

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

+ CM(M) 1041/2014

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Reserved on: 21st April, 2015
Decided on: 14th May, 2015

AGYA RAM ARORA Petitioner
Through Mr. Sandeep Kumar, Adv.

versus

SURJEET MECH. TOOLS Respondent
Through Mr. Shiv Kumar Sharma, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 16th October, 2014 granting leave to defend to the respondent in an eviction petition filed by the petitioner under Section 14(1)(e) of the DRC Act, the petitioner Agya Ram Arora prefers the present petition.

2. In the eviction petition Agya Ram stated that he was the owner of property bearing No. 1017/342, Gali No.4, Industrial Area, New Rohtak Road, Delhi (in short the suit property). On some portion of the ground floor of the suit property Agya Ram was doing the business of electroplating. Another shop on the ground floor as well as the first floor of the suit property were being used for the purpose of manufacturing and retailing auto-parts which was a business run in the name of his wife. However, his two sons managed the said business effectively. The business of

manufacturing auto-parts was successful and thus Agya Ram took another premises on rent. It is stated that both sons of Agya Ram were dependent on him and for the purpose of expansion of their business, the tenanted premises which was a shop on the ground floor of the suit property with M/s. Surjit Mechanical Tools, the respondent herein was required.

3. In the leave to defend application the respondent stated that Agya Ram was having a huge residential accommodation measuring 100 sq.yds. which was three storied. The area was now commercial and thus Agya Ram could use the said property also for commercial purposes. About one and a half year ago Agya Ram had purchased commercial accommodation at Anand Parbat Industrial Area, though the respondent could not give the particulars/details of the said premises. Further in the suit property three-fourth of the ground floor and the entire first floor was with Agya Ram which was in excess of Agya Ram's requirement. The site plan was filed. The respondent was paying rent regularly to Agya Ram but he is avoiding taking the rent since January 2011. No other plea was taken in the leave to defend application.

4. In the reply to the leave to defend application Agya Ram stated that no triable issue was raised. He reiterated his contention of paucity of accommodation. He denied that his residential accommodation was huge built up to three storied and the area having become commercial, the same could be used for commercial purpose. It was stated that residential property was only 75 sq.yds. which comprised of ground floor and first floor having two rooms each and the same was highly inadequate for his family which comprised of himself, his wife and the families of his two married sons. He further denied having purchased any commercial accommodation at Anand

Parbat Industrial Area. It was stated that the first floor and the three portions of the ground floor of the suit property were being used by the petitioner and both his sons and thus it cannot be said that the accommodation was in excess. The fact that the rent was not being taken was denied and it was stated that in fact the respondent was not paying the rent.

5. An application under Order 6 Rule 17 CPC was filed by the respondent for amendment of the leave to defend application wherein the respondent sought to add further ground that the suit property had already been acquired by the Government and thus the provisions of DRC Act were not applicable as per Section 3 of the DRC Act. It was stated that Agya Ram concealed material fact that the suit property had been acquired. It was further stated that the suit property was situated at Gali No. 4, Anand Parbat Industrial Area which was known as Ramjas Estate and in the revenue record it was known as Village Shahdora, Khurd, Delhi. There were hundreds of unauthorized occupants in the property and the area falls under the slum area thus the Slum Area Improvement and Clearance Act, 1956 was applicable.

6. In reply to the application Agya Ram denied that the suit property was vested with Ramjas Foundation or was later acquired by the Government or DDA. He reiterated that landlord tenant relationship between the parties stood admitted.

7. The learned ARC relying upon additional affidavit granted leave to defend on the ground that in view of the Government Notification dated 3rd October, 1997, 12th December, 1998, 23rd July, 2001 as well as RTI reply dated 26th September, 2013 the suit property stood acquired and thus a serious triable issue was raised qua the title of the suit property. With regard to bonafide requirement it was held that the business was in the name of the

wife of Agya Ram and his sons were doing business, thus it has to be seen whether the wife and sons of Agya Ram were financially dependent on him or not, hence a triable issue was raised regarding the bonafide requirement of Agya Ram as well.

8. Learned counsel for the petitioner before this Court contends that contrary to the principles laid down by the Supreme Court in Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15 additional grounds were permitted to be added in the leave to defend application beyond statutory period of 15 days. Further it is well settled that even if the suit property is acquired and an award passed the landlord can still maintain a suit for eviction. Reliance is placed on Sheela Jawarlal Nagori & Anr Vs. Kantilal Nathmal Baldota & Ors. JT 2014 (4) SC 443; Tilak Raj Aggarwal & Anr. Vs. DDA & Ors. MANU/DE/1336/2009; State of AP & Ors. Vs. D. Raghukul Pershad (d) by LRs & Ors. 2012 (8) SCC 584 and Meena Devi & Ors. Shiv Prasad 217 (2015) DLT 108. Admittedly, petitioner and respondent are in possession of the premises and the possession has not been taken over by the DDA, hence no triable issue was raised. Even if the sons of the petitioner were doing business with the petitioner in the name of their mother no triable issue was raised qua the bonafide requirement.

9. Learned counsel for the respondent states that the amendment in the leave to defend application was carried out pursuant to a consent order. Thus, the petitioner cannot now challenge the same. The award was passed in the year 1995. After passing of the award respondent had not paid the rent to the petitioner. Even the order of possession has taken place, hence triable issues having been raised, there is no illegality in the impugned order.

10. I have heard learned counsel for the parties. In *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 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 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. It is trite law that the time for filing leave to defend application cannot be extended beyond 15 days as held in Prithipal Singh (supra) and any amendment sought which is not a subsequent event would have the effect of permitting extension of time in filing the leave to defend application. Even if the order permitting the amendment to the leave to defend application was a consent order; it is well-settled that parties cannot consent to an order being passed which is otherwise legally impermissible.

