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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 23.11.2022

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Judgment pronounced on: 10.05.2023

+ **RC.REV. 148/2018 and CM APPLs. 14431/2018, 7082/2021, 42826/2021**

RAJINDER SINGH

..... Petitioner

Through: Ms. Pushti Gupta and Mr. Joney, Advs.
along with petitioner in person.

versus

RAJESH ARORA

..... Respondent

Through: Mr. Rajat Aneja and Ms. Chandrika
Gupta, Advs. along with respondent in
person.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. The present petition is directed against the impugned order/judgment 15.01.2018 passed by the court of Senior Civil Judge/Rent Controller (West District) Tis Hazari Courts, Delhi, whereby, the learned Rent Controller has allowed the eviction petition filed by the respondent/landlord herein under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958.

2. Accordingly, an eviction order has been passed in favour of the respondent and against the petitioner herein, directing the petitioner to hand-over the vacant and peaceful possession of the Shop No. 5, U shape, situated in

property bearing No. 5A/1 Tilak Nagar, New Delhi (*hereinafter referred to as “tenanted premises”*).

3. In the eviction petition filed on behalf of the respondent, it was averred that the tenanted premises was purchased by the respondent vide registered sale deed dated 10.03.2011 along with other adjoining shop admeasuring 12x7.5 feet on the ground floor of the property bearing No. 5A/1 Tilak Nagar, New Delhi (*hereinafter referred to as “adjoining shop”*). At the time of said purchase, the petitioner herein was already a tenant in respect of the tenanted premises. It was stated by the respondent in the eviction petition that upon the respondent becoming the owner of the tenanted premises, the petitioner accepted the respondent to be the owner/landlord in respect thereof.

4. It was specifically averred in the eviction petition that the respondent/landlord is not in a position to use the adjoining shop; the reasons for the same were stated to be as under: -

“5. That the adjoining shop is measuring about 12x7.5 ft. is in possession of the petitioner but there is only one common shutter in respect of both the shops and the petitioner has requested the respondent to construct a partition wall and have a separate entrance of both the shops but the respondent had refused to accede the legitimate request of the petitioner.

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12. That the adjoining shop which is in possession of the petitioner could not be used for the said business because the shop is so small and no business can be carried out in the said shop and even otherwise, there is only one shutter and a temporary wall in between the two portions and the said portion is also not available because the respondent is not allowing the petitioner to use the said shop and he further threatened that in case the petitioner would enter into the said shop, then in that event, he threatened that he would involve the petitioner in false and frivolous criminal cases and as such, the petitioner requires the said shop bonafide for himself as well as for this two sons to run the business so that the petitioner may maintain the family.”

5. It was further averred by the respondent/landlord in the eviction petition as under :-

"9. That the petitioner's family comprised of himself, his wife his son Sh. Sagar Arora, -aged, about 29 years who is unmarried, son Sh. Nitin Arora, aged about 26 years who is unmarried and the father of the petitioner who is a senior Citizen, aged about 83 years.

10. That both the sons of the petitioner are totally depending upon the petitioner and they are living with the petitioner as a member of the joint family and both the sons of the petitioner are helping the petitioner in connection with the business of the sale and purchase of the cars at Ramesh Nagar, New Delhi.

11. That the eldest son of the petitioner namely Shri Sagar Arora is of marriageable age and his marriage could not be solemnized due to non availability of the commercial premises because he is unemployed and has been helping the petitioner in connection with the said business and the petitioner wants to set up his own business in the shop in possession of the respondent along with his son who would help the petitioner in connection with the said business.

12. ...

13. That the petitioner under compelling circumstances had taken the said premises on rent and the said shop which is. in' the tenancy of the petitioner is also not suitable- as ' the same is inside Ramesh Nagar, New-Delhi, whereas the shop in question is on the main road side' and the customers attract towards the road Side and as such, the shop in possession of the respondent is more suitable- for running the business. Even otherwise the area where the shop in dispute is situated, is commercialized and the said shop' is suitable for running, the business of sale and purchase of the cars as the said shop is situated on the main road side and in front of the shop, there is a road and across the road, there is Najafgarh Road, and the location and surrounding circumstances are so good that the customers would attract., in case the petitioner would run the business in the shop in question, and as such the petitioner requires the said shop bonafide.

