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

+ **RC.REV. 60/2020 & CM APPL. 4000/2020**

BABITA JAIN & ANR Petitioners

Through: **Mr. Rishipal Singh, Advocate**

versus

KAVINDER SINGH Respondent

Through: **Mr. Shailender Dahiya, Advocate.**

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Reserved on: 07th March, 2023

Date of Decision: 17th March, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present revision petition has been filed by the Petitioners, tenants assailing the eviction order dated 07.06.2019 ('impugned eviction order') passed by the Senior Civil Judge-cum-Rent Controller, North West District, Rohini Court, Delhi ('Trial Court') in RC ARC No. 5589/16 whereby the Petitioners' application seeking leave to defend was dismissed and the impugned eviction order was passed in favour of the Respondent, landlord with respect to shop no.3 (9'11''x 8' 5'') at ground floor of H. No. 2552, Onkar Nagar A, Tri Nagar, Delhi-35, measuring 83.4 sq. ft. ('the tenanted premises').

Brief facts

2. Admittedly, the Respondent along with his brothers is the exclusive owner of H. No. 2552, Onkar Nagar A, Tri Nagar, Delhi-35 ('the subject

property'), measuring 54 sq. yds, consisting of ground floor, where shop nos. 1, 2, 3 and 4 are located, first floor, second floor, third floor and fourth floor. The Respondent along with his brothers and the family resides on the upper floors in the subject property. It is stated that in a mutual partition settlement of the family, the entire ground floor consisting of the four shops has fallen to the exclusive share of the Respondent herein.

3. The Respondent, landlord, after his retirement from his employment started his business in shop no.4, located in the subject property. The said shop admittedly measures 8.5 sq. ft. and was not sufficient for carrying on his business and therefore he filed the eviction petition for recovery of the tenanted premises (shop no.3), which abuts his shop no.4.

4. The Trial Court after perusal of the pleadings of the parties held that the Petitioners' leave to defend failed to raise any triable issues and the contents of the said application failed to rebut the presumption of *bona fide* requirement of the Respondent.

Submissions of the Petitioners

5. Learned counsel for the Petitioners states that the Respondent has no *bona fide* requirement of the tenanted premises. He states that since the Respondent has sufficient pension income post-retirement, he has no dire need for the tenanted premises. He states that the plea of the Respondent that he intends to carry on business from the tenanted premises is a triable issue, which the Trial Court ought to have appreciated and thus granted the leave to defend.

5.1. He states that the Respondent admittedly has possession of shop nos. 1, 2 and 4 in the subject property. He states that the Respondent, thus has sufficient alternate suitable accommodation for carrying on his business of sale of kitchen utensils etc., from the said shops.

Submissions of the Respondent

6. In reply, the learned counsel for the Respondent states that admittedly shop nos. 1 and 2 are being used by the sons of the Respondent for carrying out their separate and independent businesses. He states that the said shops are therefore not available to the Respondent herein to carry on his own business.

6.1. More specifically, he states that shop no. 1 is being used exclusively by Sh. Jai Prakash, son of the Respondent, for his business. Similarly, shop no.2 is being used exclusively by Sh. Anand, son of the Respondent for operating his own business of sale of utensils in the name of Anand Plastic Store. He states that therefore the said shop nos.1 and 2 are not vacant and therefore not available to the Respondent.

6.2. He states that admittedly shop no. 4 which admeasures 8.5 sq. ft (8 ft 5 inches x 1 ft) is being used by the Respondent for carrying on his independent business of sale of utensils. He states that since shop no. 4 is very small in size, the Respondent has been compelled to vend from the street outside the said shop due to paucity of space. He states that the Respondent has also been fined by the Municipal Council of Delhi ('MCD') for vending on the public street.

6.3. He states that, in view of the aforesaid the tenanted premises (shop no.3), is required by the Respondent to for properly keeping his stock so as to display the same and invite the customers, as the space available in existing shop no. 4 is grossly insufficient.

Findings

7. This Court has considered the submissions of the parties and perused the record.

8. The facts relevant for deciding the present revision petition are as follows:

8.1. The eviction petition was filed by the Respondent against the Petitioners on the ground of *bona fide* requirement of the tenanted premises, which are commercial in nature, for keeping his articles and to expand his business of sale of utensils.

