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

Judgment reserved on: 07.07.2022

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Judgment pronounced on: 11.01.2023

+ **RC.REV. 287/2018 and I.A. Nos. 26290/2018, 40665/2019**

MAHESH GUPTA

..... Petitioner

Through: Mr. Anoop Singh, Advocate.

Versus

JAGDISH LAL MALIK & ANR.

..... Respondents

Through: Mr. Anirudh Bakru and Mr. Vidit Garg, Advocates.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. The present revision petition filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (*hereinafter referred to as the 'DRC Act'*) assails the Eviction Order/Judgment dated 10.01.2018, passed by Ld. SCJ-cum-RC, West District, Tis Hazari Courts, Delhi (*hereinafter referred to as 'Rent Controller'*), whereby the Rent Controller dismissed the application seeking leave to defend, filed on behalf of the petitioner and consequently allowed the eviction petition No.26284/2016, filed by the respondent no.1.

2. The eviction petition was filed qua one shop at ground floor under the name and style of Mahesh General Store bearing No. J-101, Milap Market, Beriwalla Bagh, Hari Nagar, New Delhi-110064 (*hereinafter referred to as the 'tenanted premises'*).

3. It was asserted in the eviction petition that the tenanted premises was let out by the previous landlord/father of the respondent no.1, late Sh. Jagdish Lal Malik in the year 1977 to Sh. Virender Kumar Gupta (the respondent no.2 herein), who was running a tea stall at a monthly rent of Rs.100/-, excluding electricity, water and other charges. Thereafter, the petitioner is stated to have joined the respondent no.2 in the tenanted premises, pursuant to which the petitioner and the respondent no.2 have been running a general/kiriyana store under the name and style of Mahesh General Store.

4. It is asserted in the eviction petition that the rent in respect of the tenanted premises was increased from time to time and the last paid monthly rent in respect of the tenanted premises was Rs.1,000/- per month excluding electricity, water and other charges.

5. It is further asserted in the eviction petition that the respondent no.1, along with his brother, purchased the entire built-up property bearing No.J-101, Milap Market, Beriwalla Bagh, Hari Nagar, New Delhi-110064, including the tenanted premises vide registered sale deed dated 18.03.2005.

6. It is further averred that after purchasing the aforementioned property, the respondent no.1 and his brother partitioned the same by mutual oral consent whereupon the tenanted premises came in the share of the respondent no.1, who attorned the petitioner and the respondent no.2 as his tenants, pursuant to which, the said tenants started paying the rent to the respondent no.1 against which the rent receipts are stated to have been issued by the respondent no.1 herein.

7. It is pleaded in the eviction petition as under:

“The last rent is paid by the respondents /tenants till. 31.12.2012 against receipt dated 01.05.2013, thereafter the respondents stopped paying rent to the petitioner in respect of the shop in question, despite the fact the petitioner with oral consent of the respondents has increased the rent Rs.1,000/- to Rs.6000/- per month w.e.f. 01.01.2013.”

8. In the leave to defend application, filed by the petitioner and respondent no.2, it was asserted as under:

“7. That the petitioner had not clarified as to when the rent of the tenanted shop was increased from Rs.100/- per month to Rs.1,000/- per month as no specific date has been mentioned for the alleged enhancement of rent of the tenanted shop as claimed by the petitioner. Moreover, the petitioner has claimed the arrears of rent w.e.f. 01-1-2013 at the rate of Rs.6000/- per month for which there is no evidence to support the alleged claim of the petitioner as such it cannot be said that there was any enhancement of rent of the tenanted shop as claimed by the petitioner and there is no arrears of rent in respect of tenanted shop as claimed by the petitioner, hence it is a disputed question of fact as whether there was rent of Rs.100/- or Rs.500/- or Rs.1000/- per month in respect of the tenanted shop, because the petitioner had not specified anywhere in the contents of the eviction petition as to when the rent of Rs.100/- was enhanced to the sum of Rs.500/- and as to when the rent of Rs.500/- was enhanced to the sum of Rs.1000/- and as to when the rent of Rs.1000/- was enhanced to the sum of Rs.1500/- per month and as to when the rent of Rs.1500/- was enhanced to the sum of Rs.6000/- per month without which it cannot be ascertained correctly as to what is actual amount of arrears of rent as claimed by the petitioner without which the present eviction proceedings cannot proceed any further in view of the disputed question of facts which requires to be decided and adjudicated upon in the regular trial of the case because there is no admission of the alleged claim of the petitioner by the respondents, either orally or anywhere in writing which can be relied upon by the petitioner for the purpose of proceedings of this case. It is pertinent to note here that the petitioner had concealed the material facts in the contents of this eviction petition that the petitioner had already received the arrears of rent upto the year 2016 which is not mentioned anywhere in the contents of this eviction petition which amounted to deliberate and intentional misleading of this Hon’ble Court by projecting wrong and false facts in the present petition before this Hon’ble Court for which the petitioner is liable to be prosecuted for telling a lie before this Hon’ble Court in the contents of this petition.

