

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 30th January, 2019

Pronounced on: 06th February, 2019

+

RC.REV. 33/2019 & CM APPL No.2702/2019

URMIL

..... Petitioner

Through : Mr.Shailesh Kapoor, Ms.Suruchi
Thapar and Mr.Devashish
Marwah, Advocates

versus

GAURAV

..... Respondent

Through : Mr.M.K.Gahalot, Advocate

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This revision challenges the impugned order dated 09.08.2018 passed by the learned Senior Civil Judge- Rent Controller(Central), Tis Hazari Courts, Delhi (hereinafter 'Trial Court') in Eviction Petition E-77318/2016 titled *Gaurav vs Urmil* filed by the landlord/respondent herein against the tenant/petitioner under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (DRC Act).

2. The learned Trial Court vide impugned order dismissed the application for leave to defend filed by the petitioner and passed an eviction order in respect of one shop on ground floor of property bearing No.8777, Shidipura, Karol Bagh, Delhi – 110005 (hereinafter 'tenanted shop').

3. Before coming to the legality of the impugned order, let me first find out the grounds for filing of this eviction petition by the respondent. The respondent has filed the petition under Section 14 (1) (e) DRC Act on grounds as set out in Annexure A as follows:-

"1. That Sh. Ram Kishan son of Sh. Phagwa was sole and complete owner of the property bearing No.8777 which is a three storied property built on free hold land measuring area 21.4 sq. mtrs. Comprising of ground, first, second and third floor having total Plinth area 64:2 sq. mts. Situated at Shidipura, Karol Bagh, New Delhi-110005.

2. That Sh. Ram Kishan had appointed Smt.Kanta Devi @ Kamal Devi as his lawful authorized General Attorney vide GPA dated 02.03.1983 which is still valid, legal, operative and not cancelled as yet and also executed a Receipt for consideration which is also Regd. as No.1575 Book No.IV, Volume No.919 on page 99 dated 02.03.1983 regd. with Sub-Registrar, Delhi.

3. That Smt. Kanta Devi @ Kamal Devi got the House Tax duly mutated in her own name with the House Tax Department, Karol Bagh Zone, Delhi and still she was recorded owner of the said house and as such she of her own and as well as being the Attorney of Sh. Ram Kishan is fully authorized to sell the said property and to transfer all ownership and possessory right in respect of the aforesaid property.

4. That previous landlord/owner of the aforesaid property had inducted the respondent as a tenant in respect of one shop situated at ground floor of the property bearing No.8777, Shidipura, Karol Bagh, New Delhi-110005 for commercial purposes only and the last rent payable by the respondent @ Rs.650/- per month excluding the water and electricity charges.

5. That Smt. Kanta Devi @ Kamal Devi after accepting the lawful sale consideration from the petitioner had executed the Sale Deed dated 04.05.2010 in favour of the petitioner in respect of the aforesaid property and the said sale deed is duly registered with Sub Registrar-III vide Registration No.3775, book No.1, Vol. No.13614, page 189 to 195 dated 04.05.2010.

6. That Smt.Kanta Devi @ Kamal Devi in the said sale deed dated 04.05.2010 executed by her in favour of the petitioner had duly admitted and acknowledged the fact and recital that one small shop on the ground floor is occupied by tenant Smt.Parvesh Kakkar and other big shop is occupied by the respondent on the ground floor on monthly rent basis. One shop at the first floor is occupied by Sh.Aman Singh Dhillon and another shop situated at first floor is occupied by another person Sh. Sushil Kakkar as a status of a owner and the second floor is also occupied by the tenant also.

7. That Sh. Aman Singh Dhillon is real uncle of the petitioner.

8. That Sh. Aman Singh Dhillon' was inducted as a tenant in respect of one shop situated at first floor of the property bearing No. 8777, Shidipura, Karol Bagh, New Delhi-110005 by the previous owner/landlord of the said premises.

9. That the respondent became the tenant of the petitioner after purchasing the property bearing No.8777, Shidipura, Karol Bagh,

New Delhi-110005 by the petitioner. The respondent is tenant of the petitioner under the landlordship of the petitioner.

