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

+ **RC.REV. 280/2022 & CM APPL. 52974-75/2022**

MOHD NASEEM

..... Petitioner

Through: Mr. G.M. Farooqui, Mohd. Faisal,
Advocates.

versus

MOIZUDDN AND ANR

..... Respondent

Through: Ms. Poonam and Mr. Atul Kumar,
Advocate for R-1.

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Reserved on: 24th February, 2023

Date of Decision: 15th 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 Petitioner ('tenant') assailing the eviction order dated 31.08.2022 passed by the ARC, Central District, Tis Hazari Courts, Delhi ('Trial Court') in RC ARC No. 78246/2016, wherein, post-trial, the eviction order has been passed in favour of the Respondent No.1 ('landlord').

2. The Petitioner is seeking to challenge the impugned eviction order mainly on the ground that the Respondent No.1 has failed to prove his *bona fide* need as well as the fact that the said Respondent has various other suitable alternate accommodations available for his alleged *bona fide* need.

3. The Respondent No.1 is the co-owner of the Property bearing Nos. 673

to 677, Bazar Chitli Qabar, Jama Masjid, Delhi ('subject property'), which was jointly purchased by the Respondent No.1 along with his two brothers namely Qutubuddin i.e., Respondent No.2 herein and Qayamuddin, *vide* registered sale deed dated 20.09.1973. The four (4) shops at the ground floor of Property bearing Nos. 673 to 676 were let out to different tenants, wherein shop No. 673 in the subject property ('tenanted premises') was let out to the Petitioner from where is he running a business of selling Pan, Biri, Cigarettes etc.

4. The eviction petition was instituted by the Respondent No.1, who is an elderly citizen of 84 years of age, for the *bona fide* requirement of himself and his family members who intend to run and operate a business of readymade garments from the tenanted premises. The said eviction petition was instituted on 16.08.2012 and the impugned eviction order was passed on 31.08.2022. The Petitioner has thereafter awaited from 01.09.2022 to 05.12.2022 to file the revision petition on similar grounds as raised in the eviction proceedings, which were duly adjudicated by the Trial Court.

5. Learned counsel for the Petitioner states that there doesn't exist any landlord-tenant relationship between the Petitioner and Respondent No.1, and that the Respondent No.2 is the landlord of the Petitioner herein. He states that the Respondent No.1 herein, arrayed his brother, Qutubuddin, as Respondent No.2 in the eviction petition and is claiming himself to be a co-owner of the tenanted premises along with Respondent No.2. He fairly admits that he does not dispute the co-ownership of the Respondent No.1 and the issue is raised only with respect to non-existence of landlord-tenant relationship between the Petitioner and Respondent No.1.

5.1. He states that the tenanted premises is a triangular shaped, small sized shop, ad-measuring 6' x 3' and is not suitable for the *bona fide* need of the Respondent No.1 or his family members.

5.2. In the leave to defend application it is stated that other shops on ground floor of subject property i.e., shop No. 675 is lying vacant and shop No. 676 is in occupation of another tenant. It is stated that the shop No. 674 was let out by the Respondent No.1 to another tenant, immediately before filing of the eviction petition.

5.2.1. However, learned counsel for the Petitioner has altered his stand with respect to the said shops during the course of arguments in the present revision petition and he states that with respect to shop No. 674, an eviction order has been passed by the Rent Controller against the statutory tenant and a revision petition bearing RC. REV. 250/2017 is pending before this Court.

5.2.2. He states that with respect to shop No. 675, it is admitted that the same is in occupation of a third party namely Mr. Mohd. Shafiq, however, it was alleged that the said person is conducting business jointly with the Respondent No.1 herein.

5.2.3. He states that with respect to shop No. 676, it was admitted that the possession of the said shop has been recovered from the erstwhile tenant and one of the sons of Respondent No.1 is carrying on his business of crockery and other plastic item from the said shop.

5.3. In the leave to defend application it is further stated that the Respondent No.1, is the owner of another Property bearing Nos. 1174 to 1176, Gali Sunar

Wali, Kala Mahal, Darya Ganj Delhi ('Property bearing Nos. 1174 to 1176'), wherein there are three shops bearing no. 1174 to 1176, which have been let out on rent. It is further stated that there are two more shops on the ground floor of said Property No. 1175 on the *gali* side.

5.4. He states that there are three shops of the Respondent No.1 on the ground floor of Property No. 1152, Gali Nanua Teli, Turkman Gate, Delhi ('Property No. 1152'), out of which one shop is lying vacant and the Respondent No.1 is running a *Darkozi* factory on the first floor. It is stated that second floor and third floor is being used for residential purpose by the family members of Respondent No.2.