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9. That the Applicant/Respondent no.2 had already paid all the due rent in respect of the tenanted shop to the petitioner for which a proper rent receipt has been issued by the petitioner to the Applicant/Respondent no.2 which included the arrears of rent as mentioned in the rent receipt dated 08.10.2016 having the arrears of rent for 12 months amounting to Rs. 18000/- and another rent receipt dated 19.09.2016 for arrears of rent for 34 months coming to the sum of Rs.51,000/- which was duly received by the petitioner and the in the counterfoil the signature of the Applicant/Respondent no.2 was

also made and this rent receipt bears the signature of the petitioner herein. Copies of the said rent receipts dated 8.10.2016 and 19.09.2016 are annexed herewith for kind perusal and consideration of this Hon'ble Court."

(emphasis supplied)

9. Notably, in the leave to defend application, the petitioner herein did not dispute the maintainability of the eviction petition on the basis that the rent was Rs.6,000/- per month; rather as brought out in para-9 thereof (*supra*), reliance was placed on certain rent receipts, whereby the rent @ Rs.1500/- per month is stated to have been paid in respect of the tenanted premises.

10. The impugned judgment minutely examines the matter in the light of the pleadings of the parties and on the touchstone of the statutory requirements set out in the Section 14 (1) (e) of the DRC Act.

11. As regards the existence of landlord-tenant relationship, it was held as under:

"15.....

(a). Landlord tenant relationship between the petitioner and the respondent.

15(a)(i). Respondent No. 2 has denied that petitioner is his landlord. However, he admitted that he has been paying rent to the petitioner till 2016. It is the admitted case of respondent No. 2 that the tenanted shop was taken on rent from the father of petitioner. It is settled law that any of LR's of deceased landlord can file eviction petition U/s 14(1) (e) of DRC Act. Death and date of death of father of petitioner is not disputed. It is admitted by respondent No. 2 that father of petitioner was died on 05.05.2011. Copy of sale deed regarding tenanted premises in favour of petitioner is on record. Even otherwise, being one of the LR's of deceased landlord, petitioner has locus-standi to file the present petition.

15(a)(ii) In view of the above, petitioner is the landlord of respondents for the purpose of the present petition....."

12. Regarding the bonafide requirement of the respondent no.1/landlord, it was held as under:

"15.....

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

15(b)(i) Petitioner submits that he is running his Cable T.V Network business from a tenanted premises. In the application seeking leave to defend, respondent No. 2 has stated that petitioner is running his Cable T.V Network

business for which he has executed a rent agreement with one Sh. Satish Kumar Arora. Photocopy of rent deed between Sh. Satish Kumar Arora and petitioner is also on record.

15(b)(ii) The need of a person to shift his business from a tenanted premises to his own shop is bonafide need. In view of above, it is established that the need of petitioner regarding the tenanted shop is bonafide....”

13. Regarding the issue as to whether any suitable accommodation was available with the respondent no.1/landlord, it was held as under:

“15.

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

15(c)(i) The onus is upon respondents, to show that petitioner has reasonably suitable alternative accommodation for his needs. None of the respondents has stated anything in this regard. Petitioner has admitted that he is occupying the back portion of the tenanted shop and running business of Cable T.V Network from that portion as well. It is further stated that for expansion of his business, the tenanted shop is required. Respondents have failed to plead and show that the petitioner has any reasonably suitable alternative accommodation for his bonafide needs.

