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

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Date of decision: 26.08.2016

+ RC.REV. 414/2016

PRADEEP KUMAR

..... Petitioner

Through

Ms. Amrit Kaur Oberoi, Advocate.

versus

RAJENDER PRASAD & ORS

..... Respondents

Through

None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JUSTICE JAYANT NATH, J. (ORAL)

CM No. 30926/2016 (exemption)

Exemption is allowed subject to all just exceptions.

RC.REV. 414/2016, CM Nos. 30925 & 38836/2016 (stay)

1. The present petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958, (*hereinafter referred to as the 'DRC Act'*) seeking to challenge the order dated 23.04.2016 passed by the Additional Rent Controller (*hereinafter referred to as the 'ARC'*) under Section 14(1)(e) read with Section 25-B of the DRC Act by which an order of eviction was passed against the petitioner.

2. The brief facts of the case are that the petitioner is the tenant in respect of one shop on the ground floor of the property being No.5548/74, Padam Singh Road, Karol Bagh, New Delhi-110 005.

3. The respondents filed an eviction petition under Section 14 (1)(e) of DRC Act for eviction of the petitioner on the grounds of bonafide requirement. There are a total of 8 respondents. The case of the respondents was that the property originally belonged to late Sh.Ishwar Ram. He executed a will dated 27.02.2002 whereby the respondents have inherited the property. The said Sh.Ishwar Ram left behind four sons, namely i) Phool Chand, ii) Nanak Chand, iii) Rajendra Prasad and iv) Guru Dutt. He also left behind four daughters who are married. One of the sons, namely Nanak Chand has expired. All the four sons of late Sh.Ishwar Ram are having their children and are residing in the same building. It is stated that Sh.Phool Chand has six members including one son who is of marriageable age. Late Sh. Nanak Chand is survived by three members including a son 20 years old. Sh.Rajender Prasad has four members in his family. Sh.Guru Dutt also has four members in his family. Apart from these 17 members in all, it is averred that the daughters of late Sh.Ishwar Ram visit the suit property but cannot stay even a single night due to paucity of accommodation. The respondents are said to have only seven rooms, five kitchen, three latrines and three both rooms. It is urged that the available accommodation is quite insufficient for the entire family of late Sh. Ishwar Ram. It was pleaded that at least one guest room, one pooja room and one dining room is required for each of the four sons of late Sh.Ishwar Ram. Hence, it was pleaded that tenanted premises was required for the own use and occupation of the respondents. Apart from the said property, it is pleaded that none of the petitioners have any accommodation available.

4. Initially the petitioner filed an application seeking permission for leave to defend the eviction petition. The ARC disallowed the application of the petitioner and passed the eviction order against the petitioner. The petitioner

challenged the said order and a petition under Article 227 of the Constitution of India was filed before this court. This court on 03.03.2014 allowed the petition of the petitioner by the consent of the parties and remanded the matter back to the ARC for consideration afresh. On fresh consideration vide order dated 17.11.2015 the application for leave to defend of the petitioner was allowed to defend the eviction petition.

5. The petitioner filed his written statement. The petitioner raised the following pleas in the written statement:

- a) The respondents landlord are in possession of sufficient other accommodations, various addresses of which were stated.
- b) Eviction petition is malafide and tainted with oblique motive for the purpose of seeking enhancement of rent. Reliance was placed on a legal notice dated 12.12.2011 whereby it is stated that the respondents sought enhancement of rent to Rs.40,000/- per month.
- c) The tenanted premises is a shop facing the main road, with no proper ventilation and is not suitable for residential purposes.
- d) On the ground floor there is a shop which is kept locked by the respondent and is not being used by them.
- e) The suit premises was let out vide rent noted dated 01.10.1988 to M/s Natural Leathers through its partners Sh.Krishan Swaroop Aol, Sh.Rajnish Kumar Aol & Sh.Pradeep Kumar Aol. All of the partners have not been impleaded as a party.

6. The respondents led the evidence of PW1 Sh.Rajender Prasad. The petitioner led evidence of five witnesses namely Sh.Pradeep Kumar RW1, Sh.S.S.Tomar RW2, Sh.Sanjay Kumar RW3, Sh.Ravinder Kumar RW4 and Sh.Rajnish Kumar RW5.

