

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 14th February, 2020
Decided on : 25th February, 2020

+

RC.REV. 571/2015, CM APPL.Nos.24429-30/2015

SATISH KUMAR & ANR

..... Petitioners

Through : Mr.J.P.Sengh, Sr Advocate with
Mr.Anuj Soni, Mr.R.L. Sinha and
Ms.Manisha Mehta, Advocates.

versus

KANWAR RAJ SINGH

..... Respondent

Through : Mr. Bharat Chawla & Mr. Rajeev
Aggarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition challenges the order dated 18.09.2015 passed by the learned Additional Rent Controller-02, Central District, Tis Hazari Courts, Delhi (hereinafter referred as the learned '*Trial Court*') in Eviction Petition No.1107/2014 under Section 14 (1) (e) and 25(B) of the Delhi Rent Control Act, 1958 (hereafter referred as the '*DRC Act*') whereby an application for leave to defend was dismissed and an eviction order was passed in favour of the respondent.

2. The respondent has filed an eviction petition in respect of a shop situated at ground floor in house No.5580, Shardhanand Marg, (earlier known as Garstin Bastion Road), Lahori Gate, Delhi - 110006 (hereafter '*tenanted shop*'). The rent of said shop is Rs.300/- per month beside other

utility charges. The petitioners are carrying on the business of rice trading. The shop premises was originally let out to one Raghunath Dass Goel, father of the petitioners herein for commercial purposes and after his demise, the petitioners became the tenant in this shop.

3. It is the case of the respondent he had purchased property No.5580 (*supra*) from Prem Shanker Aggarwal, on his behalf as well as on behalf of his father Shri Banarsi Dass vide a sale deed dated 14.10.2009 which clearly mentions one shop at Ground Floor bearing No.5580 along with latrine, total area admeasuring 29.75 square meter, without roof /terrace right, *adjacent* to property No.5579 with a common staircase on Southern side. This property initially belong to Mst.Suraiya Begum, the erstwhile owner/landlord with two adjacent properties Nos.5579 and 5581 (*supra*). She had sold the entire property No.5580 through a registered sale deed, including the tenanted shop to one Mr.Banarsi Dass and Mr.Prem Shanker Aggarwal. Then, Mr.Prem Shanker Aggarwal sold this property, including the tenanted shop to the respondent herein vide registered sale deed dated 14.10.2009 registered on 15.10.2009. Accordingly, the petitioners became the tenants of the respondent by operation of law.

4. Since the petitioners were habitual defaulter in payment of rent and despite requests, did not pay the rent, hence a legal notice dated 12.08.2013 was served upon the petitioners which they vaguely replied vide reply dated 16.08.2013 and then moved applications before the learned Court for Deposit of Rent (DR) Petition No.247/2013 and then *DR No.21/2014* and deposited the rental there. The petitioner No.1 also

filed a Civil Suit No.147/2013 for injunction which was also disposed of on the statement made by the respondent.

5. It is alleged by the petitioners Mst.Suraiya Begum, the erstwhile original owner / landlord of the properties No.5579 and 5581 along with 5580 (*supra*) had issued the rent receipts on 15.09.2011 even after the sale deed dated 11.07.2001 of property No.5580 was executed in favour of Mr.Prem Shanker Aggarwal, wherein the tenanted premises was mentioned as a shop in property No.5581 (*supra*), hence there is a defect in ownership and in location of the tenanted shop.

6. Learned Trial Court had dismissed the application for leave to defend vide an impugned order dated 18.09.2015 which is now subject to challenge here.

7. The argument of the learned senior counsel for the appellants is four folds –*a)* the respondent also has another property viz 2729-31, at Gali Pattewali, Naya Bazar, Delhi-110006, just nearby where the respondent from its ground floor is running his transport business. There are upper floors in the said shop which are lying vacant and the respondent can shift there; *b)* there is no bonafide necessity for the respondent as though he allegedly require this shop for expansion of his business yet have let out the adjoining shop during the pendency of this eviction petition to one *M/s.J. P. and Sons* and thus his claim for bonafide necessity is frivolous; *c)* the dispute pertains to the title of the premises as to who is the actual owner of the shop; and *d)* the dispute also pertain to the location of tenanted premises being in property No.5581 (*supra*);

