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

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Date of decision: 13.09.2016

+ RC.REV. 428/2016, CAV. 785/2016, & CM Nos.32334-335/2016

HINDUSTHAN URBAN INFRASTRUCTURE LTD..... Petitioner

Through Mr.B.Mohan & Ms.Harshlata,
Advocates

Versus

RAMESH SACHDEVA Respondent

Through Ms. Perna Mehta, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. The present Revision Petition is filed under Section 25-B (8) of the Delhi Rent Control Act, 1958 (*hereinafter referred to as the 'DRC Act'*) seeking to impugn the order of eviction passed by the Additional Rent Controller (*in short the 'ARC'*) in favour of the respondent regarding the property bearing No.A-392, Defence Colony, New Delhi -110 024. The eviction order was passed for bona fide requirement of the respondent/ landlord.

2. The brief background facts are that the property was purchased by the mother of the respondent on 13.09.1965. After her demise on 12.04.2002 the property devolved upon the respondent and his two brothers and sister. The sister executed relinquishment deeds whereby the respondent- Sh.Ramesh Sachdeva and his brothers, namely, Sh.Rajan Sachdeva and Sh.Rakesh Sachdeva became the co-owners of the property.

3. The demised premises, i.e., first floor of the property No.A-392, Defence Colony, New Delhi – 110 024 was let out to the petitioner company by the mother on a lease deed dated 03.08.1973 at a monthly rent of Rs.600/-. In the demised premises one Sh.R.Roy Chaudhary along with family was residing till 1992. After he vacated the property, the petitioner filed a suit against the landlord on 23.07.1992 seeking a decree of permanent injunction to restrain them from forcibly evicting/dispossessing the petitioner from the demise premises and also a permanent injunction to restrain Smt.Sneh Arya and her children (residing on the ground floor) from causing any interference and disturbance in the water and electricity supply. A decree was passed in favour of the petitioner.

4. The respondent/landlord states that he is residing at Dhanbad, Jharkhand and is undergoing treatment for heart disease, hypertension, blood sugar, blood pressure and also from old age related ailments. He has to frequently travel to Kolkata for medical checkups and regular follow-ups as there is no advanced medical facility available at Dhanbad. In case of any medical emergency, the respondent cannot reach Kolkata in time, which requires a journey of five hours from Dhanbad by train. The wife of the respondent is also suffering from knee problem and frozen shoulder and from old age related ailments and is unable to take long journeys or travel to Kolkata alongwith the petitioner during any medical treatment or emergency. Hence, it is stated that the respondent and his wife for better medical facilities/ treatments intend to shift to Delhi and reside in the demises premises, which is essentially required for them bonafide. Further, the ground floor of the property is occupied by the children of the deceased sister of the respondent. In case of any medical emergency, the relatives will

be available to rush the respondent and his wife to the doctors/hospitals which are in close proximity to the demised premises. The respondent has two sons and one married daughter. One of the sons is living in Kolkata alongwith his in-laws. Second son is working in Mohali, Punjab. It is further stated that respondent does not have any other property in Delhi whether residential or commercial except the property bearing No.A-392, Defence Colony, New Delhi – 110 024.

5. On the issue of landlord tenant relationship, the ARC noted that the petitioner have nowhere disputed the said relationship. The only ground taken was non-joinder of the co-owners. The ARC relied upon the judgment of the Supreme Court in the case of *Smt. Shanti Sharma v. Ved Prabha*, **AIR 1982, SC 2028** to conclude that one co-owner is competent to maintain an eviction petition against the tenant and all the co-owners need not be joined as a party. On the bonafide need of the petitioner, the ARC noted that the accommodation on the ground floor of the premises consists of two bedrooms, one drawing-cum-dining room and the same is occupied by nephews (children of deceased sister Smt.Sneh Arya) who are staying on compassionate ground since 1991. As far as the second floor/barsati floor is concerned, it consists only a single room with no kitchen and no attached toilet. The ARC also noted that there is no substance in the submission of the petitioner that the documents of medical check up have been fabricated and manipulated by the respondent. The petitioner has nowhere disputed that the respondent and his wife are senior citizen and merely making a bald allegations that the medical documents produced by the respondent about the illness are fabricated and manipulated was rejected. Based on the above, the learned ARC passed the eviction order.