10. That the respondent is having the old tenancy in respect of one shop situated at ground floor of the property bearing No.8777, Shidipura, Karol Bagh Delhi-110005.

11. That the respondent is not enjoying and using the tenanted premises since last 25 years. The tenanted premises is not attached with electricity and water supply. The respondent is illegally and unlawfully only to extort the money from the petitioner is retaining the possession of the tenanted premises as the tenanted premises is road facing and located in the biggest commercial area of Delhi.

12. That the respondent was having the arrears of rent since May, 2010 so the petitioner had terminated the tenancy of the respondent vide legal notice dated 06.1.2011. The copy of the legal notice is annexed herewith. The petitioner had instituted the petition under Section 14 (1) (a) of Delhi Rent Control Act against the respondent and the said petition was registered as eviction petition No.E-86/11 dated 23.04.2011 and the notice of the said petition was issued to the respondent but the same returned with report premises found locked despite process server visited many times. Regd. AD also returned with the report 'premises found locked'. Notice was issued to the respondent through publication and the respondent was deemed to be served through publication in local newspaper Veer Arjun dated 15.07.2012. Despite service of the process, no one appeared on behalf of the respondent, hence the respondent was proceeded exparte on 24.07.2012 and thereafter the learned court of Sh. Pritam Singh, ARC, Central, Delhi vide its judgment dated 14.09.2012 was pleased to direct the respondent to pay or deposit the arrears of rent @ Rs.650/- per month from 04.05.2012 till date within 30 days from the date of service of the order. The copy of the judgment dated 14.09.2012 is annexed herewith. Thereafter the respondent by misusing and abusing the process of law has filed the application under Order 9 Rule 13 CPC for setting aside that order dated 14.09.2012 alongwith application under Section 5 of Limitation Act and the said application are pending before the learned court.

13. That the petitioner is residing in the ancestral property i.e. property bearing No.4652, Gali Mohar Singh Jaat, Pahari Dheeraj, Delhi. The aforesaid property is situated in the residential area and residential one. The petitioner is having his parents, one married sister namely Shailja and another unmarried sister namely Ajeta who is of marriageable age. The petitioner and his father are unemployed one. The real uncles of petitioner namely Sh. Aman Dhillon, Sh. Satbir Singh and Sh. Dilip Singh are giving the financial assistance and help to the petitioner and his parents for meeting out day to day expenses and expenses of the daily life. The petitioner and his father are not having any source of income, means and resources to maintain them. The father of the petitioner remains ill. The medical records of father of the petitioner are annexed herewith. The petitioner and his family members are passing through the financial hardship and crisis. The petitioner is under a social and legal obligation to maintain and care his parents and also has to perform the social obligation, customary rituals and ceremonies on the occasion of birthday, festivals and other occasion also in respect of his parents and sisters. The petitioner is also of marriageable age and the liability of marriage of his unmarried sister is on the shoulder of the petitioner.

14. That the tenanted premises is situated in a biggest Asian Market of Gift items, diaries and key chains and the tenanted premises is situated at prime location and road facing and there is strong chances of flourishing of the business.

15. That the petitioner requires the tenanted shop from the respondent for his bonafide, honest, genuine and authentic needs of running and operating his business of gift items, key chains and diaries with the financial assistance of his uncles and for earning his livelihood with dignity, honour and reputation.

16. That the petitioner is in dire and urgent need of the tenanted premises from the respondent. The Petitioner is not having any other accommodation for running the aforesaid business and the tenanted premises is situated at well established commercial place yielding good financial benefit and advantage to the petitioner.

17. That the petitioner is in dire need of independent financial resources and means to maintain himself, his parents and sisters.

18. That the petitioner is not having any other suitable and alternate accommodation for running the business except the tenanted premises.

