

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

Reserved on : 16.05.2019.

Date of Decision : 31.05.2019

IN THE MATTER OF:

+ **RC.REV. 72/2016 and CM APPL. 4199/2016 (Stay)**

RAJESHWAR DAYAL Petitioner

Through Mr. Mukul Kumar and
Mr. P.D. Sharma, Advocates
versus

PREETI GUPTA Respondent

Through Mr. Ravish K. Goyal, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. The present proceedings instituted under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'DRC Act') assail the impugned order dated 28.09.2015 passed by the ACJ/CCJ/ARC, Shahdara District, Karkardooma Courts, Delhi in E-118/2013 whereby the application of the petitioner/tenant seeking leave to defend was dismissed and consequently an order of eviction of the petitioner/tenant under Section 14(1)(e) of the DRC Act was passed qua the tenanted premises i.e, shop on the ground floor of property bearing no.530, Chatta Hingamal, Chotta Bazar, Shahdara, Delhi-32.

2. The scope of the revisional jurisdiction has been described 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 Code of Civil Procedure. 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".

3. To the same extent, is the decision of the Supreme court in Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, (2014) 9 SCC 78.

4. I have heard the Id. Counsels for both the parties and also perused the respective pleadings as well as the record of the lower court. A perusal of the trial court record would show that following facts were pleaded/emerged from the eviction petition filed by the respondent/landlady:

(i) that the respondent/landlady became the owner through registered Sale Deed dated 10.05.2007, which was also placed on record.

(ii) initially Nathu Singh was the tenant and later after his death on 02.02.2006, the present petitioner/tenant, being the son of late Nathu Singh, came in possession of the premises. (The other sons of late Nathu Singh were impleaded as respondents no.2, 3 and 4 in the eviction petition).

(iii) that the respondent/landlady has one married son and daughter. Son, Ashish Gupta, aged about 25 years, was married in the year 2009 and has two daughters aged 1 and 3 years. The son, being dependent, on the petitioner, was not settled. The son is sitting with his father at shop no.547, Gali Jain Mandir, Shahdara, Delhi-110032 from where his father is running his business in the name of 'New Bharat Abhushan Bhandar of gold and silver ornaments'.

(iv) that the son is in urgent and bonafide need of the shop of the premises in question for starting his independent business of departmental store/grocery/daily needs/FMCG store which requires a lot of space not only for the storage but also for display.

(v) The chotta bazar where the premises in question is situated, is one of the oldest bazar of Shahdara and has many shops dealing with

similar/allied/cognate goods and the footfalls of the customers in the said bazar is very good. The said chotta bazar is also near to railway station and metro station. As such the premises in question is the most suitable for the intending business.

(vi) that another shop in property bearing no.532, measuring about 98 Sq.Ft. (approx.) though owned by the petitioner but is under month to month tenancy of one Rakesh, who has executed affidavit and undertaking dated 19.09.2013 to vacate the shop in property bearing no.532 within fifteen days from the date passing of the order of eviction in respect of the tenanted premises. The abovementioned affidavit was placed on record.

(vii) that the petitioner would merge the tenanted premises with the abovementioned shop bearing no.532 (it is an admitted case that shops no.531 and 532 are one and the same shop) which would together make an area of 254 sq. ft. (approx.), as required by the petitioner for his son.

(viii) that the first floor of property bearing no.532 owned by the petitioner, is not a shop and cannot be used as such.

(ix) that the petitioner is an owner and landlady of property bearing no. A-1/B, Main Road, Kanti Nagar Extension, village Uldhanpur, which is under the tenancy of one M/s Sargam Electronics and as such is not available for starting the business.

(x) that the petitioner resides with her family at 45, First Floor, Manak Vihar, Delhi.

5. Although in the leave to defend, the petitioner/tenant has denied the landlord/tenant relationship as well as the ownership of the

respondent/landlady but on a specific query put by the Court to the learned counsel for the petitioner/tenant if he is disputing the ownership or the landlord/tenant relationship, the same was answered in negative. While arguing the present revision petition, the learned counsel for the petitioner/tenant argued only the following two issues:-

- (i) that in the eviction petition, the case set up by the respondent/landlady is for the additional accommodation, therefore, the application for the leave to defend ought to have been necessarily granted, on this ground only and
- (ii) that the son of the respondent/landlady was already doing business with his father and other alternate accommodation was available, hence, the case of bonafide need set up by the respondent/landlady is not genuine.

