



2024:DHC:840



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

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Judgment reserved on: 30.01.2024
Judgment pronounced on: 06.02.2024+ **RC.REV. 138/2019, CM APPL. 56512/2023, 5440/2024, 2118/2020**
& 10756/2019**SUMIT KHURANA & ANR**

..... Petitioners

Through: Mr Harpreet Singh, Mr Gagan Kumar
Singhal and Mr Divanshu Pandit,
Advocates with petitioner in Person

versus

MOHD IBRAHIM

..... Respondent

Through: Ms Payal Jain and Mr Sumit Kumar,
Advocates with respondent in person**CORAM:**
JUSTICE GIRISH KATHPALIA**GIRISH KATHPALIA, J.:**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioners/tenants have assailed order dated 24.12.2018 of the learned Additional Rent Controller whereby application of the petitioners/tenants for leave to contest the proceedings under Section 14(1)(e) of the Delhi Rent Control Act was dismissed and consequently, eviction order was passed against the present petitioners/tenants in respect of one shop (hereinafter referred to as "the subject premises") on ground floor of the larger premises bearing no. 3104/XI, Kucha Tara Chand, Sir Syed

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Ahmed Road, Darya Ganj, Delhi. On service of notice, the respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 The present respondent, claiming himself to be owner of the said larger premises (*of which the subject premises are a part*) filed eviction petition under Section 14(1)(e) of the Act against the present petitioners/tenants pertaining to the subject premises, pleading that he had purchased the said larger premises from one Mohd. Rafiq by virtue of a registered sale deed dated 02.05.1994; that the erstwhile owner had inducted Shri Ram Prakash, the now deceased father of the petitioners as a tenant in the subject premises; that the respondent is aged about 55 years and was engaged in manufacture of imitation jewelry, lampshades and handicraft items from his factory in Dasna, Masoori since the year 1978, but due to electricity and labour problems, the said factory is lying closed, so presently he and his family members are dependent upon petty amount earned from trading of those items; that the respondent/landlord has no vacant shop or place of business in Delhi from where he could operate his trading business; that the respondent/landlord has two sons and one married daughter, all of whom are living with him and are financially dependent upon him; that the respondent/landlord has two shops in the larger premises, out of which one is occupied by the present petitioners/tenants and the other is occupied by



another tenant namely Abdul Samad; that adjacent to the subject premises, the respondent/landlord has some vacant space, which can be joined in the subject premises to run his business; that the respondent/landlord has no reasonably suitable alternate accommodation, as such eviction of the petitioners/tenants from the subject premises is sought.

2.2 On service of summons in the prescribed format, the petitioners/tenants filed an application seeking leave to contest the petition, pleading broadly that the ground floor of the larger premises consisted of four shops in front and one shop behind the subject premises, referred to by the present respondent/landlord as open space; that the shop shaded yellow in the site plan, adjacent to the subject premises was occupied by the tenant Shri Baldev Raj who vacated the same and after merger of the open space behind it, the said shop was sold to one Parveen on 10.06.2013; that the shop adjacent to the said sold away shop was occupied by one Mr Sharma and after getting the same vacated and covering open space behind the same, the present respondent/landlord sold it; and the shop under the tenancy of Abdul Samad was rented out to one Mumtaz Khan about one and half years ago; that the larger premises were originally owned by Sardar Jaswant Singh and sale thereof by his sons to the respondent/landlord was illegal and the present respondent/landlord did not serve any notice of attornment on the petitioners/tenants; that the first floor above the ground floor of the larger premises consists of six rooms, one lobby and open space, which was sold by the present respondent/landlord on 01.03.2013 to Ishrat Khan for crores of rupees; that the present respondent/landlord has concealed that he is



already engaged in business of import-export under the name and style M/s Csiena Exports at 1959, Bara Dari, Kucha Chelan, Darya Ganj, Delhi and has 50 employees working under him; and that on the above counts, the petitioners/tenants have been able to raise triable issues, so they are entitled to leave to contest.

2.3 In his reply to the application for leave to contest, the present respondent/landlord pleaded that the said larger premises are jointly owned by him and his brother Mohd Arif; that the shop adjacent to the subject premises was sold because of financial difficulties of Mohd. Arif; that the other shop was sold in the year 2011 because the respondent/landlord needed money for marriage of his only daughter Sadia Naaz in January 2012; that he does not have any other place for commercial work; that the first floor above the ground floor of the said larger premises is meant for residential purposes and was therefore sold because he and his family were unable to reside in that congested place; that he and his two sons, aged 29 years and 27 years, are in dire need to start some business and they also need to support their married daughter who is living with them after failed marriage; that he is not engaged in any business from Kucha Chelan as falsely alleged by the present petitioners/tenants; that the premises of Kucha Chelan is a residential house where his brothers and cousins are residing with their families; that the present petitioners/tenants have failed to set up any triable issue, so they do not deserve leave to contest.



