

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

Reserved on: 16.02.2021

Date of Decision: 26.02.2021

+ **CM(M) 63/2021 & CM No.2741/2021**

SH. RAGHUBIR SINGH Petitioner

Through Mr.Kirti Uppal, Sr. Adv. with
Mr.Prashant Batra, Ms.Riya
Gulati, Advs.

versus

SHRI KANWAR INDERJIT SINGH Respondent

Through Mr.Rajeev Kumar, Adv.
with respondent in person.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner challenging the order dated 03.12.2020 passed by the learned Rent Control Tribunal (West), Tis Hazari Courts, New Delhi (hereinafter referred to as learned RCT), dismissing the appeal filed by the petitioner, being RCT No.23/2018, and confirming the order dated 24.04.2018 passed by the learned Additional Rent Controller in Eviction Petition No.25647/2016, ordering eviction of the petitioner under Section 14(1)(a) and (b) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") from the tenanted premises bearing no. Z-39, West Patel Nagar, New Delhi.

2. The respondent had filed the abovementioned Eviction Petition against the petitioner claiming himself to be the owner of the tenanted premises. It was alleged that the same had been rented out to the

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petitioner herein at a monthly rent of Rs.132/- up to 30.04.2002 exclusive of electricity charges. The respondent alleged that as the petitioner was in arrears of payment of rent from 01.10.1999 to 30.04.2002, a legal notice dated 01.04.2002 was served upon the petitioner, in response whereeto, the petitioner paid rent of Rs. 132/- per month alongwith interest. It was further alleged that the rent was enhanced to Rs.3,000/- per month with effect from 01.06.2002. As the petitioner again defaulted in payment of rent from 01.10.2002 to 28.02.2005, another legal notice dated 07.02.2005 was served upon him. In response to the legal notice, the petitioner tendered the rent for the abovementioned period at the enhanced rate of Rs.145.20/-, however, the same was not accepted by the respondent as it did not meet the demand of the respondent. The eviction petition was therefore, filed under Section 14(1)(a) of the Act.

3. The Eviction Petition was also filed under Section 14(1)(b) of the Act alleging therein that the petitioner had sublet and parted with the possession of the tenanted premises.

4. The petition was also filed under Section 14(1)(j) and (k) of the Act, however, the same was dismissed as far as these two grounds are concerned.

5. As far as the Impugned Order upholding the eviction of the petitioner under Section 14(1)(a) of the Act is concerned, the learned senior counsel for the petitioner submits that the respondent had unilaterally sought an enhancement of the rent from Rs.145.20/- to Rs.3,000/- per month. The learned Additional Rent Controller in his order dated 24.04.2018 has held that the rent could not have been unilaterally



increased by the respondent and that the rate of rent was Rs.145.20/-, which was duly tendered by the petitioner but not accepted by the respondent. The learned senior counsel for the petitioner submits that as the respondent had refused the tender of the rent, the petition under Section 14(1)(a) of the Act was liable to be dismissed.

6. He further submits that even otherwise, the petitioner has not been extended the benefit of the protection under Section 14(2) of the Act, making the Impugned Order liable to be set aside.

7. As far as allowing of the claim of the respondent under Section 14(1)(b) of the Act, the learned senior counsel for the petitioner submits that the said finding is contrary to law inasmuch as the onus of proving the subletting and/or parting of possession by the petitioner was on the respondent. He submits that the same was not proved on evidence. He submits that the learned RCT has placed reliance on the statement made by the alleged sub-tenant, Sh. Jyoti Singh, wherein the said Sh. Jyoti Singh has stated that he was using the tenanted premises as a partner of the petitioner. The learned senior counsel for the petitioner submits that therefore, there was no case of subletting or parting of possession of the tenanted premises made out against the petitioner.

8. I have considered the submissions made by the learned senior counsel for the petitioner, however, find no merit in the same.

9. As far as the tender of the rent is concerned, admittedly as on the date of the legal notice issued by the respondent, the petitioner was in default in payment of the rent with effect from 01.10.2002. Though the

respondent in its legal notice had demanded the rent at the rate of Rs.3,000/- per month, the petitioner, though tendered the rent at the admitted rate of Rs. 145.20 per month, he did not tender the same with interest at the statutory rate of 15% p.a. Section 26 of the Act requires a tenant in default to also pay interest at the rate of 15% per annum from the date on which such payment of rent is due to the date on which it is paid/tendered.