6. However, in the written synopsis filed by him, he submitted that it was not his case that where the requirement is for the additional accommodation, the grant of leave is automatic. In the written synopsis, it was additionally urged that the son, Ashish is not dependent upon his mother as he is already running his independent business from the shop no. 547 as well as from other premises and hence, the need pleaded is not bonafide.

7. Whether, in all the cases where an application for leave to defend, is filed raising ground of additional accommodation, the “leave” ought to be necessarily granted, is no longer res integra and has been answered in the negative. [Refer Amolak Raj Singh v. Narender Kumar Dang rendered in **R.C.Rev 628/2015 on 03.11.2017** and Naresh Kumar Jain v. S. Shanmuga Sundaram rendered in **R.C.Rev. 283/2017 on 03.11.2017**].

8. To support his above arguments, the learned counsel for the petitioner/tenant has placed reliance upon the decisions in Santosh Devi Soni v. Chand Kiran, (2001) 1 SCC 255 and Mohd. Jafar & Ors. v. Nasra Begum, (2012) SCC Online Del 3520.

9. In Santosh Devi Soni (Supra), it was noted that the landlady was in occupation of the first floor of the building in which the suit premises were situated. The above decision of Supreme Court was rendered in a challenge made to the order dated 20.09.1999 passed by the High court in Santosh Devi Soni v. Chand Kiran reported as 1999 SCC Online Del 734. The facts noted in the decision rendered by the high court were as follows:

“Learned counsel for the petitioner has contended that in addition to the lease-deed which was executed by the petitioner on 3.9.1990, inter alia, giving two rooms on the second floor under the tenancy of the petitioner subsequently by an oral agreement another two rooms were given to the petitioner. Learned counsel for the petitioner has contended that a sum of Rs. 85,000/- was given to the respondent for providing additional accommodation on the second floor. Another contention of the learned counsel for the petitioner is that the size of the family of the respondent and the accommodation available with her disentitles the respondent for an order of eviction.”

The facts as would emerge from a cumulative reading of the above two decisions, would show that in the captioned case, the leave to defend was granted as the petitioner/tenant had pleaded that the landlady was already in occupation of the first floor of the building where suit premises were situated and after initially giving two rooms on the second floor, she had again rented out two more rooms to the petitioner/tenant.

Another issue raised was with respect to the size of accommodation already available with her.

10. Similarly, the decision in Mohd. Jafar (*supra*) was rendered in the peculiar facts and circumstances of that case. The leave to defend was granted while noting the following contradiction in the reply filed by the respondent/landlady to the tenant's application for leave to defend:

“7. In para 4 (ii) of the reply to the application for leave to defend filed on the behalf of the respondent, it has been denied by the respondent that there are six rooms on first and second floors of the shops bearing no.780, 781, 782,783 and 784 Kabari Bazar, Jama Masjid as alleged by the petitioner. But in para 4(vii) of the reply, it has been admitted by the respondent that a hotel/guest house is being run by her husband on the first and second floors of the said shops. Such an apparent contradiction in the stand taken up by the respondent definitely raises an important triable issue regarding the alleged possession of the shops. It is pertinent for the adjudication of the eviction petition that the factual position regarding the said shops is revealed which can be done only with the help of evidence...”

11. The above decisions are of no help to the petitioner as the fact situation in the present case is entirely different. In the present case, the eviction petition itself, mentioned that the son of the respondent/landlady was sitting with his father in the latter's shop of Gold and Silver ornaments. The premises in question, a shop, was required for the setting up of a different and independent business of departmental store/grocery/daily needs/FMCG store, for the son.

12. The Petitioner/tenant's other contention that the landlady's son is already engaged in the business, which is being carried out from shop No.547 in the same area, and therefore does not need the premises in

question, is contrary to the settled legal position that tenants cannot decide what the landlords should do with their properties. In other words, the landlord is the best judge of his requirement [Ref: Prativa Devi (Smt) v. T.V. Krishnan (1996) 5 SCC 353, Sarla Ahuja v. United India Insurance Company (1998) 8 SCC 119, Ragavendra Kumar v. Firm Machinery & Co. (2000) 1 SCC 679 and Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal (2005) 8 SCC 252].

In any case, it is the petitioner/tenant's own case that the son of the respondent/landlady is sitting at his father's shop from where the latter is running his business of Gold and silver ornaments. It is evident from the record and the case set up by the two parties is that the son does not have his own independent business but is sitting at the business premises of his father. The petitioner/tenant has not even argued that the husband of the respondent/landlady was not running his business from the shop no.547. This makes it even more convenient for the respondent/landlady to argue that the premises are required for establishing his son by starting a new line of business for him.

