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

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Pronounced on: 13.04.2018

+ RC.REV. 131/2016

KULDEEP SINGH

..... Petitioner

Through Mr.Rajat Aneja & M.Shifa Nagar,
Advocates for the petitioner.

Versus

SANJAY AGGARWAL

..... Respondent

Through Mr.V.S.R.Krishna, Mr.V.S.Dubey &
Mr.J.P.Tiwari, Advocates for the
respondent

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This revision petition is filed by the petitioner/tenant under Section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'DRC Act') seeking to impugn the eviction order dated 05.11.2015 passed by the court of Rent Controller.

2. The landlord/respondent let out the property i.e. a shop part of Khasra No. 642, Village Chandrawali, Shahdara, Delhi to the petitioner/tenant. The respondent filed an eviction petition under section 14(1)(e) of the DRC Act. It was stated in the eviction petition that the premises was required by the respondent bona fide for his wife who is completely dependent on him for the purpose of her livelihood. It was pleaded that the respondent/his wife had

no other reasonable or suitable commercial premises available except the said tenanted shop for carrying out her work.

3. The Addl. Rent Controller(ARC) by the impugned order dated 05.11.2015 dismissed the application for leave to defend of the petitioner and passed an eviction order in favour of the respondent and against the petitioner. The ARC on the issue of landlord and tenant relationship rejected the claim of the petitioner holding that the petitioner was running the shop in the capacity of a tenant and cannot claim title to the property based on adverse possession. He also rejected the plea of the petitioner that the eviction petitioner was barred under Section 14(6) of the DRC Act inasmuch as the property originally belonged to the father of the respondent, namely, Sh.Yogender Pal Aggarwal. On his demise, the respondent in any case had 1/4th share. Merely because some of the family members executed relinquishment deeds in favour of the other joint owners, it cannot be said that a new right was created in favour of the respondent. The requirement of the respondent was held to be bona fide. It was also held that there was no other suitable accommodation available with the respondent.

4. Before this court a preliminary objection was raised by the petitioner. It was pleaded that after passing of the said eviction order, on 24.05.2016 the respondent has sold the suit property. This fact was admitted by the respondent. Hence, it was pleaded by the petitioner that the present eviction petition is not maintainable under Section 14(6) of the DRC Act and the eviction order is liable to be set aside.

5. This court has heard arguments of the learned counsel on the preliminary objection.

6. Learned counsel appearing for the petitioner has relied upon the judgments of the Supreme Court in the case of *Hasmat Rai & Anr. vs. Raghunath Prasad*, (1981) 3 SCC 103 and *M.M. Quasim vs. Manohar Lal Sharma & Ors.*, (1981) SCC 36 to contend that subsequent facts that have arisen after passing of the eviction order should be considered by this court and the present eviction petition should be dismissed as there is now no requirement of the landlord as projected. Reliance is also placed on Section 14(6) of the DRC Act which places a prohibition on a landlord who has acquired any premises by transfer to file a petition for recovery of possession under Section 14(1)(e) of the DRC Act unless a period of five years have lapsed from the date of acquisition of the property.

7. The Supreme Court in *Hasmat Rai & Anr. vs. Raghunath Prasad(supra)* on the issue of subsequent events being considered at the appellate stage held as follows:-

“14. The definition of expression 'tenant' in the Act excludes from its operation a person in possession against whom any order or decree for eviction has been made. The High Court referred to its earlier judgment in Taramal's case wherein it was held that the protection to a statutory tenant lapsed with the passing of a decree and such a person had no right to bring on record new circumstances which were not in existence at the date of the passing of the decree. This approach wholly overlooks the scheme of the Rent Restriction Act. The M.P. Act enables a landlord to seek eviction of a tenant and obtain possession under various circumstances set out in Section 12. If a landlord bona fide requires possession of a premises let for residential purpose for his own use, he can sue and obtain possession. He is equally entitled to obtain possession of the premises let for non-residential purposes if he wants to continue or start his business. If he commences the proceedings for eviction on the ground of personal requirement he must be able to allege and show the requirement on the date of

