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

+ **RC.REV. 290/2022 & CM APPL. 55712-13/2022**

SH. KANWAL KISHORE NAGPAL & ORS. Petitioners

Through: **Mr. Rajesh Bhatia with Mr. Hemant
Kakkar, Advocates.**

versus

SH. BRAHM DEV SHARMA Respondent

Through: **Respondent in person.**

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Reserved on: **2th March, 2023**

Date of Decision: **22nd 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 eviction petition has been filed by the tenants assailing the order dated 29.08.2022, passed by the SCJ acting as Rent Controller, West District, Tis Hazari Courts, Delhi ('Trial Court'), in RC ARC No. 25471/2016, wherein, post-trial, the eviction petition filed by the Respondent, landlord, under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act') has been allowed.

2. Brief facts as stated by the Respondent, landlord, in the eviction petition filed on 11.09.2014 are as under:

2.1. It is stated that late Sh. Gulshan Nagpal and his son i.e., Petitioner No.1, were inducted as tenants, *vide* a written rent agreement dated 08.10.1991, in the tenanted premises bearing shop No.1, measuring 8' x 17', located at the ground floor of property No. WX-31C, Jawala Heri Market,

Paschim Vihar, New Delhi – 110063 ('tenanted premises') and facing the main road. The Petitioners herein are the legal heirs of late Sh. Gulshan Nagpal.

2.2. It is stated that the tenanted premises are required for the *bona fide* need of the landlord's son, Mr. Sidharth Sharma, who is unemployed and wants to run his own real estate business. It is further stated that the tenanted premises is also required for the *bona fide* need of the landlord's widowed daughter who wants to run a business to earn and maintain herself.

2.3. It is stated that the Respondent is the owner of the property bearing No. WX-31C, Jawala Heri Market, Paschim Vihar, New Delhi – 110063 ('subject property'), wherein on the ground floor there are ten (10) shops i.e., shop Nos. 1 to 10. It is stated that shop No.10 is being used by the Respondent for running his own business and shop No. 9 is used as a godown. It is stated that the remaining shops bearing Nos. 2 to 8, have already been let out to other tenants.

2.4. It is stated that the entire first floor of the subject property has been let out on rent to the Vaish Cooperative Adarsh Bank Ltd. However, it has come on record that during the pendency of the eviction proceedings, the said bank has vacated the first floor and the same is being used by the Respondent, landlord, for his personal use.

2.5. It is stated that the Respondent along with his family members, is residing at the second floor of the subject property.

2.6. It is stated that the Respondent has no other suitable alternative accommodation for the *bona fide* need of his son and daughter other than the tenanted premises.

3. The leave to defend application filed by the Petitioners was allowed

by the Trial Court *vide* order dated 23.07.2016 and the Petitioners herein were granted leave to contest the present eviction petition.

Arguments of the Petitioners, tenants

4. The learned counsel for the Petitioners, tenants, states that the *bona fide* requirement alleged by the Respondent is not genuine inasmuch as his daughter has since remarried and is settled at her matrimonial home at Meerut, Uttar Pradesh. He relies upon the oral testimony of RW2 i.e., the neighbour of Respondent, to raise the plea of remarriage of the daughter since this fact was vehemently disputed by the landlord.

4.1. He similarly states that the Respondent's son is already running a business of real estate/property dealing at Peera Garhi, Delhi, in the name of 'Ridhi Sidhi Builders & Developers' and therefore, the plea of *bona fide* requirement on behalf of the son is also not made out.

4.2. With respect to the availability of alternate accommodation, he states that that Trial Court failed to appreciate that the Respondent during his cross-examination admitted that the first floor which was earlier let out to the Vaish Co-operative Adarsh Bank Ltd., was vacated in terms of order dated 02.05.2018 passed by this Court in RFA No.127/2017 and the same is now available with the Respondent as alternate accommodation for his son and daughter.

4.3. He states that the Trial Court failed to appreciate that shop Nos. 2 to 8 on the ground floor of the subject property have been admittedly, let out by the Respondent, landlord, from time to time. He relies upon the testimony of the landlord, who appeared as PW1, to demonstrate that some of the shops were let out immediately prior to the filing of the eviction petition and also during the pendency of the eviction proceedings.

4.4. He concluded his arguments by stating that in the subject property, on the ground floor as well as the first floor, sufficient alternate accommodation was available to the Respondent, landlord, for the alleged *bona fide* requirement of his son and daughter.

4.5. No other oral argument was addressed by the learned counsel for the Petitioners.

Arguments of the Respondent, landlord

5. In reply, the learned counsel for the Respondent states that the *bona fide* requirement of the Respondent, landlord, subsists for both his son and daughter.