7. The ARC by the impugned order noted that it was clear that the petitioner had admitted that late Sh.Ishwar Ram, the father of the respondents was the owner of the tenanted premises. The ARC noted that it was not obligatory on the part of the respondents to prove absolute ownership. The ARC concluded that a relationship of landlord and tenant exists between the parties. On the question of bonafide requirement of the respondents and also as to whether respondents are having any other suitable alternative accommodation being available with them, the ARC relied upon the cross-examination of PW1 and concluded that bonafide requirement of the respondents stands established alongwith the factum that they have no other suitable alternative accommodation available with them. Accordingly, the ARC passed the eviction order against the petitioner.

8. The learned counsel appearing for the petitioner challenged the impugned order and has vehemently argued as follows:

i) She heavily relied upon the legal notice sent by the respondents dated 12.12.2011 Ex.PW1/R3 where the respondents have demanded that the property in question would fetch a monthly rent of Rs.40,000/- per month and hence a demand was made on the petitioner to pay to the respondents a sum of Rs.40,000/- per month. It is pleaded that it is manifest in this background that the eviction petition is filed by the respondents lacks bonafide. The only object was the enhancement of rent. It is further pleaded that despite having made these submissions before the ARC, the impugned order has completely ignored the said submission of the petitioner.

ii) It is pleaded that the tenant of the respondents is a partnership firm by the name of M/s Natural Leathers where there are three partners, namely, Sh.Pradeep Kumar, Sh.Rajnish Kumar & Sh.Krishan Swaroop. It is urged that a

rent deed dated 01.10.1988 was executed between late Sh.Ishwar Ram and M/s Natural Leathers, a partnership firm. The execution of this rent deed has not been denied by the respondents. Hence, it is urged that the impugned order is entirely erroneous as necessary party and the actual tenant was not impleaded

iii) Further, it is conceded that no doubt in an earlier eviction petition filed by the respondents under Section 14(1)(b)(j) of the DRC Act against the petitioner, the ARC had rejected the contention of the petitioner that the firm M/s Natural Leathers is the tenant of the premises. It is however, urged on merits that the said eviction petition was dismissed. Reliance is placed on the judgment of the Supreme Court in the case of *The United Provinces Electric Supply Co. Ltd., Allahabad v. Their Workmen*, (1972) 2 SCC 54 and on a judgment of the Bombay High Court in the case of *Nana Tukaram Jaikar vs. Sonabai & Ors.* AIR 1982 BOM. 437 to contend that the said finding does not bind the petitioner as the petitioner had no obligation to challenge the order as the ultimate outcome of the petition was favourable to the petitioner.

9. 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..."

10. 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.

11. 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.”

12. 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 dependant upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

13. On the issue of relationship of landlord and tenant, the ARC in its impugned order has noted that it is not in dispute by the petitioner that the father of the respondents late Sh.Ishwar Ram was the owner of the property. It also noted that in the cross-examination of PW1 Sh.Rajendra Prasad all suggestions put to him by the petitioner regarding M/s Natural Leathers being a partnership having three partners and that cheques were issued by the M/s Natural Leathers towards the monthly rent of the shop have been denied. The ARC also noted the facts that the documents RW1/23 to RW1/28 as admitted by RW1, do not show constitution of Natural Leathers as a partnership firm. RW1 also admitted that in an earlier litigation which was not challenged, being Ex.PW1/12 dated 06.07.2000 passed by the Rent Control Tribunal, the petitioner was held to be the tenant. Accordingly, the ARC had concluded that the petitioner, M/s Natural Leathers is a proprietorship and the tenant of the premises in question.

14. The learned counsel for the petitioner has placed heavy reliance on the rent note dated 01.10.1988 which is executed between late Sh.Ishwar Ram, the father of the landlord and Natural Leathers a partnership firm. It is no doubt true that in his cross-examination, PW1 Sh.Rajendra Prasad has accepted that

the said document was executed but he has also clarified that the said document was never acted upon and that Sh.Pradeep Kumar, the proprietor has always been accepted and has been acting as the tenant. Relevant portion of his cross-examination reads as follows:

“It is correct that my signatures are there on the last page of the affidavit Ex.PW1/A at point A&B and nowhere else. I am aged 58 years. The shop in question was given on rent in my presence on 01.10.1988. Besides me, my father and the tenants were present there at that time. It is correct that rent agreement was executed in writing. Vol. The same was never acted upon as it was executed in favour of M/s Natural Leather but Pradeep Kumar had come as proprietor. The said original rent agreement is with the said firm and the copy of the same is filed by the respondent in this case. The possession of the shop in question was handed over to Sh.Pradeep Kumar and the rent for one month was also taken in advance. I have seen the said rent agreement. It is wrong to suggest that the said rent agreement in original is lying with me.”

