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

Judgment reserved on: 28.08.2023

Judgment pronounced on: 29.11.2023

+ **RC.REV. 621/2018 & CM APPL. 53110/2018, CM APPL. 51038/2019, CM APPL. 51039/2019, CM APPL. 34069/2022, CM APPL. 34070/2022**

RELIABLE TYRE MARKET Petitioner
Through: Mr. Manish Pratap Singh, Adv.

Versus

ARJUN UPPAL & ANR Respondents
Through: Mr. Nakul Sachdeva, Mr. Damandeep S Bhalla, Mr. Abhinandan Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: **JASMEET SINGH, (J)**

1. The present revision petition has been filed by the petitioner (*hereinafter referred as "tenant"*) seeking to challenge the impugned order dated 08.08.2018 passed by learned SCJ-CUM-RC (Central), Tis Hazari Courts in E. No. 79805/16, wherein the leave to defend application filed by the tenant was dismissed and order of eviction was passed with respect to one shop measuring 88 sq. ft. bearing municipal no. 1641-B, Shyama Prasad Mukherjee Marg, Delhi-



110006 (*hereinafter referred as “tenanted premises”*) against the tenant.

FACTS/PLEADINGS

2. Respondent No. 1 is the son of the Respondent No. 2 (*hereinafter collectively referred as “landlords”*).
3. Landlords filed eviction petition under section 14 (1)(e) of the Delhi Rent Control Act, 1958 (*hereinafter referred as “DRC Act”*) against the tenant.
4. Respondent no. 1 and respondent no. 2 are joint owners of property bearing municipal nos. 1635, 1635A, 1641 to 1648, Shyama Prasad Mukherjee Marg, Delhi- 110006 (*hereinafter referred as “property”*) having 3/8th and 5/8th share in the said property.
5. Tenanted premises in question, is one shop measuring 88 sq. ft in property no. 1641-B, Shyama Prasad Mukherjee Marg, Delhi-6 under the tenancy of the tenant who is paying Rs.82.27/- per month as rent and Rs.1200/- per year towards house tax excluding other charges, payable to concerned authorities. Last rent payable by the tenant is for the month of 31.01.2015.
6. With respect to ownership of landlords over aforesaid tenanted premises is concerned, the landlords explained the same by stating that the Smt. Raj Rani Uppal transferred her undivided 3/8th share in the property in favour of respondent no.1 by executing a registered gift deed bearing no. 8504 dated 23.12.2004 and respondent no.2 purchased his 4/8th share of the property from M. R. Jain Brothers vide registered sale deed no. 3817 executed in the year 1978 and Smt.



Saveena Uppal sold her 1/8th undivided share to respondent no.2 vide registered sale deed dated 02.12.1997. Consequently, the landlords became the joint absolute owners of the entire property to the extent of their respective shares as mentioned above.

7. As regards to the bonafide need is concerned, it was explained that respondent no.2 is a Hotelier and has been running his hotel under the name and style of M/s. New Royal Hotel on the first and upward floors of the property. Respondent no. 1 is very ambitious and desirous and has been very anxious to run an independent business of his own after completing his studies.
8. Respondent no. 1 has completed his MBA course from the University of LA TROBE MELBOURNE AUSTRALIA and has come down to India on 27.03.2008 with an ambition of starting his independent business. Respondent no.1 has finally decided to open a plush restaurant on a magnified scale for which he has prepared a project report.
9. It is further stated in the eviction petition that there are about 50 hotels in the area, without the facility of any posh restaurant. Respondent no. 1 thus for his bonafide need requires an area of approximately 5000 sq. ft. to open a proposed restaurant for which he requires the entire ground floor portion to complete the project. Respondent no. 1 has acquired sufficient knowledge and experience by working at the family hotel business and since his return from Australia he has been working for the launching of the project.



10. However, because of the portion of the ground floor of the property being under the occupancy of other tenants, respondent no. 1 has not been able to give it the practical shape.
11. The tenanted premises under the tenancy of the tenant and the other adjoining shops under tenancy of other tenants are most suitable for respondent no. 1 to set up and run a restaurant as the property in question is located very near to the old Delhi Railway Station. The strategic location of the property has all the potential to make the project a great success.
12. Landlords have no other alternative suitable accommodation for meeting out their bonafide need and filed a project report alongwith internal placements / scheme for the said proposed restaurant with the petition.
13. The respondent no. 1 has an area of about 500 sq. ft. in his possession in the form of shop no. 1648, S.P. Mukherjee Marg, Delhi. Another portion of about 275 sq. ft. on the ground floor is being used as a reception by the respondent no. 2 for the hotel being run on the upper floors.
14. The respondent no. 1 is a co-owner in the entire building bearing comprising municipal Nos. 1635, 1635A, 1641 to 1648, S.P. Mukherjee Marg, Delhi is under tenancy of New Royal Hotel. The said hotel is being run by the respondent no. 2 in partnership with the grandmother of respondent no. 1 since 1971.
15. Landlords had filed 06 separate eviction petitions against 6 tenants in 2010 bearing E668/14/10, E661/14/10, E/540/14/10, E542/14/10, E/55/13/10 and E56/13/10 respectively. Out of the above-mentioned



petitions, landlords have been successful in obtaining eviction orders against 4 tenants viz. E668/14/10 and E661/14/10 vide orders dated 28.08.2015, in petition no. E540/14/10 vide order dated 31.08.2015 and in petition no. E542/14/10 vide order dated. 27.08.2015. Area of 4 shops against which eviction orders have been obtained is about 3407 sq. ft.

