

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 22nd January, 2019

Pronounced on: 15th February, 2019

+

RC.REV. 14/2019 & CM APPL No.1003/2019

SETH SITA RAM

..... Petitioner

Through : Mr.Anil Agarwalla and Mr.Varun
Kapoor, Advocates.

versus

SARITA AGGARWAL & ANR

..... Respondents

Through : Ms.Shalini Kapoor and
Mr.Dikshant Khanna, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This revision petition is against the impugned order dated 15.10.2018 passed by the learned Pilot Court, CCJ cum ARC (Central), Tis Hazari Courts, Delhi in Eviction Petition No. 888/2017. The eviction petition was filed by the respondent herein against the petitioner in respect of first and second floor of premises No.394 out of Property No.392-395, Hauz Qazi, Delhi-110006. The basis of filing the petition is stated in para 18 of the eviction petition as under:

“18(a)(i) BONAFIDE PERSONAL NECESSITY That the petitioners are the owners/landlords of suit property bearing No. 392-395, Hauz Qazi, Delhi 110006, of which the tenanted premises of the respondent/tenant bearing premises No. 394, Hauz Qazi, Delhi-6 forms a part, hereinafter called the suit premises, and more specifically shown in red colour in the annexed site plan. That the mother of petitioner No.1 Smt. Kamla Devi W/o Shri Hem Chand Aggarwal was the owner of the entire suit property and she bequeathed the entire suit property in favour of the petitioners by virtue of Will dated 25.9.2012, duly

registered as document No.4032, Book No.3, Volume No.987 at pages 57-58 registered on 26.9.2012 and accordingly, after her death on 18.10.2012, the petitioners became the owners landlords of the suit property including the suit premises. That the respondent was the tenant under Smt. Kamla Devi and the respondent was paying the rent of the suit premises to the then owner landlady Smt. Kamla Devi against rent receipt/s through cheque/s and the respondent last paid the rent to the said owner landlady Smt. Kamla Devi for the period ending 31.3.2012 and thereafter, the respondent defaulted in the payment of the rent. After the death of Smt. Kamla Devi, the respondent was duly informed about the inheritance of the suit property by the petitioner by virtue of the aforesaid Will of Smt. Kamla Devi and the respondent was called upon to attorn in favour of the petitioners and pay the rent but the respondent failed to pay the same and not give a single penny have been paid till date. That the suit/tenanted premises are bonafidely required by the petitioners for their residence and the petitioners have no other vacant, reasonable/suitable residential accommodation to live either in the suit property or elsewhere in Delhi and the suit premises is the most suitable and convenient accommodation for the said purpose.

That the family of the petitioners consist of following members:-

1. Petitioner No.1 - who is a widow lady and a house wife, aged 57 years.
2. Petitioner No. 2 - Varun Aggarwal, aged 22 years and have recently completed his graduation from Delhi University and pursuing the Post Graduation course from Delhi University. That the petitioners, who have no other family members, are living under the same roof at Flat No.42-A, MIG DDA Flats at Motia Khan, Delhi-55, which flat is owned by Prashant Gupta and Akash Gupta, both sons of Shri Kishore Kumar (brother of petitioner No.1) and earlier, the petitioners were under the impression that the said flat is owned by Prashnat Gupta and his father Shri Kishore Kumar but the picture became clear last month, when the petitioners got the copy of the sale deed of the said flat. That the petitioner No.1 was evicted from her ground floor tenanted premises in property No. 1135 Kucha Harjas Mal, Delhi-6 in 2005 by her owner landlord and since then the petitioners are neither in possession of said property or any part thereof nor have any right, title or interest therein. Since the petitioner No.1 had no roof for

her and her child, so the Petitioner No.1's brother Shri Kishore Kumar in 2005 permitted the petitioner No. 1 to occupy the said flat for her residence, out of love and affection as the petitioner was helpless a widow with the liability of 10 years old son. However, with the passage of time, the relations of petitioner No.1 with his brother Shri Kishore Kumar have turned strained and now even the said brother is insisting the petitioners to vacate the said premises as he has two married sons and wants one of his sons to settle down at the aforesaid flat No,42-A (Supra).

That the entire suit property is a three storied property comprising of ground, first and second floor, as shown in annexed site plan and the different portion/s of the entire suit property is under the tenancy of different tenant/s. On the Ground floor, the shop marked 'A' is under the tenancy of decades old tenants namely Raju Arora and Saket Arora @ Rs.453.75 paise per month, while the shop marked 'B', shown in red colour is under the tenancy of decades old tenants namely Ramesh Kumar, Vijay Kumar & Ashok Kumar on a monthly rent of Rs.532.40 paise and the third shop marked 'C' is under the tenancy of decades old tenant Vijay Kumar Malhotra @ Rs.532.40 paise per month. Similarly, the entire first and second floor is under the tenancy of respondent and apart from the aforesaid accommodations, there is no other accommodation in the entire suit property