14. That the petitioner would run the business in the shop in possession of the petitioner, as well as the shop which the respondent would vacate because the sale of car business requires sufficient space for the, purposes of parking the car, and showing the cars to the customers on trial basis.

Therefore, keeping in view the facts and circumstances, the shop in question is and the petitioner wants to set up his own business along with his son in the shop in dispute.”

6. It was also pleaded by the respondent that he has no reasonable suitable alternative accommodation to cater to his *bona fide* need and requirement.

7. In the application filed on behalf of the petitioner herein seeking leave to defend, the petitioner did not dispute the existence of landlord/tenant relationship. In this regard, it was specifically averred by the petitioner herein as under: -

“4. ...

b. That the LR of the erstwhile owner Amrit Singh disposed off the property comprising the tenanted shop to the petitioner on 10.03.2011 to the petitioner and who gave the notice dated 14.11.2011 with regard to the purchase of the property and accordingly the respondent tendered him the agreed rent through account payee cheque by registered A.D. which he has not encashed on account of his malafide intentions and designs as since the date of the purchase of the property the petitioner is stressing hard upon the respondent to create false grounds of the eviction of the respondent from the suit shop which is in his occupation since 1998 arbitrarily and illegally, which act and conduct of petitioner is highly unjustified, improper and unwarranted....”

[emphasis supplied]

8. In the application seeking leave to defend, the petitioner has strenuously denied any *bona fide* need on the part of the respondent, on the basis that the respondent/landlord was not using the adjoining shop which was already in his possession. Allegations were also made against the respondent for allegedly hatching a criminal conspiracy to cause fire in the tenanted premises which are subject-matter of certain criminal complaints stated to have been filed by the petitioner against the respondent. Certain civil suits are stated to be pending *inter se* the parties. It is admitted in the leave to defend application that ever since the fire in the tenanted premises broke out, there has been no partition

between the tenanted premises and the adjoining shop of the respondent/landlord. It has been further averred in the leave to defend application as under: -

“12. That it is relevant to mention here that the petitioner and his sons are having their well established business in the market of sale and purchase of cars, for the last several years at the above mentioned places and nobody even can think of to shut down his running well established business and to start afresh from an isolated place having no market of such filed. It is further submitted that the shops/office/space at present available with the petitioner and his sons is larger than the suit shop and as also the petitioner and his sons even cannot think of to shift their well established business to the suit shop.”

9. In the aforesaid conspectus, the impugned judgment, after minutely examining the matter and after considering the material placed on record by the respective parties rendered factual findings with regard to the relevant aspects i.e. the existence of landlord/tenant relationship, existence of *bona fide* need on part of the respondent/landlord and availability of reasonably suitable alternative accommodation with the respondent/landlord.

10. With regard to the existence of landlord-tenant relationship, it was rightly noticed in the impugned judgment that the same was not even disputed by the petitioner herein and as such the landlord-tenant relationship between the petitioner and the respondent stood proved.

11. As regards the *bona fide* need of the respondent, it was held as under: -

“(b). Bonafide need of the respondent/family members(s)/dependent(s).

7(b)(i) It is the case of the petitioner that he is running his business from a tenanted premises at shop No. 3, bearing No. 29/11, doubles storey, Ramesh Nagar, Delhi. In this regard, photocopy of rent deed dated 18.07.2015 between one Sh. Ashok Kumar and the petitioner is also on record. Although, this rent deed is for a period of 11 months from 20.07.2015 but the same is renewable with mutual consent of the parties.

7(b)(ii) The respondent has alleged that both the sons of the petitioner are engaged in the business of sale and purchase of the cars at some other space however, no details have been provided. The onus is upon the respondent to substantiate these averments. Except for bald assertion, respondent has not produced any material in this regard. Even if it is presumed that the sons of the respondent are doing some business at some other tenanted space, they have right to shift their business to their own premises. Even, the petitioner has all the right to shift his business from a rented accommodation to his own property i.e the present tenanted shop.

7(b)(iii) It was argued on behalf of the respondent that the tenanted shop is not suitable for the business of sale purchase of cars. In this regard, it is pertinent to observe that it is settled law that the landlord is the best Judge of his needs.

7(b)(iv) Respondent has not made any specific averments to challenge the bonafide need of the petitioner. In view of the above, the need of the petitioner regarding the tenanted shop is bonafide.”

12. As regards the availability of suitable alternative accommodation, it was held as under: -

“(c) Availability of reasonably suitable alternative accommodation to the petitioner/family member(s)/dependent(s).