5.1. He has vehemently denied the plea of the Petitioners that the widowed daughter of the Respondent has since remarried and in fact the landlord, who was present in Court, took affront to the persistence of the submission of the Petitioners in this regard. It was stated that the widowed daughter along with her son are residing with the Respondent in the subject property and in this regard, he has placed reliance on the address details in the Aadhar Card issued in the name of daughter and the grandson as well as the ration card of the family.

5.2. He has placed reliance upon the site plan of the ground floor of the subject property to state that the Respondent requires the tenanted premises i.e., shop No.1, as the same has direct access from the main road and is best suited for carrying out commercial activities.

5.3. He states that the remaining shops on the ground floor of the subject property i.e., shop Nos. 2, 3, 4, 5, 6, 7 and 8 are located inside the building and are facing the corridor of the subject property. He has placed reliance

upon the photographs of the façade of the subject property to substantiate that the said shops have no visibility from the main road and cannot be compared with shop No.1.

5.4. He states that the first floor of the subject property is not let out at the present stage and the same is kept for the personal use of the Respondent and his family.

5.5. He therefore, states the plea of alternate accommodation raised by the Petitioners is incorrect as there can be no comparison between the tenanted premises and the other shops in the subject property.

Analysis and finding

6. This Court has heard the submissions of the parties and perused the record.

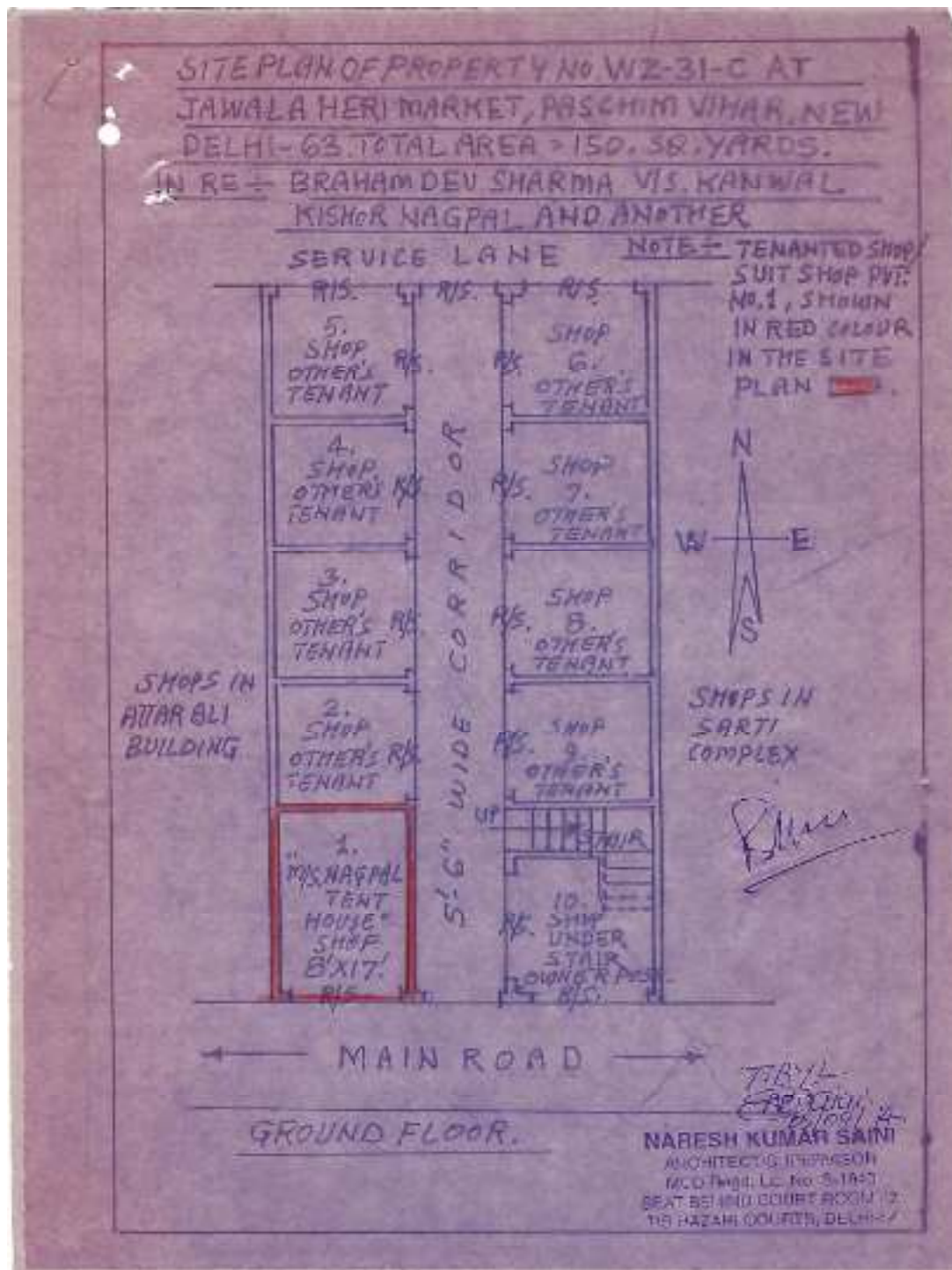
7. Though the Petitioners had disputed the existence of landlord-tenant relationship between the parties in the eviction proceedings, however no dispute has been raised regarding the same in the present revision petition. Therefore, the finding of the Trial Court on the said issue has attained finality.

