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

+ **RC.REV. 141/2015**

M/S LAXMI TRADERS

..... Petitioner

Through: Mr Ankit Jain, Mr Aditya Chauhan,
Mr Anand M. Mishra, Advocates.

versus

SHANTI PANDEY

..... Respondent

Through: Mr Udit Gupta, Mr Manan Aggarwal,
Advocates.

Reserved on: 23rd December, 2022

Date of Decision: 10th 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 12.08.2014 passed by the Senior Civil Judge cum Rent Controller (Central), Tis Hazari Courts, Delhi ('Trial Court') whereby the eviction petition filed by the Respondent ('Landlady') was allowed and the Tenant's application seeking leave to defend was dismissed. The dispute in the present petition is with respect to first floor of property No. 1697-1701, Bhagirath Palace, Delhi-110006 ('Property'). The portion of the property which was let out to the Tenant, comprises of three rooms, kitchen, bath, W.C. and a verandah on the first floor ('tenanted premises') of the said Property.

2. The Landlady filed the eviction petition under Section 14(1)(e) read with Section 25 B of the Delhi Rent Control Act, 1958 ('DRC Act'), in 2011, when she was 70 years old, seeking recovery of the possession of the tenanted premises on the ground of *bona fide* requirement for the residence of herself and her family. At the time of filing the eviction petition, the family of the Landlady comprised of her husband, son, daughter-in-law, grand-daughter aged 10 years and grand-son aged 8 years. The grounds raised in the eviction petition are as follows:

2.1. The Landlady is the owner of the tenanted premises and the same was let out to the Tenant at an agreed monthly rent of Rs. 250, excluding all other charges. She stated that the tenanted premises were let out to the Tenant for residential purpose and the same are lying locked and unoccupied.

2.2. The Landlady and her family have been residing in rented accommodation from time to time. She stated that she resided with her family in a rented premises at A-484, Pocket A, Sarita Vihar, New Delhi for about four years. However, the same had to be vacated as the owner had not extended the tenancy at the said premises.

2.3. Subsequently, the Landlady and her family resided at Flat no. 85, Pocket-A, Ground Floor, Sarita Vihar, New Delhi ('Sarita Vihar') on payment of monthly rent of Rs. 26,000/-. She stated that the rent of Rs. 26,000/- was high and on account of the fact that the Landlady and her family has been shifting from one rented premises to another, they decided to seek recovery of tenanted premises for their residential accommodation.

2.4. It was further stated that the Landlady and her family members were not in possession of any other alternative accommodation suitable for their residence.

3. The Tenant admitted the ownership of the Landlady in respect of the tenanted premises and the relationship of landlord and tenant between the parties.

4. The eviction petition was resisted by the Tenant herein, and he sought permission for grant of leave to defend in the eviction petition. The objections raised in the leave to defend application are as follows:

4.1. The Tenant objected to the plea that the tenanted premises were let out for residential purposes. It was stated that the tenanted premises were let out for godown purposes and the entire Bhagirath Palace is a commercial market. It was also stated that the Tenant's stock was lying in the premises and therefore premises are not lying unused.

4.2. The Tenant stated that the Landlady and her family do not have any *bona fide* need for the tenanted premises as the Landlady and her husband have recently sold several portions of the Property to various persons. In this regard, the Tenant enlisted the following portions of the Property:-

- (i) 1701, Ground floor, Ansal Sale Corporation, Bhagirath Palace, Delhi;
- (ii) 1699, Ground Floor, Samrat Electronics, Bhagirath Palace, Delhi;
- (iii) 1699, First Floor, Maa Mansa Medical, Bhagirath Palace, Delhi;

- (iv) 1701, Second Floor, Pharma & Pharma India Pvt. Ltd., Bhagirath Palace, Delhi;
- (v) Hindustan Medical Company, First Floor, Bhagirath Palace, Delhi;
- (vi) Raghav Enterprises, First Floor, Bhagirath, Palace, Delhi;
- (vii) Ashirwad Medicos, First Floor, Bhagirath Palace, Delhi;
- (viii) Aditya Pharma, First Floor, Bhagirath Palace, Delhi;
- (ix) Vishal Pharma, First Floor, Bhagirath Palace, Delhi;
- (x) Dee Pee Pharma, First Floor, Bhagirath Palace, Delhi.

