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

Reserved on: 2nd July, 2019

Pronounced on: 27th August, 2019

+ **CM(M) 1112/2018 & CM APPL. 37833/2018**

KRISHAN GOPAL Petitioner

Through: Mr.Bharat Bhushan,
Mr.D.K.Saini, Mr.Rajan &
Mr.Harsh Tikoo, Advocates

versus

SURINDER KUMAR CHADHA & ANR Respondents

Through: Mr.S.M.Chugh & Ms.Namrath
Arora, Advocates

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. The present petition under Article 227 of the Constitution of India is directed against an order dated 07.02.2018, by which the Additional Rent Controller, Tis Hazari Courts, New Delhi [hereinafter referred to as “the ARC”] declined leave to defend an eviction petition instituted by the respondents herein, and an order dated 04.08.2018, by which the ARC declined to review the order dated 07.02.2018.

Facts

2. Krishan Gopal, the petitioner herein (hereinafter referred to as “the tenant”) is the tenant under Surinder Kumar Chadha and Suresh

Kumar Chadha (hereinafter referred to as “the landlords”), in respect of a shop bearing No. 2, situated at WZ-77/1, Block - D, Mohalla Gurunanak Pura, Fateh Nagar, Jail Road, New Delhi-110018 (hereinafter referred to as “the suit premises”). It is contended that the suit premises was let out by the landlords’ father to the tenant in 1982. It measured approximately 340 sq.feet, of which approximately 125 sq.feet was the covered area at the time of letting, and the remaining approximately 215 sq.feet, an open area (which has subsequently unauthorizedly been covered). The monthly rent at the time of letting, which admittedly continues even today, was ₹600.

3. On 02.11.2015, the landlords filed the eviction petition bearing number E.No.25974/2016 against the tenant on the ground of *bona fide* requirement of the suit premises. It was contended that the landlords, who are brothers, required the suit premises to set up their sons in business. The sons of the landlords were stated to be engaged in the business of steel furniture, alongwith the landlords in the shop run by them, but desirous of expanding and running their business according to their own wishes. With regard to alternative accommodation available with the landlords, it has been stated that the landlords are owners of four shops in the disputed premises, of which one is in their occupation and two others are on rent, in addition to the suit premises. The landlords have averred that there is no other alternative premises in which they can settle their children.

4. The tenants filed an application seeking leave to defend on 16.11.2015. The tenants mentioned five other properties, which they

contended were in the possession of the landlords, and suitable for the business of the sons.

5. In the reply to the leave to defend application, the landlords disputed the contentions raised by the tenants, and submitted that some of the properties mentioned in the application were, in fact, being used as residential properties by the landlords.

6. By the impugned order dated 07.02.2018, the ARC found that the relationship of landlord and tenant between the parties stood established. The ARC rejected the defence offered by the tenants that one of the persons whose *bona fide* requirement was pleaded was not the son of one of the landlords, or that the other landlord and his son did not carry on the business of dealing in furniture. The ARC accepted the plea of the landlords that they were residents of the first and second floors of one of the properties mentioned in the application (D-64 and D-65, Fateh Nagar, Jail Road, New Delhi), and use part of the ground floor for display of furniture, as it is on the rear side of the shop in which they carry on their business. With regard to two other properties mentioned in the application, the ARC accepted the contention of the landlords that those properties were sold in the years 2004 and 2012 respectively. With respect to a fifth property (RZ-9, Mahindra Park, Pankha Road, Janakpuri, New Delhi), the ARC found that the landlords' stand that the property is in an unauthorised colony, and is not capable of being used for commercial purposes, remained un rebutted. On these findings, the ARC declined the tenants' application for leave to defend the eviction petition.

7. The tenants, in May 2018, filed an application for review of the aforesaid order. The ARC did not find any reason to review the order, and dismissed the same on 04.08.2018.

Submissions

8. In support of the present petition, learned counsel for the petitioner/tenant argued that the defences raised several triable issues, including *inter alia* the question of whether a furniture showroom can be run from the back lane of a colony, and whether the landlords had sufficient inventory of furniture to obviate the need for any further space. It was also contended that the tenants had denied that premises number D-65, Fateh Nagar, was being used for residential purposes, and thus raised a further triable issue. Learned counsel for the petitioner/tenant contended that the concealment of other alternative properties available with the landlords in the eviction petition itself constitutes a ground for grant of leave to defend, and the review application has also been wrongly dismissed on this ground. It was submitted that the tenants had brought various factual errors regarding the addresses of the alternative properties to the notice of the ARC by way of the review application, but the same was erroneously rejected by the ARC. Learned counsel also cited various judgments of the Supreme Court and of this Court in support of his contentions, which will be considered later in this judgment.