16. In response to the eviction petition, tenant filed an application for leave to defend in which he claimed that triable issues exist.
17. It is stated in the application that the possession of shop bearing no. 1650 was obtained by petitioners from previous tenant and same was let out to Vinayak Motors through its proprietor Raj Kumar Gupta. The landlords have big house in elite area of Civil Lines Delhi and run a hotel above tenanted shop in question having 95 rooms in property no. 1635, 1635A, 1641 to 1648, Shyama Prasad Mukherjee Marg, Delhi, whose ground floor of 500 sq. ft. is lying vacant.
18. It is further stated that possession of another portion of 3407 Sq. ft. have been obtained by landlords. The landlords are owner of property no. 29, Shri Ram Road, Civil Lines, Delhi which can be used for commercial purposes. Landlords are busy in completing a real estate project called Adonis and Senate Court, which will take 20 years for completion. The said business of Adonis developers started in the year 2010. Tenant is an old tenant, premises are situated in highly congested area and permission under section 6A of Slum Area (Improvement & Clearance Act), 1954 is required for proposed project of petitioners.



19. It is further stated that the respondent no. 1 has no experience in the proposed business of restaurant and is getting rent from New Royal hotel. Tenanted premises in question is situated in a congested area where there is difficulty for passers-by and for vehicles. Therefore, it is not feasible to run restaurant there. Further landlords have not disclosed the possession of area of commercial property they have. They want to re-let the tenanted premises at higher rent. The site plan filed by landlords is not correct and landlords are owners of 855, Shyama Prasad Mukherjee Marg, Delhi where 54 rooms are lying vacant.
20. The landlords filed their response to the leave to defend application denying the averments made in leave to defend application wherein it is stated that the location of the tenanted premises has all the potential to make the project great success.
21. Further, Amrit Hotel is a proprietorship firm of respondent no.2, who is a tenant in the property no. 855, S.P. Mukherjee Marg, near Old Delhi Railway Station. Shop No. 1648 is admeasuring 500 sq. ft. of area and is lying vacant but is unfit for running a proposed restaurant as the area is too little.
22. It is further stated that the project called Adonis did not fructify in Gurgaon and that senate court is situated at the outskirts of Gurgaon and proprietorship firm owned by respondent no.2 and as such respondent no.1 has nothing to do with it. There is no building / project going on in the name of Adonis.
23. Respondent no.2 wanted to own land in the out skirts of Gurgaon but that plan did not fructify. Only two basements were made and



construction was thereafter abandoned. As such respondent no.1 has no interest in Senate court, which is located in outskirts of Gurgaon and not in Delhi. Respondent no.1 had been waiting for last 8 years to get suit shops vacated for starting his restaurant and as such petition filed by landlords is correct.

24. Tenant filed counter affidavit to the affidavit of landlords replying application for leave to defend wherein the contention of the landlords were denied and reasserted his version.

FINDINGS RECORDED BY THE LEARNED RC

25. After hearing both the parties and perusing the materials placed on record, learned RC held as under:-

A. Tenant has made bald averments in his affidavit accompanying application for leave to defend. Those averments were not supported by any documents and therefore based on those bald averments, respondent is not entitled for leave to defend. Reliance is placed upon **Rajender Kumar Sharma &Ors. Vs. Leela Wati&Ors. 2008 SCC OnLine Del 1085.**

B. Tenant failed to file any site plan or any document based on which he had claimed availability of alternative suitable accommodation with his application for leave to defend. He also failed to mention the source from where he had come to know about availability of the properties with the landlords and therefore his claim remained baseless. No



triable issue is found with respect to the alternative suitable accommodation of the tenant.

- C.** Tenant urges that respondent no. 1 has no experience in the proposed business of restaurant. Respondent no.1 is getting rent from New Royal Hotel and therefore he does not require shop in question. Learned RC rejected the argument and held that law does not require that landlord should have experience before starting the business. Further, receiving of rent from New Royal Hotel as claimed by tenant did not create any suspicion of bonafide need of landlords.
- D.** Tenant did not deny the ownership /landlordship of landlords for the tenanted premises. Further, tenant did not deny the rent receipts filed by the landlords alongwith eviction petition. Hence, relationship of landlord and tenant stood established.
- E.** Tenant claimed that landlords have not filed permission under section 6A of Slum Area (Improvement & Clearance Act), 1954 (*hereinafter referred as "Slums Act"*). Learned RC held that the above plea is not tenable as judge made law is now settled that for proceedings under section 14(1)(e) of DRC Act, no such permission is required.
- F.** Tenant disputed the site plan of property in question, filed by landlords but did not file any counter site plan, making the said denial as bald denial which did not make out any triable issue.