4.3. The Tenant also stated that no document has been filed on record to show that the Landlady and her family were residing at Flat No. 85, Pocket-A, Ground Floor, Sarita Vihar on a monthly rent of Rs. 26,000/-

4.4. The Tenant further stated that the husband of the Landlady is the owner of House No. 104/A/1, Plot No. 7, Parmanand Estate, Maharani Bagh, New Delhi and the same has been let out by the Landlady, thereby earning a rental income from the same.

4.5. The Tenant stated that the Landlady, who is a resident of Sarita Vihar, can seek eviction of tenant from the house property owned by her husband at Maharani Bagh, which is a posh colony, instead of seeking recovery of tenanted premises situated in Bhagirath Palace, which is a commercial wholesale market for electronics and situated in a slum area.

5. The Landlady filed her reply to the application seeking leave to defend, the details of which are as follows:

5.1. It was stated the Landlady and her husband have no concern with the properties mentioned at point nos. (i) and (iv) at sub-paragraph 4.2 above. She stated that as far as the properties mentioned at point nos. (ii), (iii), (v), (vi), (vii), (viii), (ix) and (x) are concerned, the same were sold by the Landlady in the year 1997-98 *vide* sale deeds dated 29.01.1997 and 14.08.1998 to Shri. Sanjay Garg, Prem Kumar and Vijay Kumar. The copies of the sale deed were also placed on record.

5.2. The Landlady placed on record the lease deed executed between Mrs. Prabha Malik and her husband with respect to the rented property at Flat No. 85, Pocket A, Ground Floor, Sarita Vihar, New Delhi.

5.3. The Landlady admitted that her husband owns the house property in Maharani Bagh and stated that the rental income of the said property is the only source of income for her and her husband, who at the time of filing of the eviction petition were aged about 70 and 73 years respectively.

6. The Tenant filed a rejoinder to the reply filed by the Landlady, reiterating and re-affirming the same objections raised in the application seeking leave to defend. In particular, the Tenant reiterated that the property at points (i) and (iv) at paragraph 4.2 belongs to the Landlady and her husband respectively. It was further stated that the properties admitted to be sold at points (ii), (iii) and (v) to (x) were being used for commercial purposes. It was again stated that the tenanted premises were let out to the Tenant for use as a godown and that the same cannot be used for residential purposes by the Landlady.

7. The Trial Court, while examining the ground of *bona fide* need of the Landlady held that it is admitted on record that the Landlady and

her family are residing in tenanted accommodation at Sarita Vihar since last several years and concluded that the requirement of the Landlady for the tenanted premises is *bona fide*. With respect to the plea of alternate accommodation, the Trial Court held that the explanation given by the Landlady as regards the dependency on the rental income received from letting out Maharani Bagh was a sufficient reason for not opting for the said property. The Trial Court also recorded its satisfaction for the explanation given by the Landlady for the portions of the property enlisted at point nos. (i) to (x) of paragraph 4.2 above. The Trial Court in light of the aforesaid findings, proceeded to deny granting leave and allowed the eviction petition. The relevant portion of the order dated 12.08.2014 reads as follows:

“10. Regarding the bonafide need for the tenanted premises, the case of the petitioner is that she alongwith her family from last several years is residing in rented accommodation. In the year 2011, she had to shift from one rented accommodation to another where at present also she is residing with her family on the rent of Rs. 26,000/- pm. It is stated that rent of this property is too high and petitioner's family has to shift from one rented accommodation to another, therefore, her family has decided to live in the tenanted premises, hence, she bonafidely requires the same. The respondent has admitted that petitioner alongwith her family is residing in rented accommodations. Respondent himself has stated that earlier petitioner was residing in property bearing no. A-484, Santa Vihar, New Delhi and now at present she is residing at flat no. 85, Pocket A, Ground Floor, Sarita Vihar. The petitioner has also placed on record the rent agreement of this property with her landlord. The petitioner admittedly alongwith her family is residing in rented accommodation since long time, therefore, the need of the petitioner for the tenanted premises seems to be bonafide.

