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HIGH COURT OF DELHI AT NEW DELHI

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RCR 499/2015

Decided on: 4th February, 2016

RAM DULARI & ANR

..... Petitioners

Through: Mr. S.D Ansari Advocate with
Mr. I. Ahmed, Advocate

versus

DR. BRIJ MOHAN (NOW DECEASED) THR HIS LRS

..... Respondent

Through: Mr. T.K Ganju, Senior
Advocate with Mr. Aquib Ali,
Adv., Mr. Manik Ahluwalia,
Adv., & Mr. Abhishek
Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J

1. This is a revision petition filed against the order dated 26.03.2015, by virtue of which, the learned ARC-02, Central District, Tis Hazari Courts, Delhi had allowed the eviction petition filed by the Respondent/landlord on merits.
2. Briefly stated the facts of the case are that the respondent /landlord had filed an eviction petition against the petitioners/tenants for recovery of possession in respect of

tenanted premises i.e. one shop on the ground floor of 4087, Nai Sadak adjacent Chawri Bazar, Delhi-110006. The said premises were stated to be required *bona fide* the respondent's son Dr. Jaideep Rohatgi, his grandson, Vaibhav Rohatgi and his granddaughter-in-law, Pallavi Rohatgi who were all doctors. It was stated that they were facing scarcity of accommodation for the purpose of attending their patients. The respondent has explained in the petition the different usages of the portion of the building under their occupation and as to how they intend to use the accommodation if vacated by the petitioner. In this regard, it was specifically stated that there is no provision for x-ray or medical bed/table on the ground floor of the suit premises for attending patients with fractures or with accidental injuries and therefore, the tenanted shop being situated on the ground floor is most suitable for setting up these facilities.

3. It was also stated, that if the possession of tenanted shop is retrieved, then same can be alternatively used for shifting of some facility from back portion to the front portion. The portion so vacated could be used for installing a lift in the rear portion of the suit property, as the upper floors were not being properly

utilized due to non-availability of lift. It was also averred that the petitioner/tenant had sub-let the tenanted shop to one M/s Gupta Stationary Mart without the written consent or permission of the respondent/landlord.

4. The petitioners/tenants on being served filed their leave to defend application wherein they contended that the requirement of respondent/landlord is not *bona fide* since the deceased respondent/landlord Dr. Brij Mohan was 90 years old and was practicing from his residence at Defence Colony. It was stated that Jaideep Rohatgi was practicing from 4088, Nai Sarak and Vaibhav Rohatgi was employed at Safdarjang Hospital and Pallavi Rohatgi was still studying medicine and was currently working as an apprentice in Aggarsain Hospital and therefore they did not require the tenanted shop which measured only $7\frac{1}{2}$ X 15 Sq. ft.
5. It was also contended that two rooms on the ground floor as well as on first and second floor of the suit property are lying vacant which are in possession of the respondent/landlord. The respondent/landlord was stated to be in possession of sufficient alternate accommodation i.e. a hospital constructed in an area of

800 sq. yards at DDA Community Centre, Zamrudpur, Kailash Colony, Delhi. Apart from this, it was also averred that the respondent has properties in Okhla Industrial Area, NOIDA, Paharganj and at Mathura Road but details of these properties were not given. It was also stated that the respondent is getting huge amount of money as rentals from these different properties in Okhla, Mohan Singh Industrial area and Chandni Chowk and thus it was urged that he could arrange his requirement without seeking his eviction.

6. The petitioner also stated that the respondent had earlier filed an eviction petition under Section 14 (1) (b) which was dismissed upto High Court and that the present petition has been filed with a *mala fide* intention of selling the suit property after getting the tenanted shop vacated by the petitioner.
7. In replication the respondent/landlord, denied all the averments made in the written statement.
8. On the pleadings of the parties the following issues were framed:-

(i) Whether the applicant is the owner of the premises?