16. In view of the above, respondents have failed to raise any triable issue entitling them to leave to defend the present petition.”

14. In the present revision petition, reliance has been placed by learned counsel for the petitioner on the averments made in the eviction petition to contend that the rent of the tenanted premises being @ Rs.6,000/-per month, on the showing of the respondent no.1/landlord himself, the Rent Controller had no jurisdiction to entertain the eviction petition at all. Section 3 (c) of the DRC Act provides that the Act shall not apply to “premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees.”

15. Learned counsel for the petitioner has also questioned the bonafide necessity of the respondent no.1/ landlord.

16. As regards the bonafide necessity of the respondent no.1/ landlord, the impugned judgment takes note of the fact that the respondent no.1 is running his Cable TV Network business from a tenanted shop. The impugned

judgment also takes note of a rent agreement between the respondent no.1 and one Sh. Satish Kumar Arora which brings out that the respondent no.1/landlord was running his Cable TV Network from a tenanted shop. It is rightly noticed in the impugned judgment that the need of a person to shift his business from a tenanted shop to his own shop is liable to be treated as a bonafide need. The findings rendered in the impugned judgment are unexceptionable and do not call for any interference.

17. It is settled law that a tenant cannot dictate terms to the landlord and advise him what he should and should not do. Only the landlord is the best judge of his requirement. In this regard, reference may be made to the decision of the Supreme Court in **Sarla Ahuja Vs. United Insurance Company Ltd.**, (1998) 8 SCC 119, wherein it was held as under:

“...14. 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 the 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...”

18. Reference may also be made to the judgment of the Supreme Court in **Anil Bajaj and Anr. v. Vinod Ahuja**, (2014) 15 SCC 610, wherein it was held as under:

“6. ...What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business 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 utilized 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. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958."

(emphasis supplied)

19. The main plank of the petitioner's challenge to the impugned judgment is with regard to the assertion in the eviction petition regarding the rent of the tenanted premises being enhanced to Rs.6,000/- per month.

20. It is pertinent to note that the eviction petition proceeds on the footing that the last paid rent till 31.12.2012, in respect of the tenanted premises, was Rs.1,000/- per month. It is further stated therein that there was an "oral consent" to increase the rent from Rs.1,000/- to Rs.6,000/-. The said plea in the eviction petition was squarely denied in the leave to defend application and it was asserted that there was no evidence whatsoever to support the claim of the respondent no.1/landlord regarding enhancement of rent to Rs.6,000/- per month. In the reply to the leave to defend application, it has been further clarified by the respondent no.1/landlord that after filing of the eviction petition, the petitioner/tenant has paid rent @ Rs.1,500/- per month.

21. In the reply filed on behalf of respondent no.1/landlord, to the leave to defend application, it was clarified as under:

"7.... It is further submitted that the petitioner has clarified in his petition that the last rent at the time of filing of the petition is paid by the respondent till 31.10.2012 and thereafter the respondents stopped paying rent to the petitioner in respect of shop in question, despite the fact that the petitioner with the oral consent of the respondent has increased the rent from Rs.1000/- to Rs.6000/- per month w.e.f. 01.01.2013. The respondents, despite said oral consent of increase of rent, has not paid @ Rs.6000/- per month w.e.f 01.01.2013, but paid the same only @ Rs. 1500/- per month.

9. That the contents of para No.9 of the application are wrong as stated hence denied. It is specifically denied that the applicant/respondent no.2 had already paid all the due rent in respect of the tenanted shop to the petitioner, as stated. It is submitted that after filing of present petition, the respondent paid arrears of rent w.e.f. 01.01.2013 to 31.10.2016 i.e. for 46 months vide two rent receipts dated 19.09.2016 and 08.10.2016 @ Rs.1500/- per month, despite orally agreed rent between the parties @ Rs.6000/- per month.”

22. It is evident from a bare perusal of the pleadings that the admitted position of both the petitioner/tenant and the respondent no.1/landlord is that, the last paid rent was Rs.1,500/- per month. The reference to Rs.6,000/- per month was only in the context of a plea regarding “oral consent” of the tenant to enhance the rent. As noticed, the petitioner/tenant has itself denied the said plea in its reply to the leave to defend application.