8. It is an admitted fact that the subject property i.e., WX-31C, Jawala Heri Market, Paschim Vihar, New Delhi – 110063 is owned by the Respondent, landlord. There are ten (10) shops on the ground floor of the subject property, however, the shop Nos. 2 to 9 are located within the building and are facing the corridor of the said building. It is pertinent to note here that the said shop Nos. 2 to 9 are not visible from the main road and the entry to the said shops is through the corridor of the building.

8.1. Whereas shop No.1, Nagpal Tent House (i.e., the tenanted premises)

is facing the main road and the entry of the customers to the said shop is directly from the main road. The said shop is visible to the passers-by and the customers from the main road, making it ideal for attracting walk-in customers. The photograph of the façade as well as the site plan of the subject property are reproduced as under for ready reference:





8.2. A perusal of site plan and the photograph of the façade of the subject

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property, sufficiently evidences the preferential location and the vantage of the said shop No.1, making it distinct and preferable for the Respondent, landlord. Therefore, in the opinion of this Court, there can be no comparison between the tenanted premises and the shop Nos. 2 to 9. For the said reason, shop Nos. 2 to 9 cannot be considered as suitable alternate accommodation for the *bona fide* need of the Respondent, landlord.

8.3. In this regard it would be relevant to refer to the decision of Supreme Court in the case of *Anil Bajaj v. Vinod Ahuja, (2014) 4 SCC (Civ) 469*, wherein the Supreme Court has held as under: -

“6. In the present case it is clear that while the landlord (Appellant 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord, Appellant 1, does not propose to utilise the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business.”

(Emphasis Supplied)

8.4. Similarly, the plea of the Petitioners with respect to availability of first floor of the subject property is not tenable in view of the judgment of

this Court in ***K.B. Watts v. Vipin Kalra, 2015 SCC OnLine Del 9488***, wherein this Court has reiterated the admitted position of law that for conducting a profession or business, ground floor premises are always more suitable. The relevant portion of the said judgment reads as under: -

“28. In the eviction petition the plea taken by Vipin Kalra for eviction is that the front of the showroom was small and due to the tenanted premises and an office, toilet and pantry being there on the ground floor, the area of the shop was reduced to 1000 sq.ft. and that his son wants to start his business as he has done MBA in Finance from Texas. Admittedly the son and wife of Vipin Kalra own the 2nd, 3rd and 4th floors, however it is also well-settled that for a profession or business ground floor premises are always more suitable. It is trite law that the tenant cannot dictate the landlord as to how he should utilize the premises. On the facts noted above the view taken by the learned ARC is a plausible view, suffering from no illegality.”

(Emphasis Supplied)

8.5. Therefore, in the opinion of this Court, the Trial Court in the eviction order has rightly appreciated the said preference of the landlord for shop No.1, which faces the main road and this Court finds no infirmity in the said findings of the Trial Court which reads as under:

“21. Ragavendra Kumar Vs. Firm Prem Machinery and Co. AIR 2000 SC 534 the Supreme Court repelling the contention that even if in evidence the plaintiff/landlord states that he has number of other shops and houses belonging to him but in a categorical statement being made that the said house and shops were not vacant and suitable and the suit premises was suitable for his business purpose, the Courts will not interfere because the landlord is the best Judge of his requirement for residential or business purpose and he has got complete freedom in the matter.

22. Plaintiff has also replied upon various judgments such as Krishna Kumar Rastogi Vs. Sumitra Devi dated 20.08.2014 Supreme Court of India, Prativa Devi Vs. T.B. Krishnan (1996) 5 SCC 353 on the same.

23. Thus, considering that the plaintiff has specifically sought the eviction of shop no. 1, who he states to be fit and suitable for starting of the proposed businesses of his son and daughter and the other shops not being fit for the same, the Court is satisfied with the position of law that the landlord is the best judge of his requirement and therefore, cannot be forced to start the said proposed business from the other shops which as per him are not suitable for

the same.”

(Emphasis Supplied)

9. The Respondent has pleaded the *bona fide* requirement of the tenanted premises for his son as well as widowed daughter.