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11. Regarding alternate accommodation available with the petitioner, she has stated that she has no alternate accommodation available with her, however, same is disputed by the respondent. The respondent has contended that the petitioner has recently sold some portions of the property bearing no. 1697-1701, Bhagirath Palace, Delhi-110006. He

has also given the details of the properties sold by the petitioner. The details are mentioned in para no. 3 of this order. To this, the petitioner has stated that out of those properties some were sold by her in the year 1997-98. She has also placed on record the photocopies of sale deeds regarding the properties mentioned at points 2, 3, 5 to 10. The sale deeds are on record and it is evidence from the sale deeds that the properties pointed by the respondent were sold by the petitioner in the year 1997-98. She has stated that she has no concern with the properties mentioned at points 1 and 4. The respondent has also pointed out one more property owned by the petitioner's husband at Maharani Bagh. The petitioner has admitted that the said property is owned and has been let out by her husband to some tenant. The petitioner has stated that the rental income from the property of Maharani Bagh is the only source of income for the petitioner and her husband who are aged about 70 and 73 years. In my view, the petitioner has given the sufficient reason for not shifting to the property at Maharani Bagh, New Delhi. The petitioner has succeeded in showing that she has no alternate accommodation available with her for residence.”

8. Learned counsel for the Petitioner, Tenant, states that the Trial Court failed to appreciate that the portion of the property enlisted in the leave to defend at point (i) of paragraph 4.2, i.e., 1701, Ground Floor, Ansal Sale Corporation, Bhagirath Place, Delhi is owned by the Landlady. In this regard, he stated that the Trial Court failed to appreciate that in an affidavit dated 8.07.2013 filed by the Landlady in the proceedings she duly admitted that she was residing at 1701, Bhagirath Place, Delhi in 1997-98 when she sold the other portions of the Property. He states that therefore, the availability of the said portion of the Property has not been adjudicated by the Trial Court.

8.1. He also states that during the pendency of the present proceedings, the husband of the Landlady has expired and therefore, the house property at Maharani Bagh have become available to her and her family for their residence. He states that the Trial Court failed to appreciate that the Landlady who presently resides in Sarita Vihar and owns a house property in a posh colony like Maharani Bagh would not

shift to the tenanted premises which are located in a notified slum area, i.e., Bhagirath Palace.

8.2. No other submissions were made by the learned counsel for the Petitioner, Tenant.

9. In reply, learned counsel for the Respondent, Landlady states that the she is presently aged 82 years. He states that the need of the Landlady for the tenanted premises is *bona fide* as the she has been residing in tenanted premises and therefore is in need of a residential accommodation for herself and her family.

9.1. He also states that the Landlady has already stated on oath that she has no concern with portion of the Property mentioned at point (i) i.e., 1701, Ground Floor, Ansal Sale Corporation, Bhagirath Place, Delhi. He reiterated that except a bald, self-serving averment there is nothing filed on record to show that the Property was owned by the husband of the Landlady and sold off recently. It was also stated that no area of the said property is mentioned to in any manner to show that this was a habitable property for residence. He states that the husband or the Landlady did not own the said property. He states that once not owned, the Landlady could not have resided in the Property.

10. This Court has heard the counsel for the parties and perused the paper book. This Court vide order dated 23.12.2022 had directed the parties to file the written submissions. The written submission of the Respondent, Landlady is on record, whereas the written submission of the Petitioner, Tenant is not on record.

11. In the facts of the present case, the Tenant has in pleadings and arguments admitted that the Landlady is presently residing in tenanted premises at Sarita Vihar. In this view of the matter, the finding of the Trial Court that the Landlady has a *bona fide* need for her and the family's residence does not suffer from any error.