(ii) *Whether there exists relationship of landlord and tenant between the parties?*

(iii) *Whether the premises are required bona fide by the applicant for himself?*

(iv) *Whether the applicant has no other reasonably suitable accommodation?*

9. Regarding the issue of ownership, the Ld. ARC concluded that the petitioner had not placed any cogent evidence on record to show that the respondent was not owner of the premises and therefore the landlord-tenant relationship was also proved on the basis of pleadings of the parties. The issues of *bona fide* requirement and availability of alternative accommodation was also decided in the favour of the respondent by observing that testimony of PW-1, Dr. Jaideep Sahni was sufficient to establish the existence of *bona fide* requirement setup in the eviction petition. The plea of availability of alternate properties was also held as not having any bearing on the case since the respondent/landlord required additional accommodation in the same building and this requirement cannot be met by any other property.
10. The petitioner seeks to assail this order of eviction on merits on the ground that the respondent/landlord Dr. Brij Mohan

(deceased) died during the pendency of the eviction proceedings and his son Dr. Jaideep was impleaded and claimed to be owner of the tenanted shop on the basis of a will which was not produced and proved. It was contended that ownership is one of the essential ingredients for seeking retrieval of possession under Section 14 (1) (e). It is therefore contended by the learned counsel for the petitioner that Dr. Jaideep has no *locus standi* to seek eviction.

11. The counsel for petitioners has also raised similar plea regarding non-existence of *bona fide* requirement and it was contended that said requirement must be genuine and more than mere desire which is not present in the instant case.
12. Mr. T.K Ganju, the Ld. Senior Counsel on the behalf of the respondent/landlord has on the other hand contended that the factum of attornment to Dr. Jaideep Rohatgi by payment of rent was admitted by RW-1, Rajiv, attorney of petitioners/tenants and therefore they are now precluded from challenging his title. In this regard, he has placed reliance on *Bantam Enterprises Pvt. Ltd. v. Jaspal Singh Kapoor*; 189 (2012) DLT 59 to contend that

eviction cannot be prevented merely by casting a doubt on the title of the landlord.

13. As regards, *bona fide* requirement, the Ld. Senior Counsel has stated that respondent requires the tenanted shop to install an X-ray room or medical bed as absence of same may result in a life-threatening situation for a patient in emergency cases, who will have to climb stairs in order to avail these facilities. It has also been contended that tenanted shop is most suitable for installing these facilities. The Ld. Senior counsel has drawn the attention of the court to the cross-examination of RW-1 wherein he has admitted that the gali next to clinic has iron potholes and therefore activities in the clinic cannot be carried on from the backside as neither can a lift be installed nor can essential activities.
14. The respondent/landlord in support of his case has examined Dr. Jaideep Rohtagi as PW-1 while as so far as petitioners are concerned they have not entered into witness box and son of Ram Dulari has entered into witness box as RW-1 and filed his Affidavit as an attorney of Ram Dulari and he was subjected to

cross-examination. In addition to this one more witness has been examined as RW whose testimony is not very material.

15. In order to prove a case of bona fide requirement, a person has to prove four things, namely, that the petitioner is the owner and landlord of the suit premises; that the premises were let out for a specific purpose; that the premises are required bona fide by the landlord for himself or for any member of the family dependent upon him; and lastly that the landlord has no other reasonably alternative suitable accommodation available to him.
16. Mr. Ansari, the learned counsel for the petitioners has firstly contended that there exists no relationship between the petitioners and the respondent, namely, Dr. Jaideep Rohtagi of tenant and the landlord nor is latter owner of the suit property. He has challenged the very *locus standi* of the respondent to maintain the petition. Mr. Ansari admitted the factum of the eviction petition having been filed by Dr. Brij Mohan, father of Dr. Jaideep Rohtagi against the present petitioners, however, it was contended by him that on account of demise of Dr. Brij Mohan, the relationship of landlord and tenant ceased to exist between the present petitioners and the respondent. It has also

been contended that Dr. Jaideep Rohtagi has claimed ownership of the suit property on the basis of the Will purported to have been made by Dr. Brij Mohan in his favour, however, neither such Will has been filed nor proved in the present proceedings and, therefore, he could not be considered to be the owner of the suit property.