9. Learned counsel for the respondents/landlords, on the other hand, emphasised that the property in question in the present case is a commercial property and not a residential one. He submitted that an alternative accommodation which is not reasonably suitable for the

requirement, as contended by the landlords, was not required to be disclosed in the eviction petition. He urged that the question of suitability and reasonableness of accommodation was one to be decided by the landlord and not to be dictated by the tenant. With regard to the maintainability of the present petition also, learned counsel emphasised that the tenant had not filed a revision petition in respect of the impugned order dated 07.02.2018 under Section 25B(8) of the Delhi Rent Control Act, 1958 [“the Act”]. The present petition under Article 227 of the Constitution was filed only after the landlords had commenced proceedings for execution of the order dated 07.02.2018.

Analysis

10. With regard to maintainability of the petition, it is clear from Section 25B(8) of the Act that an order of the Controller refusing leave to defend in favour of the tenants is amenable to the revisional jurisdiction of this Court. The tenant chose not to adopt that course, and instead filed an application for review under Section 25B(9) thereof. The Act does not provide specifically for recourse by way of revision in respect of an order passed in review. In view of the fact that both the order rejecting the leave to defend application, and the order declining review thereof, have been challenged in the present petition, and that the existence of an alternative remedy is not an absolute bar to exercise of jurisdiction under Article 227 of the Constitution, but only a self-imposed restraint, I am of the view that it would be appropriate to examine the present case on merits rather than relegating the petitioner/tenant to an alternative remedy at this stage.

11. However, while so doing, the scope of this Court's jurisdiction under Article 227 is limited. The supervisory jurisdiction does not extend to correcting every error of law or fact made by the Trial Court, but is intended to ensure that the Trial Court does not exceed the jurisdiction vested in it, or fail to exercise jurisdiction so vested. The Supreme Court, in the judgment in *Surya Dev Rai vs. Ram Chander Rai and Ors.*, (2003) 6 SCC 675, as reiterated in *Radhey Shyam vs. Chhabi Nath*, (2009) 5 SCC 616, has summarized *inter alia* the principles regarding exercise of jurisdiction under Article 227 of the Constitution, thus: -

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

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(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and

(ii) a grave injustice or gross failure of justice has occasioned thereby.

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(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.”

Further, the Supreme Court in *Shalini Shyam Shetty vs. Rajendra Shankar Patil*, (2010) 8 SCC 329, with regard to principles of exercise of jurisdiction under Article 227, held as follows: -

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High

Court's jurisdiction under Article 227 of the Constitution may be formulated:

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(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

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(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised."

12. Learned counsel for the petitioner/tenant cited the orders of the Supreme Court in *Santosh Devi Soni vs. Chand Kiran* (2001) 1 SCC 255 and *S.M. Mehra vs. D.D. Malik* (2001) 1 SCC 256, to argue that leave to defend should normally be granted where the landlord seeks additional accommodation in a petition based on *bona fide* requirement. *S. M. Mehra* (supra) was cited in *Santosh Devi Soni* (supra). In *Madan Lal Gupta vs. Ravinder Kumar* (2001) 1 SCC 252, the Supreme Court held that the order in *Santosh Devi Soni* (supra) does not lay down any principle of law, but turns on its own facts. Although the order in *Santosh Devi Soni* (supra) has been followed by this Court in *S. K. Seth & Sons vs. Vijay Bhalla* (2012) 191 DLT 722,

in view of the judgment of the Supreme Court in *Madan Lal Gupta* (supra), it cannot be held to be an absolute proposition that in every case of additional accommodation sought by a landlord, leave to defend must necessarily be granted. The Trial Court is required to examine, even in those cases, whether the defence raised by the tenant is, in fact, such that eviction by summary procedure is inappropriate.

13. Two other judgments were cited by learned counsel for the petitioner/tenant in support of the proposition that the landlord's failure to disclose alternative accommodation available with him/her would itself raise a triable issue, and that the disputed question as to whether a particular property is commercial or residential is also one which calls for trial. In the judgment in *Vijay Kumar vs. Seema Gupta* 2018 SCC OnLine 8890 [R.C.Rev 2/2017, decided on 01.05.2018], this Court found that the landlady had been evasive and vague in giving details of the alternative accommodation available to her. The Court disbelieved her contention in view of her income tax returns for the relevant years which showed the property as one of her assets. In this context, the Court held that the landlady's plea about the unsuitability of the property could have been accepted in the event of an upfront disclosure, and that her silence in the pleadings and vague denial showed that the matter required deeper scrutiny. The present case is dissimilar, as similar material has not been placed, which might lead to the conclusion that the landlords are guilty of non-disclosure or evasive pleadings in respect of any material particulars.