9.1. The Respondent has vehemently denied that the widowed daughter of the Respondent has since remarried and he withstood the cross examination in this regard (PW1). As noted above the landlord took affront to the persistence of the submission of the Petitioners in this regard during oral arguments. This Court has perused the Aadhar Card as well as the Ration card, which duly reflect the name of the widowed daughter and the grandson at the address of the subject property. The Petitioners have relied upon the oral testimony of RW2 i.e., a neighbour. However, in view of the testimony of the Respondent, landlord (PW1), who is the father of the widowed daughter, this Court finds no credence in the oral testimony of RW2, which is bereft of any particulars of the alleged wedding. Even otherwise this Court finds that this plea is frivolous and is being argument to hurt the sentiments of the Respondent herein.

9.2. In view of the said documents and the testimony of the Respondent/PW1, this Court is satisfied that the plea raised by the Petitioners as regard the remarriage is frivolous and unsubstantiated from the record.

9.3. This Court is therefore satisfied that the plea raised by the Respondent, landlord, that he requires the tenanted premises for his daughter is *bona fide*. The Trial Court as well has found no favour in the challenge raised by the Petitioners to the *bona fide* need of the widowed daughter and

this Court finds no infirmity in the said finding, which reads as under:

“Though, the respondent has again and again contented that the daughter Twinkle of the petitioner has re-married and was not financial dependent upon the petitioner, no conclusive proof was put on record by the respondent to prove the same. Ex. PW-1/R-1 was not proved by the respondent to show that the daughter of the petitioner Twinkle has re-married. Merely receiving compensation by the daughter of the defendant cannot be a ground to deny her opportunity to earn for herself in order to maintain herself. Also, the fact of receiving compensation by the daughter Twinkle cannot be proof to the effect that she is not dependent on the petitioner or that there cannot be any bonafide requirement on her part for starting a new business for earning her livelihood. Considering the fact that husband of the daughter Twinkle of the petitioner has expired, it becomes the moral responsibility of the father to take care for the needs of her widow daughter.”

9.4. With respect to the *bona fide* need of the Respondent's son, it has been argued that the son is gainfully employed and his carrying on a business in a shop at Peera Garhi, Delhi, under the name of 'Ridhi Sidhi Builders & Developers'. In this regard, reliance has been placed on photographs marked as exhibit PW1/R2 to PW1/R5. However, a perusal of the testimony of PW1 shows that the said photographs were objected to by the Respondent as the same were not supported by any certificate under Section 65-B of the Evidence Act, 1872. Moreover, the PW1/Respondent categorically denied the veracity of the said photographs marked as exhibit PW1/R3 and PW1/R4 as morphed. He denied the contents of the printouts marked as Exhibit PW1/R2 and PW1/R5.

9.5. PW1/Respondent has therefore, denied the said documents and also questioned the veracity of the said documents. No independent evidence was led by the Petitioners to corroborate and prove the said documents or the fact that the Respondent's son carries on business from the shop at Peera Garhi. In view thereof, this Court is of the opinion that no reliance can be placed by

the Petitioners upon Exhibit PW1/R2 to PW1/R5 and the Trial Court has therefore, rightly not considered the said documents. In fact, the municipal address of the alleged shop has not been placed on record by the Petitioners.

9.6. Even otherwise, this Court is of the opinion, considering the fact that the Respondent along with his family are residing in the subject property and the *bona fide* need for providing a shop premises to the son or daughter in the same building on the ground floor is the prerogative of the Respondent, also stands to reason.

9.7. This petition was filed 9 years ago in the year 2014. The Supreme Court *vide* order dated 07.01.2022, in the case bearing **Civil Appeal No. 253/2022**, titled as '**Harish Kumar (Since deceased) through Lrs v. Pankaj Kumar Garg**' has held that the dependent family members for whose requirement, the eviction petition is filed is not expected to remain unemployed during the pendency of the eviction petition. Therefore, even assuming the tenants' plea to be correct that the son of the Respondent attempted to start business from another premises during the pendency of the eviction petition, the same would not disentitle the Respondent herein to pursue the eviction petition for the *bona fide* need of his widowed daughter.

10. The Constitutional Bench of Supreme Court in **Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh, (2014) 9 SCC 78**, has dealt with the revisionary power of this Court under the relevant rent control Act. The relevant extract of the judgement reads as under:

"31. We are in full agreement with the view expressed in Sri Raja Lakshmi Dyeing Works that where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in

one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case. The classic statement in Dattonpant that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three rent control statutes, the High Court is not conferred a status of second court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent.

(Emphasis Supplied)

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

12. Accordingly, the present petition is dismissed and pending applications, if any, are disposed of with costs of Rs. 25,000/-, payable to the Respondent within two weeks.

MANMEET PRITAM SINGH ARORA, J

MARCH 22, 2023/aa/rhc