8. Qua contention *a)* the petitioners have alleged the respondent has an alternative accommodation at 2729-31, Gali Pattewali, Naya Bazar, Delhi-110006 and in support thereof has placed a photograph at page No.257 of the paperbook showing an office of *M/s. Solan Shimla Transport Company Private Limited* in the said shop. The respondent explains in his reply to the application for leave to defend that from the said shop his son is carrying transport business, however it is not suitable as it lies in a narrow lane/*gali* and even the vehicles of his son cannot enter or be parked in the small lane/*gali* and are rather parked in front of this very subject property. Even otherwise, per settled law it is an owner who has to take a call to decide as to which of his shop(s) is most suitable for his business. A tenant cannot dictate his own terms to the landlord. If the respondent says shop at property *viz* 2729-31, Gali Pattewali, Naya Bazar, Delhi-110006 is not suitable for his purpose, the petitioners cannot dictate their terms upon him and ask him to forget about the tenanted shop, hence, contention *a)* is rejected. Even otherwise, the concept of alternative accommodation as to which property is the most suitable for the landlord has to be seen from the point of view of the landlord. The tenant cannot dictate the landlord as to how and in what manner landlord should use his own property. (See *Viran Wali vs Kuldeep Rai Kochhar* 174 (2010) DLT 328).

9. It was then urged though the petition was filed for expansion of business yet the respondent during the pendency of this petition had sold/let the adjoining shop to M/s J.P. and Sons, hence his claim for bonafide use or for use of any of the family members is a false claim.

10. Much cry is raised on the factum of an opening ceremony on 24.08.2015 of *M/s J. P. and Sons* at the adjoining shop then lying vacant and is being let out by the respondent. In support thereof the petitioners now has filed a copy of bill, photograph and online application for *TIN* number for *M/s.J. P. & Sons*.

11. The respondent denies any connection with *M/s.J.P. and Sons* saying *i)* such documents now purported to be shown were never a part of the Lower Court Record, having not filed along with the leave to defend application and thus cannot be looked into at this stage; and *ii)* these are false documents prepared with the help of computer to create a false evidence. It is alleged anyone can apply the *TIN* number online from any premises and no proof of physical verification is filed. Admittedly if the respondent has filed an eviction petition under Section 14 (1) (e) of the Act, he would not commit a suicidal act by letting out an adjoining shop. The respondent claims even today he is carrying his business from the adjoining shop in the name and style of *M/s Gatha International* and the said adjoining shop is very much in his possession.

12. I also agree to the submissions of the learned counsel for the respondent. Admittedly, the impugned order was passed in September 2015. The petitioners are alleging of an opening ceremony in the adjoining shop, in August 2015. It was their primary duty to intimate the learned Trial Court to take note of this fact, before passing of the judgment but they miserably failed. Admittedly by the petitioner the alleged opening ceremony was not at a far off place but in an adjoining shop, hence contention *b)* has no force. Even otherwise, if the

respondent enters into any such misadventure the petitioners would always have a right to make use of Section 19 of the Act to reclaim the premises.

13. It is a settled law in revision this Court can interfere only if the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or exercised the same in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby. The supervisory jurisdiction is not available to correct mere errors of facts or of law unless the errors are manifest and apparent on the face of proceedings. It is also a trite law while exercising the supervisory jurisdiction, this Court will not go beyond what is pleaded in the leave to defend application as the same would be permitting additional grounds and thus extending the period of limitation. [See *Balwant Singh vs Sanjay Malhotra & Others* 2015(2) CLJ 557 Delhi and *Kuldeep Raj Arora vs Rohtash Kumar Seewal & Others* 2019 (3) CLJ 4 (Delhi)].

14. Qua *c)* and *d)* viz the mis-description of the number of the property as also qua ownership and attornment in favour of the respondent, reliance can be made to application viz DR No.21/2013 wherein the petitioners had impleaded the erstwhile owner– Smt.Suraiya Begum as respondent No.1; Mr.Prem Shankar Aggarwal as respondent No.2; and present respondent-Mr.Kanwar Raj Singh as respondent No.3 and wherein an order dated 13.08.2013 was passed containing the averments of the respondent herein as under:-

“The correct and actual number of tenanted premises is 5580 (supra) and not 5581(supra) as claimed and the valid title has passed in favour

of the present respondent and the erstwhile owners are have no concern with the tenanted premises. The DR Petition is allowed."

15. Further, in DR Petition No.247/2013 the petitioners herein had categorically alleged they had tendered the rent personally from time to time to Mst.Suraiya Begum, but she refused saying she had sold the tenanted premises. Then the petitioners had tendered the rent to Mr.Prem Shanker Aggarwal who also refused to accept the same on the plea he had also sold the property; and then the petitioners had approached the present respondent to accept the rent and issue the rent receipts, but he also refused to accept the rent and rather threatened to evict the petitioners.