initiation of action in the Court which would be his cause of action. But that is not sufficient. This requirement must continue throughout the progress of the litigation and must exist on the date of the decree and when we say decree we mean the decree of the final court. Any other view would defeat the beneficial provisions of a welfare legislation like the Rent Restriction Act. If the landlord is able to show his requirement when the action is commenced and the requirement continued till the date of the decree of the Trial Court and thereafter during the pendency of the appeal by the tenant if the landlord comes in possession of the premises sufficient to satisfy his requirement, on the view taken by the High Court, the tenant should be able to show that the subsequent events disentitled the plaintiff, on the only ground that here is tenant against whom a decree or order for eviction has been passed and no additional evidence was admissible to take note of subsequent events. When a statutory right of appeal is conferred against the decree or the order and once in exercise of the right an appeal is preferred the decree or order ceases to be final. What the definition of 'tenant' excludes from its operation is the person against whom the decree or order for eviction is made and the decree or order has become final in the sense that it is not open to further adjudication by a court or hierarchy of courts. An appeal is a continuation of suit. Therefore a tenant against whom a decree for eviction is passed by Trial Court does not lose protection if he files the appeal because if appeal is allowed the umbrella of statutory protection shields him. Therefore it is indisputable that the decree or order for eviction referred to in the definition of tenant must mean final decree or final order of eviction. Once an appeal against decree or order of eviction is preferred the appeal being a continuation of suit, landlord's need must be shown to continue to exist at appellate stage. If the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the Court including the appellate court has to examine, evaluate and adjudicate the same. Otherwise the landlord would derive an unfair advantage.....”

8. Hence the requirement for eviction must continue throughout the progress of the litigation including at the stage of appeal inasmuch as an appeal is a continuation of the suit. This analogy was extended to revision petition by the Supreme Court in the case *M.M. Quasim vs. Manohar Lal Sharma & Ors.(supra)* where the court held as follows:-

“15. The next step to be taken is whether where a person claiming to be such a landlord has sought to evict the tenant for his own occupation of the building but lost his interest in entirety in the building during the pendency of the appeal which is a continuation of the suit. Would he still be entitled to maintain or continue the action after the cessation or extinguishment of his interest in the building? To examine this contention on merits one feature of the proceedings under the Rent Act may be taken into consideration. To what extent and in what circumstances the court can take notice of events subsequent to the institution of the action is the core problem. This is no more *res integra* and need not be examined in depth. In *Pasupuleti Venkataeswarlus'* case this Court examined this question in relation to a proceeding under the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960. The landlord in that case sought to evict the tenant as he wanted to start his own business in the demised premises. In other words, action was for eviction for personal requirement. In the zig-zag course of proceedings it transpired that subsequent to the commencement of the action the landlord had come into possession of another shop which would meet with his requirement and on this subsequent event tenant requested the court to non-suit the plaintiff. At that stage the proceedings were pending before the High Court in a revision petition at the instance of the landlord questioning a remand to the trial court by the first appellate court for investigation of certain facts. In this revision at the instance of the landlord the High Court took notice of the subsequent event that the landlord's requirement had been fully satisfied as he had come in possession of another shop. In appeal by the landlord to this Court, a serious exception was taken that the High Court could not have taken into consideration an event subsequent to the commencement of the proceedings and non-suit the landlord and that too at a stage when

the proceedings were pending in revision at the instance of the landlord. Negating this contention and dismissing the appeal this Court, after referring to the decision in *Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhri* [1940] F.C.R. 85 quoted with approval the following passage from *Patterson v. State of Alabama* 294 U.S. 600 :

We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

In the leading judgment in *Lachmeshwar Prasad Shukul's* case *Varadachariar, J.* observed that an appeal being in the nature of a re-hearing the Courts in India have in numerous cases recognised that in moulding the relief to be granted in a case on appeal, the Court of appeal is entitled to take into account even facts which have come into existence after the decree appealed against was made. *Krishna Iyer, J.* summed up the position in *Pasupuleti Venkatesworlu's* case:

It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the *lis* has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies binding the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice-subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation depends, the power exists, absent other special circumstances repelling resort to that course in law or

justice.... We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

To sum up, there was a proper and regular application to meet with the requirements of Order 41 Rule 27, CPC for additional evidence inviting the Court's attention to a subsequent event of vital importance cutting at the root of the plaintiff's right to continue the action. Coupled with it, there was evidence in the form of a certified copy of the decree showing that the plaintiffs, even if they had some shade of title to commence action, they having lost an interest in the property and the property having become one of exclusive ownership of a person not a party to the proceedings, were no more entitled to continue the proceedings for their own benefit.”

9. The present petition is a revision petition challenging the eviction order. It may be noted that revisionary powers of this Court under Section 25-B (8) of the DRC Act, were elaborated by the Supreme Court in ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222*** 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..."

