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

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Pronounced on: 04.07.2017

+ RC.REV. 168/2015

VIJAY NAYYAR

..... Petitioner

Through Mr.Sushil Kumar, Advocate

Versus

OM PRAKASH MALIK

..... Respondent

Through Mr.Sajan K.Singh, 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 order dated 29.01.2015 passed by the learned Additional Rent Controller (hereinafter referred to as the ARC) whereby the eviction petition filed by the respondent under Section 14(1)(e) of the DRC Act was allowed and an eviction order was passed against the petitioner/tenant.

2. The respondent/landlord filed the eviction petition under Section 14(1)(e) of the DRC Act for the shop on the ground floor of the property bearing No. B-202, Nehru Vihar, Timarpur, Delhi. It was the case of the respondent/landlord that the petitioner/tenant was inducted into the premises as a licensee free of cost. As the petitioner did not vacate the property, the respondent filed a suit for possession before a civil court. However, on

account of legal advice received and also on account of the fact that the petitioner had taken a plea that he is a tenant in the demised premises at a monthly rent of Rs.1500/-, the respondent states that instead of fighting a long drawn battle against the petitioner, the respondent withdrew the suit with liberty to file the present petition.

3. It is further stated that the property in question is constructed till the second floor and the respondent is the owner of the same. On the ground floor there are three shops out of which one is in possession of the petitioner, namely, the demised shop and the other two shops, it is urged, have been sold/disposed of by the respondent sometime back as he was under heavy debts and from the sale proceeds, he has discharged his pending loans. First floor of the property consists of one room, kitchen, bath and toilet in which the respondent resides with his wife. On the second floor two sons of the respondent are residing in two rooms i.e. in one room his elder son, namely, Jatin Malik is living with his wife and son-Master Hardik whereas the younger son, namely, Bhuvesh Malik is residing in the other room. The respondent had taken voluntary retirement from NDPL on 31.01.2004. The respondent has also two married daughters staying in Delhi who keep visiting the respondents. It was urged that the respondent is facing financial crises as he has very little income as he is idle. Further his younger son is to be accommodated in some business. Hence, the respondent and his younger son want to start a business of laptop and mobile repairing from the premises in question. Hence, the eviction petition.

4. It may be noted that initially the ARC had dismissed the application for leave to defend and passed an eviction order by order dated 22.01.2011. The revision petition filed by the petitioner being RCR No. 120/2011 was

allowed on 11.07.2011. This court noted the plea of the petitioner that the respondent had two other shops with him and that the respondent has created documents of transfer in favour of his relatives only to create a ground for filing of an eviction petition on the ground of bona fide requirement. This court held the said plea to be a plausible plea which warranted grant of leave to defend to the petitioner. The fact as to whether the landlord was still in possession of the other two shops or not is a matter of trial and the plea in this regard cannot be said to be frivolous. The matter was accordingly remanded back to the ARC for fresh consideration after quashing of the eviction order.

5. The petitioner thereafter filed the written statement. The respondent led evidence of himself as PW-1. He also examined PW-2-Sh.Hemant Bhatia, UDC/Record Keeper from the Sub-Registrar Office, PW-3-Sh. Alha Singh, Record Keeper, Record Room (Civil), Tis Hazari Courts, PW-4-Mr. Rajesh Arora from NDPL Office and PW-5-Sh.Rohtash Malik, LDC, DUSIB.

6. Similarly, the petitioner got himself examined as RW-1. He also examined RW-2-Sh. Rajendra Singh Sisodia, A witness from the bank but his cross-examination was not done and RW-3 Manoj Kumar.

7. The ARC by the impugned order noted that in view of the pleadings of the parties, the respondent is the owner of the premises and there exists a relationship of landlord and tenant between the parties.

On the issue of bona fide requirement, the impugned order has noted the evidence of the PW-1/respondent that he requires the premises to start his business along with his younger son for his livelihood. The ARC came to the conclusion that there was nothing adverse in the cross-examination of PW-1

which would suggest that he did not require the premises for his bona fide requirement. It was also noted that the respondent is an old aged person and being a retired technical man from NDPL is living on pension and he now wants to start his own business along with younger son for his livelihood. Accordingly, the eviction petition was allowed.

8. I have learned counsel for the parties.

9. Learned counsel for the petitioner has vehemently argued that the impugned order has ignored the submission of the petitioner about the availability of two other shops with the respondent for his use and for carrying on business. It is secondly urged that the son who is alleged to be idle is actually presently employed.