xxx xxx

That the suit premises is bonafidely required by the petitioners for their residence as they are facing great hardships besides the mental torture in the hands of the brother of petitioner No.1 Shri Kishore Kumar and his two sons and above all, the petitioners do not want to live at the mercy of others in the other's property and they want peace of mind and want to live comfortably in their own property and the petitioners desperately require the suit premises for themselves. The suit premises is most suitable as the petitioner No.1, after getting the possession of the shop No. 393, on the ground floor of the suit property shall be starting her business and it will be practical and feasible for the petitioner No.1 to manage the business from the said shop while residing on the upper floors of the suit property and doing all household chores/duties/work and even the petitioner No.2 will have easy access to going to Delhi University through Metro, as the Chawri Bazar Metro Station is situated opposite the suit property. As such, the suit premises are bonafidely required by the petitioners for

their residence and the suit premises is the most suitable premises, as detailed above.”

2. The respondent has filed an application for leave to defend before the learned Trial Court wherein he has alleged Mr.Kishore Kumar the brother of the respondent herein is a moneyed man and has invested money in numerous properties in his name and in the name of his sons and other family members and he has sufficient accommodation and that he and his family is living in flat bearing No.42-A, MIG, DDA flats, Motia Khan, Delhi-110055, purchased by Mr.Kishore Kumar for his sons for the purpose of investment and they does not intend the respondent to vacate the accommodation where she is residing with her son. It was also argued the petition does not clarify as to which of the son(s) of Mr.Kishore Kumar shall shift in the portion occupied by the respondent herein.

3. It was also argued the suit premises is commercial in nature and is being used by the petitioner herein for office purposes and it has no kitchen in it and same is not suitable for residential purposes. Further it is averred the respondent has already given a notice dated 15.06.2017 to her tenant in the premises bearing No.9-C, MIG flat, DDA, Paharganj, New Delhi asking him to vacate the said premises and as the said property is located in the same vicinity where the respondent is presently residing, hence the need for getting the premises vacated from the petitioner is not bonafide. It was urged the intention to get the premises vacated is only to get higher rentals, viz more than Rs.11,000/- per month.

4. It is also alleged the respondent is residing in a spacious flat SFS, MIG flat, bearing 42-A, Motia Khan, Delhi and she is not expected to reside in small two rooms set and the respondent is an owner of two flats viz. 41A, 42A, MIG flats, DDA, Motia Khan, New Delhi and is occupying both the flats. Lastly it was argued the petitioner is not aware about the death of Smt.Kamla Devi or that she had executed any alleged Will in favour of the present petitioner.

5. The learned ARC has dealt with the above arguments of the petitioner herein as follows :-

“17. In the present case, the respondent has specifically not denied the ownership as well as existence of landlord-tenant relationship between the parties. However it is alleged that the petitioners have never disclosed to the respondent either about the death of Smt. Kamla Devi, the owner as claimed or about having inherited the suit property or of her having executed any Will in favour of the petitioners and as such the respondent as per the routine schedule had been sending the rent through Bankers' Cheques in the name of Smt. Kamla Devi. The copies of the said Bankers' Cheques dated 04.06.2014 & 31.01.2017 alongwith their covering letters which were duly acknowledged by petitioner no. 1 under her signatures are attached as Annexure A. On the other hand the petitioner has placed on record the copy of registered Will dated 25.09.2012 executed by Smt. Kamla Devi in favour of the petitioner. The petitioners also relied upon the copy of the house tax receipt of the suit property. The petitioners have placed on record the counter foil of the rent receipts in respect of first and second floor issued by Smt. Kamla Devi in favour of the respondent. Hence, once the respondent has been paying the rent to the predecessor in interest of the petitioners, they cannot challenged the title / land lordship of the petitioners who are the LRs of the erstwhile landlord. The petitioners are relying on the Will in their favour. It is not the case of the respondent that the Will is forged or fabricated. Thus, in view of the documents placed on record by the petitioner, the ownership of the petitioner over the premises in question for the purpose of the DRC

Act as well as existence of landlord-tenant relationship between the petitioners and the respondent stands duly proved.

18. xxx

19. xxx

20. In order to prove their bonafide requirement the petitioners have placed on record the copy of the sale deed in respect of flat no. 42-A, MIG DDA Flats at Motia Khan, Delhi registered in the name of Prashant Gupta and Akash Gupta both sons of Shri Kishore Kumar. Further petitioners have relied upon the house tax receipts, water bill and electricity bill pertaining to the said flat no. 42-A. It is not the case of the respondent that Shri Prashant Gupta and Akash Gupta are not the owners of the property no. 42-A, MIG DDA Flats at Motia Khan, Delhi. The petitioners have categorically stated that her brother Shri Kishore Kumar has asked the petitioners to vacate the said premises. The petitioners cannot be forced to live in the premises of others when they have the tenanted premises in their own name. Thus, the contention of the respondent that brother of the petitioner is having many properties in his name does not hold ground, as the petitioners have right to live in their own property.

