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

Date of decision: 19.09.2023

+ **RC.REV. 174/2017**

RAJEEV JAIN

..... Petitioner

Through: Mr Varun Jain and Mr Navin Kumar,
Adv.

versus

DEVKI NANDAN SUYAL @ BABLOO & ANR Respondents

Through: Mr Shubham Kulshreshtha, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

CM APPL. 46970/2023

1. On 10.07.2023, this Court had recorded that the petitioner and respondents have arrived at a settlement and the respondents had agreed to hand over vacant and peaceful possession of property bearing No. 50/9A, Sri Nagar Colony, Sidora Kalan, Delhi (hereinafter referred as 'tenanted premises') to the petitioner on or before 31.03.2024. The statement was made by Mr R.K. Rawat, Advocate for and on behalf of the respondents. Further, it was directed that the respondents shall file an affidavit undertaking terms of the order within a period of two weeks. Since the

RC.REV. 174/2017

Page 1 of 10



undertaking was not filed, the petitioner was constrained to file this instant application.

CM APPL _____/2023 (to be numbered)

2. Mr Shubham Kulshreshtha, learned counsel appearing for the respondents has now filed an application which is still lying under office objections but stated in the said application that the respondent No.1 has sought revocation of the order dated 10.07.2023 as the statement contained in the order dated 10.07.2023 was made without respondent No.1's consent and provide an opportunity to file respondent No.1's response. Copy of the application has been handed over in Court today and is taken on record. The Registry is directed to number the application.

3. This is a serious issue. At my request Mr R.K. Rawat, learned counsel who had appeared in Court and had made the statement on 10.07.2023, stated that he was instructed on behalf of both the respondents to give an undertaking. Hence, it is clear that the respondent No.1 is seeking to wriggle out of the statement made by his counsel on instructions on 10.07.2023.

4. A bare perusal of the new application would show that the prayer clause is infructuous as reply to the Revision Petition was already filed by the respondents way back on 28.02.2018 and is accompanied by the affidavit of respondent No.1.

5. From the aforesaid facts, it is even more clear that the respondents are trying to hoodwink this Court and trying to overreach and circumvent the administration of justice. However, without getting into any further controversy, I have asked learned counsel for the respondents to address arguments on the merits of the case.

RC.REV. 174/2017

Page 2 of 10



6. At the outset, Mr Kulshreshtha has stated that the present revision petition is not maintainable. He states that Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (hereinafter referred as ‘DRC Act’) is only meant for premises which are required to be used for “residential purposes”. He points out that in the present case, the tenanted premises in question were let out for commercial purposes and the same is required for Mr Cheerag Jain who is the younger son of the petitioner to start his own business, who is already running his business under the name and style of M/s. Sonam Enterprises from a rented accommodation situated at B-40, Sector 5 in Bawana Industrial Area, New Delhi and is paying Rs. 14,000/- per month as rent.

7. The second argument of Mr Kulshreshtha is that the petitioner did not disclose in his eviction petition that there was another shop adjoining the tenanted premises in the front side. The said shop was vacated by the tenant in 2014 and the said shop was concealed. Hence, the eviction petition of the petitioner was rejected.

8. Mr Varun Jain, learned counsel for the petitioner states that there is no concealment at the hands of the petitioner. He has drawn my attention to the site plan of the suit premises where the shop is clearly shown. He states that the said map is annexed with the Eviction Petition and hence, there is no concealment. He further points out from the cross-examination of the respondent which clearly states that “ *The back side portion alongwith one shop in front are now being used by the petitioner as godown....*” and has further admitted that there is no access to the back side from one shop.

9. Learned counsel for the petitioner further states that the cross



examination of the respondent clearly shows that there is no concealment and the shop was being used as a godown which has clearly been stated in the eviction petition.

10. I have heard learned counsel for the parties.

11. As regards with the first objection is concerned that Section 14 (1) (e) of the DRC Act is only meant for residential purposes not for commercial purposes, the Hon'ble Supreme Court in *Satyawati Sharma v. Union of India* (2008) 5 SCC 287 has clearly held:

“31. In H.C. Sharma v. LIC of India [ILR (1973) 1 Del 90] the Division Bench of the High Court, after taking cognizance of the acute problem of housing created due to partition of the country, upheld the classification by observing that the Government could legitimately restrict the right of the landlord to recover possession of only those premises which were let for residential purposes. The Court felt that if such restriction was not imposed, those uprooted from Pakistan may not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the Ganges. Those who came from West Pakistan as refugees and even their next generations have settled down in different parts of the country, more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set-up of the Government and have earned huge wealth in different trades, occupation, business and similar ventures. Not only this, the availability of buildings and premises

RC.REV. 174/2017

Page 4 of 10



which can be let for non-residential or commercial purposes has substantially increased. Therefore, the reason/cause which prompted the Division Bench of the High Court to sustain the differentiation/classification of the premises with reference to the purpose of their user, is no longer available for negating the challenge to Section 14(1)(e) on the ground of violation of Article 14 of the Constitution, and we cannot uphold such arbitrary classification ignoring the ratio of Harbilas Rai Bansal v. State of Punjab [(1996) 1 SCC 1] , which was reiterated in Joginder Pal v. Naval Kishore Behal [(2002) 5 SCC 397] and approved by three-Judge Bench in Rakesh Vij v. Dr. Raminder Pal Singh Sethi [(2005) 8 SCC 504] . In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of the 1958 Act has, with the passage of time (almost 50 years), become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria.

....

41. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant



from the premises let for residential purposes only.”

(emphasis supplied)

12. For the said reasons, the Hon’ble Supreme Court has done away with the distinction contained in Section 14 (1) (e) of the DRC Act with regard to the eviction on the ground of bonafide need for residential and non residential purposes.

13. The Hon’ble Supreme Court in ‘**Raghunath G. Panhale v. Chaganlal Sundarji and Co.**’, (1999) 8 SCC 1 has observed as under:

“9. Next comes the decision of this Court in *A.K. Veeraraghava Iyengar v. N.V. Prasad* [AIR 1994 SC 2357] . In that case, this Court observed that the need was bona fide and that the tenant failed to adduce any evidence against the “experience of landlord, his financial capacity and his readiness and willingness to start jewellery shop”. In *Vinay Kumar v. District Judge, Ghazipur* [1995 Supp (2) SCC 586] it was contended for the tenant that the son of the landlord whose requirement was pleaded, was in government service and, therefore, he could not have any bona fide need to start a private practice as a doctor. This contention was rejected. In *Rena Drego v. Lalchand Soni* [(1998) 3 SCC 341] it was observed that in the light of the factual position in that case, “when the landlady says that she needs more accommodation for her family, there is no scope for doubting the reasonableness of the requirement”. It was held that the circumstances of the case raised a presumption that the

RC.REV. 174/2017 Page 6 of 10



requirement was bona fide and that “tenant has failed to show that the demand for eviction was made with any oblique motive”. It was held that in the absence of such evidence by the tenant, the presumption of the bona fide need stood un rebutted. In Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC 119] it was again observed that the court should not proceed on the assumption that the requirement of the landlord was not bona fide and that the tenant could not dictate to the landlord as to how he should adjust himself without getting possession of the tenanted premises. It was stated in Pratiba Devi v. T.V. Krishnan [(1996) 5 SCC 353] and in Meenal Eknath Kshirsagar v. Traders and Agencies [(1996) 5 SCC 344] that the landlord was the best judge of his requirement. In Sheela Chadha v. Dr Achharaj Ram Sehgal [1990 Supp SCC 736] it was held that the landlord had the discretion to determine his need. See also in this connection the judgment of this Court in Shiv Sarup Gupta v. Dr Mahesh Chand Gupta [(1999) 6 SCC 222] . In Raj Kumar Khaitan v. Bibi Zubaida Khatun [(1997) 11 SCC 411] this Court had even stated that it was not necessary for the landlord to state in the pleadings, the nature of the business he proposed to start.”

14. Further, the scope of revisional jurisdiction of the High Court is dealt by the Hon’ble Supreme Court in the judgment of **Abid-UL-Islam v. Inder Sain Dua**, (2022) 6 SCC 30 and has observed as under:

“22. We are, in fact, more concerned with the scope and ambit of
RC.REV. 174/2017

Page 7 of 10



the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.

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.”

15. I am of the view that in the present case, the learned ARC has clearly erred in appreciating the evidence and the law laid down by the Hon'ble RC.REV. 174/2017

Page 8 of 10



Supreme Court and has committed an error apparent on the face of record. The learned ARC has dismissed the eviction petition on the ground that the petitioner has concealed alternative accommodation from the respondents. The learned ARC has further held that one shop was available to the petitioner which was concealed and hence the petitioner has approached the Court with unclean hands.

16. In the present case, a perusal of the site plan annexed with the eviction petition clearly demonstrates that the petitioner has shown the two shops along with the godown. The site plan has been exhibited as Ex. PW-1/1 and was part of the eviction petition. In addition, the cross-examination of the respondent also shows that the said shop was never available and was always being used as a godown by the petitioner. Hence, the learned ARC has sat in the armchair of the petitioner and has adjudged a) the availability of accommodation and b) the suitability of accommodation to arrive at a finding that there has been concealment by the petitioner. The judgment of **Raghunath G. Panhale** (*supra*) clearly holds that the assumption of the requirement of the landlord must be presumed to be bonafide and the tenant cannot dictate his landlord as to how he should adjust himself without getting the possession of the tenanted premises. Hence, the observations by the learned ARC are perverse and suffers from illegality which clearly call for interference by this Court in exercise of its revisional jurisdiction.

17. In view of the above reasons, the order dated 10.07.2023 passed by this Court is recalled and also the order dated 15.02.2017 passed by the learned ARC are set aside and an order of eviction is passed in respect of property bearing No. 50/9A, Sri Nagar Colony, Sidora Kalan, Delhi on *RC.REV. 174/2017*

Page 9 of 10



account of the bonafide requirement of the petitioner.

18. In view of Section 14 (7) of the DRC Act, the petitioner shall not be entitled to obtain the possession before the expiry of six months from the date of this order.

19. Before parting, I cannot lose sight of the fact that the respondents have been irresponsible in their conduct and have been misleading the Court and making application after giving undertaking before the Court seeking to withdraw the same. The conduct of the respondents is condemnable. However, I am refraining from initiating any contempt action but I am of the view that the cost must be imposed on the respondents. While dismissing the application, each of the respondents are burdened with cost of Rs. 50,000/- to be deposited with “Green Delhi Account” at UCO Bank, Delhi High Court Branch, bearing Account No. 15530110156933. The cost be paid within a period of four weeks from today and proof of cost be filed in this Court failing which the file be put up before this Court.

20. Pending applications, if any, are disposed of in the above terms.

JASMEET SINGH, J

SEPTEMBER 19, 2023

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Click here to check corrigendum, if any