

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC. REV. 458/2015**

Decided on: 31st August, 2015

SH. RAMESHWAR DAYAL Petitioner

Through: Mr. V.P Katiyar, Advocate with
Mr. Puneet Verma, Advocate

versus

SAROJ BALA RATHORE & ORS. Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K SHALI J.(ORAL)

1. The present revision petition has been filed by the petitioner/tenant against the eviction order dated 29.06.2015 passed by the learned Additional Rent Controller (ARC), East District, North-West, Rohini, Delhi by virtue of which the Ld. ARC dismissed the petitioner's application for leave to defend and passed the order of eviction.
2. Briefly stated the facts of the case are that the respondent is the landlady of the shop on the ground floor forming part of the property bearing no. 1089/71, Deva Ram Park, Tri Nagar, Delhi-

110035 and the same was let out to the petitioner on a monthly rent of Rs. 500/- (hereinafter referred to as the tenanted premise). The respondent on 13.09.2013 filed an eviction petition u/s 14(1)(e) read with S.25-B of the Delhi Rent Control Act against the petitioner/ revisionist herein on the grounds that the tenanted premises are required for the settlement of his son Rahul Rathore who has taken admission in a post graduate diploma in finance and on completion thereof intends to run his business from the aforesaid tenanted premises, there being no other suitable accommodation.

3. The Ld. ARC vide order dated 29.06.2015 dismissed the petitioners application seeking leave to defend and passed an order of eviction in favor of the respondent herein. Leading to the present revision petition.
4. The learned counsel for the petitioner/revisionist has argued that the word ‘bonafide requirement’ of the landlord cannot by any stretch of imagination include a mere design or desire to start a business. Reliance in this regard is placed on the judgments of the Honorable Apex Court in cases titled Inderjeet Kaur vs Nirpal

Singh (2001)1SCC706 and Deena Nath Vs. Pooran Lal (2001) 5 SCC 705.

5. It has been averred by the learned counsel for the petitioner that the learned ARC erred by accepting the bare assertions made by the respondent / landlord to the effect that except two shops, all shops are residential rooms because they have ordinary wooden doors. It is argued that Ld. ARC failed to consider that none of the shop bearing nos. 3,4,5,6 and 7 have any water tap, attached kitchen and bath room without which they cannot be used for residential purpose.
6. The learned counsel for the petitioner has stated that during the pendency of proceedings before the Ld. ARC, the respondent/landlord let out the shop no. 4 as joint-tenancy to one Ranjit and Raman on 24.07.2014 for the business of silver polish on utensils. When the same was brought to the notice of the Ld. ARC the respondent/landlady got the said shop no. 4 vacated. It has been further stated that shop. No. 3 and 4 are lying vacant and on the basis of the aforesaid the respondent's plea of paucity of any other suitable accommodation could not have been accepted.

7. The learned counsel for the petitioner has averred that while dealing with an application for leave to defend the Ld. ARC ought to have confined himself to the affidavit of the revisionist/tenant while examining whether triable issues are made out. At the stage of filing of the said application the revisionist/tenant is only required to show that prima facie sufficient grounds are made out and he need not prove every averment made in the application which shall be done once the application is allowed. Reliance in this regard is placed on the judgments rendered by the Apex Court in case titled Liaq Ahmed & Ors. Vs. Habeeb-Ur-Rehman IV (2000) SLT 148 and Charan Dass Duggal vs. Brahma Nand (1983) 1 SCC 301.
8. I have heard the learned counsels for both the parties and perused the judgments relied upon by the learned counsel and the impugned order.
9. From the perusal of the provision itself it is evident that the S.14 (1) (e) of the Act, was not intended to be against the requirement of a bona-fide landlord or to act in any way as an anti-landlord provision but was designed to protect the interest of the tenant that