2.4 The present petitioners/tenants filed a rejoinder in the application for leave to contest, reiterating their stand.

2.5 In the backdrop of above rival pleadings, after hearing both sides the learned Additional Rent Controller dismissed the application for leave to contest and passed the consequent eviction order, which is impugned in these proceedings.

3. During arguments, learned counsel for petitioners/tenants took me through the aforesaid and contended that the impugned order is not sustainable in the eyes of law insofar as the petitioners/tenants deserved to be granted leave to contest. It was argued by learned counsel for petitioners/tenants that the requirement projected by the respondent/landlord is self created paucity of accommodation and not a *bona fide* necessity as the respondent/landlord habitually gets the shops vacated and sells away the same, so even the subject premises after being vacated would be sold away; that the site plan at pdf page 56 depicts four shops, out of which the orange shaded shop is the subject premises while the shops shaded red and green were sold by the respondent/landlord in June 2013 while the shop shaded black was sold during pendency of the eviction proceedings. Since the learned Additional Rent Controller failed to notice these sales, the impugned order is liable to be set aside according to petitioners/tenants.

4. On the other hand, learned counsel for respondent/landlord supported the impugned order, contending that the petitioners/tenants had failed to set



up any triable issue, therefore, they do not deserve to be granted leave to contest. It was argued on behalf of respondent/landlord that it is the date of institution of eviction petition which is relevant for the present purposes and on that day, the respondent/landlord did not have any other accommodation available with him. As regards the three shops other than the subject premises, with the help of documents on record, it was explained by learned counsel for respondent/landlord that the shop shaded black in the site plan at pdf page 56 was sold away in the year 2011 to arrange marriage expenses of daughter of the respondent/landlord; that the L-shaped shop shaded red in the said site plan was sold in the year 2013 by brother of the respondent/landlord, buckling under the pressure tactics of its tenant; and the shop shaded green in the said site plan was sold to Parveen in the year 2020 in order to arrange finances for medical treatment of the cancer ridden wife of respondent/landlord, therefore, it was not a case of self created paucity of accommodation.

5. In rebuttal, learned counsel for petitioners/tenants reiterated his above mentioned arguments.

6. At this stage, it would be apposite to briefly traverse through the legal position, which should be guiding light for the High Court while exercising jurisdiction under proviso to Section 25B(8) of the Act. As regards the legal position, there is no dispute between the parties to this case.



6.1 By way of an amendment in the year 1976, Chapter IIIA was inserted into the Delhi Rent Control Act with retrospective effect from 01.12.1975 in order to stipulate summary trials pertaining to the eviction claims largely dealing with the situations where the landlord was in bonafide need of the tenanted accommodation. One such situation was already on the statute book in the form of Section 14(1)(e) of the Act and one more such situation was added by amendment of the year 1976 in the form of Section 14A. Subsequently, the amendment in the year 1988 added more such situations in the form of Section 14B to Section 14D of the Act. The broad scheme of Chapter IIIA precludes a tenant from contesting the eviction proceedings of those specific situations as a matter of right, unless the tenant obtains leave to contest from the Controller; and if the leave is declined, an order of eviction would necessarily follow. The whole idea is that a landlord who bonafidely requires the tenanted premises should not suffer for long, awaiting eviction, but at the same time, the tenant also must not be subjected to eviction like any other civil consequence without being afforded an effective opportunity to defend himself in such civil proceedings. The court has to cautiously and judiciously strike a fine balance between the right of the landlord to eviction through summary proceedings and right of the tenant to continue tenancy.

6.2 Notably, the provision under sub-section (8) of Section 25B of the Act places complete embargo on any appellate scrutiny of an order for recovery of possession of the tenanted premises passed by the Rent Controller in accordance with the summary procedure laid down under Section 25B. The



underlying principle was to ensure expeditious remedy to the landlord who is in bonafide need of the tenanted premises. It is also significant to note that the proviso, enacted in Section 25B(8) of the Act to lift the blanket of scrutiny in a limited manner has to be understood and used in such a manner that it does not frustrate the legislative intendment of expeditious remedy in certain specific kind of cases. At the stage of seeking leave to contest, it is sufficient if the tenant makes out a case by disclosing such facts as would disentitle the landlord from obtaining an eviction order. At the stage of seeking leave to contest, the tenant is not required to establish such a strong case that would non-suit the landlord. At the stage of seeking leave to contest, the test to be applied is as to whether the facts disclosed in the affidavit of the tenant *prima facie* show that the landlord would be disentitled from obtaining the eviction order and not that the defence may fail in the end.

6.3 At the same time, the court also has to be conscious that a leave to contest cannot be granted for mere asking or in a routine manner, as that would defeat the object behind Chapter IIIA of the Act. It is only when the pleas and contentions raised by the tenant in the application seeking leave to contest make out a triable issue and the dispute on facts demands that the matter be properly adjudicated after ascertaining the truth through cross-examination of witnesses that leave to contest must be granted. Each case has to be decided on its merits and not on the basis of any generalized suppositions. The court also cannot ignore a situation where the case set up by the tenant has been so set up with the sole object of protracting the



proceedings so as to lead to the landlord giving up in frustration, which would in turn frustrate the process of law. Where the tenant seeks leave to contest, pleading anything and everything, pulled out of thin air and claims to have raised a *prima facie* case, the court is under a duty to read between the lines so as to ensure justice to the process established by law.

