



2024:DHC:4792



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

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Judgment reserved on: March 13, 2024
Judgment pronounced on: June 28, 2024

+ CM(M) 286/2022

HARJIT SINGH SAHNI

..... Petitioner

Through: Mr. Rohan Thawani and Ms. Gunjan Ahuja, Advs.

versus

SIDHANT GUPTA

..... Respondent

Through: Mr. Manmeet Arora, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. This petition under Article 227 of the Constitution of India emanates from the order dated 19.01.2022 passed by the Principal District & Sessions Judge (HQS), Rent Control Tribunal (Central) , Tis Hazari Courts, Delhi (hereinafter referred to as "learned RCT") in RCT No.46 of 2020 titled as "*Harjit Singh Sahni vs Sidhant Gupta*" whereby the learned RCT has dismissed an application filed by the petitioner under Section 38 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "DRC Act"). The petitioner is the appellant and the respondent is also the respondent before the learned RCT.

2. A brief factual history is set out below:



3. The petitioner herein was a single tenant of the respondent/landlord carrying out a wholesale/retail business of motor parts under the name M/s Sahni Benz Pvt. Ltd at the suit shop bearing the address No.3887, Roshanara Road, Delhi admeasuring 340 square feet (hereinafter referred to as “Suit Shop”). The respondent/landlord filed an eviction petition against the petitioner under Section 14 (1) (e) of the DRC Act on 16.12.2015, stating that he wishes to start his own business at the suit shop.

4. The learned Senior Civil Judge-cum-Rent Controller (hereinafter referred to as “learned SCJ-cum-RC”) vide the judgement dated 22.07.2016, dismissed the leave to defend application filed by the petitioner and allowed the eviction petition filed by the respondent, thereby directed the petitioner to vacate the suit shop within a period of six months. Thereafter, the petitioner filed a Revision petition bearing No.554 of 2016, titled as “Harjit Singh Sahni vs. Sidhant Gupta” against the eviction order before this Court. In the said revision petition, vide the order dated 20.12.2016, it was noted that the parties agreed that the petitioner would vacate the suit shop on or before 30.06.2018 and that the eviction order would not be executed before that day. Accordingly, the revision petition was withdrawn.

5. Vacant possession of the suit shop was handed to the respondent on 30.06.2018 and thereafter the petitioner continued to run his business from the adjoining shop. Since the respondent had not occupied the suit shop within a statutory period of two months, the petitioner filed an application under Section 19(2) of the DRC Act read with Rule 4 of the Delhi Rent Control Rules, 1959 on 01.04.2019, seeking to be put back into possession of the suit shop. The respondent filed his reply to the said application on



29.07.2019 and the application under Section 19(2) of the DRC Act came to be dismissed on 28.07.2020 as not maintainable.

6. The petitioner appealed the said order vide an appeal filed under Section 38 of the DRC Act, which was dismissed by learned RCT on 19.01.2022, wherein, it was observed that there was no infirmity with the impugned order. Hence, the present petition.

7. Mr. Rohan Thawani, learned counsel for the petitioner submitted that the learned RCT as well as the learned SCJ-CUM-RC have failed to appreciate that the respondent did not occupy the suit shop within the statutory period of two months, therefore, Section 19(2) of the DRC Act would be applicable in the present case. Reliance is placed on the judgement of the Supreme Court in “**Vidya Dhari Bhagat vs Allahabad Law Journal Co. Ltd**” [(1990) 2 SCC 58].

8. The learned counsel for the petitioner submitted that learned RCT as well as the learned SCJ-CUM-RC have erred in holding that the respondent did not recover possession in execution of judgment / decree dated 22.07.2016. The petitioner had approached this Court in revision petition against the above mentioned judgment, however the same was withdrawn on 20.12.2016 as the only agreement between the parties was that the petitioner would vacate the suit shop on 30.06.2018 and the respondent agreed not to execute the judgment/decree till that date.

