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

+ **RC.REV. 237/2022 & CM APPL. 43400/2022**

**PARVEEN KUMAR AJAY KUMAR & SONS** ..... Petitioner

Through: Mr. J.P. Sengh, Sr. Advocate  
with Mr. Shashi Pratap Singh,  
Mr. Gaima Chauhan and Ms.  
Abhilasha, Advocates

versus

**MANOJ KUMAR** ..... Respondents

Through: Mr. Sanjeev Sindhvani, Sr.  
Advocate with Mr. Sanjay Dua  
and Mr. Bharat Deep Singh,  
Advocates

Reserved on: 20<sup>th</sup> December, 2022

Date of Decision: 11<sup>th</sup> January, 2023.

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**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 Petitioner ('Tenant'), assailing the order dated 07.07.2022, passed by the Senior Civil Judge acting as the Rent Controller of East District, Karkardooma Courts, Delhi ('Trial Court'), whereby the Respondent's ('Landlord') eviction petition filed under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act') has been allowed and an eviction order has been passed in favour of the Landlord *qua* shop No. 3 situated at ground floor

of Property No. 1263, Narain Market, Subhash Road, Gandhi Nagar, Delhi ('tenanted premises/shop No. 3').

2. The Tenant's application for leave to defend was allowed *vide* order dated 11.10.2013, accordingly, written statement was filed by the Tenant and thereafter, evidence was led by the parties.

3. The facts of the case as averred by the Landlord and relevant for deciding the present revision petition are as follows: -

3.1. The eviction petition was instituted by the Respondent, owner and landlord, on the ground of *bona fide* requirement for expanding his shop and non-availability of any other reasonably suitable accommodation.

3.2. The Respondent deposed that he is the owner and landlord of three shops in Property No. 1263, Subhash Road, Gandhi Nagar, Delhi ('Property'), shown in green, red and yellow colour in the site plan marked as EX. PW1/1. The tenanted premises are marked on the site plan in colour red. The shop from where the Landlord is carrying out his business is marked on the site plan in colour green (for ease of reference identified as 'shop No. 1') and the shop being used by the Petitioner as a godown is marked on the site plan in colour yellow (for ease of reference identified as 'shop No. 2').

3.3. The Landlord deposed that he is carrying on a business of readymade garments under the name and style of M/s Rajesh Garments from the shop No. 1 and he uses the shop No. 2, which is located at the rear side of the property, as a godown. The Landlord further states that his shop No. 1 is very small and he cannot accommodate the customers in the said shop admeasuring 7' 3'' x 4' 6''.

3.4. The Landlord deposed that he has applied for the registration of a Tax Payer Identification Number ('TIN') for his business from the said shop No. 1 on 14.03.2013 and the registration certificate was issued by the sales tax authority on 26.08.2013.

3.5. The Landlord deposed that he wants to amalgamate/merge his existing shop with the adjoining tenanted premises to make one big shop in order to expand his business and display the garments properly.

4. The Tenant vide the present revision petition has opposed the pleas of the Landlord on the ground that the Landlord does not have any *bona fide* need for the tenanted premises as he is not carrying on any business of readymade garments and, in fact, the shop Nos. 1 and 2 are lying vacant. It is further stated that the Landlord also has in his possession an entire property, which is owned by the mother of the Landlord.

5. While before the Trial Court, the Tenant in its pleadings had raised an issue with respect to the non-existence of relationship of landlord and tenant between the parties as well as non-impleadment of his brother Ajay Kumar, however, no arguments in this regard were addressed before this Court during the hearing in the present revision petition.

6. Learned senior counsel for the Petitioner states that the Trial Court's finding that the Landlord carries out his business of readymade garments from shop No. 1 is without any basis. He states that the Landlord has not led any evidence on the record to prove that he is carrying on the said business. He states that, in fact, immediately prior to filing of the eviction petition in July, 2013, the Landlord had in

January, 2012, let out the shop No. 1, to one Mohd. Arif, for a period of 36 months at a monthly rent of Rs. 15,000/-. He states that the evidence led by the Landlord to prove that the said tenancy was terminated within a period of three (3) months is a sham defence and the Trial Court fell in error in accepting the said defence of the Landlord.