12. In the case of *Mohd. Yameen v. Mohd. Saleem Khan & Another*, 2003 (66) DRJ 268, this Court has held as follows:

"11... A landlord/owner living in a rented house but intending to shift to his own property is certainly in bona fide need of his premises."

13. The singular contention of the Tenant is regarding the availability of suitable alternate accommodation, which submission can at best be only an 'incidental' consideration while deciding a petition under Section 14(1)(e) of the DRC Act. The Supreme Court in *Abid-ul-Islam vs. Inder Sain Dua*, (2022) 6 SCC 30 held that the existence of other properties which are, in fact, denied by the Landlady would not enure to the benefit of the Tenant in the absence of any pleadings and supporting material before the Trial Court to the effect that they are reasonably suitable for accommodation. The relevant portion of the judgment reads as follows:

"29. Section 14(1)(e) deals with only the requirement of a bona fide purpose. The contention regarding alternative accommodation can at best be only an incidental one. Such requirement has not been found to be incorrect by the High Court, though it is not even open to do so, in view of the limited jurisdiction which it was supposed to exercise. Therefore, the very basis upon which the revision was allowed is obviously wrong being contrary to the very provision contained in Section 14(1)(e) and Section 25-B(8).

30. We have already discussed the scope of Section 14(1)(e) vis-à-vis Section 25-B(8) of the Act. Therefore, the mere existence of the other properties which are, in fact, denied by the appellant would

not ensure the benefit of the respondent in the in the absence of any pleadings and supporting material before the learned Rent Controller to the effect that they are reasonably suitable for accommodation.”

(Emphasis supplied)

14. The said observation of the Supreme Court is apposite for deciding the contention of the Tenant with respect to 1701, Ground Floor, Ansal Sale Corporation, Bhagirath Palace, Delhi. It is the stated case of the Tenant that the said premises is a commercial shop on the ground floor, as per the site plan filed by the Tenant. The Landlady has categorically denied her ownership or any concern with the said portion of the Property. The Tenant has not placed on record any documents which would evidence that the Landlady is the owner of the said portion or has access to the said portion for her residence. Further, in view of the admitted position that it is being used as a commercial shop by the occupant, this Court fails to understand how the said portion of the property deemed to be suitable for residential accommodation of the Landlady and her family.

15. With respect to the property of the deceased husband of the Landlady at Maharani Bagh, she had explained that she (and her deceased husband) is dependent upon the rental income from the said premises. The Tenant has not disputed that the said property at Maharani Bagh is let out and this Court therefore, finds no error in the satisfaction recorded by the Trial Court holding that this is a sufficient explanation offered by the Landlady for not shifting to the premises for residential accommodation.

16. With respect to the contention of the Tenant that the locality of Bhagirath Palace is located in a notified slum area and therefore it is hard to believe that the Landlady who currently resides in Sarita Vihar is willing to move to such a locality, this Court observes that it is the Tenant's own contention that admittedly the Landlady used to earlier reside in the same Property at Bhagirath Palace. In this view of the same, it is not for the Trial Court or this Court to doubt the intention of the Landlady to use the premises for her residence considering that she has resided in the tenanted premises in the past.

17. In the grounds of the revision petition, it has been stated that the Landlady had not placed on record the lease deed of the premises at Sarita Vihar. The said contention of the Tenant is incorrect and the lease deed has been placed on the record before the Trial Court as is evident from perusal of the lower Court record available on the record. The said ground of challenge is also not made out.

18. This Court in exercise of its revisional jurisdiction does not exercise appellate powers. The powers of this Court are merely supervisory and one of superintendence. This aspect has been reiterated by the Supreme Court in *Abid-ul-Islam (supra)* in the following terms:-

"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.”

19. The issues raised by the Tenant as noted above do not give rise to triable issues, which would warrant a consideration on merits by this Court. Accordingly, this court is of the considered opinion that no error was committed by the Trial Court in rejecting the leave to defend as sought by the Tenant. Thus, in view of the aforesaid discussion, the present revision petition and pending applications, if any, are dismissed. Interim orders stand vacated.

MANMEET PRITAM SINGH ARORA, J

JANUARY 10, 2023

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