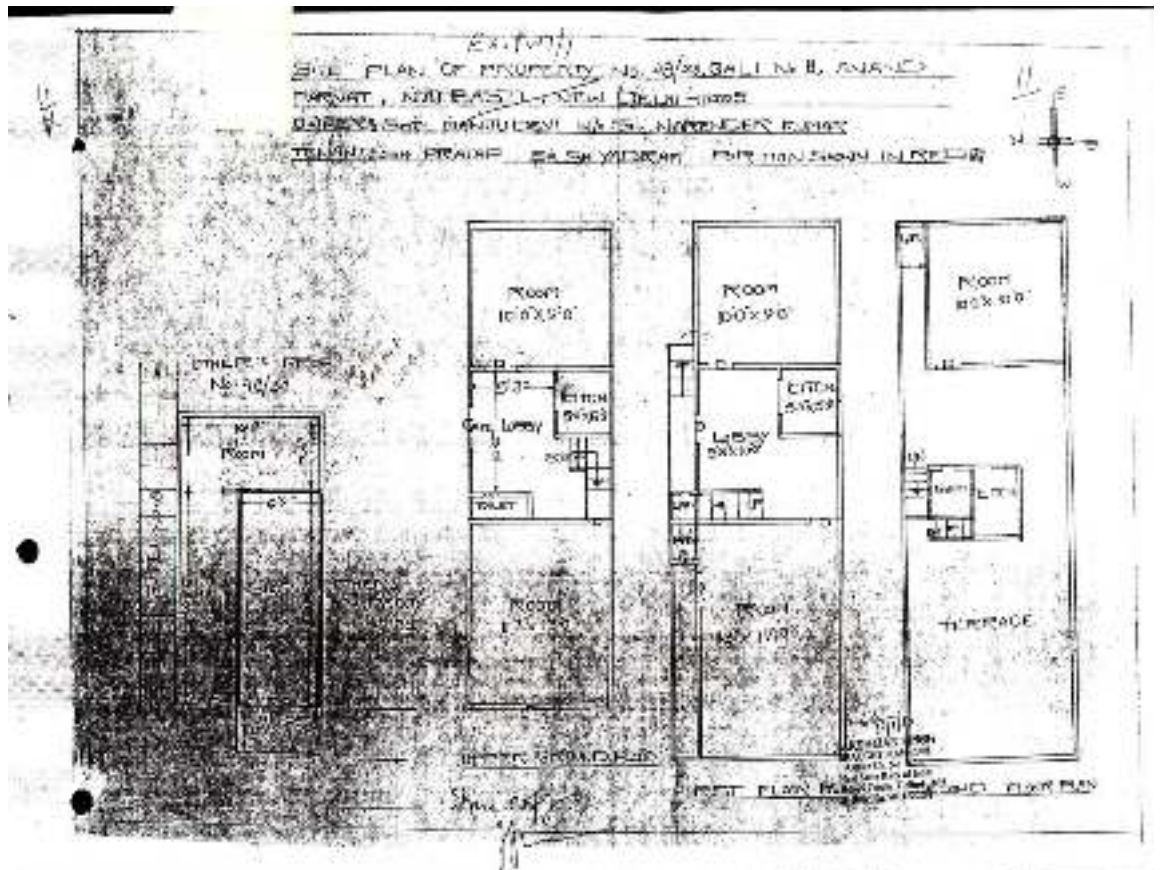
have been unfavourable to the petitioner. Further, Vivek Kumar for whose benefit the property was required has not appeared in the witness box and the petitioner/landlady has miserably failed to prove that Vivek was living with her and was dependent on her. Having accepted the contention of the petitioner with regard to the alternative property, however in conclusion the learned ARC held that even though landlord is the master of the requirement however she was required to come with clean hands. It was held that the petitioner having failed to prove that her step son was living with her and her husband and was dependent on them for the purpose of accommodation or financially, when admittedly he was not living with the petitioner since her marriage, dismissed the eviction petition.

