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

% Pronounced on : *04.07.2016*

\+ RC REV.480/2013

PRAN NATH KATYAL ....Petitioner

Through Mr.M.R.Chawla, Adv.

versus

K.C.VERMA ...Respondent

Through Mr.R.S.Kela, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. The present Revision Petition is filed under section 25-B(8) of the Delhi Rent Control Act, (hereinafter referred to as the DRC Act) seeking to impugn the order dated 14.10.2013 passed by the Additional Rent Controller (hereinafter referred to as the ARC) whereby the eviction petition filed by the petitioner/landlord under Section 14(1) (e) of the DRC Act was dismissed.

2. The petitioner/landlord filed the Eviction Petition seeking eviction of the respondent/tenant under section 14(1)(e) of the DRC Act of property being 17/17, Ground Floor (back portion) Mall Road, Tilak Nagar, New Delhi. The entire property measures 61 sq.yards comprising of two and half floors. The respondent/tenant has in his possession one shop measuring 9"x 13". As per the eviction petition the case of the petitioner was that the premises are required by the petitioner for himself/other members of the family. The petitioner retired from the Central Government in May 2000. His family consists of his wife, one married son, Shri Surinder Katyal, daughter

in law, two grandsons, namely, Utkarsh and Namit. He has two married daughters. It is stated that the eldest grandson Shri Utkarsh is the son of Shri Surinder Katyal from his first wife. His stepmother it is stated is not taking care of him because of which Shri Utkarsh is left far behind in his studies. Hence, the petitioner seeks to open a shop for him but is not having sufficient space. Further, his son Shri Surinder Katyal i.e. father of Shri Utkarsh has recently been served with a job termination notice from his private job and hence the entire family is dependent upon the petitioner. It was further stated that on the first floor the petitioner has one room, one drawing room, one kitchen, one bathroom and one toilet and on the second floor he has two rooms. Further, it is stated that the petitioner is also having a small space of 5"x 14" which is insufficient to carry on the desired business on the ground floor. The front of the said shop is further shortened by a 2" pillar. Another shop is said to be under the ownership and occupation of Ms.Ritu Kapoor.

3. The respondent filed his application for leave to defend. However, the said application was dismissed vide order dated 12.4.2012. The respondent had impugned the said order of the ARC dated 12.4.2012 before this court in RC Rev.438/2013. By consent order dated 23.5.2013 the order of the ARC dated 12.4.2012 was set aside and leave was granted to the respondents. The ARC was directed to dispose of the matter within one year.

4. The respondents thereafter filed their written statement where they have taken various pleas. Parties led their evidence. The petitioner appeared as PW-1 whereas respondent as RW-1.

5. On the issue of landlord-tenant relationship the impugned order noted that the ownership of the petitioner or relationship of landlord and tenant are

not denied by the respondent. The impugned order notes that the only dispute is regarding the bona fide need of the petitioner as well as the alternative accommodation. The impugned order notes that the respondent in the written statement has taken the following pleas:-

> "(a) The petitioner had sold one shop in the suit property on 09/07/2010 i.e. just 5 months prior to filing of present eviction petition;
> (b) The petitioner has let out one another shop measuring 5x14 feet on 09/08/2010 i.e. just 4 months prior to filing of the present petition to Sh.Daman Singh Pal on the rent @ Rs.6,000/- per month;
> (c) The petitioner's son Surinder Katyal is running an electrical shop from shop No.100, Lajpat Rai Market, New Delhi;
> (d) The petitioner's grandson Utkarsh has taken admission in graduation course in Delhi University."

6. Regarding the first contention of the respondent that the petitioner had sold one shop on 9.7.2010 i.e. five months prior to filing of the Eviction Petition the impugned order notes the plea of the petitioner that he had to sell the shop since he wanted to financially assist his daughter who had engaged her daughter (granddaughter of the petitioner). The impugned order does not believe the version of the petitioner as this plea about the grand daughter's marriage and the need to sell the shop was revealed only for the first time in the replication. In the eviction petition there was no whisper that the shop has been sold to Ms.Ritu Kapoor in compelling circumstances just prior to filing of the eviction petition. Even in his cross-examination the petitioner could not answer the question whether the shop was sold prior to getting his grand daughter engaged or thereafter.