13. The ld. Counsel for the petitioner/tenant has urged that the respondent/landlady, her husband and the son have sufficient commercial/residential accommodation at various places and such the bonafide need shown is not genuine.

14. Per contra, ld. Counsel for the respondent/landlady has drawn attention of this Court to para nos. 18(a)(vi) to 18(a)(x) of the eviction petition to urge that, in the eviction petition itself, the other premises which were available were disclosed namely, the property bearing No. A-1/B, Main Road, Kanti Nagar Extn., village Uldhanpur, which was

under the tenancy of M/s. Sargam Electronics; the property bearing no, 45 (first floor), Manak Vihar, a residential property, where the respondent/landlady was living with her family & the shop bearing No.532, which was under the possession of one Rakesh, who had already executed an affidavit and undertaking dated 19.09.2013, thereby undertaking to vacate the shop bearing No.532 within 15 days from the passing of the order of eviction of the petitioner/tenant from the tenanted premises. He urged that it was his case that he would merge shop No.532 with the premises in question so that the total area of 254 Sq. ft., would be available to meet the requirements of starting the new business. So far as other properties, mentioned in the application for leave to defend were concerned, it was categorically stated in the reply that while some of the properties were rather owned by the brother of her husband i.e., Raj Bhushan Gupta or his family, the rest of the properties had no concern with either the respondent/landlady or her husband or her son. It was also denied that the son of the respondent/landlady was doing any other business except sitting with his father at the latter's shop.

15. It is noteworthy that the petitioner/tenant did not even file any replication to the abovementioned reply filed by the respondent/landlady. The ARC held that the petitioner/tenant failed to explain as to how the existing or the other alleged properties in the name of the respondent/landlady would meet the requirement of the son.

16. I am of the view that the petitioner/tenant has made general and vague averments about alternate accommodation. No document worth its name was placed on record in support thereof except photographs of the shop bearing no. 547, where the son is seen sitting at the counter. I find

that in the eviction petition itself, it was categorically averred that the shop bearing no. 547 belongs to the father where the father is doing his business of Gold and Silver ornaments and the son is only assisting him. The petitioner/tenant did not file a single photograph/document or any supporting material with respect to other alternate accommodation mentioned in application for leave to defend.

17. Whether bald assertions in the leave to defend are enough to dislodge the presumption available in favor of the landlord? In this regard, it is profitable to reproduce the dicta of Supreme Court in Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778, where it was held as under:

“19.....A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.”
(emphasis added)

18. Similarly, in Anil Bajaj and Ors. vs. Vinod Ahuja, (2014) 15 SCC 610, wherein it was held by the Supreme Court as under:

“6.....It is not the tenant's case that the landlord-Appellant No. 1 does not propose to utilize the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the

same is any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend.” (emphasis added)

19. Recently, a Coordinate Bench of this court in Kailash Kumari & Anr v. Shakuntala & Ors, **247 (2018) DLT 718**, while dealing with the issue of vague and bald pleas in the application for leave to defend, held as under:

“15. As would be evident from the narration above, the petitioners in the leave to defend application, except for making vague pleas have not disclosed any facts of their own which would disentitle the respondent/landlady from obtaining an order of eviction under Section 14(1)(e) within the meaning of Section 25(B)(5) of the Act. If it were to be held that a tenant, in the application for leave to defend, merely by denying the averments in the petition for eviction or making vague pleas, without any basis and without disclosing the requisite particulars, or producing

any material, is entitled to leave to defend, then the same would defeat the legislative intent in providing for summary procedure with respect to petitions for eviction on the ground of personal requirement of the landlord, as then in all cases leave to defend will have to be granted and the stage of leave to defend would merely serve the purpose of delaying the filing of the written statement by the tenant and the trial to follow, thereby making the procedure for eviction on the ground of requirement of self use longer than the procedure prescribed for adjudication of the petitions for eviction on other grounds of eviction prescribed in the Act.”

20. Again, in judgment **dated 2nd August, 2017 in RCR No. 352/2017** titled Lalta Prasad Gupta v. Sita Ram, passed by a Coordinate Bench of this court, it was held as under:

"17. The word "discloses" in Section 25 B (5) of the Rent Act has to be understood as disclosing facts which if proved would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e). Unless the words "discloses such facts" in Section 25B(5) are understood and interpreted as placing before the Rent Controller facts which when proved will result in dismissal of petition for eviction, the Rent Controller will be unable to apply summary procedure prescribed in Section 25B for such petitions for eviction. If it were to be held that every plea in the application for leave to defend, howsoever vague and without particulars and without anything in support thereof, should be permitted to be proved, the advocates for tenants, with their astute drafting skills, will not allow the summary procedure, prescribed by legislature to be followed for petitions for eviction of tenants on the ground of requirement of the landlord of the tenancy premises for self use, to be followed in any case and leave to defend will have to be granted and each case put to trial.