is to provide him with a safety net in case an eviction was sought either out of sheer mischief or in hope of higher monetary gains. The tenancy law does not envisage or confer a better right than the landlord, on the tenant with respect to the bona fide enjoyment of the tenanted premises. The same is reflected from the judgment of this court in Punjab State Co-operative Supply And Marketing Federation Limited vs. Amit Goel and Another 204 (2013) DLT 63 wherein it was held that “the law is settled that unless shown to the contrary, the presumption would be in favor of the landlord’s need”. In light of the aforesaid it is incorrect to say in the present matter that the requirement of the landlady to settle her son is not bonafide merely because it has been inferred to be a mere design by the revisionist/tenant on the grounds that the qualification of the son is limited to a B.Com. degree and a distance mode diploma in finance and that the son is already employed with a firm. There are no two doubts about the law laid down in Deena Nath’s case (supra) but on the same note the revisionist/tenant failed to place on record any details with respect to the alleged employment of

Rahul Rathore and therefore in agreement with the Ld. ARC the same appears to be a bald allegation.

10. It is the case of the respondent/landlady that there are only two shops on the ground floor out of which one is in possession of the petitioner/tenant and other is in possession of Mohan Singh Rathore whilst the other portion which is alleged to be shops by the revisionist/tenant is in fact residential premise with wooden doors and cannot be used for commercial activity.
11. Before proceeding further it is pertinent here to reproduce the relevant paragraphs of the impugned order and the same reads as follows:

“20. That with respect to remaining portion on the ground floor, the respondent has filed on record the photographs which are perused. All the said rooms have normal wooden doors which are lying closed. On the other hand, the shop no. 2 as well as that of demised premises have the iron shutters installed on it. The said photographs itself destroys the case of the respondent that remaining rooms are shops. Rather the last shop on the extreme right portion has a latrine attached to it which again corroborates the contention of petitioners that it is residential room only. Further the said shop has no entry from the main road or from gali no. 73 apart from the main gallery of the entire house which destroys the argument of the respondent that it is a shop.

21. *The respondent has also failed to disclose the necessary particulars with respect to said shop as claimed by him. He should have disclosed the names of the previous tenants and the nature of business being done by them. The respondent has named only one tenant Sh. Mata Prasad who vacated one of the said portion in June 2012. But, again it is not clear as to whether he was using the same as commercial or residential. Thus the plea of the respondent with respect to the said vacant portion is not supported by any material on record and rather it appears that the said portion is residential only. The petitioners cannot be forced to convert the same as commercial as same would amount to dictating the terms to the landlord. Thus no triable issue is raised on the said aspect. The reliance placed by respondent upon the judgments titled as Rampat Vs. Ganga Devi cited as 217 (2015) DLT 568 and G.S. Sachdeva Vs. G.S. Puri 207 (2014) DLT 641 is misplaced being differentiable on facts.*

22. *Further the other grounds which have been raised by the respondent in his leave to defend are not supported by any material on record but are bald assertions only. In this regard the Hon'ble High Court of Delhi in Krishan Kumar Gupta vs. Swadesh Bhushan Gupta 2008 152 DLT 556 is relevant. The relevant paragraph is reproduced herein under for the sake of convenience:*

“All sorts of objections are generally raised whenever an eviction petition is filed by the landlord. Even the ownership of the landlord, the relationship of the landlord tenant, the purpose of letting and bonafide requirement are denied by the tenant and fake allegations are made that the landlord has other properties. Many

allegations are raised only for the sake of raising. Unless, the learned ARC scrutinizes each of the objections raised by the tenant with the help of documents and the material placed on record, the entire purpose of providing summary proceedings in respect of the eviction proceedings fails. Thus, it is incumbent upon the ARC to scrutinize all objections carefully in the light of law laid down and in the light of the material placed on record. It cannot be argued that the learned ARC was not required to go into the details of the objections and come to a conclusion on the basis of affidavits and once objections are raised leave to defend must be granted. Leave to defend can be granted only in those cases where the tenant is able to show by material on record that the petition was filed by the landlord malafidely. The facts stated by him about his age, family accommodation were false.”

