

\$~A-4

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

% *Date of decision: 1.2.2017*

+ RC.REV. 207/2016 & CM No.13796/2016

RAKESH TALWAR Petitioner
Through Ms.Shabnam Sheikh, Advocate

Versus

SUDESH GULATI Respondent
Through Mr.Rama Shankar and Mr.Shivam
Garg, Advocates

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present Revision Petition is filed under section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as 'The DRC Act') seeking to challenge the eviction order dated 16.7.2015 passed by the Additional Rent Controller (hereinafter referred to as the ARC) under Section 14(1)(e) of the DRC Act.

2. The respondent filed an Eviction Petition for shop Private No.4, front side in the property No.H-61, Kalkaji, New Delhi. It was urged that the shop was let out by the father of the respondent to the petitioner sometime in 1981-82. The father of the respondent Shri Hansraj was the absolute owner and left behind a Will dated 30.5.2007. In view of the Will on the death of the father the respondent and his elder son Shri Sanjay Gulati became joint owners. It is further urged that the son of the respondent Shri Lucky, due to non-availability of commercial space is running a stall of eatable items on

footpath. He has experience of running a restaurant and requires the tenanted premises alongwith two other shops to run a restaurant. It is also pointed out that there is paucity of accommodation for residence of the family of the respondents who are also living in the same building. The said respondents have two rooms for their residence and due to paucity of accommodation they have converted one shop into a room. One shop is being used by the respondent for store. It is urged that the said shop is not suitable for running of a restaurant and the respondent's son Shri Lucky requires three shops being private shop Nos.4 and 6. This is including the tenanted shop in question for running of the restaurant. Other two separate petitions are also said to have been filed/are being filed.

3. The petitioners filed a cryptic application for leave to defend. The only argument raised was that there is no information given as to who is occupying shop Nos.8, 9 and 10. It was further stated that there are three shops on the western side facing northern side which are lying vacant and the possession of the shops are with the respondents. That in sum and substance was the ground on which leave to defend was sought. The respondent filed his reply to the said application and denied that the said shops are lying vacant. It was stated that Shop No.9 and 10 have been converted into one shop and are under tenancy of a tenant. It was further stated that the said shop is facing a small gali and is not suitable for running of a restaurant. Shop No.8 was being used by the daughter-in-law of the respondent for running a boutique. Shop No.7 has been converted into a room to meet the residential requirements of the respondent. It is also stated that the respondent requires L shape accommodation for running the

restaurant and the requirement will only be met with the shops where the petitioner is a tenant alongwith two adjacent shops.

4. I have heard learned counsel for the parties. The ARC by the impugned order noted that the sole ground taken by the petitioner is that Shops No.8, 9 and 10 are available to the respondents to meet his proposed bona fide requirement. The ARC noted the explanation given by the respondent, namely, that two shops have been let out and one is being used by the daughter-in-law and that no shop is lying vacant for the bona fide requirement of the respondent. Accordingly, the application for leave to defend was dismissed.

5. Learned counsel for the petitioner has stressed that there are six shops available with the respondent which are sufficient for his requirement. It is secondly submitted, relying upon a copy of a rent agreement dated 6.4.2015 that shops have been let out to tenants by the respondent after filing of the eviction petition. Thirdly reliance was placed on a sale deed dated 4.3.2014 executed in favour of Smt.Santosh Gulati wife of the respondent and Shri Anubhav Gulati son of the respondent to contend that immediately prior to filing the eviction petition an additional accommodation has been bought by the respondents which is available to the respondent.

6. Learned counsel for the respondent has pointed out that no such averments have been made by the petitioner in the application for leave to defend. He submits now before this court these new pleas cannot be raised and are barred by section 25B of the DRC Act. He further submits that there are no available shops in occupation of the petitioner. Regarding the rent agreement dated 6.4.2015, he points out that these shops were always under occupation of a tenant and have only been re-let. Regarding the sale deed

said to have been executed on 4.3.2014 it is urged that the property in question is only a basement and cannot be said to be an alternative suitable accommodation.

7. 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...”

8. 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.

9. 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.

10. 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.

11. 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.

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 parameters stated above for determining as to whether the trial court rightly refused the leave to defend to the petitioners.

15. A perusal of the application for leave to defend would show that the only ground taken by the petitioner to seek leave to defend is about availability of three shops, namely, Shop Nos.8, 9 and 10 to the respondent

as alternative suitable accommodation. The respondent has clearly pointed out that the shops are not available for the bona fide requirements of his son Shri Lucky. Shop Nos.9 and 10 have been converted into a single shop and are occupied by a tenant. Further the shop is facing a small gali. Shop No.8 is said to be used by the daughter-in-law and shop No.7 is being used for residential accommodation. Hence, in view of the above explanation given by the respondent and the fact that the petitioner apart from making bald averments was unable to place or submit anything further, the ARC rightly rejected the application for leave to defend filed by the petitioner.

16. Now, before this court the petitioner seeks to urge additional grounds which were never raised before the ARC or even mentioned in the application for leave to defend.

