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

% Date of decision: 25.1.2017

\+ RC.REV. 470/2016 & CM No.35673/2017 (stay)

HARISH CHANDER BHOLA ..... Petitioner

Through Mr.Jayant Bhushan, Senior Advocate with Mr.M.S.Vinaik and Mr.Shashwat Bhardwaj, Advocates

versus

ANKIT BAJAJ ..... Respondent

Through Mr.Kirti Uppal, Senior Advocate with Mr.Manjit Singh Ahluwalia and Mr.Harsh Kumar, Advocates

Mr.S.P.Mehta, Advocate for the Objector.

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, 1958 (hereinafter referred to as the DRC Act) seeking to impugn the eviction order passed by the Additional Rent Controller (hereinafter referred to as The ARC) dated 26.7.2016 by which the application for leave to defend filed by the petitioner/tenant was dismissed and an eviction order was passed.

2. The respondent/landlord has filed the present Eviction Petition under section 14(1)(e) on grounds of bona fide requirements of the respondent. The tenanted premises is situated at property No.741-742, Punja Sharif, Chhota Bazar, Kashmere Gate, Delhi-110006 and is a shop on the First Floor. It is stated that the premises was let out to the petitioner after the respondent purchased the property on 1.6.2000 on a

monthly rent of Rs.180/- per month. The property was bought from the previous owner vide registered Sale Deed of the said date. The tenanted premises is a market where there are several shops. It is averred in the Eviction Petition that all the shops are occupied by old tenants. It is admitted that the respondent has for his personal needs and due to financial constraint has in the past sold three shops to Green Motors, Kewal Narand and Bee Pee Industries 5-6 years ago. The father of the respondent is also in motor parts trade business. Hence, the respondent is said to have started the business of motor parts in Kashmere Gate area about four years ago. He has taken a shop on rent to start the said business which is 1108, Bara Bazar, Kashmere Gate, Delhi-110006 on a rent of Rs.500/- per month besides deposit of security. The respondent now wants to move to his own premises which would also be a larger premises. It is urged that the present rented premises from where the respondent is conducting business is grossly insufficient.

3. The ARC by the impugned order on the issue of landlord-tenant relationship noted that the same is not denied by the petitioner.

4. On the issue of bona fide requirement the ARC noted that the respondent is carrying on business from a rented accommodation, where the space available is less. Two of the shops in the building where the tenanted premises is situated are in occupation of the father of the respondent who is independently carrying on his own business in the name and style of M/s.Roxy Motors and that the respondent has nothing to do with the said business. The respondent cannot be denied his right to start his own business. Keeping in mind the fact that the petitioner did not dispute that the respondent is carrying on business from a tenanted

premises the ARC concluded that the requirements of the respondent is bona fide.

5. On availability of alternative suitable accommodation, the ARC noted three contentions of the petitioner, namely, (i) sale of three shops to Green Motors, Kewal Narang and Bee Pee Industries (ii) that after purchase of the property where the tenanted premises is located, the respondent built number of shops in addition to what were there when the property was bought i.e. No.FA-1, FA-2 and FA-3 and two more shops and godowns on the second floor being No. SA-1 and SA-2 which were said to be lying vacant and in occupation of the respondent. (iii) Shop Nos 741/G, 741/E on the ground floor, Shop Nos.741/8, 741/11 on First Floor/godown and Shop No.741, 741/14 have been vacated by different tenants and are in occupation of the respondent.

The ARC rejected the first contention about sale of the properties as the same had been done quite some time back and does not affect the bona fide need of the respondent.

On additional construction, the ARC noted that a perusal of the sale deed dated 1.6.2000 shows that the shops are in possession of the tenants and that none of the shops were built after purchase of the property by the respondent. Hence, the said contention was held to be a mere bald allegation made without any basis whatsoever.

On the availability of certain shops, the ARC noted the Sale Deed on the basis of which the property was bought by the respondent and the details provided by the respondent in his reply about the various tenants occupying the premises, and rejected the said contention of the petitioner. Based on the above, the leave to defend application of the petitioner was

dismissed and the Eviction Order was passed.

6. I have heard learned senior counsel for the parties. Learned senior counsel appearing for the petitioner has reiterated the submissions which were made and noted by the ARC in the impugned order. Reliance is placed on the Sale Deed dated 26.5.2000 to show that as per the Sale Deed Shop No.741/G on the ground floor was vacant and physical possession of the shop had been handed over to the respondent at the time of sale of the property. Reliance is also placed on the averments of the said Sale Deed dated 26.5.2000 to contend that as per the said Sale Deed Shop No.741/8 was in occupation of Shri Ramesh Ahuja. However, as per the reply now filed by the respondent the said shop is occupied by Shri Vikas. Similarly, it is urged that as per the Sale Deed godown No.741/11 was in occupation of Shri Anil Kumar and Shri Sanjay Kumar. However, as per the reply filed by the respondent the same is in possession of Shri Khurana. Similarly, godown No.741/14 on the second floor it is urged that as per the Sale Deed it was in occupation of Shri Hira Lal Mohanti and Shri Rattan Mohanti. The same as per reply filed by the respondent is in occupation of Shri Mahesh.