23. Lastly, it was argued that during the course of the pendency of the present petition the petitioners have let out the shop on the ground floor measuring 20.8 X 8.7 to tenants namely Raman and Ranjeet at monthly rent of Rs. 6,000/-. They are manufacturing silver utensils etc. The said fact was brought on record through application under Section 151 CPC which has been filed on 27.08.2014. Admittedly, the said application was filed beyond the stipulated period of 15 days of filing the leave to defend application. Thus legally the said additional facts pleaded in the application under Section 151 CPC cannot be considered in view of the specific procedure under

Section 25 B of the DRC Act. But, even then the said contention is bald assertion only. The petitioners have claimed that both the said tenants were inducted for residential purpose only. The photographs placed on record by the respondent also does not support his argument. The mere presence of one weighing scale, it cannot be believed that it is being used as commercial space. As per the respondent only they are using the same for manufacturing silver utensils. But, no other instrument for manufacturing is seen in the said photographs which rebuts the arguments of the respondent.”

12. As is reflected from the analysis of the aforesaid, it is evident by the learned ARC has carefully analyzed the documents and photographs placed on record by the revisionist/tenant. It has been recorded by the Ld. ARC that the portion alleged to be shops by the revisionist/tenant does not have any iron shutters whilst the two shops which have been admitted to be shops by the respondent/landlady and the revisionist/tenant both have iron shutters which corroborates the story that the same is residential. No information as to the history of the use of the said portion alleged to be shops has been placed on record by the revisionist/tenant. With respect to the shop/portion that the learned counsel for the petitioner has alleged to have been vacated in June,

2012 and is stated to be presently not occupied or in use, has been recorded to have been let out for residential purpose only and in the absence of any material facts to the contrary brought on record by the tenant the same seems to be a plausible conclusion. With respect to the joint tenancy the Ld ARC has observed that the mere presence of one weighing scale cannot establish that the premise is being used for the purpose of commercial activity.

13. It is pertinent to note here that the revisionist/tenant could have filed the municipal records or provided material facts with respect to the prior use of the alleged shops as to whether the same was residential or commercial to establish his case. The revisionist/tenant miserably failed to establish his story and the photographs filed by him before the Ld. ARC seem to be destructive of his own case.
14. The shop which is under the occupation of the petitioner in respect of which the respondent-landlady is expressing her desire to use for the settlement of her son is on the front road in which the main commercial activity is carried out and in the absence of any other suitable commercial premise it is best suited for the purpose. The

Court has rightly observed that the tenant cannot dictate his terms to the landlord as to how he is to use his accommodation unless and until there is grossly unjustified demand made by the landlord.

15. I have considered carefully this aspect of the matter and fully agree with the analysis of the evidence done by the learned ARC.
16. No other point has been raised though I have gone through the entire impugned order running into 20 pages where a decree of eviction is passed on the ground of *bona fide* requirement. I do not find that there is any jurisdictional error, infirmity or impropriety in rejecting the leave to defend of the petitioner by the learned ARC and therefore, this Court is not required to interfere with the said order.
17. The court under S.25-B of the Act does not sit in appeal over the findings of the Ld. ARC. Reliance in this regard is placed on the judgment of the Honorable Apex Court in *Sarla Ahuja vs. United India Insurance Co. Ltd.* AIR 1999 SC 100 wherein it has been held as under:

"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 the 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 facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available."

18. As it flows from the aforesaid discussion and in light of the judgment rendered in Sarla Ahuja (supra) I do not find any perversity or material irregularity in the findings reached by the learned ARC. The view taken in the impugned order is not only a possible but a plausible one and does not require the interference of this court.
19. Accordingly, the same is dismissed.
20. Pending applications also stand disposed off.

AUGUST 31, 2015
AD

V.K. SHALI, J.