21. The next contention of the respondent is that the suit premises are even otherwise commercial in nature and are also being used by the respondent for their office purposes, The portion consists of a room measuring 13.5x 15.5 ft. and latrine on the first floor, a room 9.5 x 10 ft. with a bath room on the second floor and there is no provision for a kitchen which accommodation is thus, even otherwise not suitable and conducive for residential use at all, more so, being located in the non residential busy market. The petitioners have allegedly been residing in a spacious SFS MIG flat bearing no. 42, Pahar Ganj, New Delhi-110055 to which life style they are accustomed to live and petitioner no. 2 having now grown up and educated in those environments can't be expected to shift to the suit property which is less than half in size thereof, inconvenient for use, each of the two rooms being on different floors and those too without amenities of kitchen and bath room. In reply the petitioners have denied the contention of the respondent submitting that the kitchen portion can easily be carved out in the suit premises and as such the allegations of the non

existence of the kitchen in the suit premises is no help to the respondent.

22. xxx

23. xxx

24. *Further another contention is raised by the respondent that the petitioner no. 1 is having regular rental income from the different tenants of property bearing no. 9-C, MIG, DDA Flats, Pahar Ganj, New Delhi ' other than the undisclosed sources. In reply, Ld. Counsel for petitioners submits that the petitioners have already disclosed the amount of rent being paid by all the tenants as well as the name of the tenants. Moreover, having rental income does not mean that petitioners do not have right to live in the premises which is in their name. Further it has already been discussed above that it is for the petitioner to decide where they wish to reside and which premises suits their requirement. In Sarla Ahuja v. United India Insurance Company Ltd. (1998) 8 SCC 119 it has been held that Rent Controller shall not proceed on the presumption that the requirement of the landlord is not bona fide and that when the landlord shows Prima facie case, a presumption that the requirement is bona fide is to be drawn. Thus, the bonafide requirement of the petitioners qua the tenanted premises stands duly proved.*

25. xxx

26. xxx

27. *In support of their submissions the petitioners have placed on record the certified copy of the eviction petition filed by the petitioners against the tenant Padmesh Verma in the case title Sarita Aggarwal v. "Padmesh Verma bearing eviction petition no. 70/17, pending in the Court of Shri Shirish Aggarwal, Ld. ARC, Delhi. Further she has filed certified copy of the written statement filed by the said tenant in the said eviction petitioner wherein the said tenant has not disputed that the petitioners are residing in property no. 42-A. The petitioners have also relied upon the copy of the summons and copy of the DR petition under Section 27 of the DRC Act filed by the tenant Padmesh Verma in DR Petition no. 235/17 wherein the address of the petitioners have been mentioned as flat no. 42- A, DDA MIG Flats, Pahar Ganj, New Delhi. Per contra the*

respondent has not been able to produce any documents to show that the petitioners are the owners of flat no. 41-A as alleged by them. Hence, the said contention raised by the respondent is merely bald assertions not been proved.

28. Another contention of the respondent is that the intentions of the petitioners is of harassing the tenant to make him pay the enhanced rent. The petitioners have denied the said contention. However, the said contention of the respondent is without any substance as even if the petitioners try to do such act, the respondent is very well protected u/s 19(2) of the DRC Act, for re-possession of the premises.”

6. The learned ARC has aptly dealt with each contention raised by the petitioner herein. Yet again it is argued before me that Shri Krishan, the brother of the respondent is a moneyed man and has various properties and has never asked the respondent to vacate his property. I may say it is not relevant at all to find how rich is the brother of the respondent as the question is of the legal right of the respondent to stay in her brother's property. Admittedly, she has no legal right to stay there especially when she has alleged in her petition how she and her son are suffering humiliation in the hands of Mr. Kishore Kumar and his sons and how her brother is trying to kick her out of his house. There is no reason to doubt her submissions.

7. Qua the contention it would not be feasible for the respondent to stay in subject premises as it could only be used for office purposes, I may only say it is for the landlord to decide as to in which premises he or she intend to reside. Admittedly flat No.9-C (supra) belonging to the respondent is under the tenancy of a tenant and she is not in occupation of the same. Admittedly an eviction petition is filed against such tenant, hence it is the case of survival and dignity for her that she lives in her

own accommodation. If the subject premises does not have a kitchen, the respondent may construct one to use such premises for her residence where she can stay with self respect. The subject premises may not be as spacious as that of her brother's but shall be her own.

8. Though the petitioner alleges he is not aware of the Will dated 25.09.2012 but has himself annexed it with this revision petition. Even otherwise, all that the respondent was required to prove in a petition under Section 14(1)(e) of the DRC Act was that she has a better title than that of the petitioner. The respondent was never required to prove her absolute ownership, in the manner, as is required under the Transfer of the Property Act.

9. It is settled law the revisional power is largely meant for satisfying as to the regularity, legality or propriety of proceedings or decisions of the subordinate Court. Hence, finding no illegality in the order passed by the learned Trial Court, there being no merit in the petition, it is dismissed. The pending application(s), if any, is also dismissed. No order as to costs.

YOGESH KHANNA, J.

FEBRUARY 15, 2019

DU