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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Pronounced on: 04.07.2017

+ RC.REV. 102/2013 & CM Nos.4153/2013 and 7021/2013

SURENDER KUMAR JAIN

..... Petitioner

Through Mr. M.R.Chawla, Mr. Siddharth and
Mr. Aditya Vaibhav, Advocates.

versus

SARDAR MOHD. KHAN & ORS.

..... Respondents

Through Mr.G.M.Farooqui, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

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 dated 29.01.2013 passed by the Additional Rent Controller (hereinafter referred to as the ARC) whereby the application for grant of leave to defend filed by the petitioner was dismissed and an eviction order was passed under Section 14(1)(e) of the DRC Act.

2. The brief facts are that respondent No. 1/landlord filed an eviction petition against the petitioner and Sh. Roshan Lal, now represented by his LRs being petitioners No. 2 and 3, respondents No.2(a) to 2(c) and Sh. Raj Kishan Jain, son of Sh.Roshan Lal. The eviction petition was filed for eviction of Shop No. 1427, Bazar Chitli Qabar, Jama Masjid, Delhi-110006. As per the petition, late Sh. Roshan Lal and Sh.Raj Kishan were under joint

tenancy but had allowed the petitioner No.1 to carry on business on the false pretext of partnership. It was averred in the eviction petition that respondent No.1 is the owner and landlord vide sale deed dated 27.02.1989 and release deed dated 29.07.1999. It was urged that the shop is required bona fide by respondent No. 1 for his own use as well as for his family members. Respondent No. 1 is aged about 60 years having a cloth's business in Shop No. 1430, first floor, Bazar Chitli Qabar, Zama Masjid Delhi under the name and style of "Mehtab Bhai Zari Wala" for earning his livelihood. Respondent No. 1 has no other commercial business to earn his livelihood. The respondent No. 1 is having two sons, namely, Tariq Mehtab and Siraj Mehtab aged about 25 years and 22 years respectively and one daughter aged 20 years. It is further stated that two brothers of respondent No. 1 have passed away. One of his brothers, namely, Mehfooz Khan had died at a very young age leaving behind his wife, one daughter and one son aged about 22 years and 20 years respectively. The other brother, namely, Sultan Khan died on 14.06.2007 leaving behind three children. It was urged that the family of the two brothers and his own family depend on respondent No.1 and the tenanted shop is required bona fide for the sons of respondent No.1 and for the son of his brother, namely, Late Mehfooz Khan.

3. The ARC by the impugned order noted the plea of the petitioner that respondent No.1 is neither the owner nor the landlord of the premises. It was noted that the suit property was owned by Hazi Zahiruddin and his brother Qamuddin. They had sold the property by a sale deed to respondent No.1 and to Smt.Rabia Arif who has relinquished her share in favour of the respondent No.1. It was admitted that the original tenants were inducted by Sh. Hazi Zahiruddin who had sold the shop to respondent No.1. Hence, the

impugned order concludes that the relationship of landlord and tenant is evident.

4. On the issue of alternative accommodation, the impugned order noted the plea of the petitioner about the alleged alternative accommodation being available to respondent No.1, namely, premises No. 1426 and 1429, Bazar Chitli Qabar, Jama Masjid, Delhi, first, second and third floor of the building where the tenanted property is located, premises No. 1431-1435 of the same locality comprising of ground floor, first floor, second floor and third floor and property No. 1668, Gali Takhtwali Suiwalan, Daryaganj, Delhi. The impugned order noted that respondent No.1 has categorically explained that shop No. 1426 and 1429 are not owned by him. The said shops are owned by Sh.Arif Hussain Khan. Regarding shops in property No. 1431-1435, the impugned order noted that the said properties are not owned by respondent No.1. Respondent No. 1 has given the names of the owners of the said properties. It was also noted that it has been explained by respondent No.1 that the first floor of shop No. 1431 and 1432 and first floor of shop No. 1426-1429 is one hall in which respondent No.1 is running his business of cloth under the name and style of Mehtab Bhai Zai Wala. The second and third floor of the property No. 1426-1429 is being used by the wife of respondent No.1, namely, Smt. Abida Sultan who has been running a school and coaching centre there since the date of purchase of the property. Similarly, regarding property No. 1668, Gali Takhtwali Suiwalan, Daryaganj, Delhi, the impugned order noted that this is an ancestral property which is lying in the name of the father of respondent No.1. The property is a residential property and cannot be used for commercial purposes. The impugned order also noted the objection of the petitioner that the eviction

petition has been filed against a dead person as such the same is a nullity in law as Sh.Roshan Lal had died in 1974. This plea is also rejected as on 29.08.2011, the LR's. of the original tenants, namely, Sh. Roshan Lal were allowed to be brought on record.

5. The original eviction petition was filed against the petitioner, Sh.Roshan Lal and Sh.Raj Kishan. It later transpired that Sh.Roshan Lal had died in 1974. The petitioner No.1 is one of the sons of Sh.Roshan Lal. Respondent No.1 moved an application under Order 1 Rule 10 CPC whereby a direction was sought from petitioner No.1 to give details of the LR's of the two respondents who had expired. From the reply filed by petitioner, it transpired that Sh. Roshan Lal has left behind six sons including the petitioner and four daughters. The ARC vide its order dated 29.08.2011 allowed the application under Order 1 Rule 10 filed by respondent No.1.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner has strongly submitted that the petition has been filed against a dead person. Hence, no such petition lies. It has secondly been submitted that as per the eviction petition, the petitioner has been described as a sub-tenant and hence, it is urged that the eviction petition does not lie. It has thirdly been reiterated that respondent No.1 owns various other properties which are alternative suitable accommodation including property No. 1426 and 1429 including the first, second floor and top floor in the same locality, namely, Chitli Qabar, Jama Masjid, 1431-1435 Chitli Qabar, Jama Masjid, Delhi and property No. 1668, Gali Takhtwali Suiwalan, Daryaganj, Delhi. Hence, the petition lacks bona fide.