6. Heard learned counsel for the parties and perused the records. Undoubtedly the petitioner has not disclosed property 717G Faridpuri which was owned by her husband in the eviction petition. The same being on rent is not disputed and it is also well settled that if the other accommodation is not suitable then the landlord need not disclose the same in the eviction petition. In Surinder Singh Vs. Jasbir Singh 172 (2010) DLT 6117 this Court held -

“25. The mere fact that, respondent did not disclose the accommodation of basement and first floor available with him in the eviction petition, would not prove fatal to the present case, since the same cannot be said to be an alternative suitable accommodation for the purpose of business.”

7. In the eviction petition though the petitioner has not stated that the area adjoining that of the respondent's shop was used as a shop and has been stated to be a room, however a perusal of the site plan, which was duly filed

with the eviction petition and has been exhibited as Ex.PW-1/1, would show that no fault could be attributed to the petitioner if the same was not a suitable accommodation for the shop. As per the site plan Ex.PW1/1 the shop with Niranjana was on the back of the tenanted premises (shown in dark outline below) with a passage of 3ft. leading to it.



8. Thus, there is a passage of 3 feet only leading to the shop at the back which is 5 feet 9 inches in width and 10 feet 2 inches in length. It is well-settled that a shop in the front is always suitable for running the business and hence the learned ARC rightly held that the non-disclosure of this room at the back being used as the shop was not fatal because even if someone is running business from the said shop it was for the petitioner to decide which

shop was more suitable to settle her step son in business. Thus, the learned ARC rightly held this point in favour of the petitioner in view of the fact that the landlord is the best judge of his requirement.

9. However, the moot question in this case is whether the petitioner has been able to prove that Vivek Kumar was dependent on the petitioner and her husband. Admittedly, Vivek Kumar was not living with the petitioner and her husband after her marriage and was living with his maternal grandparents till 10th standard. The only document placed on record to prove the residence of Vivek Kumar with the petitioner is a ration card where the name of Vivek Kumar has been mentioned. The ration card was issued on 20th October, 2005 wherein his year of birth is mentioned as 1993. Admittedly till 10th standard Vivek Kumar was not living with the petitioner but was on and off coming to meet his father. On 28th October, 2005 Vivek Kumar was aged around 12 years and thus could not have completed 10th standard. As no other document was placed on record the learned ARC came to the conclusion that Vivek Kumar was not dependent on the petitioner for the accommodation.

10. The Supreme Court in *Joginder Pal Vs. Naval Kishore Behal* (2002) 5 SCC 397 while dealing with a similar provision under Section 13(3)(a) (ii)(a) of the East Punjab Urban Rent Restriction Act, interpreted the expression, “for his own use” and held –

“24. We are of the opinion that the expression “for his own use” as occurring in Section 13(3)(a)(ii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself

require the accommodation and to fulfil the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove, we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependants and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. 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. If the requirement is of actual user of the premises by a person other than the landlord himself the court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by the landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act."

11. It is not the case of the respondent that Vivek Kumar is earning his livelihood by doing some other work. The factum of his education being up to 12th standard and he being aged 23 years at the time of filing of the eviction petition is also not disputed. Learned ARC failed to draw the distinction between dependency for the purposes of residency and the dependency for settling in a vocation for which the commercial premises was required. Merely by living with the maternal grandparents after the death of his mother would Vivek lose the status of being dependent on his father and step-mother for settling him in a vocation is the question which arises for consideration. Testing the facts of the case on the touchstone of law laid down by the Supreme Court i.e. “whether there is a close interrelation or identity nexus between the landlord and such person so that the requirement of the said person has to be treated as the requirement of the landlord”, it can be safely held that a father/mother including a step father or a step mother will not be absolved of the responsibility to settle their son to earn his livelihood even if he has been staying with his maternal grandparents.

12. In Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta (1999) 6 SCC 222 the Supreme Court laid down the law in relation to scope of interference by the High Court in a petition under Section 25B(8) DRC Act which was further clarified by the Constitution Bench in Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh (2014) 9 SCC 78 wherein it was 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 reappraisal 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

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].”

13. As the finding of the learned ARC is contrary to the law laid down by the Supreme Court in Joginder Pal (supra) hence the impugned judgment is set aside. Eviction petition is allowed. The respondent is directed to vacate the premises in six months from the date of this order.

(MUKTA GUPTA)
JUDGE

FEBRUARY 23, 2015
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