12. Be that as it may, there is no dispute that as on date both Agya Ram and the respondent are in possession of the suit property. In Sheela Jawarlal Nagori (supra) the Supreme Court referring to Section 6 of the Land Acquisition Act, 1894 (in short the Act) held that it enables the acquiring authority to take possession of acquired land and when that is taken it would

be free from all encumbrances. Thus, as long as physical possession is not taken over, the suit for eviction of the tenant by the landlord even after passing of the award under the Land Acquisition Act was maintainable. In Special Land Acquisition Officer Vs. Godrej and Boyce (1988) 1 SCC 50 the Supreme Court held that Section 50 of the Land Acquisition Act makes it clear beyond doubt that the title of the land vests in the Government only when possession is taken over by Government. Till that point of time the land continues to be with the original owner and he is also free to deal with the land just as he likes. It was held that under the scheme of Act neither the notification under Section 4, nor the declaration under Section 6, nor the notice under Section 9 of the Act was sufficient to divest the original owner or other person interested in the land of his rights therein. Thus, contrary to the law laid down by the Supreme Court the learned ARC held that a triable issue was raised in view of the award having been published.

13. This brings to the next ground on which leave to defend has been granted. The learned ARC held that Section 14(1)(e) DRC Act stipulates that such members must be dependent on the petitioners. Thus, whether the sons of Agya Ram were dependent on him was a triable issue. The averments in this regard in the eviction petition are:

“2. That the petitioner is doing the business of electroplating from the ground floor of the premises (as specifically shown in the site plan) in the name of Rosy Electroplating wherein the petitioner is the proprietor of the same.

3. That the wife of the petitioner is also running the business of manufacturing and retailing of auto parts of the premises and the first floor portion of the premises is used for the manufacturing of the same and one shop at ground floor is

used for the storage of the parts manufactured (as specifically shown in the site plan).

4. That it is pertinent to mention that although both the business are being in the name of the petitioner and her wife, the said business are now being run by their sons namely Rajeev Arora and Ashish Arora.

5. That the family of the petitioner and their sons is growing and in today time of increasing cost of living the petitioner is continuously under pressure to expand the business for more earning. That due to the growing need and due to the paucity of accommodation the wife of the petitioner took one premises on rent in July 2012 at HR Road, Pot No.13, Anand Parbat Industrial Area i.e. nearby to the premises in question but the same got sealed and thereafter the wife of the petitioner has taken the new premises at HR-35, Anand Parvat Industrial Area, New Delhi on monthly rent of ₹5500/- to carry out the business of its proprietorship concern namely Rosy Sales Corporation.

6. That the shop under the tenancy of the respondent is required bonafidely to the petitioner as the same is required for carrying out the business of Rosy Sales Corporation which is required to be used for trading purpose as the space available for the godown purpose on the ground floor is not sufficient for the wife of the petitioner to carry out its business of the storage/godown due to which the tenanted space has also being taken by the wife of the respondent which is causing huge financial burden to the petitioner and embarrassment to the petitioner.”

14. From the facts noted above, it is thus clear that the business of Agya Ram of electroplating in the name of Rosy Electroplating and that of his wife of manufacturing and retailing auto parts is now being run by their sons Rajiv and Ashish. The growing need of the accommodation is evident from the fact that wife of Agya Ram took premises on rent in July, 2012 at HR

Road, Plot No.13, Anand Parbat Industrial Area which was sealed and thereafter she has taken another premises on rent at HR-35, Anand Parbat Industrial Area, New Delhi on monthly rent of Rs.5500/-.

15. Whether the sons are dependent on Agya Ram for expansion of business has to be inferred from the averments in the eviction petition. No material has been placed by the respondent to show that the sons have their own accommodation which can be used for commercial purposes. It is not denied that the sons have joined the business of parents and thus, it is being run like a joint family business. Section 14(1)(e) of the DRC Act permits eviction of the premises which are required bonafide by the landlord for occupation for himself, or for any member of the family dependent on him. Supreme Court in Joginder Pal Vs. Naval Kishore Behal (2002) 5 SCC 397 while considering the ambit of the expression “for his own use” as used in Section (13)(3)(a)(ii)(a) East Punjab Urban Rent Restriction Act, 1949 held that the expression cannot be construed narrowly and must be assigned 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 fulfill 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 dependant or who is dependent on the landlord can be considered to be the requirement of landlord for his own use. It was further held that 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. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on variety of factors such as interrelationship and interdependence – economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong. The tests to be applied are (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement, and (ii) whether on the facts and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by the landlord as "his own" occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as "his own" and the person who actually would use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The court on being satisfied of the reasonability and genuineness of the claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

16. Applying the test laid down by the Supreme Court, it is clear that the business of Agya Ram and his wife are now being run by their sons who are thus dependent on them and Agya Ram and his wife dependent on their sons for running their business. No material has been placed on record to show that after the sons of Agya Ram are running the business, Agya Ram and his wife have opened either business for themselves. Hence the requirement of

Agya Ram for expansion of his and his wife's business which are now being run by their sons is the requirement of the landlord for himself and for members of his family dependent on him and cannot be said to be a triable issue as held by the learned ARC.

17. Consequently, the order is set aside being contrary to the law laid down by the Supreme Court. Leave to defend application filed by the respondent is dismissed. The respondent would vacate the premises on or before six months from the date of this order.

18. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

MAY 14, 2015
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