7. Based on these facts it is sought to be urged that the respondent is constantly changing the possession of premises in question i.e. by changing tenants and clearly this gives rise to suspicion that he has created artificial scarcity to file this petition.

8. Learned senior counsel appearing for the petitioner has also argued that additional constructions have been raised and this additional area is numbered as Shop Nos.FA-1, FA-2, FA-3, SA-1 and SA-2. It is urged that all the shops/godowns were constructed after the sale-deed and are in

possession of the respondent. The basis for this averment is again the sale deed dated 1.6.2000 where there is no reference to these shops. Based on these averments it is urged that a clear cut case has been made out for grant of leave to defend to the petitioner/tenant. Reliance is placed on judgment of the Supreme Court in the case of ***Precision Steel and Engineering Works and Another vs. Prema Devi Niranjan Deva Tayal, 1983 (1) SCR 498*** and ***Inderjeet Kaur vs. Nirpal Singh, JT 2001 (1) SC 308.***

9. Learned senior counsel appearing for the respondent has stressed that a clear categorical averment has been made by the respondent in the Eviction Petition that none of the areas available in the building where the tenanted premises is situated is lying vacant and available with the petitioner. He submits that the vague and bald averment made by the petitioner in his leave to defend application have been rightly rejected by the ARC and there are no grounds for this court to exercise interference in exercise of powers under Article 25B of the DRC Act.

10. 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…"

11. 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.

12. 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."

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.

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. 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.

15. 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."

16. 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.)"

17. 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 leave to defend to the petitioners.

18. I may deal with the pleas raised by the learned senior counsel for the petitioner. Essentially the plea is about change of occupation of different shops existing in the building owned by the respondent and construction of additional shops.

19. I may note that in the eviction petition filed by the respondent, the respondent has categorically stated that the suit premises where the tenanted premises is situated is a market where there are several shops but all the shops are occupied by old tenants. The respondent also clarifies that for the personal need and due to financial constraints, three shops which were occupied by Green Motors, Kewal Narand and Bee Pee Industries respectively were sold 5-6 years ago. It has also been clarified that the respondent is filing separate eviction petition against other tenants on the ground floor and first floor premises which are required bona fidely by the respondent for use and occupation for his business of motor parts and to be used to keep stock and inventory. It has also been

stated that the respondent has no other suitable alternative accommodation.

20. I may deal with the pleas of the petitioner now. What the petitioner is doing is that he is relying on the list of tenants as mentioned by the erstwhile owner in the sale deed dated 26.05.2000 by which sale deed property was bought by the respondent. The said list of tenants as stated in the sale deed dated 26.05.2000 are sought to be compared with the current factual position and based on discrepancies, allegations are being made that the shops have changed hands or additional construction has been raised. It appears that the name of the tenants for shops No. 741G, 741E, 741/8, 741/11 and 741/14 are presently different from the names of the tenants as stated in the sale deed. In view of this difference an allegation is made that the respondent has inducted new tenants. No details are given as to when the tenants as mentioned in the sale deed have moved out and when new tenants have moved in. The admitted fact is that the petitioner has been occupying a shop in the premises since the year 2000 when the sale deed was executed. He would be aware of occupation of various properties but has failed to give proper details. It is also the case of the petitioner that there are 36 shops existing in the building. Keeping in view this factual scenario, it is quite obvious that there may have been some wrong description of tenants in the sale deed. Alternatively, even if there has been a change in occupation between 2000 and 2012, when the eviction petition was filed, in some of the shops, this change will not mean that there is a lack of bona fide unless the change of tenants has taken place recently prior to filing of the eviction petition. The petitioner has failed to give the dates when

possession of these shops allegedly changed hands. It is quite clear that the allegations are mischievous and have no merits whatsoever.

21. Similarly, it appears that the shops being FA-1, FA-2, FA-3, SA-1 and SA-2 are not property marked out in the sale deed. On account of this, the petitioner has come with allegations claiming that additional construction has been carried out by the respondent. No date of construction has been mentioned and no details of construction have been mentioned. Merely an attempt is made to compare the position depicted in the sale deed of 26.05.2000 with the present ground situation and allegations have been made accordingly. Even if in the past some additional construction has been made it would not effect the bona fide requirement.

22. The bald averments have been rightly rejected by the ARC especially keeping in view the fact that a clear averment is made by the respondent about the entire premises being occupied by old tenants and the names and details of the tenants have been duly provided. It is manifest that the landlord cannot remain frozen in time frame as in 2000 i.e. date of sale deed. In the light of the above position, there are no reasons to interfere with the view taken by the ARC.

23. Present petition is without merits and is dismissed. All pending applications, if any, also stand disposed of accordingly.

(JAYANT NATH)
JUDGE

JANUARY 25, 2017
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Corrected and signed on 12.06.2017.