17. Mr. Ganju, the learned senior counsel for the respondent has contested this submission of Mr. Ansari. He has contended the factum of relationship of landlord and tenant being in existence between the petitioners and Dr. Brij Mohan is not in dispute. It is further stated that after the unfortunate demise of Dr. Brij Mohan he was survived by four legal heirs all of whom had given their no objection in favour of Dr. Jaideep Rohtagi, the present respondent to contest the matter and the name of Dr. Jaideep Rohtagi was substituted as the legal representative of Dr. Brij Mohan by trial Court vide order dated 19.12.2011. After the demise of Dr. Brij Mohan the rent continued to be paid by the petitioners to Dr. Jaideep Rohtagi and since there was a Will made by Dr. Brij Mohan in favour of Dr. Jaideep Rohtagi, therefore, he was the owner of the suit property as well.

18. It has been further contended that the ownership of a landlord need not be the absolute ownership of the property all that the landlord is to show is that he has some superior title than the tenant. Reliance was also placed by Mr. Ganju, the learned senior counsel on the judgment of Delhi High Court in *Bantam Enterprises Pvt. Ltd. v. Jaspal Singh Kapoor*, 189 (2012) DLT 59, wherein it has been observed that the proceedings under the Rent Act cannot be converted and utilized by a tenant to prevent eviction by trying to cause a doubt on the title of the property which has been inherited by a person.
19. I have carefully considered this submission of the learned counsel for the parties and I find considerable merit in the submission of Mr. Ganju, the learned senior counsel.
20. The question of non existence of relationship of landlord and tenant or the ownership which has been sought to be urged by Mr. Ansari is only a mirage. He seems to be oblivious to the fact that RW-1 in his cross-examination has admitted on 20.02.2015 that after the death of Dr. Brij Mohan it was Dr. Jaideep Rohtagi who was collecting the rent from the petitioners/tenants. The very fact that the petitioners had paid the rent to the respondent,

the relationship of landlord and tenant gets conclusively established and by virtue of Section 116 of the Evidence Act, the petitioners are also precluded from challenging the ownership of the respondent/landlord.

21. In addition to this, the proposition of law which has been laid down in *Bantam Enterprises Pvt. Ltd.* squarely fits in to the facts of the present case that the petitioners who were admittedly inducted as tenants by Dr. Brij Mohan, respondent/landlord predecessor-in-interest of Dr. Jaideep Rohtagi, could not be permitted to raise a frivolous plea with regard to ownership of the suit property so far as respondent/landlord is concerned. It is established by preponderance of probabilities that Dr. Jaideep Rohtagi is the son and legal heir of Dr. Brij Mohan apart from his other legal heirs. Dr. Brij Mohan had died during the pendency of the eviction petition. On an application being filed for substitution of his LRs the other legal representatives gave no objection Affidavit to the substitution of the name of Dr. Jaideep Rohtagi. Dr. Jaideep Rohtagi had also relied on a Will to have received the entire suit property by way of testament and accordingly his name was substituted in place of his father which

clearly establishes that not only he stepped into the shoes of his father to continue the eviction proceedings against the petitioners but also claiming himself to be the owner of the suit property. It is no longer *res interga* that for the purpose of declaring the ownership of the suit property, a person is not required to be the absolute owner. All that he is required to show is that he has superior title than the title than that of the tenant which has been established by him by ample measure. Accordingly, the aforesaid submission made by the learned counsel for the petitioners is without any merit and the same has rightly been rejected even by the Rent Controller.

22. So far as issue No.2 is concerned that is the purpose for which the premises have been let out that issue is not in dispute. The property is situated in a commercial market of Chandni Chowk and obviously it is admitted case of the parties that the property has been let out for the purpose of running a commercial activity by the petitioners. Issue No.2 has not been assailed by the petitioners in the present appeal nor does it require any further comment to be passed by this Court.

