

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

+ **RC.REV. 399/2014 & CM No.20460/2014 (Stay)**

% Reserved on: 7th January, 2015
Decided on: 4th February, 2015

GULSHAN RAI MONGA Petitioner
Through Mr. Jugal Wadhwa, Mr. Rishab
Wadhwa and Mr. Parth Kaushik,
Advts.
versus

SANJAY MALHOTRA & ORS. Respondents
Through Mr. S.C. Singhal, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J.

1. The petitioner is aggrieved by the order dated 20th August, 2014 whereby the application of the petitioner for leave to contest the eviction petition under Clause (e) of Section 14(1) of DRC Act, 1958 filed by the respondents was dismissed.

2. Respondent No.1 is the son of late Baldev Raj Malhotra and respondents No. 2 to 6 the legal heirs of late Rajesh Malhotra son of late Baldev Raj Malhotra being the wife and four children. The petitioner is a tenant in one shop in property bearing No. HS-23, Kailash Colony Market, New Delhi owned by Baldev Raj Malhotra on whose demise the same devolved on his legal heirs. The respondents pleaded that late Baldev Raj Malhotra and his wife late Saroj Malhotra who died on 16th May, 1998 and

10th December, 1999 respectively were survived by two sons and four daughters namely late Rajesh Malhotra, Sanjay Malhotra, Neeru Kapoor, Shashi Gulati, Indu Sachdeva and Renu Arora. The four daughters relinquished their shares in the said property in favour of Rajesh Malhotra and Sanjay Malhotra where after they agreed to be owners of 45% and 55% of the said property which was to be re-constructed but the re-construction could not be done for various reasons. In the meantime Rajesh Malhotra died intestate on 16th November, 2013 leaving behind respondent No.2 his widow, and respondent No.3 to 5 his daughters and respondent No.6 his son who are all unmarried. The parties thereafter mutually decided to own the property in equal shares i.e. 50% to Sanjay Malhotra and 50% to respondent No. 2 to 6 jointly.

3. In the eviction petition it is claimed that the shop in question was required bonafidely by the respondent Nos. 2 to 6 for commercial purposes as Rajesh Malhotra and Sanjay Malhotra were having a small tenanted shop at Dariba Kala, Chandni Chowk and landlord's Eviction Petition No.88/2009 was pending in Tis Hazari Courts. Rajesh Malhotra and Sanjay Malhotra were carrying on business of jewellery in the said shop and the place being congested it was not possible for respondents No.2 to 6 to carry on the said business over there. Moreover, they have no experience in the business of jewellery. Respondent No. 2 to 6 have no other source of income. Respondent No.3 to 5 are unmarried grown-up daughters of respondent No.2 and respondent No.6 is the younger son aged about 22 years studying in BBA who will also eventually do business. Respondent No.3 aged 30 years has completed the course of Choreography and is running a boutique from

the residence as no commercial space is available. Respondent No.4 who is 28 years old has done diploma in hospitality management especially in Patisserie and also has no commercial space to carry on the business. Similarly respondent No.5 aged 24 years has done diploma in hotel management and is also unable to do her own business and is presently working as a sales-girl in Khan Market. The wife of respondent No.1 Shivani Malhotra is a law graduate and a practicing lawyer who also needs a regular office in a commercial place. In view thereof besides the petitioner's shop the respondents also filed eviction petition against two other shop owners in the said premises wherein also orders were passed in favour of the respondents. It is stated that the first floor of the premises consisting of three rooms including drawing and dining room with a store room are in possession of respondents No.2 to 6 who are using the same for residential purposes. The second floor consisting of same number of rooms is being used by respondent No.1's family for residential purposes. The respondent No.1's family consists of himself, his wife and two daughters aged 15 and 13 years who are also school going. Both the daughters of respondent No.1 are residing at the second floor as well as ground floor. In the ground floor besides these three shops there are two rooms on the back side, two toilets and motor room with front yard which is being used for parking right from the very beginning. In terms of the compromise the family of respondent No.2 to 6 is residing on the first floor and is also occupying one room on the ground floor and two rooms on the mezzanine floor. It is further noted that the respondent No.1 has another residential premises measuring 923 sq. ft. first floor, F-38, South Extension which cannot be used for commercial purpose and respondent No.2 to 6 have no legal right qua the said property.

It is thus urged that in view of the bonafide requirement of earning a regular livelihood by the respondents the premises be directed to be vacated.