6.1. He further stated that there is no evidence led by the Landlord that he is actually carrying on business from the shop No. 1. He stated that since the Landlord had set up a plea of expansion of business as his *bona fide* requirement, it was incumbent upon the Trial Court to satisfy itself that the Landlord is presently carrying on a business, which as per the Tenant has not been proved on record.

6.2. He stated that the Landlord has merely obtained a TIN from the sales tax authorities, however, no financial statements of the alleged business, recording the sales turnover etc. have been placed on record. He, therefore, states that since the Landlord is not carrying on any business, there cannot be a requirement of expansion of business and therefore, there is no *bona fide* need of the Landlord.

6.3. He further states that the Trial Court failed to appreciate that the Landlord has in his possession an alternate suitable accommodation i.e., an entire property, consisting of three floors, bearing No. 292, Gali No. 3, Saraswati Bhandar, Gandhi Nagar, Delhi, ('Saraswati Bhandar'), admeasuring 30 sq. yards, which is owned by the Landlord's mother.

6.4. He states that the Trial Court failed to appreciate that the Landlord has in his possession a vacant shop No. 2 in the same Property.

6.5. He further states that the Tenant was also denied an opportunity to address oral arguments before the Trial Court. In this regard he states

that arguments were heard on 28.05.2022 and the matter was put up for judgment/clarification on 07.07.2022. He states that the judgment was pronounced on 07.07.2022, on the basis of the record and the oral submissions of the Landlord. He therefore states that there has been violation of principles of natural justice.

7. In reply, learned senior counsel for the Landlord states that there is no error in the order of the Trial Court. He states that the Landlord stepped into the witness box as PW-1 and the erstwhile tenant, Mohd. Arif, also stepped in the witness box as PW-3. The said witnesses duly deposed that the shop No. 1, which was let out in January, 2012, was subsequently vacated by Mohd. Arif in March, 2012. He states that the evidence of the said witnesses withstood the test of cross-examination and there is no material on record to disbelieve the said testimony.

7.1. He states that with respect to the property situated at Saraswati Bhandar, there is no dispute that the same belongs to the mother of the Landlord and the Trial Court has also returned a finding that the Landlord has no concern with the said property. In this regard, he relied upon the judgment dated 07.09.2022 passed by this Court in **RC. REV. 208/2022** titled as '*Shashi Bala Gupta and Ors. vs. Manish Gupta*', to contend that the said fact of existence of other premises being owned by the family member of the landlord cannot be a raised as a plea to deny the landlord his right to seek eviction of a tenant from his exclusively owned premises.

7.2. He states that the finding of the Trial Court that the Landlord carries on the business of readymade garments from the shop No. 1 is correct and duly borne out from the evidence on record. He states that

the submissions of the learned senior counsel for the Petitioner, tenant, that there is no evidence on record, led by the Landlord that he carries on business of readymade garments, is incorrect. He states that a perusal of the cross-examination of the Landlord, who deposed as PW-1 in cross - examination, would show that there was no question put to the witness that the shop No. 1 is lying vacant or that the Landlord is not carrying on any business. He states that the testimony of the Landlord that he carries on the business of readymade garments has gone unrebutted and unchallenged and therefore, the Trial Court rightly concluded that the Landlord, who is carrying on the readymade garment business from shop No. 1, has a *bona fide* need of the tenanted premises, for expansion of his business. In this regard, he relied upon the judgment of this Court in ***Jasdeep Singh Kalsi vs. The State & Ors., 2018 SCC OnLine Del 12977.***

7.3. He states that with respect to the use of the shop No. 2 as a godown, the Tenant cannot dictate to the Landlord the manner in which he should use his properties. He states that the Landlord has duly disclosed the accommodations owned by him including Shop No. 2. In this regard, he relied upon the judgment of this Court in ***Babu Lal vs. Atul Kumar & Anr., 2014 SCC OnLine Del 2493.***

8. This Court has heard the learned senior counsel for the parties and perused the paper book. Learned senior counsel for the Petitioner was heard on 30.11.2022 and 20.12.2022, so also Respondent was heard on 01.12.2022 and 20.12.2022 in this matter.