G. Tenants claimed that landlords have not disclosed the possession of area of commercial property which landlords have in their possession. Learned RC held that this plea did not make out any triable issue as landlords are not supposed to give details of the area over which they are having possession in proceedings of like nature.

H. Further, learned RC held that bonafide need of landlords is not merely a desire, they placed on record photocopy of project report of said proposed hotel alongwith site plan of property in question. Their claim that in the concerned locality there is no plush restaurant is not disputed by respondent. Financial status of petitioners as such is not a relevant consideration in the proceedings of like nature. The dependency under section 14(1)(e) DRC Act is basically with respect to accommodation. Tenant, *per contra*, failed to show any triable issue with regard to said bonafide need.

I. Hence, application for leave to defend filed by the tenant was dismissed and eviction order was passed with respect to the tenanted premises in favour of the landlords and against the tenant.

26. Assailing the above order passed by the learned RC, the instant revision petition is preferred by the tenant.

SUBMISSIONS ON BEHALF OF THE TENANT



27. Mr. Singh, learned counsel for the tenant raised the contentions which are virtually identical to the contentions raised by the learned counsel for tenant therein in R.C. Rev. No. 117 of 2016.
28. In addition, learned counsel for the tenant has taken additional plea and has drawn my attention to sub section (1) of Section 6A of Slums Act, where the landlords were required to take permission from competent authority.

SUBMISSIONS ON BEHALF OF THE LANDLORDS

29. In the present case and in the above captioned revision petition, landlords are same and hence, the submissions advanced by the learned counsel for the landlords are also virtually identical.

ANALYSIS, FINDINGS AND CONCLUSION

30. I have heard the learned counsel for the parties and perused the material available on record.
31. I have already considered the similar arguments taken by the learned counsel for the tenant in R.C. Rev. No. 117 of 2016 and are not repeated for the sake of brevity.
32. The order passed in R.C. Rev. No. 117 of 2016 may be read as part of this judgment.
33. The only additional plea raised by the tenant regarding section 6A of the Slums Act is to be considered.
34. Learned counsel for the tenant pointed out that with regard to Slums Act, that landlords were required to file permission from the competent



authority before filling the eviction petition. Section 6A of the Slums Act reads as under:-

“6A. Restriction on building, etc., in slum areas.—(1) The competent authority may, by notification in the Official Gazette, direct that no person shall erect any building in a slum area except with the previous permission in writing of the competent authority.”

35. The Hon’ble Supreme Court in **Ravi Datt Sharma vs. Ratan Lal Bhargava, (1984) 2 SCC 75**, has settled the law with regard to the inconsistencies between the Slums Act and the DRC Act. Relevant portion reads as under:-

“11. It is, therefore, clear from the new provision in the amending Act that the procedure indicated therein was intended to have overriding effect and all procedural laws were to give way to the new procedure. Applications under Section 14(1)(e), therefore, clearly fell within the protective umbrella of the new procedure in Chapter III-A.

12. An identical view has been taken by the Delhi High Court in the case of Smt Krishna Devi Nigam v. Shyam Babu Gupta [AIR 1980 Del 165] . In this decision it has been clearly held that the provisions of Section 25-A cannot be controlled by the provisions of the Slum Act. We fully approve and endorse the ratio laid down in that decision as it is in conformity with the consistent opinion of this Court.



13. On a consideration, therefore, of the facts and circumstances of the case and the law referred to above, we reach the following conclusions:

“(1) That Sections 14-A, 25-A, 25-B and 25-C of the Rent Act are special provisions so far as the landlord and tenant are concerned and in view of the non obstante clause these provisions would override the existing law so far as the new procedure is concerned;

(2) That there is no difference either on principle or in law between Sections 14(1)(e) and 14-A of the Rent Act even though these two provisions relate to eviction of tenants under different situations;

(3) That the procedure incorporated in Chapter III-A of the amending Act into the Rent Act is in public interest and is not violative of Article 14 of the Constitution;

(4) That in view of the procedure in Chapter III-A of the Rent Act, the Slum Act is rendered inapplicable to the extent of inconsistency and it is not, therefore, necessary for the landlord to obtain permission of the Competent Authority under Section 19(1)(a) of the Slum Act before instituting a suit for eviction and coming within Section 14(1)(e) or 14-A of the Rent Act.”

36. In the present case, the plea taken by the tenant is squarely covered by the above cited judgment which clearly held that it is not necessary for



the landlords to obtain permission from the competent authority. In this view, the plea taken by the tenant has no merit and is hereby rejected.

37. Therefore, no grounds are made out to interfere in the order passed by the learned RC. The instant revision petition stands dismissed.
38. Interim order(s), if any, stands vacated.
39. Pending application(s), if any, are disposed of accordingly.

JASMEET SINGH, J

NOVEMBER 29, 2023/(MSQ)

Click here to check corrigendum, if any