23. With regard to requirement, the learned counsel for the petitioners has challenged the bona fide requirement of the respondent and has contended that the respondent has number of other properties including a hospital being run by them at DDA Community Centre, Zamrudpur, Kailash Colony, Delhi and therefore, on this ground the petitioners does not deserve to be evicted so as to result in their displacement, when the respondent can run his clinic at any of the spaces so owned by him.
24. This argument challenging the bona fides of the present petitioners has also been controverted by Mr. Ganju, the learned senior counsel who has contended that the bona fides of the landlord are in no way suspect. It has been contended that the respondent requires the extra space to treat his patients. The petitioners have accepted before the trial Court that there is no X-ray machine or a medical bed on the ground floor of the premises. The respondent has a requirement to install the same in order to treat emergency patients, especially the accident cases. It was stated that the patients who has just met with an accident cannot be first asked to go all the way upto the first floor in order to get the requisite medical attention or treatment.

The precious time which may be lost in such a process may lead to a threat to the life of the patient.

25. Further, RW-1 in his cross examination dated 23.02.2015 has admitted that the gali next to the clinic i.e. Satte wali gali has two iron poles embedded in it as it is difficult even for a rickshaw puller to go through therefore by making a patient go through the area in order to get medical help would not be feasible.
26. It is further stated that the tenant cannot dictate the terms as to how the landlord is supposed to live or conduct his affairs. The learned counsel for the respondent has placed reliance on *Anil Bajaj v. Vinod Ahuja*, AIR 2014 SC 2294; *S.R. Babu v. T.K. Vasudevan & Ors.*, AIR 2001 SC 2881; *Sh. Labhu Lal s/o Jeevan Lal v. Smt. Sandhya Gupta w/o Luxmi Dutt Gupta*, 173 (2010) DLT 318; *Sh. Gurcharan Lal Kumar v. Srimati Satyawati & Ors.*, 2013 (2) RCR (Rent) 120; *K.K. Ohri v. Dr. Balraj Sethi & Ors.*, 82 (1999) DLT 906; *John Impex Pvt. Ltd. v. Dr. Surinder Singh & Ors.*, 135 (2006) DLT 265; and *Bhatia Cloth House v. Dr. Raj Kumar Gupta & Anr.*, (2008) 151 PLR 796.

27. It has been further stated that the Hon'ble Supreme Court in *Uday Shankar Upadhyay & Ors. v. Naveen Maheshwari (2010) 1 SCC 503* has held that even the Courts cannot direct the landlord the manner in which the property is to be used by him.
28. Reliance is also placed on *Sarwan Dass Bange v. Ram Prakash, 167 (2010) DLT 80*, wherein it has been held that whenever the landlord would approach the Court his requirement shall be presumed to be genuine and bona fide and heavy burden lies on the tenant to prove otherwise. The above decision was further reiterated by this Court in *Sh. Labhu Lal s/o Jeevan Lal v. Smt. Sandhya Gupta w/o Luxmi Dutt Gupta*.
29. It has been argued by the learned senior counsel that the petitioners have urged that the respondent is financially very sound and has other multiple assets and therefore the requirement is not bona fide and the respondent may be directed to use other premises. It is reiterated that the tenant cannot dictate the terms as to how and in what manner the landlord is supposed to use his properties. The respondent in cross examination before the trial Court has not only conceded but also stated the reasons as to why the other properties are not

feasible for his use. RW-1 during his cross examination dated 27.02.2015 has admitted that none of the other properties mentioned by them are in actual and physical possession of Dr. Jaideep Rohtagi. He has also not been able to show that the same are feasible to run a Clinic as contended.

30. It is further stated that Dr. Brij Mohan had been running his clinic for more than sixty years prior to his death. Dr. Jaideep 'Rohtagi has also been practicing in the clinic with his father and after his father's death in January, 2011 he continues to carry on the practice from the said premises and now his son and his daughter-in-law have also joined. After more than 60 years he has earned a name and reputation for his clinic and professional capability in the area. His reputation has constantly grown over the year which has consequently led to a growth in his clientele as well. If the argument of the petitioners is accepted and the respondent is asked to arrange for another area, it would not only cause a harm to his practice as Doctor but shall even cause a huge harm towards his clientele as patients in need would not travel so many kilometers to get treatment as few seconds are extremely precious in a patient's life let alone minutes and

hours. The respondent who has three members in his family as doctors must be given a free hand to arrange his affairs to run the clinic in a manner in which he likes. Therefore, argument of the appellant cannot be taken into consideration.