19. That the petitioner had sent the legal notice dated 09.11.2015 upon the respondent at her correct addressees through Speed Post. The petitioner through his legal notice had directed the respondent to vacate the tenanted premises and to handover the physical and vacant possession of the tenanted premises to the petitioner within a period of 30 days from tendering of the legal notice and take notice that the petitioner is true and lawful owner/landlord of the premises bearing No. 8777, Shidipura, Karol Bagh, New Delhi-110005. The speed post cover sent at the tenanted premises was received back with postal remarks "shop is closed since many years". The speed post cover sent at another address of the respondent i.e. E-46 Lajpat Nagar-IV, New Delhi was received back with postal remarks "Left". The speed post cover sent at another address of the respondent i.e. C-1/16, Janakpuri, New Delhi was received back with postal remarks "No such person".

20. xxx.

21. That the petitioner requires the tenanted premises for earning his livelihood so that he may satisfy the basic needs of food, cloth, medicines and other needs of himself, his parents and unmarried sister.

22. That the need of the petitioner is genuine, original, honest and bonafide one and the petitioner is in dire need of the tenanted premises from the respondent and the petitioner is own judge of his requirement and the respondent cannot dictate upon the petitioner how the petitioner's need will be met out.

23. That the petitioner has good prima facie case, balance of convenience, irreparable loss and injury in favour of the petitioner and if the relief as prayed by the petitioner is not granted then the petitioner will suffer irreparable loss and injury and it will lead to miscarriage and failure of justice."

4. The notice of eviction petition was issued to the petitioner herein who filed an application for leave to defend before the learned Trial Court, raising following issues:-

(a) That respondent is resident of C-1/116, Janak Puri, New Delhi and not C-1/16, Janak Puri, New Delhi, regarding which petitioner has knowledge, prior to filing of this petition, but despite that knowledge he tried to serve respondent on said wrong address. Similarly, address of respondent is E-46, Lajpat Nagar-III, New Delhi and not E-46, Lajpat Nagar-IV, New Delhi, which means that petitioner is in collusion with postal authorities to serve respondent on wrong addresses.

(b) That petitioner has sold one shop at first floor to Sushil Kakkar which indicates that petitioner had obtained good and handsome amount of selling that shop.

(c) That father of petitioner is running Travel & Tour business for last 25 years and have got fleet of taxis and buses.

(d) That entire second floor of property in question is in possession of Smt. Gyanmati who is paying rent to petitioner and therefore petitioner has adequate means to earn his livelihood. He is a person of resources and means.

(e) That petitioner has wrongfully not mentioned as to who is occupying third floor of property in question as the same is lying vacant.

(f) That erstwhile owner Smt. Kanta Devi was a widow and was given pagri for the shop. Despite having three children who are unemployed, she did not file any eviction petition based on bonafide need as she had knew that she had taken pagri for the said shop.

(g) That petitioner and his father have shops in Rohini and area near Faiz Road, Karol Bagh, New Delhi where they are running their businesses.

(h) That petitioner has purchased old property in question in May 2010 by paying an amount of Rs.8,30,000/- by cheque and cash which means that he is resourceful person. His bank statements and income tax record therefore are required for checking his financial status.

(i) That petitioner has purchased property in question, which is located at prime location as per him at meager amount of Rs.8,30,000/- which create doubt regarding fraud being played upon- the government exchequer for avoiding stamp duty etc.

(j) That respondent had offered Rs.12 lacs to Smt. Kanta Devi for changing name of shop in question in favour of respondent but Smt. Kanta Devi demanded Rs.20 lacs."

5. Before proceeding further, let me see how the learned Trial Court has dealt with the issues urged by the petitioner. The learned Trial Court has held:-

"11. All those claims were bald claims, not supported by any documentary proof. Even otherwise, they did not make out any triable issue as they were legally not tenable in proceedings of like nature. Respondent did not explain the basis on which he had alleged aforesaid claims. Therefore, they did not make out any triable issue.

12. Respondent claimed that petitioner has sold one shop at one shop to Sushil Kakkar but did not mention the details of said sale. She further stated that petitioner and his family are land grabbing builder mafia who purchased disputed properties at throw away prices and sell them at higher rate, which is irrelevant for the purpose of this case.

