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

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Pronounced on: 04.07.2017

+ RC.REV. 102/2016 & CM No.5355/2016 (stay)

DR S N GUPTA

..... Petitioner

Through Mr. N.Mahabir and Mr. P.C. Arya,
Advocates.

versus

SATNAM SINGH

..... Respondent

Through Mr. Abhishek Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) seeking to impugn the eviction order dated 15.10.2015 passed by the Additional Rent Controller (hereinafter referred to as the ARC) dismissing the application seeking leave to defend by the petitioner.

2. The respondent/landlord filed the present eviction petition against the petitioner/tenant under Section 14(1)(e) of the DRC regarding shop at 52/69, Gali No. 20, Nai Basti, Gadodia Road, Anand Parbat, Delhi. The shop was said to have been let out @ Rs.145 per month 40 years ago. The petitioner is said to be tenant in possession of two shops which were let out to the father of the petitioner Sh. Tulsi Ram Gupta 40 years ago by the father of the

respondent, namely, Sh.Prtiam Singh for running oil mill business. Presently, the petitioner has a clinic in one shop. From the other shop which is the subject matter of the present eviction petition, the petitioner is running a flour mill. The father of the respondent is said to have died on 12.10.2013 leaving behind a Will dated 30.05.2013 whereby the half portion of the property has been bequeathed in favour of Sh.Gurdeep Singh, the brother of the respondent and the other half portion leading to street No. 20 has been bequeathed to the respondent. The shop in question is under the ownership of the respondent and the petitioner is said to have been paying rent to the respondent for the same. The rent has been last paid on 17.06.2014 by the petitioner to the respondent for a period of 10 months i.e. from 01.09.2013 to 30.06.2013.

It is the contention of the respondent that he was working in a private company, namely, Galaxy Elegant Fashions Pvt. Ltd. having its office at Manesar. He had to travel around 120 kms daily from his residence to attend his duties. Due to ill health, he resigned from the job in June 2014 as it is not possible for him to travel such a long distance daily. The respondent has a wife and two children who are dependent on him. The respondent is said to be unemployed. He even tried taking technical training of Piano tuning and technician for one year. He needs the tenanted shop to start a business for himself and for his son so that the respondent can earn some money and fulfill the daily needs of the family.

3. The ARC by the impugned order noted the defences raised by the petitioner in his application for leave to defend, namely, that the respondent has an alternative accommodation available in Dwarka; that the LRs of late Sh. Pritam Singh had sold one shop adjacent to tenanted premises in April

2014; that there is another shop in possession of another tenant and no case has been filed regarding the same.

4. The ARC by the impugned order noted that there is no dispute regarding the relationship of landlord-tenant between the parties. It also noted that in any case, a co-owner can also file an eviction petition without impleading the other co-owner. Regarding availability of alternative suitable accommodation, the impugned order notes that the property in Dwarka is a residential accommodation in the joint name of the respondent and his wife. The bank statement which is placed on record shows that the respondent is paying installment to LIC Housing Finance Scheme. Hence, the property in Dwarka being a residential property, it cannot be said to be suitable alternative accommodation.

5. Regarding availability of another shop which is occupied by another tenant, the impugned order notes that it is not for the tenant to dictate to the landlord as to which particular premises he may chose to get evicted. Regarding the sale of the shop in April 2014, the ARC noted that the contention itself shows that the shop was sold by the LRs and not by the respondent himself. The impugned order also notes that the bank statement shows stoppage of deposit of salary since June 2014 showing that the respondent has left his job. Noting that there is no ground made out for grant of leave to defend, the impugned order dismissed the application for leave to defend and passed the eviction order.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner has vehemently argued as follows:-

(i) In June, 2014 the respondent gave an undertaking in a case in civil court that he will not dispossess the petitioner. Hence, the present eviction petition is mischievous.

(ii) It is urged that though the fulcrum of the case of the respondent is that he has resigned from his job but there is no proof given about his resignation

(iii) The availability of alternative accommodation in Dwarka is again stressed.

8. Learned counsel for the respondent has reiterated that the respondent used to work in Manesar. He is now 50 years old and he is not in a position to commute daily from Delhi to Manesar. It is urged that the respondent is unemployed and seeks to start his own shop to earn his livelihood. Regarding the property in Dwarka, it is urged that the same is a residential property. It is also stated that the passbook of the respondent shows that he is unemployed.

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 any 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.

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 dependent 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 petitioners. 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 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.)”

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. As far as the plea of the petitioner relying upon an undertaking given by the respondent in a civil court, the same has no meaning. That suit was filed for permanent injunction against the respondent and his brother. On the basis of the statement of the respondent and his brother that they will not dispossess the petitioner from the suit shop without following the due process of law, the suit was disposed of. The proceedings of the said suit and order do not in any manner prohibit the respondent from filing the present eviction petition.

18. Regarding the plea of the property at Dwarka, it is manifest that the property in Dwarka is a residential property. On the other hand, the location of the present property in Anand Parbat which is a commercially active area is more suitable to run a shop/business by the respondent. The property in Dwarka cannot be said to be a suitable alternative accommodation.

19. Regarding the alleged sale of the shop by the other LR.s., the sale has not been affected by the respondent. It does not in any manner affect the bona fide need of the respondent.

20. In *Ragavendra Kumar v. Firm Prem Machinery and Co., [2000] 1 SCR 77*, it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in

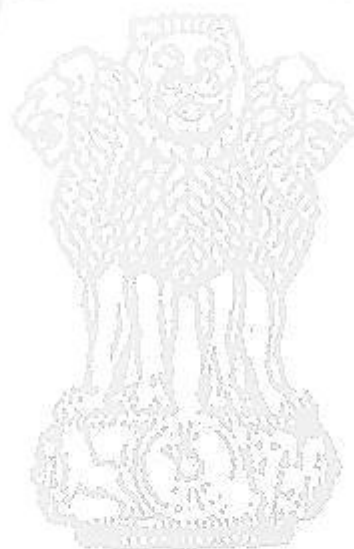
the matter. In *Prativa Devi (Smt.) v. T.V. Krishnan*, (1996) 5 SCC 353, it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live.

21. There are no reasons to differ with the impugned order. The present petition is without merit and the same is dismissed. All pending applications also stand dismissed.

**(JAYANT NATH)
JUDGE**

JULY 04, 2017

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