Hence, as per the aforesaid judgment, the revisionary powers under Section 25-B(8) DRC Act are not as limited as those under Section 115, CPC. I may also note that it is the first challenge against the eviction order passed by the ARC. Hence while exercising jurisdiction under Section 25-B(8) of the DRC Act, this Court in a revision petition would normally take into account subsequent facts/events that take place after passing of the eviction order which go to the root of the matter. This court cannot ignore subsequent developments which show that the basic facts have ceased to exist which warranted the landlord to file an eviction petition. The property of which the respondent has sought the eviction is no longer within the control of the respondent and hence the very foundation on which the eviction petition was filed has ceased to exist. Clearly, the respondent cannot now be permitted to execute the eviction order.

10. Reference may also be had to Section 14(6) of the DRC Act. The same reads as follows:

“14. Protection of tenant against eviction.

xxx

(6) Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1), on the ground specified in clause (e) of the proviso thereto, unless a period of five years have elapsed from the date of the acquisition.

xxx”

11. Hence, where a landlord acquires any premises by transfer, he cannot move an eviction petition under Section 14(1)(e) of the DRC Act unless a period of 5 years have lapsed from the date of acquisition of the property. Admittedly, the respondent herein has already sold his rights in the property on 24.05.2016 and handed over the rights to a fresh landlord. The new landlord, if he were to file an eviction petition today, the same would not be maintainable under Section 14(6) of the DRC Act. New landlord cannot be permitted to circumvent provisions of Section 14(6) of the DRC Act and take possession of the suit property contrary to the provisions of the DRC Act.

12. There is another factor which persuades me to hold that on account of the subsequent facts which have developed after passing of the eviction order, the plea of the petitioner has to be accepted. I may refer Section 19 of the DRC Act which reads as follows:-

“19. Recovery of possession for occupation and re-entry.- (1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (e) of the proviso to sub-section (1) of section 14 [or under sections 14A, 14B, 14C, 148 and 21, the landlord shall not, except with the permission of the Controller, obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the

Controller may direct the landlord to put such evicted tenant in possession of the premises.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made on him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.”

13. In *Smt. Vidhya Dhari Bhagat vs. M/s. Allahabad Law Journal Co. Ltd.*, AIR 1990 SC 1015, the Supreme Court while interpreting Sections 19(1) of the DRC Act held as follows:

“7. Sub-section (1) refers to recovery of possession of any premises from the tenant in pursuance of an order made under Section 14(1)(e) or under Sections 14-A, 14-B, 14-C, 14-D and 21. The landlord shall not re-let such premises within three years from the date of obtaining possession from the tenant without the permission of the Controller.

.....

9. This sub-section again operates in favour of the tenant who has suffered an order of eviction under Section 14(1)(e) or under Sections 14-A to 14-D and 21. If the landlord after recovering possession of the premises does not occupy the same or it is not occupied by the person for whose benefit the premises are held, within two months of obtaining such possession, the tenant may move the Controller for a direction against the landlord to put him

in possession of the premises or to pay him such compensation as the Controller thinks fit. Not merely that, the tenant has a further right to move the Controller for such reliefs if the landlord has at any time within three years from the date of obtaining possession, re-let the premises to third party without obtaining permission of the Controller under sub-section (1) of Section 19, or the possession of such premises is transferred to another person not bona fide. This right of the tenant to re-enter the premises is, however, restricted only in cases where the tenant is ordered to be evicted either under Section 14(1)(e) or under Sections 14-A to 14-D and 21. If the possession is recovered under any order other than those referred to in sub-section (1) the tenant has no right to invoke the provisions of sub-section (2) of Section 19.

14. Hence, where a landlord seeks eviction under Section 14(1)(e) of the DRC Act and thereafter parts with premises within three years from the date of obtaining the possession without permission of the Rent Controller, the Controller may, on an application made on behalf of the evicted tenant, direct the landlord to put the tenant in possession. In the present case the landlord/ respondent has already parted with possession of the premises in question without permission of the Rent Controller, even prior to having executed the eviction order. It is manifest that in the eventuality that the landlord was to get possession of the premises, the petitioners/tenant would in law be entitled to approach the Rent Controller seeking back to possession of the tenanted premises.

15. Taking into account the subsequent events, it is manifest that the facts which gave rise to passing of an eviction order by the Rent Controller, no longer exist. Further there is a bar on the new landlord seeking eviction of the premises and DRC Act.

18. The petition is accordingly allowed and the impugned order dated 05.11.2015 is set aside. All the pending applications, if any, also stand disposed of.

JAYANT NATH, J.

APRIL 13, 2018/rb