Similarly, extent of business of father of petitioner, non payment of proper stamp duty by petitioner for purchasing property in question and communications between Smt. Kanta Devi and respondents for sale of shop in question were irrelevant considerations. Even otherwise, as a tenant respondent could not have challenged the title documents of petitioner, in the wake of Sec. 116 Indian Evidence Act. Coupled with the same, the medical documents, relied by the petitioner, show that plea of petitioner that she is ill, is not unfounded. The claim of respondent that said medical record indicates illness, which is temporary in nature, remains bald plea, which did not inspire confidence.

13. Fact of the matter remains that petitioner is the owner of shop in question. She requires that shop to run business for supporting her family members, which cannot be doubted just like that. Further, respondent failed to place on record any proof regarding availability of alternative suitable accommodation for petitioner for meeting out her bonafide need. Ingredients of Sec.14(1)(e) DRC Act therefore were not controverted by respondent on the basis of any documentary proof.

14. The documents relied by respondent viz. Copy of legal notice by petitioner, reply to legal notice dated 22.09.2010, copy of postal money order dated 12.07.2010, copy of postal money order dated 24.09.2010 and copy of postal receipt dated 21.01.2016 did not support his contentions, as mentioned in his affidavit. Therefore, they are discarded by me.

15. The net result is that respondent failed to raise any triable issue. Application for leave to defend stands dismissed.”

6. The learned counsel for the petitioner before this Court argued the learned Trial Court did not afford the petitioner an opportunity to argue his case as no personal hearing was given. The learned counsel referred to an order dated 13.07.2018 which notes since the counsel was not present, matter be listed for pronouncement of orders. A bare perusal of order shows even on earlier occasion i.e. on 13.04.2018 the learned counsel for the petitioner had failed to appear and yet again he failed to appear on 13.07.2018 on which date the learned Trial Court, finding no other alternative, had reserved the matter for orders. Admittedly written submissions on behalf of the petitioner were taken on record. Thus, as the learned counsel for petitioner did not appear on two occasions, so the learned Trial Court rightly listed the matter for orders. Nevertheless, a

bare perusal of impugned order would reveal all contentions as raised in application for leave to defend were considered by the Court below.

7. The learned counsel for the petitioner again has raised similar issues before me which he had raised before the learned Trial Court viz the respondent had sold one shop at first floor to one Sushil Kakkar which indicate that he got the handsome amount after selling such shop. Admittedly, the date of sale of such shop was not given by the petitioner. However, as stated by the respondent, it was sold to Mr.Sushil Kakkar in the year 2011 and not in the year 2015 when the eviction petition was filed. Thus sale of shop on first floor four years prior to filing of this eviction petition cannot be termed as a malafide act of respondent. Further, the availability or non-availability of the accommodation on the first to third floors is not relevant since the respondent is seeking possession of a shop situated at ground floor, which, admittedly, is more suitable for the business purposes than shops on the upper floors.

8. Qua the contention viz the father of the respondent is running a Travels and Tour business for the last 25 years and has got a fleet of taxis and buses; the petitioner had failed to disclose registration number of any of such vehicle(s) or any visiting card of the father of the respondent. This being a vague plea was rightly rejected by the learned Trial Court.

9. Further, the contention qua receipt of the *pagri* by the erstwhile owner is not relevant in these proceedings. Lastly, though it was argued the respondent and his father are having shops in Rohini, Faiz Road, and Karol Bagh etc, but no numbers of such alleged shops were given. No

other issue, muchless a triable one was raised by the petitioner, hence the leave to defend was rightly rejected by the learned Trial Court.

10. The learned counsel for the petitioner could not show any illegality or perversity in the impugned order. Revisional power is ordinarily a power of supervision keeping subordinate Tribunals within the bounds of law. It is largely meant for satisfying itself as to the regularity, legality or propriety of proceedings or decisions of the subordinate Court. Since I find no illegality in the reasoned order passed by the learned Trial Court hence there is no merit in the petition and the same is dismissed. The pending application(s), if any, is also dismissed. No order as to costs.

YOGESH KHANNA, J.

FEBRUARY 06, 2019

M