15. I may mention that several legal proceedings have taken place between the parties earlier. In each of these proceedings, the respondents have taken a stand that the tenant is Sh.Pradeep Kumar in his individual capacity and not the firm Natural Leathers. Relevant details of these litigations and relevant findings of the courts may be noted as follows:

- a) The petitioner, Sh.Pradeep Kumar as proprietor of Natural Leathers, had filed a petition under Section 45 of the DRC Act on 11.07.1990 where he had stated that he is the tenant of the shop in question. He had sought restoration of the electricity supply to his tenanted shop.
- b) Late Sh.Ishwar Ram had filed an eviction petition on 12.07.1994 under Section 14(1)(b)(j) of the DRC Act claiming that the petitioner Sh.Pradeep Kumar proprietor of Natural Leathers had parted with possession of the

tenanted premises and that the property is for residential purposes and is being misused by the petitioner Sh.Pradeep Kumar for commercial purposes. The ARC after recording the detailed evidence in his judgment dated 23.12.2004 concluded that the tenant is the petitioner as proprietor of Natural Leathers and not any firm. Relevant portion of the finding of the ARC reads as follows:

“13. M/s Natural Leather, partnership firm has been doing the business in the demise premises, then certainly it should have registration number which has not been denied by the respondent that it is not a registered firm. He has stated that it is a registered firm, but he has not placed any record to show that the same has been registered with the Registrar of Firm nor he has brought any account books showing that ever partnership business was carried out from the premises in suit. It is fact that the rent receipt has always been issued in the name of M/s Natural Leather through proprietor Shri Pradeep Kumar and nowhere the respondent has objected about the issuance of the rent receipts in the name of Shri Pradeep Kumar nor by any other partners as alleged. Therefore, considering all the circumstances, I am of the opinion that it is M/s Natural Leather through proprietor Shri Pradeep Kumar is tenant of the petitioner nor the partnership concerned.”

c) Another petition had been filed by late Sh.Ishwar Ram under Section 14(1)(a) of the DRC Act for non-payment of rent and against the petitioner Sh.Pradeep Kumar, the sole proprietor of Natural Leathers. An application was filed under Order 1 Rule 10 CPC on behalf of Natural Leathers partnership firm through its partners Sh.Pradeep Kumar, Sh.Rajnish Kumar and Sh.Krishan Swaroop for impleadment. The ARC allowed the said application. In appeal, the Rent Control Tribunal vide its judgment dated 06.07.2000 concluded as follows:

“9. Merely because rent deed was executed does not mean that the tenancy was created in favour of M/s Natural Leather as a

partnership concerned. Prima facie the circumstance that rent receipts were being issued in favour Pradeep Kumar as a sole proprietor right from the day of creation of tenancy till date cannot be lost sight of.”

The order of the ARC was accordingly set aside.

16. The history of the litigations of the parties shows that various courts have repeatedly held that the tenant in question is the petitioner as proprietor of Natural Leathers. The Rent Controller/ Additional Rent Controller have held that the document relied upon by the learned counsel for the petitioner, namely rent deed dated 01.10.1988 did not establish that the firm was a tenant. The petitioner has not been able to show any conclusive record to support her contentions. In my opinion, there are no reasons to differ with the findings of facts and conclusions of the ARC in the impugned order recording the tenant being the petitioner as a sole proprietor.

17. So far as availability of an alternative suitable accommodation is concerned, it is not being disputed by the petitioner that the respondents comprise a large family, four brothers and their family members. PW1 in his detailed affidavit by way of evidence has clearly stated some of the details of the family of the respondents as follows:

“6. That at present, I, Rajender Prasad, petitioner No.2/Sh.Phool Chand, peittoner No.3/Sh.Guru Dutt are residing in the suit property alongwith our family. At present the family of petitioner No.1/Sh.Rajender Prasad includes his wife Smt.Chanchal, One son aged 24 years namely Sh.Varun who is doing a private job, and one daughter namely Ms.Rashi also is a student.