31. It has been further argued that the respondent's financial status is very sound cannot be a reason to deny his bona fide requirement. Reliance is placed on *Aero Traders Pvt. Ltd. v. Mohan Singh & Ors.*, 207 (2014) DLT 202 wherein it was laid down that the financial status of the landlord cannot be a ground to deny his *bona fide* requirement of the property.
32. As discussed earlier, it is no more *res integra* that the tenant cannot dictate the terms as to how the landlord is to utilize the premises or as to how he must arrange his affairs which will result in the escape of the petitioners from eviction in the event of *bona fide* requirement being shown by the respondent/landlord. It may also be pertinent here to mention that the respondent during his cross-examination recorded on 27.02.2015 has admitted that none of the properties mentioned by them are in actual and physical possession of Dr. Jaideep Rohtagi nor he been able to show as to how these properties are

conducive for the purpose of running medical clinic as is sought to be urged by him. Therefore, this contention of the learned counsel for the petitioners Mr. Ansari does not have any merit.

33. It may also be pertinent here to mention that Late Dr. Brij Mohan has been running his clinic for more than 60 years before his unfortunate demise. Dr. Jaideep Rohtagi his son also a practicing doctor who is looking after the clinic now and was also doing so, earlier when his father was alive. The son and the daughter-in-law of Dr. Jaideep Rohtagi are also stated to be qualified doctors who are also stated to be intending to utilize the suit premises for the purpose of carrying out the family tradition of running the medical clinic at the place in question. In such a contingency where a person is running clinic and has taken generations to set up his medical practice for last more than 60 years, it does not lie in the mouth of the petitioners/tenants to question the *bona fide* requirement of the respondent/landlord to say that he should shift his medical clinic to some other place or that he is not providing a particular service to any patient. The case which is set out by the respondent/landlord is that he wants additional accommodation

by evicting the present petitioners/tenants so that he is able to arrange his affairs in such a manner whereby he renders a better medical service by shifting certain provisions to the ground floor and also gives him an opportunity to install lift at the rear portion so that the patients can be taken conveniently on to the first floor. It will cause immense harm to the landlord in a case of this nature where the eviction is not ordered and it is held by the Court that he must shift his clinic to some other place that will be literally holding the landlord to ransom by the tenant. The law does not countenance such a situation. Therefore, I feel that this is a classic case where the petitioners are holding on to the premises only with a view to deprive the respondent/landlord from additional accommodation so that he could arrange his affairs of running a medical clinic in a better and efficient manner only for the sake of benefit of the public at large.

34. Mr. Ansari, the learned counsel for the petitioners/tenants has taken the Court through various portions of the evidence in order to support his submissions especially with regard to the challenge given to be bona fides of the petitioners. As against this, Mr. Ganju, the learned senior counsel for the respondent

has contended that the present revision petition has been filed under Section 25-B(8) of the DRC Act under which the scope of the revisionist court is very limited and it has to only see whether there is any material irregularity committed by the learned Additional Rent Controller in deciding the matter in accordance with law. The learned senior counsel has also placed reliance on the Full Bench judgment in *Mohan Lal v. Tirath Ram Chopra & Ors.*, AIR 1982 Delhi 405 wherein it has been held that when a Court comes to the conclusion that the unsuccessful party had not a proper trial according to the law then the Court can interfere, however, the Court is not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at. Meaning thereby, it does not lie within the domain of revisionist Court's power to substitute its own finding in place of the finding of the trial Court unless trial court arrives at a finding which no reasonable person could have arrived at.