8.2. The ground floor of the subject property consists of four shops, namely, shop nos. 1, 2, 3 and 4. Shop nos. 1 and 2 are admittedly used by the two sons of the Respondent for their independent businesses. Shop no. 3 is under the tenancy of the Petitioner and shop no. 4, which admeasures 8 ft 5 inches x 1 ft, i.e., 8.5 sq. ft, is being used by the Respondent for running his independent sale of utensils etc.

8.3. The other floors of the subject property are being used for the residential purposes of the Respondent and other family members. More specifically, the first floor of the subject property is being used for the residence of the Respondent and his wife. The second floor of the subject property is being used for the residence Sh. Jai Prakash, son of the Respondent, along with his wife and two children. The third floor of the subject property is being used for the residence of Sh. Anand, son of the Respondent, along with his wife and son. The fourth floor of the subject property is being used for the residence of Sh. Amodh Kumar, son of the Respondent, who is residing along with his wife.

8.4. The Respondent has sought the eviction of the Petitioners from the tenanted premises on the ground that, due to the small size of shop no.4, he is unable to carry on his business and thus he requires the tenanted premises for keeping his articles lying in shop no. 4.

9. The arguments raised by the Petitioners are two-fold, i) *firstly*, the Respondent has no *bona fide* requirement for the tenanted premises ii) *secondly*, the Respondent has sufficient alternate suitable accommodation available at shop nos. 1, 2 and 4 in the subject property. It is pertinent to mention that the Petitioners have not raised any other pleas before this Court.

10. At the outset, this Court notes that the Trial Court has returned a finding at paragraphs 17 and 18 of the impugned eviction order that the relationship of landlord and tenant between the mother of the Respondent and the Petitioners herein is admitted. The Trial Court held that the tenanted premises have devolved upon the Respondent in view of the partition deed dated 01.05.2006 and also by the law of intestate succession.

10.1. The father of the Respondent was the registered owner of the subject property. Since, the learned counsel for the Petitioners has not assailed the said finding of the Trial Court, the said issue of ownership and landlord-tenant relationship between the parties has attained finality.

11. With respect to the disputes raised by the Petitioners regarding the *bona fide* requirement of the Respondent for the tenanted premises, the Respondent has stated that after his retirement from Delhi Transport Corporation ('DTC') on 31.12.2013, he started his own business of sale of utensils. The Respondent has stated that the said business was commenced from shop no. 4 which admeasures 8.5 sq ft. and is thus very small in size.

11.1. It was stated that the tenanted premises (shop no.3) which admeasures 83.4 sq. ft. (9 ft. 11 inches x 8 ft. 5 inches) adjoins shop no. 4 and on recovery of possession of the tenanted premises, the same shall be utilized by the Respondent for keeping his articles and to expanding his personal business.

11.2. It has been categorically stated in the eviction petition that the Respondent has taken a godown in property bearing no. 2508/190, Tri Nagar, Delhi-110035 on rent of Rs. 4,000/- per month for the purpose of keeping his articles lying in shop no. 4.

11.3. It was stated that shop nos. 1 and 2 in the subject property are being used by the two sons of the Respondent to carry on their independent business and therefore the said shops are not available to the Respondent herein for his personal business.

11.4. Learned counsel for the Petitioner during his arguments has not disputed that shop nos. 1 and 2 are being used by the sons of the Respondent for carrying on the independent business. Further, the miniscule size of shop no. 4 as noted hereinabove has also not been disputed by the Petitioners.

11.5. In view of the aforesaid submissions and facts, it is admitted on record that Respondent after his retirement is carrying on independent business. This Court is of the opinion that the size of shop no.4 is miniscule and carrying on business of sale of goods is bound to be difficult from such a small shop. The fact that Respondent has been conducting business from such a small shop shows his earnest desire to do business. This Court is of the opinion that merging of shop no.3 with shop no.4 will give respectable space and size to the Respondent herein to carry on his business.

11.6. The submission of the learned counsel for the Respondent that due to the paucity of space in shop no.4, Respondent is compelled to keep his goods/articles on the street and be subjected to challans/reprimands from the MCD substantiates the *bona fide* requirement of the Respondent.

11.7. As shop no.1 and 2 continue to be occupied by the Respondent's sons for their independent businesses, the said shops cannot be considered as alternate accommodation available to the Petitioners.