5.5. He states that the Respondent No.1 has initially issued a legal notice dated 22.02.2012 to the Petitioner, wherein he had called upon the tenant to enhance the rate of rent. He states that pertinently, there was no mention of any *bona fide* need in the said notice. He states that the eviction petition was immediately filed thereafter within a period six months on 16.08.2012, on the plea of *bona fide* requirement for the family members of the Respondent No.1, which is contradicted by the notice. He states that in the eviction petition, no details of the said family members was set out and the said eviction petition was vague and bereft of any details in this regard.

5.6. He states that the Respondent No.1 himself did not step into the witness box and instead in his place, his son appeared as PW1. He states that in the affidavit by way of evidence of PW1, again there was no detail with respect to the family members for whose *bona fide* requirement the tenanted premises is required by Respondent No.1.

6. In reply, learned counsel for the Petitioner states that the Respondent No.1 herein, is a senior citizen of 84 years, who is suffering from old age ailments and therefore, could not step into the witness box.

6.1. She states that the Respondent No.1 has preferred eviction petition(s) with respect to shop Nos. 674, 675 and 676 as well. She states that with respect to shop No. 674 the Rent Controller has passed an eviction order which is pending challenge in a revision petition before this Court. She states that with respect to shop No. 675, the eviction petition is pending adjudication before the Rent Controller. She states that with respect to shop No. 676, the eviction order was passed by the Rent Controller about three (3) years ago and the said shop is being used by one of the sons of the Respondent No.1, wherein he is running a business of crockery and plastic items.

6.2. She states that the Respondent No.1 is neither the owner of Property bearing Nos. 1174 to 1176, nor the Property No. 1152.

6.3. She therefore, states that the allegation of vacant alternate accommodation is incorrect.

7. This Court has heard the learned counsel for parties and perused the paper book.

7.1. The impugned eviction order in this petition was passed after a full trial was conducted and parties led evidence.

Existence of landlord-tenant relationship

8. With respect to the issue of ownership of the tenanted premises, the

Petitioner herein had disputed the ownership of the Respondent No.1. In reply, the Respondent No.1, produced before the Trial Court the sale deed dated 20.09.1973 which was marked as Exhibit PW1/1 and was duly tendered in evidence. The said sale deed evidences that the Respondent No.1, is a co-owner of the subject property along with his brothers including Respondent No.2 herein. In view of the said sale deed, the learned counsel for the Petitioner conceded during oral arguments that there is no dispute with respect to the co-ownership.

8.1. With respect to the status of landlord-tenant relationship, the Petitioner herein admitted that he was paying rent to Respondent No.2, who is the brother of Respondent No.1 and a co-owner in the premises. In view of the said admission, the Petitioner's status of a tenant stands admitted. Further, Respondent No.2 herein was arrayed as a party to the eviction petition and he has not objected to the eviction petition.

8.2. In this view of the matter the eviction petition filed by the Respondent No.1 herein, who is admittedly a co-owner of the tenanted premises, is maintainable. The finding of the Trial Court at paragraph 8 and 9 of the impugned order are correct and do not suffer from any error of law and the status of landlord-tenant relationship between the parties stands established. The relevant finding of the Trial Court in the impugned eviction order reads as under: -

“8. Being an eviction petition for bonafide requirement, the first question that obviously falls for determination is the issue of existence of landlord and tenant relationship between the parties. Respondent initially claimed that petitioner was neither the owner nor the landlord and instead petitioner's brother Qutubuddin was his landlord vide rent receipts Ex. RW1/1. Per contra,

petitioner placed on record the sale deed Ex, PW1/I establishing that he and his two brothers were the joint owners of the tenanted premises and hence there was an automatic landlord and tenant relationship between him and the respondent. It is not the case of respondent that such sale deed is forged. There is no challenge to this sale deed nor can there be any on the part of the respondent. Infact during his cross-examination dated 06.04.2018, respondent went on to accept the petitioner as the co-owner of the property. The relevant part of his testimony reads as under: -

"It is correct that the petitioner has filed the present petition as the co-owner of the suit property. I know all the three brothers jointly purchased the suit property."