The impugned order further notes that the petitioner accepts that there is one additional shop available measuring about 5"x 14"but the shop is insufficient to carry on business as the front of the shop is shortened by a 2" pillar. The petitioner, however, did not mention that the shop was let out on 9.8.2010 i.e. just four months' prior to filing of the eviction petition at a rent of Rs.6,000/- per month. In the replication the petitioner stated that the shop had been vacated by Shri Daman Pal Singh in December 2012. The impugned order also does not believe the contention of the petitioner, namely, that the front of the shop is shortened by 2" due to a pillar as nothing about the pillar is mentioned in the Rent Agreement with the tenant. The impugned order further notes the conduct of the petitioner that at the time of filing of the petition he concealed about letting out of the shop to Shri Daman Pal Singh which has been admitted only after the fact was revealed in the leave to defend application.

The impugned order also does not believe the contention of the petitioner that his son Shri Surinder Katyal has been served with one month termination notice by his employer of the private job. The order notes that in his affidavit by way of evidence the petitioner states that his son is not doing any job since March 2013 when he was expelled from his private job. The order notes that when the matter was fixed for final arguments the petitioner has moved an application for exhibiting certain documents. One of the documents is a letter dated 16.11.2010 issued by the office/employer of the petitioner's son where it is mentioned that the petitioner's son is working since 2010. Another letter is dated 31.12.2012 where one month's termination notice is given to the son Shri Surinder Katyal for termination of his job. The letters were not proved by the petitioner. The impugned order disbelieves these communications and the submission of the petitioner that the service of his son has been terminated. It was noted that an averment was made in the Eviction Petition in 2010 that his son has been served with one month's notice of termination of his job. However, the termination letter placed on record is dated 31.12.2012 showing that facts/events have been manipulated.

The impugned order also notes the submission of the respondent that the petitioner's son is actually doing business of electronic items in shop No.100, Lajpat Rai Market, Delhi. Photographs to the said effect have been placed on record showing the presence of the son of the petitioner in the shop. The petitioner accepts that the son is working in the said shop which is said to be belonging to his brother-in-law where his son goes to learn marketing skills. The impugned order does not believe the version of the petitioner as at one place the petitioner states that he and his son and grandson wants to start the business of readymade garments and on the other hand his son is going to Lajpat Rai Market to learn the business of marketing of electronic goods. The order also notes that the petitioner has not placed anything on record to show that Shop No.100, Lajpat Rai Market, Delhi belongs to his brother-in-law and not to the petitioner. Based on the above findings of fact recorded by the ARC, the Eviction Petition has been dismissed.

7. I have heard learned counsel for the parties. Learned counsel for the petitioner has made detailed submissions in this regard. He has also filed written synopsis. It is submitted by the learned counsel for the petitioner that it is not the case of the respondent that the petitioner has any ulterior motive in getting the shop vacated. The petitioner/landlord is the best judge of his

requirements and the tenant cannot dictate terms to the landlord as to how he is to use the premises. In case there is an abuse of powers of the court by the landlord, the tenant can always apply for restitution of the premises under section 19 of the Act. It is further stated that during pendency of the petition the petitioner has died on 11.1.2015 and his legal representatives have been brought on record. However, the death of the landlord does not eclipse his needs. It is urged that it is the privilege of the landlord if he requires the premises for his bona fide requirement for extension of business and there is nothing to show that the petitioner does not intend to use the premises for his own bona fide requirement. Learned counsel for the respondent has reiterated the contentions as stated before the ARC.

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 reappreciation 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. Reference may also be had to the judgment of the Supreme Court in ***Hindustan Petroleum Corporation Limited vs. Dilbahar Singh, 2014 9 SCC 78*** where the Supreme Court in paragraphs 28 and 43 held as follows:-

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43. The observation in Ramdoss v. K. Thangavelu, (2000) 2 SCC 135] that the High Court in exercise of its revisional jurisdiction cannot act as an appellate court/authority and it is impermissible for the High Court to reassess the evidence in a revision petition filed Under Section 25 of the Act is in accord with Rukmini Amma Saradamma v. Kallyani Sulochana and Ors. : (1993) 1 SCC 499] and Dr. D. Sankaranarayanan v. Punjab National Bank [1995 Supp. (4) SCC 675]. Its observation that the High Court can interfere with incorrect finding of fact must be understood in the context where such finding is perverse, based on no evidence or misreading of the evidence or such finding has been arrived at by ignoring or overlooking the material evidence or such finding is so grossly erroneous that if allowed to stand, will occasion in miscarriage of justice. Ramdoss v. K. Thangavelu, (2000) 2 SCC 135] does not hold that the High Court may interfere with the findings of fact because on re-appreciation of the evidence its view is

different from that of the first Appellate Court or Authority."