14. Learned counsel for the respondents/landlords has referred to the judgment of this Court in *Manju Devi vs. Partap Singh* (2015) 219

DLT 260 to contend that disclosure is required only in respect of alternative accommodation which is otherwise suitable for the purpose intended, which is a matter of consideration for the landlord and not for determination by the tenant. The judgments of this Court in *Devi Ram vs. Ram Kapoor* (1998) 76 DLT 637 [in paragraph 15], *Kashmiri Lal Kataria vs. Navneet Gupta* (2015) 219 DLT 13A (CN) [in paragraph 5], and *M. L. Prabhakar vs. Rajiv Singal* (1998) 76 DLT 647 [in paragraph 8] clearly lay down that the determination of suitability of an alternative accommodation is a matter for the landlord, and not to be dictated by the tenant, keeping in mind the standard of a reasonable landlord and not a whimsical one. These judgments establish that the contention raised on behalf of the tenants does not, in the facts of the present case, disclose a failure to exercise jurisdiction vested in the ARC.

15. The findings rendered by the ARC in the impugned order must be examined in the light of the aforementioned principles. It is only if the ARC has committed a jurisdictional error that the interference of this Court under Article 227 would be justified. As the only plea upon which the tenant supported the present petition was that of *bona fide* requirement being met by alternative accommodation available with the landlords, the findings of the ARC in the impugned order with regard thereto are reproduced below:

“(iv) As regards the plea of alternate accommodation in property no. D-64 and D-65 Fateh Nagar, Jail Road, New Delhi, petitioners have tendered justification that first and second floor of these properties are being used for residential purposes and basement and part of ground

floor are being used for display of furnitures as the same is on the rear side of the front shop where the petitioners are carrying on their business. Their contention that the respondents have also in a similar manner been in occupation of rear side of one property which is being used by them for display of furnitures to customers also appears to be tenable as it is generally seen that the furniture shops are generally operated from the front side and the furnitures are being kept for display on the rear side. Respondents have failed to construe that for first and second floor of D-64 and D-65 are not being used for residential purposes by the petitioners or that they are suitable for the business of furniture intended to be started by the petitioners for their children.

(v) As regards the other two properties mentioned by the respondent Gl-19, measuring 200 sq yards in Hari Nagar Jail Road and M-33, First Floor, Mahavir Nagar, Tilak Nagar, petitioners have furnished their explanation that property no. GL-19 was sold in the year 2012. Respondents have not filed any material to demonstrate that these properties were recently sold by the petitioners in order to evince scarcity of space. Petitioners have also filed copy of documents on record in support of their justification. Thus, no malafide can be imputed upon the petitioners in their act of selling these properties.

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11. As regards other contention of the respondent that the petitioners could have proceeded against other tenants who are in private shop no. 3 & 4 which are adjacent to the shop where the petitioners are carrying on their business, it is held that it is the well settled law that the landlord is the best judge of its own interest and he cannot be dictated by the tenants/respondents. It is not the case of the respondents that their premises is situated far from that where the petitioners are carrying on their business. Respondents cannot command the petitioners to proceed those two tenants merely because their shops are just adjoining the shops of the petitioners. Since,

adjoining shops are admittedly not vacant, this court also cannot thrust any particular choice upon the petitioners. Otherwise also, respondents have the privilege of resorting to Section 19 of the DRC Act to ensure that the petitioner utilized the premises for the purpose for which the petition was filed.”

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13. Another plinth of ground raised is that the petitioners are also in possession of running the business of furniture at premises RZ-9, Mahindra Park, Pankha Road, Janak Puri on ground floor and first floor. But the respondents have not filed any material/photographs to substantiate this plea. Petitioners have explained that the same is an unauthorised colony not fit for any commercial activity and there is no such showroom being operated from this premises. It was for the respondents to have rebutted this stand by filing any photographs or other material in support of their plea.”

16. The consideration of the issues in the impugned order does not demonstrate an error of jurisdiction which warrants the exercise of powers under Article 227 by this Court. The ARC has duly considered the case of the tenants in respect of the alternative accommodations alleged by him. The conclusions of fact and law reached in the impugned order do not suffer from a jurisdictional error, or perversity, calling for interference by this Court.

Conclusion

17. In the facts and circumstances aforesaid, the petition is without merit and is accordingly dismissed, along with the pending application.

PRATEEK JALAN, J.

AUGUST 27, 2019