17. The Supreme Court in the case of *Prithipal Singh v. Satpal Singh, (2010) 2 SCC 15* held as follows:-

“13. Next comes the very important provision in Section 25B of the Rent Act, i.e., Sub-section (4) of the same. It clearly provides that a tenant on whom the summons is duly served in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller, as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

14.....

15. At this stage, we may also note that in Sub-section (4) of Section 25B of the Rent Act read with Third Schedule, it has been made clear by the Legislature that if the summons of the

proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceeding within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.”

18. Hence, the tenant has to appear and file an application for leave to defend within 15 days. It has been further held that section 25B of the Act is a complete code by which the entire procedure to be adopted for eviction of tenant on the ground of bona fide requirement is to be followed.

19. This court in *Sh.Mirajuddin v. Mohammad Habib & Ors., R.C. Rev. No.488/2011*, decided on 24.07.2014, held as follows:

“9. Learned counsel for the petitioner wanted to argue orally before this Court by placing reliance upon certain documents by stating that facts have now come to notice which entitle grant of leave to defend, however, this is not permitted in law in view of the judgment of the Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15 and which holds that whatever has to be stated for grant of leave to defend has to be necessarily and only stated within 15 days in the leave to defend application and the statutory period of 15 days is sacrosanct. Supreme Court has held in the case of Prithipal Singh (supra) that there cannot be condonation of delay of even one day in filing of an application for leave to defend because neither the provision of Section 5 of the Limitation Act, 1963 nor the provisions of CPC, 1908 apply to the exhaustive procedure for bonafide necessity under Section 25 B of the Act. Once the period of 15 days is sacrosanct, it is not permissible to a tenant after the period of 15 days to keep on filing affidavits or documents to urge grounds for seeking leave to defend, and which if permitted to be done, will be violative of the ratio of the judgment of the Supreme Court in the case of Prithipal Singh (supra) that 15 days period for filing of leave to

defend application is non-flexible and a fixed period, and every aspect for seeking leave to defend has to be stated within 15 days only and not thereafter. Therefore, the so called subsequent events which are sought to be urged cannot be urged on behalf of the petitioner.”

20. Similar view was taken by the learned Single Judge of this court in ***Sh.Sanjeev Gupta & Ors. v. Sh.Subhash Kumar Gupta & Anr., R.C.Rev. No.270/2013***, decided on 27.08.2014, wherein it was held as follows:

“2. Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15 has held that the statutory period for filing of leave to defend is sacrosanct and there cannot be condonation of delay of even one day in filing of the leave to defend application. A learned single Judge of this Court in the case of Ms. Madhu Gupta Vs. M/s. Gardenia Estates (P) Ltd. 184 (2011) DLT 103 has held that there cannot be filed an application for amendment of the leave to defend application after a period of 15 days because that would amount to destroying the sanctity of the 15 days period as stated in the case of Prithipal Singh (supra).

3. In view of the above, it is clear that whatever has to be stated by a tenant for seeking leave to defend has to be stated within 15 days, and after a period of 15 days, no application for leave to defend should be entertained nor any additional affidavit or document be allowed to be taken on record/considered or an application to amend the leave to defend application be entertained on the ground that certain additional facts or documents are required to be considered”

21. Similar view was also taken by the learned Single Judge of this court in ***Mohd. burhan. v. Shri Triloki Nath Nirmal, R.C.Rev. No.240/2013***, decided on 25.08.2014 and in ***Punjab Stainless Steel House v. Sangeeta Kedia MANU/DE/2055/2014; C.M.(M) No.1354/2011***.

22. In the light of the above legal position it is clear that the petitioner/tenant cannot normally after expiry of 15 days' period start adding to the grounds which he ought to have urged in his leave to defend application either by seeking to amend the application or by filing additional documents. Any such act done by the tenant would be contrary to the provisions of section 25B of the DRC Act.

23. In the light of the above, it is not be possible for this court to take into account the submissions which have been made by learned counsel for the petitioner. These facts are not subsequent events that arose after filing of the eviction petition. In any case it would be highly unfair to go into those submissions as the respondent has not received an opportunity to respond to the said submissions.

24. I may, however, add that before this court suitable explanation has been given by the respondent/tenant regarding the new submissions which have been sought to be raised by the petitioner before this court. The reliance of the petitioner on the rent agreement dated 6.4.2015 is misplaced. These shops in question as explained have earlier also been under rent. Further, the respondent seeks eviction of shops which are facing the main road. The said tenanted shops do not face the main road and are not said to be reasonable suitable alternate accommodation for the petitioner. Regarding the other argument raised by the petitioner regarding purchase of a property, as stated by the respondent the said property is only a basement and cannot be said to be a reasonable suitable alternative accommodation for the requirement of the respondent.

25. There is no merit in the present petition to warrant interfere by this court in its revisional jurisdiction in the impugned order passed by the ARC.

The peititon is dismissed. All pending applications, if any, also stand disposed of accordingly.

(JAYANT NATH)
JUDGE

FEBRUARY 01, 2017

n