4. The petitioner herein filed leave to defend application within the statutory period. The prime contention of the petitioner is that the respondent was inducted as a tenant in the year 1971 by the father of respondent No.1 and father-in-law of respondent No.2 and the rent was being paid on regular basis. However later the sons of late Baldev Raj Malhotra wanted the rent on yearly basis which was being paid. In the year 2007-09 the respondent No.1 and husband of respondent No.2 insisted that they were willing to sell the premises to the petitioner and therefore rent would be adjusted in the amount payable but again stepped back. In May 2013 husband of respondent No.2 again approached the petitioner to sell the said shop to the petitioner assuring that he would obtain the consent of his siblings and conclude the sale transaction. The petitioner paid a sum of ₹50,000/- by way of cash on 21st August, 2013 as earnest money and thus the status of the petitioner changed from a tenant to that of a vendee. It is further stated that however when the sale was to be concluded, the husband of respondent No.2 passed away in November 2013 and thereafter the respondent No.2 to 6 kept on delaying on one pretext or another. To show his bonafides the petitioner as a matter of abundant caution on 7th January, 2014 sent three money orders to the tune of ₹ 3508/-, 4410/- and 2348/- as rent from 1st April, 2011 to 31st March, 2014 to respondent No.1 and at the same time conveying that he would initiate appropriate legal proceedings against respondent No.2 and other legal heirs of late Shri Rajesh Malhotra. It is thus urged that the jural relationship between the petitioner and

respondent was of vendor and vendee and not that of landlord and tenant and thus the petitioner is entitled to leave to defend.

5. The other issue raised in the leave to defend application is that the petition was bad for non-joinder of necessary parties as besides respondent No.1 and the respondent No.2 to 6 the daughters of late Shri B.R. Malhotra have not been made party. It is further stated that the relinquishment deed does not define the proportion of the share falling in the hands of respondent No.1 and respondent No.2 to 6. It is also stated that though the respondents have placed on record an order of this Court dated 17th December, 2008 in CS(OS) 109/2004 however the complete settlement has not been placed on record so as to know the extent of shares. It is further contended that material fact that respondents are owners of different property and are in possession of tenanted Godown bearing No.149 in property situated at Katra Mashroo Dariba Kalan, Delhi has been concealed.

6. In the reply to the leave to defend application the respondents stated that they had no other accommodation available to them other than a Godown premises which Godown was tenanted and the respondents have already handed over its possession to the landlord and the said fact was duly recorded in the settlement arrived at between respondent No.1 and husband of respondent No.2. A copy of the application under Order XXIII Rule 3 CPC being IA No. 15607/2008 in CS (OS) 109/2004 was filed by the petitioner. The said settlement was arrived at between the parties in the month of December 2008 wherein they noted that they would sell out the shop and the Godown, however the eviction petition was filed much later in the year 2014 qua which a specific pleading was made in the reply to the

leave to defend application that the said premises has been vacated. Even in the eviction petition the averment qua the shop at Dariba Kala is that an eviction petition bearing No.88/2008 is pending in Tis Hasari Courts in this regard. Thus subsequent events have been duly noted and it is from the reply to the leave to defend application that the learned ARC came to the conclusion that the possession of the said property had been handed over to the landlord though the fact that it was Godown premises has been not noted.

7. On the basis of pleadings and on hearing the parties vide the impugned order the learned ARC declined to grant leave to the petitioner. As regards the first ground of jural relationship of landlord and tenant, the learned ARC noted that to substantiate the claim of promise to sell the property, the petitioner has shown cash withdrawal in the sum of ₹30,000/- from the bank account and ₹20,000/- in ledger account maintained, however he has neither entered into an agreement to sell and purchase nor has received any receipt from the buyer. Further the leave to defend application does not even whisper about total sale consideration regarding the premises. Moreover husband of respondent No.2 was not the owner of entire property but only owned the 45% of the property which was within the knowledge of the petitioner, however he choose to pay ₹50,000/- to the husband of respondent No.2 only. Thus no trial was required to prove that the alleged sale had not been concluded. Further it is the admitted case of the petitioner that he sent money orders for rent from 1st April, 2011 to 31st March 2014. Thus the petitioner could not demonstrate that there was no jural relationship of landlord tenant.

8. Regarding the second ground of non-joinder of parties, the learned Trial Judge noted that co-owner can also maintain a suit for eviction and it is not necessary for the co-owner to show before initiating the eviction proceedings that he has taken the consent or option of other co-owners. Reliance was placed on India Umbrella Manufacturing Company and Ors. Vs. Bhagabandei Agarwalla (dead) by LRs. Smt. Savitri Agarwalal and Ors. AIR 2004 SC 1321 and Mahinder Prasad Jain Vs. Manohar Lal Jain AIR 2006 SC 1471. It is further noted that the co-owners of the respondent have not placed any protest against the eviction petition and the respondent has filed relinquishment deed and hence the objection was meritless.