6. I have heard the learned counsel for the parties.

7. The learned counsel for the petitioner company has made the following submissions:

i) That the ground floor of the property in question is available and is occupied by the relatives of the respondent. Because of the illness of the respondent, the ground floor would be more suitable.

ii) That barsati floor is also similarly available to the respondent.

iii) That the impugned order in para 22 has wrongly rejected the plea of the petitioner about the availability of the ground floor by stating that the respondent alongwith his wife wishes to reside in the tenanted premises as they want to keep their kitchen and other expenses separate to have personal freedom and privacy intact. It is stated that this finding is beyond the pleadings.

8. The learned counsel appearing for the respondent has stressed that the premises is lying vacant. The respondent is not using the premises for last several decades.

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

14. This court in the case of *Sarwan Dass Bange vs. Ram Prakash*, **MANU/DE/0204/2010** noted as follows:-

“7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition. However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence

and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.”

15. Similarly, this court in *Deepak Gupta vs. Sushma Aggarwal, 2013 102 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.)”

16. I may hence test the findings recorded by the ARC on the touchstone of the requirement of the parameters stated above for determining as to whether the trial court rightly refused the leave to defend to the petitioners.

17. The essential contention of the petitioner before this court is about the availability of ground floor of the property and barsati floor/second floor. Hence, the argument being that an alternative suitable accommodation is available with the respondent.

18. In my opinion, there is no merit in the said contention of the petitioner. The ground floor was occupied by the children of the deceased sister of the respondent since 1991. Family of deceased sister comprises of three sons, who are residing there. The respondent has a moral obligation to the sister. Regarding the fact that the family of the sister is occupying the ground floor since long is clear from the fact that the petitioner themselves had filed a suit for injunction where the sister Smt.Sneh Arya was also impleaded as party and relief was sought to restrain her and her children from causing any interference and disturbance in the water and electricity supply of the petitioner. Clearly, it would be highly improper for the respondent to evict the children of the deceased sister of the respondent Smt. Sneh Arya who are staying for the last thirty years. It is also pointed out that one son of the respondent is living in Kolkata alongwith his in-laws and the other son is working in Mohali, Punjab. While staying in the present demised premises, they have the advantage to having recourse to medical facilities of high level available to them and availability of close relatives in proximity who would be available in case of an emergent situation. Hence the ground floor cannot be said to be a suitable alternative.

19. As far as barsati floor/second floor is concerned, it is an admitted fact that no separate kitchen or bathroom is available and it cannot be said to be an alternative suitable accommodation available with the respondent.

20. The other argument raised is that the ARC has used a reasoning to reject the contention of the petitioner which do not form part of the pleadings. This is entirely incorrect as in para 22 of the impugned order the ARC has noted that the first floor of the property is suitable as the respondent alongwith his wife wishes to reside in the tenanted premises as they want to keep their kitchen and other expenses separate to have personal freedom and privacy intact. This argument is clearly stated in para 2A of the reply filed by the respondent to the leave to defend application of the petitioner. The argument of the petitioner that this plea was not pleaded by the respondent is entirely erroneous.

21. It may be noted that the Supreme Court in the case of ***Pratibha Devi v. T.V. Krishnan, (1996) 5 SCC 353*** held that the landlord is the best judge of his residential requirement and courts have no concern to dictate the landlord as to how and in what manner he should live or to prescribe for him a residential standard of their own. The court held as follows:

“2. The landlord is the best judge of his residential requirement. He has a 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. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding

reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.”

22. In *G.C. Kapoor Vs. Nand Kumar Bhasin*, AIR 2002 SC 200, the Supreme Court noted as follows:

“It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In *Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Anr.*: [1999] 2 SCR 912, this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.”

In view of the above, there are no reasons to interfere with the conclusion of the ARC about the premises being required bona fide by the respondent.

23. Accordingly, there are no errors or infirmities in the order of the ARC which warrant any interfere of this court. There is no merit in the present revision petition and the same is dismissed. All the pending applications are also dismissed.

JAYANT NATH, J

SEPTEMBER 13, 2016/v