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

Judgment pronounced on: 13.12.2023

+ **RC.REV. 592/2019& CM APPL.45295/2019**

VIJAY SINGH

.....Petitioner

versus

SHER SINGH

.....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vijay Kinger, Mr. Ashwani Gehlot
and Ms. Roopa Nagpal, Advs.

For the Respondent : Mr. Sudhir Kumar Sharma and Mr.
Pranjal Rai, Advs.

CORAM:

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Court Hearing/ Hybrid Hearing]

JUDGMENT

TARA VITASTA GANJU, J.:

RC.REV. 592/2019& CM APPL.45295/2019*[Application seeking
interim reliefs]*

1. The present Revision Petition has been filed by the Petitioner/tenant assailing the Order dated 21.08.2019 passed by the learned Senior Civil Judge/Rent Controller, Shahadra, Karakardooma Courts, Delhi [hereinafter referred to "Impugned Order"].



1.1 By way of the Impugned Order, the learned Trial Court has allowed the Eviction Petition filed by the Respondent/landlord, after a full trial in the matter.

2. The brief relevant facts are:

- (i) The Respondent/landlord is the owner of property, i.e. one shop on the ground floor admeasuring 13' x 8'6" sq. ft. Being Shop No. B-4, Gali No.5, New Modern Shahdara, Delhi - 110032 [hereinafter referred to as the "demised Premises"].
- (ii) The Respondent/landlord had filed the Eviction Petition on 20.11.2014 for his own *bona fide* requirement of his practice as a Ayurvedic and Unani Doctor and for sustaining himself.
- (iii) The Respondent/landlord also averred that he does not have any other suitable alternate accommodation available.
- (iv) The Leave to Defend Application filed by the Petitioner/tenant, was allowed on 05.11.2015. The Written Statement filed by the Petitioner/tenant contended that there was alternate suitable accommodation available with the Respondent/landlord including possession of three shops on the ground floor out of which one is lying vacant; two shops on ground floor in property bearing no. A-49/B, Jagat Puri, Shahdara, Delhi-110032 admeasuring 100 sq. yds; another property at Sushila Garden admeasuring 100 sq. yards which is also lying locked.

2.1 Evidence was led by both parties before the Trial Court. After hearing both parties, the Impugned Order was passed, allowing the



Eviction Petition. Aggrieved by the Impugned Order, this Petition has been filed.

3. Notice in the present Revision Petition was issued on 15.10.2019 and thereafter, by the order dated 18.02.2020, a statement of the learned Counsel for the Respondent/landlord was recorded, undertaking not to pursue the Execution of the Impugned Order, which is being continued till date. Arguments were heard and Judgment in the present Petition was reserved by this Court.
- 3.1 The parties were given liberty to file their respective Written Submissions in the matter, which have since been filed.
4. Learned Counsel for the Petitioner/tenant, has submitted the following:
 - (i) The Respondent/landlord has failed to prove the necessary ingredients enshrined under Section 14(1)(e) of the Delhi Rent Control Act, 1995 [hereinafter referred as “DRC Act”] and the *bona fide* requirement as contended by the Respondent/landlord is a mere facade to evict and harass the Petitioner/tenant.
 - (ii) There are multiple suitable alternate accommodations available with the Respondent/landlord as the Petitioner/tenant is in possession of the entire property admeasuring about 200 sq. yds. There are three shops on the ground floor itself of the suit property out of which, one shop is lying vacant and at the disposal of the Respondent/landlord.



- (iii) The Respondent/landlord has not filed the correct site plan with respect to the demised Premises in terms of the provisions of the Section 14(1)(e) of the DRC Act.
- (iv) An issue of jurisdiction of the learned Rent Controller was raised by the Petitioner/tenant. It is averred that the demised Premises in question is not covered under Section 1 (2) of the DRC Act, in as much as the area (i.e., Village Chandrawali) in which the demised Premises is situated, has not been notified under Section 1(2) of the DRC Act. Thus, the learned Rent Controller did not have jurisdiction to adjudicate upon the matter under the DRC Act. Reliance is placed on the judgment passed by the Supreme Court in the matter of *Mitter Sen Jain v. Shakuntala Devi*¹ in this regard.
5. Learned Counsel for the Respondent/landlord, in support of his contentions, submitted the following:
- (i) The Respondent/landlord is a senior citizen aged about 83 years and is a certified medical practitioner in the field of Ayurveda and Unani medicine. The Respondent/landlord requires the demised Premises to establish and set up his medical practice and that he has no other suitable alternate accommodation for this requirement.
- (ii) In response to the ground raised by the Petitioner/tenant with respect to the site plan, it is contended that the Petitioner/tenant himself has not filed any site plan in support of his averment. It is a settled law, that in absence of a site plan filed by the Petitioner/tenant, the site

¹(2000) 9 SCC 720



plan filed by the Respondent/landlord is deemed to be the correct site plan.

- (iii) The Petitioner/tenant has failed to provide any documents evidencing the availability of any suitable alternate accommodation being available with the Respondent/landlord and has only raised bald assertions with respect to the same.
- (iv) In response to the issue of jurisdiction being raised by the Petitioner/tenant, it is contended that the Petitioner/tenant failed to raise this issue in the Written Statement filed by the Petitioner/tenant or at any time during the proceedings before the Trial Court, which were pending for more than 5 years. This issue was only raised by the Petitioner/tenant before this Court. Reliance is placed on the judgment of the Supreme Court in *Ariane Organchem Private Limited v. Wyeth Employees Union and Others*² to submit that only a pure legal issue can be raised at any stage. However, since this is not a pure legal issue, it cannot be decided at this stage.
- (v) The Respondent/landlord has filed another Petition against the Petitioner/tenant on the ground of non-payment of rent as the Petitioner/tenant has failed to deposit any rental since 2014. The said Petition is pending adjudication before the learned Trial Court.
- (vi) The Impugned Order has dealt with all the aspects raised by the Petitioner/tenant and there are no infirmities in the said Impugned Order.