8.1. The Tenant has firstly contended that the impugned order dated 07.07.2022, passed by the Trial Court, is in violation of the principles

of natural justice inasmuch as the Tenant herein could not address oral arguments before the Trial Court. The Trial Court on 29.04.2022 listed the matter for final arguments on 28.05.2022 and on the said date the Trial Court heard the oral submission made by the Landlord and listed the matter for orders on 07.07.2022. The counsel present for the petitioner elected not to address arguments on 28.05.2022. Pertinently, the Trial Court granted liberty to both the parties to file their written submissions. The Trial Court was functioning till 10.06.2022 and after the summer vacations, the Trial Court resumed functioning on 01.07.2022. It is admitted that no application was filed before the Trial Court at any time prior to 07.07.2022 by the Tenant herein, seeking an opportunity to address the oral arguments in the matter. Further, no written submissions were also filed by the Tenant, despite the specific leave reserved by the Trial Court to the parties vide its order dated 28.05.2022. The absence of any attempt by the Tenant during the intervening period of 28.05.2022 to 07.07.2022 to approach the Trial Court for a hearing belies the contention now being raised with respect to violation of principles of natural justice.

8.2. In this regard, it is also noted that the eviction petition was filed on 09.07.2013. The recording of evidence was concluded on 29.04.2017 and the matter was ripe for final arguments since then. However, at that stage, an application for impleadment was filed by Mr. Ajay Kumar, the brother of the Tenant, for asserting his rights as a joint tenant. The said application was heard and dismissed by the Trial Court on 12.03.2019 and the matter was thereafter adjourned on the plea of the said Mr. Ajay Kumar and the Tenant herein that a revision petition has been filed

against the said order of dismissal. The said Mr. Ajay Kumar stopped appearing before the Trial Court and a Court notice was also issued to him by the Trial Court, however, none appeared on his behalf and the Trial Court observe that there was no information available on the record with respect to the alleged revision petition filed by Mr. Ajay Kumar. The matter languished from 2017 to 2021 and thereafter, was set down for final arguments on 24.04.2021 with a note of caution to the Tenant that it is the last and final opportunity.

8.3. The matter was heard and reserved by the predecessor Judge in the Trial Court on 02.12.2021, however, the judgment was not pronounced as the said judge was transferred. The successor Judge passed an order on 29.04.2022 listing the matter for re-arguments on 28.05.2022. Though the Tenant was represented on 28.05.2022, the counsel elected not to argue on the ground that the main counsel was not available. The Trial Court heard the Landlord and listed the matter for orders on 07.07.2022.

8.4. As noted above, the Tenant took no steps to address the oral arguments in the intervening period of 28.05.2022 to 07.07.2022. The revision petition is also silent with respect to the reason for the non-appearance of the arguing counsel for the Petitioner on 28.05.2022 and there is no explanation on record for the inability of the counsel present to argue the matter. There is no explanation offered by the Tenant in the revision petition and during the oral arguments before this Court for not approaching the Court for hearing between 28.05.2022 and 07.07.2022. It is therefore evident from the record that the Tenant elected not to

press for an oral hearing of his arguments during the period of 28.05.2022 to 07.07.2022.

8.5. In the present case, since the evidence had been duly recorded and concluded as early as on 29.04.2017 and the matter was listed by Trial Court by its order dated 29.04.2022 specifically for final arguments on 28.05.2022, the Trial Court had discretion as per order XVII Rule 2 and 3 of Code of Civil Procedure, 1908 ('CPC') to proceed with the matter as if the Petitioner was present. The order XVII Rule 2 and 3 of CPC reads as under:

***2. Procedure if parties fail to appear on day fixed.*** —Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

***[Explanation. — Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion proceed with the case as if such party were present.]***

***3. Court may proceed notwithstanding either party fails to produce evidence, etc.***—Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed [the Court may, notwithstanding such default,

(a) if the parties are present, proceed to decide the suit forthwith; or  
(b) if the parties are, or any of them is, absent, proceed under rule 2].”