18. Thus, if the tenant seeks leave to defend controverting the requirement pleaded by landlord on the ground of the

landlord, though at the time of requirement having alternate premises, having not used the same and instead having commercially exploited the same, the tenant must plead (a) the particulars of such premises; (b) the right/title of the landlord to the same; (c) that the said premises were vacant and available for use at the time of the pleaded requirement of landlord; (d) how the said premises were suitable for the pleaded requirement; and, (e) how the landlord has deprived himself thereof i.e. by sale or letting and support the said pleas with material on the basis whereof such pleas will be proved. I say that it is essential to place such material before the Rent Controller because the purpose of trial, resulting from grant of leave to defend, is to prove the said pleas and if the tenant has nothing from which he can possibly prove the said pleas, the trial also will not result in the landlord being "disentitled from obtaining an order for recovery of possession of premises on the ground specified in Clause (e) of proviso to sub-Section (1) of Section 14" of the Act, within the meaning of Section 25B(5) supra. This is not to say that the tenant should file fool proof documentary evidence at the stage of leave to defend. However there must be placed on record all the requisite particulars. The onus on the tenant, at the stage of seeking leave to defend, is thus somewhere in between fool proof documentary evidence and a totally vague, bereft of any particulars plea. Where, in between the said onus lies, depends on facts of each case."

21. So far as dependency of the son on the parent/landlady is concerned, Supreme court in Joginder Pal v. Naval Kishore Behal, (2002) 5 SCC 397 held as under:

"24. We are of the opinion that the expression "for his own use" as occurring in Section 13(3)(a)(ii) of the Act cannot be narrowly construed. The expressions must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically

occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the *pari materia* provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.

25. *Ravinder Kumar Pujara's case (AIR 1987 P&H 31) relied on by the learned counsel for the appellant-tenant which holds that setting up of independent business of the son of the landlord is not covered by Section 13(3)(a)(ii) of the Act takes too narrow a view of the provision; it does not lay down the correct law and is overruled.*”

22. I am of the view, the mere fact that son was sitting in his father’s shop, assisting the father in father’s own business, is no ground to grant leave to defend. The view finds support from the decision rendered in similar facts by Supreme court in Bhupinder Singh Bawa v. Asha Devi, as **(2016) 10 SCC 209**, where the premises were required by the son to support his own independent business, it was held as under:-

“12. In light of the above, The Additional Rent Controller and the High Court rightly concluded that no alternative premise was lying vacant for running business of the respondent's son. The High Court rightly relied on the ratio of Anil Bajaj Vs. Vinod Ahuja (2014)15 SCC 610 to hold that it is perfectly open to the landlord to choose a more suitable premises for carrying on the business by her son and that the respondent cannot be dictated by the appellant as to from which shop her son should start the business from.”

23. Similarly, in Hukum Chandra (D) thr. L.Rs .v. Nemi Chand Jain and Ors. reported as **2018 SCC Online SC 2812** it was held:

“13. In the present case, mere fact that Rajendra Kumar was involved in the business of utensils-"Rajendra Bartan Bhandar" a bona fide need of the premises cannot be doubted. It would be inappropriate to expect the son of the Respondent-landlord to sit idle without doing any work till the eviction petition is decided on the basis of the bona fide requirement. If there is categorical averment by the Respondent that the premises is required for his son Rajendra Kumar; engaging in the business of utensils in

the meanwhile, cannot be a ground to deny a decree for eviction.”

24. The petitioner/tenant is protected under Section 19 (2) of the Delhi Rent Control Act which provides for recovery of possession of the tenanted premises for occupation and if the landlord does not use the premises for the need shown in the eviction petition.

25. Consequently, I find no reason to hold that the conclusion arrived at by the ARC is not in accordance with law. Accordingly, the present petition is dismissed alongwith the pending application. No order as to costs.

26. Copy of this order be sent to the court of ACJ/CCJ/ARC, Shahdara District, Karkardooma Courts, Delhi.

(MANOJ KUMAR OHRI)
JUDGE

May 31, 2019/sa/na