9. It is further submitted by the learned counsel for the petitioner that the courts below have erred in placing reliance on Section 14(7) of the DRC Act, if such an interpretation is given effect, it would essentially mean that whenever a superior court extends the time to vacate the tenanted premises beyond 6 months, the eviction order will lose effect and the parties would be



in a settlement, aloof of the legal process. Essentially, a tenant who would suffer eviction and voluntarily hand over possession would render the eviction order meaningless.

10. Mr. Manmeet Singh Arora, learned counsel for the respondent refuted the submissions of the petitioner and contended that the learned RCT as well as the learned SCJ-cum-RC have passed well-reasoned orders, which require no interference. The learned counsel stated that the respondent had entered into an agreement with a builder on 03.12.2017 whereby the builder would construct three floors above the suit shop and would be given the first floor as consideration for this construction. A dispute had arisen between the builder and the respondent and after the respondent took possession of the suit property. As the property was in a dilapidated condition, the respondent could not immediately put the property to use.

11. The learned counsel further submits that the petitioner on his own accord agreed to settle the dispute with the respondent and demanded a longer period of time to vacate the premises than what is envisaged under Section 14 (7) of the DRC Act. The settlement made before this Court did not warrant for the respondent to file an execution for availing the judgment passed under Section 14 (1) (e) of the DRC Act. Therefore, the petitioner surrendered possession after a period of 18 months, which now bars the petitioner from approaching this Court under the provision of Section 19(2) of the DRC Act. The consent order arrived at by the parties before this Court is being interpreted in an incorrect manner by petitioner and he cannot claim benefit of the Section 19(2) of the DRC Act in such circumstances.

12. This Court apart from hearing the arguments at length on behalf of the parties has perused the record and the impugned order.



13. I may refer to Section 19(1) of the DRC Act, which contemplates recovery of possession for occupation and re-entry and reads as under

“19. Recovery of possession for occupation and re-entry.

(1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (e) of the proviso to sub-section (1) of section 14 [or under sections 14A, 14B, 14C, 14D and 21] [Inserted by Act 57 of 1988, section 10 (w.e.f. 1-12-1988).], the landlord shall not, except with the permission of the Controller obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises.”

14. The reading of sub-section (1) of Section 19 of DRC Act makes it clear that whenever the possession of any premises is recovered from the tenant in pursuance to an order made under Section 14(1)(e) or under Section 14-A, 14-B, 14-C, 14-D & 21 of DRC Act, the landlord of such premises shall not re-let the premises within a period of three years from the date of obtaining possession from the tenant without the permission of the rent controller.

15. It is further necessary to lay down hereinbelow, the provision of sub-section (2) of Section 19, which is more relevant from the point of view of the present petition:

“19. Recovery of possession for occupation and re-entry.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made to him in this behalf by such evicted tenant within such time as may be prescribed, direct the



landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.”

16. Section 19(2) like the other provisions of the DRC Act provides sufficient protection to the tenant against being harassed, in case the tenant is unable to comply with the unjustified demands of the landlord. Sub-section (2) of Section 19 envisages that a tenant, who has suffered an order of eviction under Section 14(1)(e) or under the other aforesaid provisions of DRC Act, if the landlord after recovery of possession of the premises does not occupy the same or it is not occupied by the person for whose benefit the premises was got vacated, within a period of two months of obtaining such possession, such a tenant may approach before the Rent Controller to seek directions against the landlord to put him in possession of the premises or to pay him such compensation as the Rent Controller thinks fit.

17. The main contention of the petitioner is that he handed over the possession of the suit shop on 30.06.2018 to the respondent *dehors* the eviction order dated 22.07.2016 under Section 14(1)(e) of DRC Act. The respondent has responded to the said submissions by emphasizing that the petitioner on his own violation opted to settle the aforesaid revision petition with the respondent and the respondent agreed for grant of further time period than is envisaged under Section 14(7) of DRC Act. Therefore, the possession was surrendered by the petitioner in view of the compromise arrived between the parties and recorded before this Court, hence, the petitioner cannot revert back to the provisions of DRC Act and resort to Section 19(2) of the DRC Act. Moreso, neither the possession from the petitioner was recovered as per the provisions of the DRC Act nor was the petitioner evicted in strict sense as per the mandate of DRC Act.