(Emphasis Supplied)

8.6. The power of the Trial Court to proceed with the final hearing has been affirmed by the Supreme Court in the case titled as ***B. Janakiramaiah Chetty vs. A.K. Parthasarathi and Ors., (2003) 5 SCC 641***, with reference to Order XVII Rule 2 and 3 of CPC, wherein the court held as under: -

*“10. The crucial expression in the Explanation is “where the evidence or a substantial portion of the evidence of a party”. There is a positive purpose in this legislative expression. It obviously means that the evidence on record is sufficient to substantiate the absentee party's stand and for disposal of the suit. The absentee party is deemed to be present for this obvious purpose. The court while acting under the Explanation may proceed with the case if that prima facie is the position. The court has to be satisfied on the facts of each case about this requisite aspect. It would be also imperative for the court to record its satisfaction in that perspective. It cannot be said that the requirement of substantial portion of the evidence or the evidence having been led for applying the Explanation is without any purpose. If the evidence on record is sufficient for disposal of the suit, there is no need for adjourning the suit or deferring the decision.”*

(Emphasis Supplied)

8.7. The legal position was reiterated by the Supreme Court in ***G. Ratna Raj V. Sri Muthukumarasamy Permanent Fund Ltd., (2019) 11 SCC 301***, held as under:-

*“18. The Explanation appended to Order 17 Rule 2 of the Code provides that where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the court may, in its discretion, proceed with the case as if such party was present.”*

(Emphasis Supplied)

8.8. In the eviction proceedings, in fact, the Tenant was duly represented by a counsel on 28.05.2022, who elected not to address oral arguments. The recording of evidence was concluded on 29.04.2017 and was sufficient for appreciating the defence of the Tenant and deciding the Petition. Therefore, in the opinion of this Court, no error has been committed by Trial Court in proceeding to hear the Landlord and reserve the judgment, considering the fact that the Tenant elected to not address the arguments.

8.9. Further in the oral arguments addressed in this revision petition except for stating that the Tenant's oral arguments were not heard on

28.05.2022, the learned senior counsel for Petitioner, Tenant, was unable to show non-consideration of any plea of the Tenant in the impugned order due to the non-hearing. The impugned order shows that the Trial Court has duly taken note of the pleading of the parties and the evidence led by them while deciding the three issues arising for consideration.

8.10. It is settled law that the principles of natural justice are “*no unruly horse, no lurking and mine*” as characteristically stated by Krishna Iyer, J. in ***Chairman, Board of Mining Examination and Chief Inspector of Mines vs. Ramjee, (1977) 2 SCC 256***. It is further settled law that principles of natural justice cannot be fitted into right moulds. Therefore, this Court finds that in the facts in this case, there has been no violation of principles of natural justice.

9. With respect to the contentions of the Tenant that the Landlord does not have a *bona fide* need for the tenanted premises, as the Landlord is not carrying on any business, this Court finds no merit in the said submission. A perusal of the cross examination of the Landlord who stepped in the witness box as PW-1 shows that there was no suggestion put to the said witness that he is not carrying on the business of readymade garments. The Landlord in his cross-examination categorically asserted that he is carrying on the readymade garments business in the said shop No. 1 which is in his possession.

9.1. With respect to the other plea of the Tenant that, in fact, the said shop No. 1 is in possession of a tenant namely Mohd. Arif, it is noted that the said erstwhile tenant stepped into the witness box as PW-3 and categorically asserted that he occupied the said shop only for three

months between January 2012 to March 2012. He further gave details of the current address at which he is carrying on his business. The PW-3 withstood the test of cross examination.

9.2. Pertinently, the Tenant who is carrying out his business from the tenanted premises, which are adjoining the shop No. 1, has not brought on record any documentary evidence which would suggest that the shop No. 1 was being used by Mohd. Arif. If indeed the said shop was being used by Mohd. Arif, furnishing evidence *qua* such user would have been easily accessible to the Tenant from his adjoining premises. The absence of any such evidence substantiates the plea of the Landlord and Mohd. Arif that the shop had been vacated in March, 2012. The finding of the Trial Court recording its satisfaction with respect to the testimony of PW-3 and holding that he was not in occupation of the premises therefore does not suffer from any error. The Tenant has not made out any ground for interference with the said finding.