² (2015) 7 SCC 561



6. Admittedly, a new issue has been raised by the Petitioner/tenant before this Court, which is, that DRC Act does not apply since the demised Premises are situate in Village Chandrawali which does not fall in the Municipal limits of the city and is also not notified under proviso to sub-section (2) of Section 1 of the DRC Act.
7. The DRC Act extends to areas under the jurisdiction of New Delhi Municipal Council, urban areas under the Municipal Corporation of Delhi, the Delhi Cantonment Board and to areas as specified in the First Schedule of the DRC Act. The proviso to sub-section (2) of Section 1 of the DRC Act provides that the Central Government may by a notification extend the provisions of this Act to different areas under the jurisdiction of Municipal Corporation of Delhi as below:

“....

(2) It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule:

Provided that the Central Government may, by notification in the Official Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof.

[Emphasis supplied]

8. As discussed above, the DRC Act is applicable in an area of Delhi in two situations;
- (i) The area is included within the limits as specified in the First Schedule under the DRC Act; or



(ii) The area is notified under the proviso to Section 1(2) of the DRC Act, making such area within the jurisdiction of the First Schedule.

9. The Supreme Court in the **Mitter Sen** case has clarified the applicability of the DRC Act and has held that even if an area is included as an area notified under Section 507 of the Delhi Municipal Corporation Act, 1957, a further notification is required to be issued under the proviso to Section 1(2) of the DRC Act. Unless such a notification is issued, the DRC Act cannot be made applicable to such area.

9.1 The relevant extract of the **Mitter Sen** case is extracted below:

"3. Subsequently, by a notification dated 24-10-1994 issued under Section 507 of the Delhi Municipal Corporation Act, the rural area falling under Sagarpur where the property in dispute is situate was included within the urban area of Delhi Municipal Corporation. It is on the strength of this notification, learned counsel urged that once the area has been included as urban area within the Delhi Municipal Corporation ipso facto, the Delhi Rent Control Act shall be applicable. The argument is totally misconceived. Even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under the proviso to sub-section (2) of Section 1 of the Delhi Rent Control Act. Unless the area is so specified in the Schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area. It is admitted that no notification has yet been issued under the proviso to sub-section (2) of Section 1 of the Delhi Rent Control Act specifying Sagarpur area within the Schedule of the Act. In the absence of such a notification, the provisions of the Delhi Rent Control Act cannot be enforced in the area, namely, Sagarpur."

[Emphasis supplied]

10. Admittedly, the issue with respect to non-applicability of the DRC Act was not raised by the Petitioner/tenant either in his Leave to Defend Application or in his Written Statement. As a consequence



thereof, no evidence was led by either party on this issue. Thus, there is no discussion on this aspect in the Impugned Order.

10.1 The Supreme Court in *Ariane Organchem* case while relying on the Judgment of *National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad*³ has held that no evidence can be permitted to be adduced on an issue unless a factual foundation for the same has been raised and only a pure legal issue can be raised at any stage in the proceedings. The relevant extract of the *National Textile* case reads as follows:

"18. In view of the above, the law on the issue stands crystallised to the effect that a party has to take proper pleadings and prove the same by adducing sufficient evidence. No evidence can be permitted to be adduced on a issue unless factual foundation has been laid down in respect of the same.

19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. [See Sanghvi Reconditioners (P) Ltd. v. Union of India [(2010) 2 SCC 733: AIR 2010 SC 1089] and Greater Mohali Area Development Authority v. Manju Jain [(2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639 : AIR 2010 SC 3817].]"

[Emphasis supplied]

11. As stated above, no pleadings have been made with respect to this issue and neither has any evidence been led by the Petitioner/tenant in this regard before the Trial Court.

11.1 It is no longer *res integra* that a defence not taken by the Petitioner/tenant before the Trial Court cannot be taken in a revision

³ (2011) 12 SCC 695



before this Court.[See: *K.B. Watts Vs. Vipin Kalra*⁴ and *Swaranjit Singh v. Saroj Kapoor*⁵ in this regard].

12. In view of what has been stated above, this Court is of the opinion that a decision on the applicability of proviso to sub-section (2) of Section 1 of the DRC Act is required.

12.1 Accordingly, the following directions are passed:

- (i) The Trial Court shall decide the issue of applicability of proviso to sub-section (2) of Section 1 of the DRC Act, as raised by the Petitioner/tenant before this Court.
- (ii) For this purpose, the parties shall appear before the Trial Court on 20.12.2023.
- (iii) The parties shall file evidence and documents sought to be relied upon in support of their respective contentions.
- (iv) The Trial Court is requested to decide the matter as expeditiously as possible and no later than four months from today.

13. Registry is directed to forthwith despatch a copy of this order to the parties and the concerned Trial Court.

14. The Revision Petition and all pending Applications are accordingly closed.

TARA VITASTA GANJU, J

DECEMBER13, 2023/SA/r

⁴ 220 (2015) DLT 402

⁵ 2023 SCC OnLine Del 7396