35. The Court cannot lose sight of the fact that this is a case where the eviction order has been passed against the present petitioners not at the threshold while denying him to leave to defend. On

the contrary, this is a case where leave to defend was granted, the matter was contested, parties produced their respective evidence and it is only after such an exercise was undergone it took considerable length of time of the Court that the learned ARC has returned a finding that the premises in question are required bona fide by the respondent/landlord in order to arrange his affairs in such a manner so that it is able to run the medical clinic not by himself but for his son and daughter-in-law also in an efficient and proficient manner. It is also taken note of the fact that this clinic is in the walled city has been in existence for the last more than 60 years having been established by the father of the respondent/landlord who himself was also a doctor. Therefore, all these factors have been taken into account by the learned ARC and a detailed reasoned order has been passed by the learned ARC. The learned counsel Mr. Ansari, appearing for the petitioner has not been able to show to the Court that there is any illegality, irregularity or any jurisdictional error in the finding returned by the learned ARC, therefore, I am in total agreement with the finding recorded by the learned ARC that the only irresistible conclusion by preponderance of probability

which has been drawn is the one which has been arrived at by the learned ARC.

36. Another factor which weighs heavily against the present petitioners is that the petition has been filed by two petitioners both of whom are stated to be wife of one Shri Shankar Lal, who was the original tenant.
37. It is also noticeable that neither Smt. Ram Dulari nor Smt. Chand Kiran has entered into the witness box. On the contrary son of Smt. Ram Dulari, Shri Rajiv (RW-1) has filed his Affidavit Ex.RW-1/A by way of examination-in-chief and has been cross-examined. Mr. Ansari, the learned counsel for the petitioners has justified the filing of the Affidavit by the son of Ram Dulari in the capacity of attorney by contending that Smt. Ram Dulari was an old lady and was not in a position to come before the Court and testify.
38. It may be possible that Smt. Ram Dulari was an old lady but it was certainly not the case of Mr. Ansari that she was not in a position to speak and testify or file an Affidavit. Therefore, in such an eventuality even if she was not able to appear before the Court, the proper course of remedy open to the

petitioners/tenants was to get her examination or for that matter cross-examination recorded on commission. This has not been done. On the contrary, her son has appeared as a witness and filed his Affidavit by way of examination-in-chief in the capacity of an attorney and permitted himself to be subjected to cross-examination. He in his Affidavit has stated that he is aware of the facts but it is nowhere stated by him in his Affidavit as to whether he is living at the suit premises or not. In case he is not living in the suit premises then it is very unlikely that he would be aware of the actual ground position available and therefore, the observations of the Supreme Court in catena of judgments where a petition is filed or defend by a party in his individual capacity ordinarily it is he/she himself to appear in the witness box. In the absence of this, the only inference which the Court would draw is an adverse inference against the party. Section 114(g) of the Indian Evidence Act, 1872 clearly shows that if there is a witness who was within the power and control of a person and that witness is not produced then the presumption can be drawn that if such witness had been produced it would have gone adverse to the party concerned. On

this score also the petitioners are on very weak footing. Reliance can also be placed on catena of judgments of the Supreme Court where such a conduct on the part of the party who is defending the case in person or filed the case in person does not appear as a witness. Similar view was taken in *Janki Vashdeo Bhojwani and Anr. v. IndusInd Bank Ltd. and Ors.* AIR 2005 SC 439; that a power of attorney holder can ‘act’ on behalf of the principal but he cannot depose for the principal for the acts done by the principal and not by him. Apart from this, it was also held by Apex Court in the case of *Vidhyadhar v. Manikrao and Anr*, [1999] 1 SCR 1168; that:

“Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.”

39. In view of the aforesaid totality of facts and circumstances of the case, I am fully convinced that the petitioners have not been able to make out any case for interference by this Court as the impugned order does not suffer from any illegality, material irregularity or any jurisdictional error or impropriety.

Accordingly, the revision petition is dismissed. No orders as to costs.

40. Pending applications also stands disposed of.

41. Since the period of six months has already elapsed long back, the petitioners/tenants are given a month's time to vacate the premises and handover the possession to the respondent/landlord of their own. In case the possession is not handed over, the respondent/landlord shall be well within his right to seek execution of the decree after expiry of 60 days from today.

V.K. SHALI, J.

**FEBRUARY 04, 2016/
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