8. 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...”

9. 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.

10. 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.

11. 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.

12. 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.”

13. 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.)”

14. 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 petitioner.

15. Coming to the plea of the petitioner that the petition has been filed against a dead person and hence, does not lie. The plea is without merit. The petitioner has been defending the petition since the date it was filed, they have filed an application for leave to defend and have also filed the present petition. No doubt that the two original tenants had expired and the LR's were not impleaded when the petition was filed. However, subsequently the LR's were impleaded. The plea of the petitioners is without merit inasmuch as no prejudice has been caused to the petitioner by the fact that in the original petition, the LR's of the deceased Roshan Lal had not been impleaded.

16. In this context reference may be had to the judgment of the Bombay High Court in the case of *Official Liquidator, High Court, Bombay and Liquidator of Jai Hind Estate & Housing Co. Ltd. vs. Taru Jethmal Lalvani & Ors.*, AIR 1994 Bom 74 whereby the court held as follows:

“6. Under Order I Rule 10 of the Code of Civil Procedure the Court has the power to strike out or add parties to the suit. However, where the suit is brought against a person who is found to have died before institution of the suit (he being the only defendant), the plaint cannot be amended by bringing, his legal representatives on record though the suit may have been filed in ignorance of his death. This is because a suit against a dead man is a nullity. Of course if a suit is against several defendants and only one of them is found to have died before its institution, the entire suit will not fail and can proceed against the other defendants. The legal representatives of the deceased defendants can be joined, provided a fresh suit could have been filed on that date.”

17. Similarly, the Division Bench of the Andhra Pradesh High Court in the case of *Khaja Begum vs. Gulam Mohiuddin & Ors.*, AIR 1976 AP 65 held as follows:-

“5. Section 153, Civil P.C. says :-

"The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."

This section is new. It confers a general power on the court to amend the defects and errors in any proceeding in a suit and to make all necessary amendments for the purpose of determining

the real question or issue between the parties in the suit. So when a suit is filed against a dead person the plaint can be amended by substituting the legal representatives of the deceased defendant, but the suit should be treated as instituted on the date of the application for amendment. If on that date the suit is not barred by limitation it will be in effect a suit validly instituted against the legal representatives of the deceased defendant.....”

18. In the present case, petitioner No. 1 was also impleaded as a respondent in the original Eviction Petition. It is not a case where a suit was instituted against a dead person only. The ARC rightly impleaded the LR's of the deceased tenant. No prejudice was caused to the petitioner. The plea is without merit.

19. Regarding alternative accommodation, the ARC in a detailed order has dealt with each of the accommodations claimed by the petitioner to be alternative as suitable accommodation to respondent No.1. Respondent No.1 has pointed out that he is the owner of only two shops, namely, 1427 and 1428, Bazar Chitli Qabar, Jama Masjid, Delhi. The shop No. 1428 was in possession of the tenant, namely, Abdul Ajeer who is now deceased and against whom a separate eviction petition was also filed. Respondent No.1 has also explained that he is having one shop/hall for his business on the first floor of shop bearing No. 1431-1432 and shops No.1426-1429 (being interconnected) under the name and style of Mehtab Bhai Zari Wala. It was pointed out that Shop No. 1426, 1429 are owned by Arif Hussain Khan. Regarding property No. 1431, it is stated that it is owned and possessed by Haji Ali Jaan, property No. 1432 is owned and possessed by Ali Wakil Jewellers, property No. 1433 is owned and possessed by Noor Mohd. who is

running a business of jewelry. Property No. 1434 is also owned by somebody else and 1435 is a shop owned by Ahmed Ali. Respondent No.1 and his family do not have any concern with the said shops/property Nos. 1431-1435, Bazar Chitli Qabar, Jama Masjid, Delhi. The second and the third floor of property 1426 to 1429 is being used by Smt. Adiba Sultan (wife of respondent) who is running her public school/coaching centre since the property was purchased by her.

20. In the light of the explanation given by respondent No.1, it is manifest that there is no suitable alternative property available with respondent No.1. The averments of the petitioner are vague and bereft of any details and have been rightly rejected by the ARC

21. Reference may be had to the judgment of the Supreme Court in ***Anil Bajaj & Anr. vs. Vinod Ahuja, AIR 2014 SC 2294***. That was a case where the landlord owned several properties in the vicinity of the tenanted premises. However, the said landlord was running his shop from a shop which is 15 feet in width. The tenanted premises was facing the main road. In those facts the Supreme Court accepted the plea of the landlord and held as follows:-

6. In the present case it is clear that while the landlord (Appellant No. 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord-Appellant No. 1 does not propose to utilize the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord

proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend.”

22. Keeping in view, the legal position above, it is manifest that there is no merit in the present petition. There are no grounds to interfere in the orders passed by the ARC. The petition is dismissed.

(JAYANT NATH)
JUDGE

JULY 04, 2017
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