9. *Thus being a co-owner, petitioner is entitled to seek eviction of tenant under Section 14(1)(e) of the Delhi Rent Control Act. Even if the rent receipts Ex. RW1/I have been issued by the other co-owner Qutubuddin, there is nothing on record to suggest that he or the remaining co-owner Qayamuddin have any objection, to the petitioner seeking, eviction of the respondent. In fact Qutubuddin, as respondent no, 2, had every opportunity to contest the petitioner's case but he chose not to and never filed any reply to the petition. In light of these circumstances, it has to be held that there exists a relationship of landlord and tenant between the parties and being one of the co-owners/co-landlord, petitioner is competent to have filed the present petition. The objection of the respondent that the absence of an official partition between petitioner and his brothers disentitles him to file the present case is devoid of merits and hence stands dismissed.*

(Emphasis Supplied)

Alternate accommodation

9. The Petitioner herein has assailed the finding of *bona fide* requirement on the ground that the Respondent No.1 herein has alternate suitable accommodation available to him in the subject property itself in the shape of shop Nos. 674, 675 and 676.

9.1. The Petitioner has admitted that shop No. 674 is in occupation of a statutory tenant who has suffered an eviction order, which is pending adjudication in RC. REV. 250/2017, before this Court.

9.2. The Petitioner has also admitted that shop No. 675 is in possession of

a third party namely, Mr. Mohd. Shafiq. Learned counsel for the Respondent No.1 had submitted during oral argument that an eviction petition is pending for the recovery of possession of said premises, before the Rent Controller.

9.3. As regards shop No. 676, the Petitioner admits that the said shop was vacated by the statutory tenant in pursuance to an eviction order and the said shop is being used by one of the sons of the Respondent No.1, for carrying on the business of crockery and other plastic items.

9.4. Learned counsel for the Respondent No.1 has stated that the Respondent No.1 has filed the eviction petitions for recovery of tenanted premises i.e. shop No. 673 and the adjoining shop Nos. 674, 675 and 676 for the *bona fide* requirement of himself and his family members who wish to run and operate a business of readymade garments from the tenanted premises.

10. In view of the aforesaid admitted facts that shop Nos. 674 and 675 are admittedly not available to the Respondent No.1, this Court is of the opinion that the Respondent No.1 is not precluded from seeking recovery of the tenanted premises due to the availability of shop No. 676, which is admittedly, being used by one of the sons of Respondent No.1.

11. The Petitioner has also alleged that Property Nos. 1174 to 1176, Gali Sunar Wali, Kala Mahal, Darya Ganj, Delhi, is available to the Respondent No.1. However, no evidence has been brought on record by the Petitioner to substantiate his plea that the said properties belong to Respondent No.1. The Respondent No.1 has categorically denied the ownership of the said property and it has come on record that the Petitioner No.1 herein admitted that the

said property belongs to Respondent No.2. In view of the said admission of the Petitioner, the Trial Court rightly rejected the contention of the Petitioner that this property can be considered as an alternate accommodation. The relevant finding of the Trial Court in the impugned eviction order reads as under: -

“11. Respondent further claims that petitioner is the owner of property bearing no. 774-776, Gall Sunar Wall, Kalan Mahal, Darya Ganj Delhi; that there are three shops 1175 to 1176 at the above said property which have been let out on rent; that there are two more shops on the ground floor which are lying vacant and that its first floor is being used by the petitioner for running a factory of Darkozi whereas second and third floors are used for residential purposes. Petitioner/PW1 have specifically denied the ownership of such property. Interestingly, even though the respondent took such plea in his written statement and evidence affidavit, he himself nullified it by making an admission during his own cross- examination, that the aforestated properties did not belong to petitioner but to his brother Qutubuddin. In short, the respondent's plea regarding the availability of the above said properties falls in the teeth of his own admission and as the present case has been filed on the basis of bonafide need of the petitioner and not of his brother, the availability of such properties becomes inconsequential to the case.”

(Emphasis Supplied)

12. Similarly, with respect to Property No. 1152, Gali Nanua Teli, Turkman Gate, Delhi, the Petitioner has alleged that the said property is available to Respondent No.1. The Respondent No.1 has categorically denied the ownership of the said property. The Petitioner has not brought on record any documents during the stage of evidence, in eviction proceedings, to substantiate his claim that the said property belongs to Respondent No.1. This Court is unable to accept the submission of the Petitioner that the testimony of PW1 is evasive in this regard and therefore, should be considered to be an admission of ownership. In view of the fact that the Petitioner herein despite a full trial, which lasted 10 years, was unable to bring any evidence on record

as regards his claims, this Court is of the opinion that the finding of the Trial Court merits no interference.

13. In view of the aforesaid facts, it is clear that the Petitioner has been unable to show that the Respondent No.1 herein has any vacant alternative accommodation.