9. Regarding the third ground of inter-se settlement between the co-owner it is held that the order of this Court in CS(OS) 109/2004 was passed not on merits but on mutual settlement between respondent No.1 and husband of respondent No.2. They were within their rights to arrive at any other settlement and no one could object to the same. Thus the proportion in the property varying from the earlier settlement cannot be a ground to grant leave to defend to the petitioner

10. On the issue of alternative suitable accommodation the learned ARC noted that the petitioner herein claims that the respondents have other property available in Dariba Kala, Chandni Chowk which would satisfy the requirement of additional accommodation. It was noted that the said property was not owned by the respondents but was a tenanted property and an eviction petition had already been filed by the landlord. In the reply to the leave to contest application, the respondents have stated that the possession of said property has already been handed over to the landlord.

The respondents have expressed their intention to use the shops one by the wife of the respondent No.1 and two shops by the daughters of respondent No.2 for their businesses. In view of the fact that safeguard was provided under Section 19 of the DRC Act and in case the property was re-let within three years by the landlord the petitioner can approach the Court. Thus, it was held that it can be safely presumed that the property is bonafidely required by the respondents to meet their requirements and they have no other alternative suitable accommodation, hence the petitioner has failed to raise any triable issues. In this backdrop the eviction petition was allowed and eviction order was passed in favour of the respondents and against the petitioner in respect of tenanted shop in property bearing No.HS-23, Kailash Colony Market, New Delhi, however the respondents were not entitled to obtain the possession in question before expiry of period of six months from the date of order i.e. 20th August, 2014.

11. Learned counsel for the petitioner assailing the impugned order contends that without there being pleadings the learned Trial Judge brought out the aspect that one shop was required by the wife of respondent No.1 and two shops by the daughters of respondent No.2. It is further stated that the three shops in total are 550 sq. yds. and the shop in possession of the petitioner was 177 sq. ft. and no material was placed to show what business the respondents would carry out in the said premises. Merely by placing on record the educational qualification of the respondents, it cannot be urged that they would be starting business. Some further material was required to be placed on record. The respondents failed to disclose that they were in possession of a Godown also at Chandni Chowk. Respondent No.1 has

admitted that he has another space measuring 923 Sq. ft. approximately on first floor F-38, South Extension, and whether the same can be used for commercial purpose or not is a triable issue. The respondents were required to show their bonafide requirement and absence of alternative accommodation which they have failed to do. The respondents in their settlement application under Order XXIII Rule 3 CPC being IA No. 15607/2008 in CS (OS) 109/2004 stated that they would sell the shop and Godown jointly and thus they would have earned huge profits by selling the Godown. Vide the impugned judgment the learned ARC has not considered the various legal aspects and the finding of the learned Trial Court that they have surrendered the premises at Dariba Kala is beyond pleadings. Reliance is placed on M.M. Quasim Vs. Manohar Lal Sharma & Ors. (1981) 3 SCC 36; Charan Dass Duggal Vs. Brahma Nand (1983) 1 SCC 301; Santosh Devi Soni Vs. Chand Kiran (2001) 1 SCC 255; Liaq Ahmed & Ors. Vs. Habeeb-Ur-Rehman AIR 2000 SC 2470; Inderjeet Kaur Vs. Nirpal Singh (2001) 1 SCC 706; Hindustan Zinc Ltd. Vs. Lt. Col. Satya Pal Wadhwa & Anr. 194 (2012) DLT 244; Shakti Kumar Bhola Alias Shakti Bhola Vs. Atma Ram R.C. (REV.408/2011decided by this Court on 20th September, 2012); Sukh Dev Raj Sharma Vs. Kuljeet Singh Jass 2012 (132) DRJ 632; Kishore & Anr. Vs. Prabodh Kumar & Ors. 2012 (132) DRJ 562; Prahlad Rai Mittal Vs. Rita Devi 2013 (133) DRJ 734; Khem Chand & Ors. Vs. Arjun Jain & Ors. 2013 (138) DRJ 154; Davinder Pal Singh & Ors. Vs. M/S. Pritam Prakash Dawar & Sons (HUF) 2013 SCC Online Del 4425 and Rakesh Jain Vs. Suresh Kumar Kohli & Anr. 2014 IAD (DELHI) 752.