7(c)(i) The onus is upon the respondent / tenant to show that the petitioner has reasonably suitable alternative accommodation with regard to his bonafide need. In the present matter, there is no allegation / averments to the effect that the petitioner has any reasonably suitable alternative accommodation for his bonafide need. The respondent has failed to show that the petitioner has any reasonably suitable alternative accommodation for his bonafide need.”

13. In the circumstances, it was held that the petitioner/tenant had failed to raise any triable issue, entitling him to leave to defend, accordingly, the eviction order was passed.

14. In the present petition, the petitioner has primarily questioned the *bona fide* need of the respondent/landlord on the ground that the respondent is not using the adjoining shop adjacent to the tenanted premises. It is further

contended that the said adjoining shop also serves as reasonably suitable alternative accommodation in the hands of the respondent/landlord.

15. I find no merit in the contentions raised on behalf of the petitioner. As noticed hereinabove, it was specifically pleaded by the respondent/landlord in the eviction petition that the adjoining shop could not be used by the respondent since its size is inadequate for carrying on the business of sale and purchase of cars. Further, it is common case of the petitioner and the respondent that after the wooden shutter that existed between the tenanted premises and the adjoining shop was destroyed in fire that took place in the year 2012, there is no partition between tenanted premises and the adjoining shop.

16. The respondent/landlord also produced the rent deed dated 18.07.2015 to establish that he is carrying on his business of sale and purchase of cars from a rented premises i.e. from shop No. 3, in property bearing No. 29/11, double storey, Ramesh Nagar, Delhi.

17. In the above conspectus, no fault can be found in the impugned judgment with regard to the findings regarding the *bona fide* need of the respondent/landlord. The law is well-settled that the landlord is the best judge of his requirements. The law is also well settled that it is not for the tenant to dictate terms to the landlord as to how he should adjust himself. This has been reiterated time and again in numerous cases.

17.1 In ***Sarla Ahuja v. United India Insurance Co. Ltd*** AIR 1999 SC 100, it has been held as under:

“The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a

prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

17.2 In **Baldev Singh Bajwa v. Monish Saini** (2005) 12 SCC 778, it has been held as under:

“A mere assertion on the part of the 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”

17.3 In **Prativa Devi (Smt.) v. T.V. Krishnan** (1996) 5 SCC 353, it has been held as under:

“The landlord is the best judge of his requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a standard of their own.”

17.4 In **Balwant Singh v. Sudarshan Kumar** 2021 SCC OnLine SC 114, it has been held as under:

“It is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate.”

17.5 In **Anil Bajaj v. Vinod Ahuja** (2014) 15 SCC 610, it has been held as under:

“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 utilized by him for the purpose of his business.”

18. Further, the petitioner has been unable to establish that the respondent/landlord has any other reasonably suitable alternative

accommodation for his *bona fide* need. Although, it has been averred in the leave to defend application that the respondent/landlord has fabricated rent agreement in respect of shop situated at Ramesh Nagar from where the respondent is carrying on his business of sale and purchase of cars, the same is a bald averment, not supported by any evidence. The law is well settled that a bald plea of alternative accommodation in the absence of any cogent material to substantiate the same is liable to be rejected. In this regard reference may be made to the judgment of this court ***Rajender Kumar Sharma v. Smt. Leela Wati&Ors.***, 155 (2008) DLT 383, wherein it was held as under:

"....Only those averments in the affidavit are to be considered by the rent Controller which have same substance in it and are supported by some material. Mere assertions made by a tenant in respect of landlord's ownership of other buildings and in respect alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed the whole purpose of Section 25-B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence defeating the very purpose of the statute."

19. It is also apposite to refer to the recent judgment of the Supreme Court in the case of ***Abidul Islam vs. Inder Sen Dua*** (2022) 6 SCC 30, delineating the scope of interference in revisional proceedings under Section 25B(8) of the Delhi Rent Control Act. In this regard, it has been held 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.”

20. There is no infirmity in the impugned judgment which warrants interference in exercise of revisional jurisdiction, on the touchstone of the parameters laid down by the Supreme Court in the aforesaid judgment.

21. In the circumstances, no merit is found in the present revision petition and the same is accordingly dismissed.

MAY 10, 2023/j

SACHIN DATTA, J.