23. The attempt on the part of the petitioner/tenant to question the validity of the impugned order and/or the jurisdiction of the Rent Controller by seeking to misinterpret the aforesaid pleadings, cannot be countenanced. It is notable that no such plea questioning the maintainability of the eviction petition or the jurisdiction of the Rent Controller, was taken in the leave to defend application. It is settled law that a party cannot be permitted to blow hot and blow cold in the same breath or approbate and reprobate. Reference in this regard may be made to a judgment of the Supreme Court in **R.N. Gosain vs. Yashpal Dhir**, (1992) 4 SCC 683, wherein it was held as under:

“10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage”. [See. *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd.*, (1921) 2 R.B. 608, at p.612, Scrutton, L.J]. According to Halsbury’s Laws of England, 4th Edn., Vol. 16, “after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside”.(para 1508)”

(emphasis supplied)

24. Further, a coordinate bench of this court in the case titled as **K.S. Patcha v. Arun Sarna**, (2008) 151 DLT 784, has held as under:

"7. It is settled law that a person cannot be allowed to approbate and reprobate. No party can take stand as per convenience and a party cannot be allowed to withdraw from the admissions made by it in the pleadings in respect of the same subject matter. In the civil case, the landlord came clear before the Court and claimed rent at the rate of Rs.3700/- p.m. relying upon the initial agreement. The tenant/respondent however, stated that this agreement had come to an end and after expiry of this agreement a new oral agreement was entered into between the parties and the agreed rent was Rs.3100/- per month. He also relied upon certain rent receipts issued by the landlord for Rs.3100/- and he took the plea that the Civil Court had no jurisdiction. Even before the High Court, the tenant/respondent had not stated that the rent was Rs.3700/- rather he maintained his plea that the rent was Rs.3100/- p.m. In view of this contention of the tenant that the monthly rent of the premises was Rs.3100/- and an oral agreement was entered into after the expiry of written agreement reducing the rent, the landlord/petitioner withdrew his suit before the Civil Court and filed this eviction petition under the Delhi Rent Control Act. The tenant thus, cannot be allowed to take a plea that the rent was not Rs.3100/- but Rs.3700/-. The tenant had all along been tendering the rent @ Rs.3100/-. The learned ARC completely went beyond jurisdiction in allowing the application under Section 25-B of the Delhi Rent Control Act even to the limited extent of rate of rent. Once the tenant had stated in the Civil Suit that the rate of rent was Rs.3100/- p.m. in terms of an oral agreement, the landlord has a right to sue the tenant on the basis of his admission before the Civil Court. Even if, the tenant takes the plea that the rent was Rs.3700/- p.m., the ARC on the face of it should have rejected this plea and should have also rejected the application under Section 25-B of the Delhi Rent Control Act.

8. The Courts and the Rent Controller must keep in mind the Courts cannot be converted into a wrestling field, for trial of tricks where the Court has to act as an umpire. The Courts must effectively intervene and nip the evil of perjury and false statements in bud. Where a tenant takes different stand in different Courts to defeat the effort of landlord to get the premises vacated at the time of need such an effort must be curbed down by the Courts effectively by binding him with his earlier statement in respect of the same premises and his plea of raising a dispute in respect of the rent admitted by him should not be heard and entertained. If the parties are allowed to approbate and reprobate at their sweet will and convenience and take the Courts for a ride, the whole judicial system shall fail. The courts must effectively check such parties, who take inconsistent stand according to their convenience in different proceedings. I consider the Trial Court grossly erred in holding that a triable issue was there regarding the rate of rent. Once the respect had

taken the stand in one Court that the rent was reduced to Rs.3100/- p.m., and the Civil Judge had no jurisdiction only Rent Controller had jurisdiction, now he cannot be allowed to reprobate that Rent Controller had no jurisdiction and Civil Court had jurisdiction.”

(emphasis supplied)

25. In view of the aforesaid, there is no merit in the present petition and the same, along with the pending applications, is accordingly, dismissed, however, with no orders as to costs.

SACHIN DATTA, J.

JANUARY 11, 2023

HG/AK