10. On refusal of the respondent to accept the same, the petitioner did not also deposit even the admitted rent in terms of Section 27 of the Act with the Controller. Admittedly, no interest was tendered or deposited by the petitioner. In terms of the judgment of the Supreme Court in *Sarla Goel & Ors. v. Kishan Chand*, (2009) 7 SCC 658, therefore, the petitioner was clearly liable to be evicted under Section 14(1)(a) of the Act.

11. As far as the protection to the tenant under Section 14(2) of the Act is concerned, as the eviction petition of the respondent has succeeded also on the ground of Section 14(1)(b) of the Act, the question of extending such protection to the petitioner no longer survived. In fact, the stage for considering extension of such protection to the petitioner did not arise in the facts of the present case and was rightly not considered by the learned RCT.

12. As far as the eviction of the petitioner under Section 14(1)(b) of the Act is concerned, the learned RCT has held as under:

"19. In view of the said proposition of law, reverting back to the instant case, PW-1 categorically deposed in his affidavit in evidence dated 15.04.2008 Ex.PW-1/1 that the appellant/tenant had sublet or parted with the entire possession of the tenancy premises in favour of respondent No.2 without his written consent. First thing first, in the cross-examination of PW-1 except for a bald suggestion that premises had not been sublet to respondent No.2 Jyoti Singh, no worthwhile fact or counter fact was put to the witness to suggest as to in what manner the appellant/tenant was in possession and occupation of the premises in question. The petitioner/landlord on his part examined PW-2, who produced the Goswara Register entry No. 568 to the effect that DD No.76B/04 titled 'State v. Jyoti Singh' under Section 28/112 of DP Act was decided on 14.07.2005. The petitioner/landlord proved on the record the certified copy of the order sheet dated 21.04.2005 Ex.PW-1/K wherein accused Raghubir Singh appeared in DD No. 76B and made following endorsement, which writing on the order sheet is as under:-

"हम दोनों यानि ज्योति सिंह S/o संतबंत सिंह निवासी 601
Pocket I, पश्चिम पूर्वी नई दिल्ली व् रघुवीर सिंह S/o Late Sh.
Gurbachan Singh R/o I-KG Marg, New Delhi-110001
हम दोनों Bawa Chicken के Partner है जो Z-39, West Patel
Nagar, New Delhi -110008 में चला रहे हैं। "

20. It is further in the testimony of the petitioner/landlord that Jyoti Singh was proceeded with under Section 417/421/397/430 of the DMC Act vide challan Ex.PW-4/C for running a non-veg dhaba in the name of 'Bawa Chicken' running on 25.05.2004 from premises No. Z-39, West Patel Nagar, New Delhi and fined of Rs. 800/- was paid by Jyoti Singh on pleading guilty vide receipt Ex.PW-4/A. While the plea of the appellant/tenant is indeed impressive that although there were seven shops in the subject property, nothing is brought on the record so as to suggest that such challan was in respect of any other shop in the subject premises. The "onus of proof" shifted upon the appellant/tenant to show and prove that respondent No.2 Jyoti Singh had no connection with the tenancy premises in question, which is belied

from the statement made before the Court reflected in order dated 21.04.2005. The appellant/tenant chose to examine only RW-1 Narender Nath Dogra as his Attorney who cut a sorry figure in his testimony asserting that he never visited the shop in question and he had no knowledge as what kind of business was being run from the premises. He was not able to show any document that he was the Personal Manager of the appellant/tenant and in his cross-examination he hammered the last nail in the case of the appellant/tenant by conceding that he did not know respondent No.2 and was unable to admit or deny if the premises had been sub-let or possession ever parted with in favour of respondent No.2 Jyoti Singh."

13. As is apparent from the above finding, the respondent had been able to prove the presence of Sh. Jyoti Singh in the tenanted premises. It was thereafter for the petitioner to show the nature of such possession in the hands of Sh. Jyoti Singh. The petitioner miserably failed to prove the same.

14. In any case, this being a matter of appreciation of evidence and as this Court is not sitting as a Court of appeal against such finding of facts, it would not be proper for this Court to start re-appreciating the evidence to come to its own conclusion on the same.

15. Accordingly, I find no merit in the present petition, the same is dismissed. The petitioner shall pay a cost of Rs.25,000/- to the respondent for the present petition.

NAVIN CHAWLA, J

FEBRUARY 26, 2021/RN

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