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 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:-
>
> 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.”

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 dependant upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

13. A perusal of the facts as stated above and the impugned order passed by the ARC will show that there are particularly three aspects which have persuaded the ARC to come to a conclusion that the petition of the petitioner lacks bona fide. The first aspect is the non-disclosure of the sale of a shop located in the suit property 4-5 months prior to filing of the eviction petition. The petitioner in his cross-examination admits that the shop was sold on 9.7.2010. The present eviction petition was filed in December 2010. He further avers that he received a total consideration of Rs.2,75,000/- from sale of the shop out of which he spent Rs.75,000/- in the marriage of his grand daughter. To a question posed by the counsel for the respondent he submits that he does not remember the date when his granddaughter got engaged or the month when he sold the shop. He states that he cannot say whether the shop was sold prior to the grand daughter getting engaged or thereafter. There is no explanation as to why the sale of the shop was not revealed when the eviction petition was filed.

14. The second aspect pertains to the second shop located in the suit property. As per the eviction petition the shop is not of much use as it has a frontage of only 5" which includes a pillar which consumes 2" of space. What was not revealed in the eviction petition was that the said shop was let out by the petitioner in August 2010 i.e. just prior to filing of the eviction petition. It is also on record that the shop remained under the new tenant till December 2012. Further, the plea of the petitioner that the frontage is obstructed by 2" pillar is also not sought to be proved by the petitioner. The petitioner has filed a site plan Ex.PW1/1. There is no proper depiction of the pillar in the site plan. No evidence was led of any qualified Architect to show existence of the pillar. The entire story about the said shop being not suitable

for use by the petitioner and his son or grandson does not inspire any confidence whatsoever.

15. The third leg of the argument centers around the claim of the petitioner that his son's service is about to be terminated. In the Eviction Petition filed in December 2010 the petitioner states that his son Shri Surinder Katyal has recently been served with a termination notice of his private job which he has been carrying on and thus the whole family has become dependent upon the petitioner. Subsequently as already noted in the impugned order when the matter was at the stage of final arguments the petitioner has in July 2013 filed a letter from JSD Infotech dated 31.12.2012 stating that the performance of Shri Surinder Katyal is not very appreciable and that he had been allowed to continue only till the end of 2012 and he has not met the sales target. He was hence told to treat the communication as one month's notice and that he would be released from his assignment w.e.f. 1.2.2013. The Eviction petition was filed in December 2010 where it is pleaded that Shri Surinder Katyal has already lost his job. However, in July 2013 the petitioner filed some communication where it is stated that his job is discontinued from 1.2.2013. In this context reference may also be had to the contention of the respondents that the said Shri Surinder Katyal is actually running his own shop from 100, Lajpat Rai Market, New Delhi. The petitioner does not deny this fact but states that Shri Surinder Katyal is working in a relative's shop only to gain marketing experience. The impugned order disbelieves the version of the petitioner regarding unemployment of Shri Surinder Katyal.

16. It is clear that the petitioner does not appear to have given correct facts in the eviction petition. The facts have been distorted.

17. The Supreme Court in the case of ***Charan Dass Duggal vs. Brahma Nand, (1983) 1 SCC 301*** held as follows:-

> "5. …… when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively."

18. In view of the above three aspects and the nature of averments and evidence led by the parties, in my opinion, the ARC has in the impugned order come to a plausible conclusion that the pleaded requirement in the Eviction Petition lacks bona fide. The conclusions arrived at by the impugned order are reasonable and plausible conclusions based on the facts and material on record. Accordingly in my opinion there are no reasons to interfere in the impugned order. The petition is accordingly dismissed.

(JAYANT NATH)
JUDGE

JULY 04, 2017
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