At present, the family of petitioner No.2/Sh.Phool Chand includes one son namely Sh.Mayur who is doing a private job, daughter in law Smt.Rashmi Chandalia W/o Sh.Mayur.

Pertinently, Smt. Rashmi is pregnant and she is expecting baby. Furthermore, petitioner No.2 also had three daughters namely Lata Promila and Deepali. Pertinently, the wife of petitioner No.2 namely Smt.Kamlesh Devi had died during the pendency of petition.

At present the family of petitioner No.3/Sh.Gurudutt includes his wife Smt.Sunita Devi and his two sons namely Lakshey and Vaibhav aged 11 and 15 years who are students.

Apart from above three sons, Late Sh.Ishwar Ram also had one son namely Sh.Nanak Chand who died leaving behind his wife Smt.Prem Lata who is arrayed as petitioner No.8 in the present petition and three children. The petitioner No.8/Smt.Prem Lata one son Sh.Virender is married to Smt. Mamta and they have one son namely Gaurav Chandalia aged 3 years. The petitioner No.8 also has two daughters namely Geeta and Praveen. It is pertinent to mention that though petitioner No.8 and her family wants to reside in the suit property but she is living separately due to paucity of space in the suit property. Earlier the petitioner No.8 due to paucity of space started residing in a tenanted accommodation at Raiger Pura and later after getting Government accommodation started residing at Gulabi Bagh. However, after few months i.e. September, 2016 the petitioner No.8 has no opinion but to come back to the suit property with her family as she is going to retire by December, 2016 and has to vacate her Government accommodation.”

18. Sum and substance of the cross-examination of PW1 on the requirement of the additional accommodation is as follows:

“XXXX by Sh.V.D.Pahuja Ld.counsel for the respondent.

Smt.Asha Devi petitioner No.5 had already expired in the year 2014. It is correct that wife of Sh.Phool Chand Smt Kamlesh has also died in June, 2015. It is correct that Phool Chand with his wife resided in the earlier (behind the suit premises) on the ground floor. Vol. When they had no child. I do not remember when Mr.Phool Chand/Petitiner No.2 shifted from ground floor to upper floor. It is wrong to suggest that the said rear portion on the ground

floor is lying vacant and locked. Vol. It is a common drawing room. It is wrong to suggest that the said rear portion is lying locked because we intend to let-out the same at higher rent. I instructed my counsel about all the facts to be pleaded in the eviction petition. It is correct that Smt. Prem Lata (who is widow of Sh.Nanak Chand) with her family used to reside earlier in the suit building. Vol. Due to paucity of space, she shifted to rented premises. It is correct that said Smt. Prem Lata shifted to the rented premises during the pendency of the present petition. Vol. She shifted after the marriage of her son.”

Clearly, the categorical averments of PW1 about the bona fide requirement have gone unchallenged.

19. In the light of the above, clearly there are no reasons to interfere with the finding recorded by the ARC that the premises are required bonafide by the respondents for their own accommodation.

20. I may note that though the averment is made by the petitioner in the written statement about existence of alternative accommodation, no evidence on this aspect has been led by the petitioner.

21. So far as the contention of the learned counsel for the petitioner regarding the legal notice Ex.PW1/R3 is concerned, the same is entirely without any merit. The legal notice dated 12.12.2011 was sent by the learned counsel for the respondents. The said legal notice appears to have been issued on misconception that the tenancy of the petitioner stands terminated and has now become a month to month tenancy. Hence, the claim was made in this factual background that the tenancy has come to an end and the tenant/petitioner was obliged to pay the mesne profits and damages at market rate. The notice does not mean that the eviction petition lacks bonafide or is an attempt to only extract additional rent from the petitioner as stated.

22. In my opinion, the petitioner has failed to show any error in the impugned order passed by the ARC in exercise of its jurisdiction. It is not for this court to enter into the appreciation or re-appreciation of the evidence. There is nothing to show that the conclusions arrived at by the ARC are not reasonable, or are such that no reasonable person acting with objectivity would conclude. The findings recorded by the ARC are plausible/reasonable conclusions.

23. There is no merit in the present petition and the same is dismissed. All the pending applications are also dismissed.

JAYANT NATH, J.

AUGUST 26, 2016/v
(signed on 02.11.2016)