18. In view of the above submissions, it shall be apposite to refer to the judgment of Hon'ble Supreme Court in **Vidhya Dhari Bhagat vs. Allahabad Law Journal Co. Ltd.** (1990) 2 SCC 58. The Hon'ble Supreme Court while dealing with similar set of facts has held as under:-

“10. With these requirements of the statute, it may now be examined whether the tenant has a right to seek re-induction into the premises under sub-section (2) of section 19.

11. From the narration of facts it will be seen that the parties entered into a compromise in Suit No. 330/77 by which the tenant has willingly surrendered possession with payment of Rs.6,000 to the appellant as arrears of rent. On that day there was no execution of the decree for eviction obtained in Suit No. 288/77. It was, however, contended that the tenant willingly surrendered possession of the premises without waiting for the execution of the eviction decree in Suit No. 288/77 and there is no such bar for surrendering of possession under section 14(7) of the Act. We could have accepted this submission if there was only a decree for possession in Suit No. 228/77, but that is not so in the instant case. The possession was actually delivered to the appellant by the tenant as per the compromise recorded in the suit based on arrears of rent under section 14(1)(a) and delivery of such possession cannot therefore, be referable to the decree for eviction under section 14(1)(e). In fact, that decree for eviction in Suit No. 288/77 was not put into execution and it was perhaps found unnecessary to execute that decree since the tenant has surrendered possession of the premises as per the compromise in Suit No. 330/77 based on arrears of rent. The application filed by the tenant under sub-section (2) of section 19 of the Act was, there-fore, clearly not maintainable.”

19. In the revision petition filed by the petitioner before this Court, the petitioner exhibited an inclination to settle the matter with the respondent, requested for some time to vacate the suit shop. Accordingly, the parties agreed that the petitioner shall vacate the suit property within 18 months from the date of order being 20.12.2016 i.e. on or before 30.06.2018. To remain in possession of the suit shop till 30.06.2018, the petitioner had further agreed to pay rent, electricity and water charges of the suit property,



additionally, with an undertaking not to sub-let or part with possession of the suit property or cause any willful damage to the suit property. Accordingly, in view of the aforesaid compromise, the petitioner filed an affidavit of undertaking before this Court, hence, respondent was directed not to execute the eviction order till 30.06.2018. The parties were directed to remain bound by the terms and conditions as agreed before this Court and accordingly, the petition was disposed of as withdrawn.

20. In view of the above, it is clear that petitioner had willfully offered to vacate the suit shop on a deferred date and voluntarily handed over the possession of the suit shop on 30.06.2018 to the respondent without any pressure or by process of law in the execution petition. No doubt, the initial decree was passed by learned SCJ-cum-RC on 22.07.2016 in the eviction petition filed under Section 14(1)(e) read with Section 25B of DRC Act as the petitioner failed to satisfy the learned SCJ-cum-RC of existence of any triable issue in the eviction petition and the petitioner's application to seek leave to defend filed under Section 25B(4) of DRC Act was dismissed with specific directions that the aforesaid order shall not be executed within a period of 6 months from the date of order as per Section 14(7) of DRC Act.

21. Nonetheless, the handing over of the possession was made by the petitioner of his own violation within an extended period than as provided under Section 14(7) of DRC Act as agreed before this Court, which otherwise would have continued only till 22.01.2017 from the eviction order dated 22.07.2016. Accordingly, the petitioner after having enjoyed the possession of the suit shop and protection from execution of eviction decree till 30.06.2018 cannot claim the benefit under Section 19(2) of the DRC Act.



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22. Having considered the above, this Court finds no ground to interfere with the impugned order. Consequently, the present petition along with pending application stands dismissed.

SHALINDER KAUR, J.

JUNE 28, 2024/ss