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

Date of decision: 10.08.2016

+ RC.REV. 388/2016

HARBANS LAL KALRA Petitioner

Through Ms.Geeta Mehrotra, Adv.

versus

NIKHIL KUMAR Respondent

Through Mr.Naveen Arya, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

Caveat No.706/2016

Since counsel for the respondent has entered appearance notice of caveat stands discharged.

CM No.28963/2016

Exemption allowed, subject to all just exceptions.

RC.REV. 388/2016 & CM No.28962/2016 (stay)

1. The present Revision Petition is filed under Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as the DRC Act) seeking to challenge the eviction order dated 12.4.2016 by which order the application for leave to defend filed by the petitioner was dismissed.
2. The respondent/landlord has filed the Eviction Petition in respect of Shop No.E-45, Ground Floor, Hauz Khas Market, New Delhi. It is contended in the Eviction Petition that the respondent requires the premises for his mother Smt.Savita Nirmal who wants to start a coaching centre from

the premises. The mother is a Bachelor of Education (B.Ed.). She is residing with her only son. She had a job in the Indian Overseas Bank and has now retired. She is a widow. It is urged that the respondent is the owner of two shops which have been converted into one shop by virtue of the Will of his grandmother Smt.Surajwati. Smt.Surajwati was the absolute owner of the entire property E-45, Hauz Khas, New Delhi vide registered sale deed dated 24.9.1954. She had rented the tenanted shops which are converted into one. She expired on 14.3.1996 leaving behind her Will whereby she has bequeathed two shops (converted into one) and mezzanine floor of the property to the respondent. It is further stated that the petitioner has paid rent upto August 2013.

3. The ARC by the impugned order on the relationship of landlord-tenant has noted the contents of the Will dated 17.11.1995 of the grandmother of the respondent Smt.Surajwati. Admittedly, the respondent is one of the LRs of the said Smt.Surajwati hence the ARC concluded that the relationship of landlord-tenant exists between the parties.

On availability of suitable alternative accommodation, it again noted the contents of the Will wherein it is stated that the respondent is entitled to a shop in question apart from five rooms on mezzanine floor and terrace in the middle portion. It also noted that the petitioner has failed to bring on record the availability of alternative vacant commercial accommodation in possession of the respondent.

On bona fide requirement it noted the objection of the petitioner that the mother of the respondent is of old age. It also noted the contention of the petitioner that the respondent is earning handsome income. However, both the contentions were rejected keeping in mind that the mother had retired

from Indian Overseas Bank and she wants to open a coaching centre and she is professionally qualified.

4. I have heard learned counsel for the parties. Learned counsel for the petitioner has relied upon email dated 28.3.2014 said to have been sent by the respondent with the proposed MOU whereby the petitioner was to vacate the premises/shop for enhanced consideration. Reliance is also placed on alleged email dated 19.2.2014 enclosing some agreement. It is urged based on these emails the object of the respondent is only to enhance rent and there is no bona fide requirement. It is secondly submitted that the mother of the landlord is retired and is an aged lady. She is receiving good pension. There is no requirement of the mother of the respondent to start her own work.

5. Learned counsel for the respondent has submitted that the tenanted shop in question is lying locked since 1.9.2013 and the petitioner is only harassing the respondent.

6. I may first see the scope of the present petition. The Supreme Court in *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, (1999) 6 SCC 222/(MANU/SC/0132/1999) described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of

Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available..."

7. Hence, this court is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.

8. Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

Xxxxx

(e) that the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation.”

The above provisions would in view of the judgment of the Supreme Court in *Satyawati Sharma(dead) by LRs vs. Union of India & Anr., AIR 2008 SC 3148* apply to commercial premises also.

9. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

10. In the present case the trial court declined to grant leave to defend to the petitioners. The parameters for granting leave to defend are well known.

11. The Supreme Court in *Precision Steel & Engineering Works and another vs. Prem Deva Niranjana Deva Tayal, AIR 1982 SC 1518* in para 22 held as follows:-

22. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in Sub-section (5) of Section 25B. 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. Similarly, this court in *Deepak Gupta vs. Sushma Aggarwal, 2013 202 DLT 121* held as follows:-

“24.From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of Precision Steels (supra), it is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the question as to grant or not grant of the leave to defend but the real question is

tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of the grant of the leave to defend by going into the complicated questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of Charan Dass (supra) and Precision Steel (supra) are holding the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of Inderjit Kaur vs. Nirpal Singh: 2001 (1) R.C.R. 33 and Tarun Pahwa vs. Pradeep Makin,; 2013 (1) CLJ 801 Del.)”

13. Coming to the submissions of learned counsel for the petitioner I may first deal with the submission regarding the emails allegedly sent by the respondent. The contention is that there is no bona fide requirement and the object is only to increase the rent of the tenanted premises. A perusal of the impugned order would show that it appears that such submissions have not been made at all before the ARC as there is no reference to the same in the impugned order.

14. In any case a perusal of the reply to the application for leave to defend filed by the respondent would show that it has been clarified that no doubt proposal had been sent but the same had not been accepted by the petitioner. The MOU itself states that the petitioner would hand over vacant possession of shop No.3 and retain the possession of shop No.2 for nine years. Shop No.2 was proposed to be rented out to the nominee of the petitioner whereby only 10% of the rent was to be retained by the respondent

and 90% rent was to be given to the petitioner. It was merely a proposal. From the said proposal it cannot be inferred that the requirements of the respondent are not bona fide. There is no merit in the said contention of the petitioner.

15. Coming to the second contention, namely, that the mother of the respondent is old and is receiving her pensions and hence does not require the premises. The admitted fact is that the mother is a widow living with her only son. She has a right to keep herself occupied. She is educationally well qualified having done B.Ed.. She has retired from Indian Overseas Bank. Hence, if she wishes to start her own coaching centre to keep herself professionally occupied and also earn her livelihood, the said desire cannot be said to lack bona fide.

16. Reference may be had to the judgment of the Supreme Court in the case of ***Ram Dass v. Ishwar Chander & Ors., (1988) 3 SCC 131***, where the court held as follows:

“11. Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the land-lord subject to the satisfaction of certain statutory conditions. One of them is the bonafide requirement of the landlord, variously described in the statutes as "bona-fide requirement", "reasonable requirement", "bona-fide and reasonable requirement" or, as in the case of the present statute, merely referred to as "landlord requires for his own use". But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a "requirement" in law must have the objective element of a "need". It must also be such that the court considers it

reasonable and, therefore, eligible to be gratified. In doing so, that court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down.”

17. There is no merit in the present petition. The petitioner has failed to raise any cogent grounds to persuade this court to differ with the views expressed by the ARC.

18. The petition is without merits and is dismissed. All pending applications, if any, also stand disposed of.

(JAYANT NATH)

August 10, 2016/n

Signed on 15.4.2017