10. Learned counsel for the respondent has submitted that presently it is Jatin Malik, the elder son who is unemployed and that the younger son Bhuvish is working in a private job. Regarding the two shops, it is urged that PW-2 has proved the requisite sale documents executed in favour of the owners and it is clear the shops were sold.

11. 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* 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..."

12. Section 14 (1) (e) of the Delhi Rent Control 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:-

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(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;”

13. 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.

14. The basic contention that has been raised by the petitioner is about alleged availability of two shops on the ground floor with the respondent. The respondent in the eviction petition has mentioned about these shops but has clearly stated that the two shops have been disposed of by the respondent some time back as he was under heavy debts and loans have been paid back from the same proceeds. In his affidavit by way of evidence the respondent (PW-1) has stated as follows:

“9. I say further that the property bearing No. B-202, Nehru Vihar, Timarpur, Delhi-110054 is constructed till second floor. On the ground floor, there are three shops out of which one shop is in possession of the respondent i.e. the demised shop and the other two shops have been disposed of by me in April 2009 vide two separate transactions as I was under heavy debts and loans. I say further that one shop bearing shop No. 1 was sold to one Smt. Bimla Devi vide registered G.P.A. dated 21.04.2009 and agreement to sell dt. 21.04.2009. The G.P.A. and agreement to sell both dt. 21.04.2009 is exhibited as Ex.PW-1/5 and Ex.PW-1/6 respectively. I say further that the other shop bearing Shop No. 2 was sold to one Mrs. Maya Devi vide registered G.P.A., registered agreement to sell, two receipts, special power of attorney, affidavit, possession letter and deed of Will all dt. 21.04.2009 is exhibited here as Ex. PW-1/7, Ex.PW-1/8, Ex.PW-

1/9, Ex. PW-1/10, Ex.PW-1/11, Ex. PW-1/12 and Ex.PW-1/13 respectively. I say further that from the sale proceeds thereof I had discharged the liability pertaining to dues of different banks pertaining to loan amount/credit cards facility. The copies of settlement letter with different banks are exhibited here as Ex.PW-1/14 to Ex.PW-1/21.”

15. He was cross-examined on this aspect of 17.02.2012. Nothing contradictory was said in his cross examination. He has explained that one of the persons to whom a shop was sold is Smt. Maya Devi whom he met through a property dealer. The said shop has subsequently changed hands and is now in occupation of Sh. Umesh Madan. He has denied that Sh. Umesh Madan is his tenant. He has also confirmed that the second shop which was sold to Smt.Bimla Devi is now in occupation of Sh. Ravi. He has stated that Mr.Ravi is not his tenant. Similarly. PW-2- Sh.Hemant Bhatia, UDC/Record Keeper from the office of Sub-Registrar has brought two GPAs registered on 21.04.2009 (Ex.PW-2/1 and Ex.PW-2/2) and agreement to sell also registered on 21.04.2009 (Ex.PW2/3). The evidence of PW1 & PW2 show the sale of shops in 2009 vide registered documents.

16. In contrast, the petitioner has brought evidence of RW-3 who appears to live in the vicinity. He has claimed that in the other two shops, there is a tailor in one shop and in one shop there is a property dealer and both are tenants of the respondent. On his cross-examination, he has stated that Sh. Ravi Duggal and Smt. Alka are tenants of the respondent and he has heard this from various persons. He has confirmed that he does not know these tenants. He has also confirmed that he has never seen Smt.Alka and Sh. Ravi Duggal making any payment of rent to the respondent. It is clear that the testimony of RW-3-Manoj Kumar cannot be believed. It is based merely on

surmises and hearsay. Even otherwise as per RW-3, the occupants of the two other shops are tenants of the respondents. It is not the case of the witness that these shops are in possession of the respondent. It is manifest that the plea of the petitioner claiming that the other two shops are available with the respondent is completely false and frivolous and cannot be relied upon.

17. Regarding bona fide requirement, it is manifest that the respondent is without a job since February 2004. He is entitled to occupy his shop for the purpose of earning his livelihood and to keep himself occupied in his occupation. 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.

18. There are no reasons to interfere with the well reasoned order of the ARC. The present petition is without merit and is dismissed.

(JAYANT NATH)
JUDGE

JULY 4, 2017
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