Bona fide need

14. The Petitioner herein has assailed the *bona fide* need of the landlord on the plea that the Respondent No.1 has initially issued a legal notice dated 22.02.2012 wherein, the landlord had called upon the tenant to enhance the rate of rent. He states that pertinently, there was no mention of *bona fide* need in the said notice and the eviction petition was immediately filed within a period six months on 16.08.2012, on the plea of *bona fide* requirement for the family members of the Respondent No.1.

14.1. The Petitioner further stated that the detail and particular of the family member, for whose *bona fide* need, the tenanted premises are required has not been set out in the eviction petition.

14.2. This Court has considered the submission of the Petitioner. The Petitioner during the oral arguments admitted that the Respondent No.1 has nine (9) family members including himself and this fact was also affirmed by PW1 in his examination-in-chief. This Court has perused the statement of PW1 i.e., the son of the Respondent No.1. In his examination in chief, PW1 has categorically deposed that the PW1 along with his brothers and sisters as well as the Respondent No.1, *bona fide* requires the tenanted premises for

running the business of readymade garments. However, there was no cross examination of PW1 with respect to the said deposition. The Cross examination was limited to giving a suggestion that the tenanted premises are not required *bona fide* by Respondent No.1. In the opinion of this Court, merely giving a suggestion was not enough to displace the plea of *bona fide* requirement, pleaded by the Respondent No.1.

14.3. In his testimony, the PW1 has clearly stated that he is out of work for the past 10-12 years, which has not been controverted by the Petitioner herein. In this view of the facts, the Trial Court rightly upheld the *bona fide* need of the Respondent No.1 for the tenanted premises at paragraph no. 14 and 15 of impugned eviction order, which reads as under: -

“14. As regards the petitioner's bonafide requirement, it is his case that he is has a large family of 8 dependant children and wants to start a business of ready - made garments from the tenanted premises. To this, the respondent states that the petitioner and his children are comfortably running a business of darkozi/ hand embroidery work from the first and second floors of the suit property as well as from other properties mentioned above (supra) and as such none of his children are dependant on him. He also states that the tenanted premises is a small triangular shop of 6' X3' dimensions which cannot suit petitioner's needs.

15. Nothing has been placed on record by the respondent in support of his above-mentioned averments. But even accepting that petitioner is running a business of hand-embroidery etc, from some place. same does not operate as a bar to running another business of his liking to supplement his family income in order to support his family, The petitioner has a large family of 9 members which fact has not been disputed by the respondent. Having such a huge family to look after is itself a prima facie proof of his requirement. In a society like ours where a system of joint family is still the norm and parents look even after their adult children till they are comfortably settled in life, it would be wrong to suggest that adult children are not dependent on their parents. During his testimony, son of the petitioner – PW1 Mohd. Alam categorically deposed that he has been out of work for last 10-12 years, which assertion has not been dislodged by the respondent. As regards the size of the tenanted shop, whether or not it is sufficient to suit petitioner's needs is no concern of the respondent.

In India, trade and business can be successfully carried on even from smallest of corners with the right skills and expertise and it is not in every case that a large accommodation would be required. How the petitioner would put the shop of 6' X3' dimensions to his use is for the petitioner to see. It requires no reiteration that landlord is the best judge of his requirements. The tenanted premises is admittedly situated at the ground floor of the suit property and judicial notice can be taken of the fact that a business run at the ground floor would be more profitable than at other floors. Tenant while enjoying a ground floor property cannot insist that either the present property is not suitable for the petitioner or that he should adjust himself in some other manner or continue to utilise the space already available with him."

(Emphasis Supplied)

14.4. The Supreme Court in the case of **Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778**, has held that in an eviction petition filed by landlord, the Court shall presume that the landlord's plea is genuine and *bona fide* and a heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. The Supreme Court further held that a mere assertion on the part of tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.

14.5. In the present case, the Petitioner has not placed on record any document or evidence to rebut the strong presumption acting in favour of the Respondent No.1. A mere bald plea has been raised that the specific detail of the family member for whose *bona fide* need the tenanted premises is required has not been specified by the Respondent No.1. The said plea of the Petitioner has already been declined by the Trial Court in paragraph 15 of the impugned eviction order, as reproduced earlier.

14.6. In view of the aforesaid facts, this Court does not find any infirmity

with the decision of Trial Court.

15. 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 para 23 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.”

16. In view of the dicta of the Supreme Court, this Court is of the view that the issues raised by the Petitioner herein do not merit any interference and the findings of the Trial court do not suffer from any infirmity.

17. This Court finds no merit in the present petition. Accordingly, the present petition along with pending applications is dismissed and the eviction order dated 31.08.2022 passed by the Trial Court is upheld.

MANMEET PRITAM SINGH ARORA, J

MARCH 15, 2023

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