12. Thus the learned Trial Court considered all the 5 issues raised by the petitioner in the leave to defend application as noted above, i.e. the jural relationship of landlord tenant, non-joinder of parties, contradiction in the settlement with regard to proportion of the ownership, that the respondents were also in possession of tenanted Godown bearing No. 149 of commercial premises situated at Katra Mashroo, Dariba Kala and there was no bona-fide requirement.

13. The present petition is filed under Section 25(b) of the DRC Act. The legal position while exercising supervisory jurisdiction is well settled. This Court in its supervisory jurisdiction under Article 227 of the Constitution or 115 of the CPC or Section 25(b)(d) of the DRC can interfere only if the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or exercised the same in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby. The supervisory jurisdiction is not available to correct mere errors of facts or of law unless the errors are manifest and apparent on the face of proceedings such as when the same are based on clear ignorance or utter disregard of the provisions of law. The jurisdiction under Article 227 of the Constitution of India is limited in scope and in exercise of this jurisdiction this Court would not be entitled to either re-appreciate evidence or consider any material placed before this Court which was not placed and were not subjected to scrutiny by way of application before Trial Court. It is also trite law that while exercising the supervisory jurisdiction this Court will not go beyond what is pleaded in the leave to defend application as the

same would be permitting additional grounds and thus extending the period of limitation.

14. As regards the jural relationship of landlord/tenant, misjoinder of necessary parties and inter-se settlement regarding shares of the two brothers in the suit property the decision of the learned ARC is based on sound principles as having sent the rent to respondent No.1 the petitioner cannot dispute the relationship of landlord and tenant. Further it is well settled that all co-owners are not required to be impleaded in the eviction petition and in the present case the respondents have placed on record the relinquishment deeds as well. Further co-owners can always settle their shares inter-se in the property.

15. The main attack of the petitioner in the present petition is to the bona-fide requirement of the respondent and availability of alternate accommodation. No doubt the learned Trial Court of its own noted that one shop was required for the wife of the respondent No.1 and the other two shops for the daughters of the respondent No.2 for their businesses, however the same is based on the inference drawn by the Court from the averments in the pleadings. Even if it is assumed that there is availability of an alternative commercial space at South Extension with respondent No.1 however the office space being available for a lawyer in the residential premises itself is far more convenient and as well settled landlord is the best judge of his requirements and the same cannot be dictated by the tenant. Further as regards the requirement of respondent Nos. 3 to 6 are concerned spaces are required by all four of them being educated and wanting to settle in life. It will be for the parties to settle their inter-se shares in suit premises and how

the three shops admeasuring 550 sq.yds. which one shop is the subject matter of the present petition were to be divided. Learned counsel for the petitioner on the basis of the settlement arrived at in application under Order XXIII Rule 3 CPC in IA No. 15607/2008 in CS (OS) 109/2004 where it is noted that the shop and Godown would be sold urges this Court to presume that having sold the said Godown at a hefty amount the respondents cannot now claim eviction of the suit premises. Without any material on record no inference that the godown was sold at a hefty price can be drawn by this Court. Moreover the eviction petition filed for the Dariba Kalan shop and Godown was under Section 14(1)(a) and 14(1)(j) of DRC. This itself shows that the said premises were not in a usable condition and hence there is no merit in the contention of the petitioner on this count.

16. Whether any triable issue arises or not is a question of fact to be determined on the facts of each case and considering that the respondent No.2 has three unmarried daughters qualified and wanting to establish their business and her fourth child respondent No.6 is also doing BBA who would also like to do his own work, it cannot be said that there is no bona-fide requirement for the premises. Even as per the petitione,r the respondent No.2 to 6 have no other alternative accommodation.

17. In Prativa Devi (Smt.) Vs. T.V. Krishnan (1996) 5 SCC 353 on an observation of the High Court that the landlady therein being aged 70 years and as there was no one to look after her therefore she should continue to live as a guest with a family friend, the Supreme Court noted that the landlord is the best Judge of his residential requirement and he has complete freedom in the matter. It is no concern of the Courts to dictate to the

landlord how and in what manner he should live or to prescribe for him a residential standard of their own. In Ragavendra Kumar Vs. Firm Prem Machinery and Co. AIR 2000 SC 534 the Supreme Court repelling the contention that even if in evidence the plaintiff/landlord states that he has number of other shops and houses belonging to him but in a categorical statement being made that the said house and shops were not vacant and were not suitable and the suit premises was suitable for his business purpose, the Courts will not interfere because the landlord is the best Judge of his requirement for residential or business purpose and he has got complete freedom in the matter.

18. There being no illegality or perversity in the impugned order, the petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 04, 2015
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