16. Further, in para No.10 of their DR Petition No.247/2013 the petitioners herein had alleged the respondent instead of accepting the rent of the tenanted shop and issuance of rent receipt has rather extended threat to the petitioners to dispossess the petitioners without due process of law. *Admittedly*, in this DR Petition, no objection(s) by Mst.Suraiya Begum and by Mr.Prem Shanker Aggarwal were filed stating *inter alia* they have sold the tenanted shop to the present respondent. *Admittedly*, the respondent herein had received the rent so deposited in the Court by the petitioners from the Government Treasury and the petitioners never challenged the same.

17. Further, *admittedly* the sale deed dated 11.07.2001 executed by Mst.Suraiya Begum in favour of Mr.Prem Shanker Aggarwal for sale of property No.5580 (*supra*) clearly record the said building is in occupation of six tenants, including the petitioners of the tenanted shop as described in the list of tenants attached to the sale deed. The second

sale deed dated 14.10.2009 in favour of the respondent also clearly mentions of demised shop in property No.5580 on the ground floor along with latrine, having total area of 29.75 square meter without roof/terrace right, adjacent to property No.5579 and common stairs on Southern side. The petitioners did not deny this description of the tenanted shop as incorrect.

18. Admittedly, a site plan of the tenanted premises was also filed along with the eviction petition wherein this shop was shown to be a part of property No.5580 (*supra*). The site plan is at page No.98 of this revision petition clarifies there are only two shops in premises No.5580(*supra*) i.e. one shop with the petitioners and another was with the respondent from where the respondent is doing his business in the name and style of M/s Gatha International. Admittedly, the petitioners did not file their own site plan. In *R.K.Bhatnagar vs Sushila Bhargav* 1986 RLR 232 it was held if a tenant does not file any site plan then the site plan filed by the owner along with petition would be deemed to be correct.

19. Further in their reply dated 16.08.2013 to the legal notice dated 12.08.2013, the petitioners had admitted Mst.Suraiya Begum was an owner of premises No.5580 (*supra*) and on 30.05.2013 Mr.Prem Shanker Aggarwal had apprised the petitioners of having sold the property to the respondent by filing of a copy of the sale deed dated 14.10.209 (registered on 15.10.2009) in the Court in Suit No.577/2007. In its reply dated 16.08.2013 the petitioners had also admitted the respondent had never apprised the petitioners of purchase of this property, including the

tenanted shop at any point of time hence the petitioners were not having any *knowledge* about this purchase of the property by the respondent prior to 13.05.2013 but the respondent is not entitled in any case to recover the rent for the period of more than three years and that after coming to know about the purchase of the property by the respondent the petitioners have approached and tendered the legally recoverable rent to the respondent but the respondent instead of accepting the rent had threatened the petitioners to dispossess them on account of non-payment of rent. In the same reply dated 16.08.2013 the petitioners also alleged the respondent can claim enhancement in the rent only @ 10% per annum after every three years as per law.

20. One may also refer to the letter dated 20.05.2006 sent by Mst.Suraiya Begum to the petitioners, which *inter alia* notes:-

“8. That you all notices are intimated that you all fall in the premises No.5580 and not on 5581 and we are accordingly intimating this position to the police also with a copy to Shri Banarsi Dass Aggarwal and Shri Prem Shanker Aggarwal.”

21. The above letter do show the erstwhile owner of premises No.5579, 5580, and 5581 had duly intimated the petitioners, the correct location of the shop premises and in which of the three properties it fall. Secondly, the averments made by the petitioners in their DR Petition No.247/2013 and in their reply dated 16.08.2013 clearly reveal the petitioners had attorned to the respondent. Lastly, the petitioners never challenged the site plan filed by the respondent along with the eviction petition and it clearly shows the location of the tenanted premises, hence, contentions *c)* and *d)* above, are answered against the petitioners herein.

22. Even otherwise, the imperfectness of title of premises can neither stand in way of eviction petition nor can a tenant be allowed to raise plea of imperfect title or title not vesting in landlord and that too when tenant has been paying rent to landlord as held in *Puran Chand Aggarwal vs Lekh Raj* 210 (2014) DLT 131. In the present case there is sufficient material to show the petitioners had attorned to the respondent.

23. Admittedly, eviction petition has been filed by the respondent for his need as also for the need of his six other family members as described in para No.18 of the eviction petition and I need not repeat it for brevity. Suffice is to say it is settled law a landlord can choose the property from where he intends to carry on his business.

24. A bare perusal of the impugned order do show the learned Trial Court has also considered the issues raised before me and it needs no interference. Even otherwise in revision, the powers of this Court are limited and it is not open to revisit or relook the findings returned by the learned Trial Court.

25. In view of above, I find no illegality in the impugned order. The petition is thus dismissed, being devoid of merits. The pending application(s), if any, also stands disposed of. The LCR be remitted forthwith. No order as to costs.

YOGESH KHANNA, J.

FEBRUARY 25, 2020

M