9.3. Since it was the stand of the Tenant that the shop No. 1 is being used by Mohd. Arif, Tenant elected not to lead any evidence on record to prove that no business was being carried out by the Landlord from shop No. 1. On the contrary, the Landlord has placed on record evidence which shows that he had obtained TIN registration for his proprietorship firm from Shop No. 1 and asserted in his oral testimony that he carries on business from the said shop No. 1. Thus, in the absence of any evidence led by the Tenant to rebut the assertions of the Landlord, the Trial Court rightly held that the Landlord carries on business from the shop No. 1 and has a *bona fide* requirement for the tenanted premises.

10. With respect to the submission of the Tenant that the Landlord has suitable alternate accommodation in the form of the property at Saraswati Bhandar, the Tenant in his cross-examination has admitted that the said property at Saraswati Bhandar belongs to the mother of the Landlord. The Landlord in his testimony has stated that the said property is owned by his mother, she realizes rentals from the said property and the Landlord has no concern with the said property. As mentioned earlier, this Court in *Shashi Bala Gupta* (Supra) and in *Geeta Malhotra v. Ravneet Kaur Chowdhary, 2017 (240) DLT 353*, has held that the landlord cannot be compelled to explore the possibility from the premises owned by another family member if he can have access to his own premises.

10.1. The Landlord is carrying on the garments business from shop No. 1 which is adjoining the tenanted premises and therefore his requirement for the tenanted premises for expansion is reasonable and in ordinary course of business. He cannot be dictated to carry out expansion in the property owned by his mother.

11. While in its grounds of the revision petition, the Tenant has raised an issue with respect to the non-existence of relationship of landlord and tenant between the parties as well as non-impleadment of his brother Ajay Kumar, no arguments in this regard were addressed before this Court.

11.1. The Trial Court in the impugned order after perusing the evidence on the specific admission of the Tenant, held that the existence of landlord and tenant relationship between the parties stands proved in view of the rent receipts issued by the Landlord and admitted by the

Tenant during the evidence. It is also admitted that the recorded owner of the tenanted premises is the maternal grandfather of the Landlord and the property was initially let out by the said maternal grandfather.

11.2. The perusal of the record further shows that in application filed by the said Mr. Ajay Kumar for seeking impleadment in the eviction proceedings was dismissed by the Trial Court on 12.03.2019. Thereafter, though it was stated before the Trial Court that the revision petition was filed by Mr. Ajay Kumar, however, no details of the revision petition or its outcome are available on record and further Mr. Ajay Kumar elected to not appear in proceedings and contest the same, despite Court notice as recorded in order dated 10.03.2021. Therefore, this plea in any event is not available to the Tenant herein.

12. In the facts of the present case, the Landlord has asserted that he is carrying on business of readymade garments from shop No. 1 and he requires the adjoining tenanted premises for expansion of his business.

13. This Court is conscious of the fact that in exercise of its revisional jurisdiction, the power of the High Court are merely supervisory and of superintendence. The consideration or examination of the evidence by this Court is confined to find out that findings of the facts recorded by the Trial Court is according to law and does not suffer from any error of law. (Paragraph 43 of *Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh*, (2014) 9 SCC 78)

14. This aspect was reiterated and highlighted by the Supreme Court in *Abid-ul-islam vs. Inder Sain Dua*, (2022) 6 SCC 30. Para 23 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.”*

15. In light of the facts that the landlord - tenant relationship has been proved, the satisfaction recorded by the Trial Court with respect to the *bona fide* need of the Landlord and unavailability of alternate accommodation merits no interference. The Court finds no merits in the present revision petition and the same is dismissed. The pending application stands disposed of.

**MANMEET PRITAM SINGH ARORA, J**

**JANUARY 11, 2023**

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