11.8. Thus, this Court is of the opinion that the Respondent is entitled to seek eviction of the Petitioners from the adjoining shop no.3, i.e., the tenanted premises, which admeasures 83.4 sq. ft for merging the same with his existing shop no.4, measuring 8.5 sq. ft.

11.9. This Court is satisfied that the Trial Court has correctly returned a finding with respect to the *bona fide* requirement of the Respondent for the tenanted premises. The relevant findings of the Trial Court on the ground of *bona fide* requirement are as follows:

“23. In the present case, the respondent has not denied that the petitioner is carrying the business as claimed by him, however, it is contended that in other two shops sons of the petitioner are also running their business and that the petitioner has got retirement benefits and regularly receiving pension and the contention raised by the petitioner for additional space is only a desire to extend his business and not and that the petitioner has got retirement benefits and regularly receiving pension and the contention raised by the petitioner for additional space is only a desire to extend his business and not a requirement and that the shop no.4 already run by the petitioner is not too small as claimed by the petitioner.

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26. Furthermore, it is the right of every person to excel in life. If the petitioner is of the opinion that it would be better in life to extend his independent business which has nothing to do with the business of his two sons who are running the same in shop no. 1 and 2, then it would not be just for this court to direct the petitioner otherwise and thereby stop the financial growth of the petitioner or decline an opportunity to extend his own business from the tenanted suit premises owned by the petitioner.

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30. There is one strong contention raised on behalf of the respondents is that the petitioner wants to extend his business of kitchen utensils which is being run by him in shop no. 4 and the same is also the business of respondents and the petitioner is seeking eviction order against the respondents as he wants to kick out the respondents from the market by running the same business as he wants to open a huge showroom at ground floor corner shop to cause a business loss to the respondents. In this regard, this is worth mentioning that the petitioner has already filed certain photographs on record with the submission of kitchen utensils and other articles. Therefore, the said contention raised on behalf of respondents seems to be bald and baseless contention.”

(Emphasis supplied)

12. With respect to the availability of alternate accommodation, the Petitioners have not raised separate arguments before this Court, other than the averments regarding shop nos. 1 and 2 in the subject property. The Trial Court has recorded that only four shops fell to the share of the Respondent herein, which have been duly considered and deliberated in the findings returned by the Trial Court. The finding of the Trial Court on the non-availability of alternative accommodation to the Respondent reads as under:

“37. In the previous paras of this order, it is already considered that the petitioner is stating that out of whole property, he has obtained only a portion of 54 sq. yards in mutual partition settlement of family which took place between him and his three brothers and this portion consists only four shops regarding which each and every details has already been furnished by the petitioner so as to who is in occupation of the same and what business is being run by the occupiers. It is not disputed by the respondents that two shops are being run by two sons of the petitioner and also that the area of the shop under occupation of the respondents. It is also not disputed by the respondents that all the upper floors of whole premises are being used by the petitioner and other family members for residential purpose. This is also considerable that when whole area at ground floor is limited to 54 sq. yards and four shops are already in existence, then how could the contention raised by the respondents be presumed to be true that there is a big godown adjacent to shop no.4 at the ground floor regarding which it is already clarified by the petitioner that there is only an entrance to upper floors adjacent to shop no.4 and no such godown is lying there. It is also clarified from the photographs relied upon by the petitioner that the area of the shop no.4 is very much small and it might be difficult for him to run his business in such a small space.”

(Emphasis supplied)

This Court finds that there is no error in the said findings of the Trial Court.

13. The Supreme Court in the case of *Abid-ul-Islam v. Inder Sain Dua*, (2022) 6 SCC 30, has after discussing the law held that the scope of the revisional jurisdiction under Section 25B(8) of the Delhi Rent Control Act, 1958 is limited. The relevant portion of the said judgment reads as under:

*“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. **Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision.** There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.”*

(Emphasis supplied)

14. In view of the aforesaid dicta of the Supreme Court, this Court is of the view that the pleas raised by the Petitioners fails to show any error in the findings of the Trial Court and therefore, the impugned eviction order do not suffer from any infirmity.

15. In view of the aforesaid observations and findings, the present petition and pending applications, if any, are dismissed and the impugned eviction order dated 07.06.2019 is upheld. Interim order dated 31.01.2020 stands vacated.

MANMEET PRITAM SINGH ARORA, J

MARCH 17, 2023

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