6.4 A careful examination of the proviso to Section 25B(8) of the Act would show that it does not specifically use the term “revision”. But the provision read in its entirety shows that the power conferred under the said proviso is a revisional power, completely distinct from appellate power in the sense that the appellate power is wide enough to afford the appellate court to scrutinize the entire case and arrive at fresh conclusion whereas the revisional power is quite restricted to superintendence and supervision aimed at ensuring that the subordinate courts and tribunals operate within the bounds of law. Unlike Section 115 of the Code of Civil Procedure dealing with the scope of revision in civil cases, the proviso to Section 25B of the Act does not expect the High Court to look for satisfaction as regards regularity of the proceedings under scrutiny or correctness, legality or propriety of any decision or order for recovery of possession passed in the summary proceedings under Section 25B of the Act. The proviso to Section 25B(8) of the Act confines the satisfaction of the High Court to the extent that the order impugned before it was passed by the Controller under Section 25B “in accordance to law”.



6.5 It is trite that the power of revision conferred upon the High Court by the proviso to Section 25B(8) of the Act being in the nature of superintendence over the court of first adjudication on the decision making process, including compliance with the procedure laid down by law, the High Court cannot substitute and supplant its view over that of the court of the first adjudication by exercising parameters of appellate scrutiny. The High Court has a superintendence role only to the extent of satisfying itself on the process adopted. Thus, scope of interference by the High Court in the proceedings of the present nature is quite restrictive and the High Court should not venture into disturbing the decision of the court of first adjudication unless it finds some error apparent on the face of record, which would only mean the absence of adjudication per se. While examining the records of the Rent Controller in order to satisfy itself that the impugned order was passed according to law, the High Court should be cautious not to venture into a roving enquiry which would convert the power of superintendence into that of a regular first appeal, which in turn is completely forbidden by the legislature. It is not permissible for the High Court in such proceedings to arrive at a finding of fact different from the one recorded by the Rent Controller, unless the findings of fact recorded by the Rent Controller were so unreasonable that no Rent Controller would have recorded the same on the material available. In the case of ***Shiv Sarup Gupta vs Mahesh Chand Gupta***, (1999), 3SCR 1260, the Supreme Court held that the High Court in such proceedings is obliged to test the order of the Rent Controller on the touchstone of whether it is according to law and it is for the limited purpose of ascertaining whether the conclusion arrived at



by the Rent Controller is only unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available that the High Court can examine the matter.

7. Falling back to the present case, as narrated above, before this court, no dispute was raised qua ownership of the present respondent/landlord over the subject premises and the jural relationship of tenancy between the parties. That was fairly so in view of the registered sale deed dated 16.05.1994 coupled with the principle of estoppel under Section 116 of the Indian Evidence Act and inability of the petitioners/tenants to specify as to who, if not the respondent, is owner of the subject premises in which they are admittedly tenant only, being the successors of their father who was inducted as a tenant by the predecessor in interest of the respondent. As further explained above, the core of the argument of the petitioners/tenants is that the respondent/landlord in these proceedings cannot be given benefit of self created paucity of accommodation in the sense that he has been selling away portions of the said larger premises and would do the same qua the subject premises as well after the same are vacated.

8. So far as the apprehension of the petitioners/tenants qua intentions of the respondent/landlord to sell away the subject premises after getting the same vacated is concerned, the provisions under Section 19 of the Act are always on the statute book to prevent that.



9. The only issue to be examined by this court is as to whether the requirement of the subject premises as projected by the respondent/landlord is a *bona fide* requirement or self created paucity of accommodation. In that regard, it would be necessary to note that some of the particulars related to the sale of shops on the ground floor of the said larger premises were wrongly (which appears to be a *bona fide* mistake of learned counsel for respondent/landlord) mentioned during the arguments and the same are slightly different in the documents on record.

10. The shop shaded red in the site plan was sold to Ms Mumtaz Khan by way of registered sale deed dated 28.01.2011 by the present respondent acting for himself and as General Attorney of his brother Mohd. Arif. The shop shaded green in the site plan was sold by way of registered sale deed dated 07.06.2013 to Ms Parvin Jahan and Ms Sajida Parveen by the present respondent for himself and as General Attorney of his brother Mohd. Arif. The shop shaded black in the site plan was sold by the petitioner to Abdul Samad by way of registered sale deed dated 04.03.2020.

11. In the case of ***Gaya Prasad vs Pradeep Srivastava***, AIR 2001 SC 803, the Supreme Court observed that the crucial date for deciding as to the *bona fide* requirement of the landlord is the date of institution of the eviction petition; that the antecedent days may perhaps have utility to reach the said crucial date of consideration, but if every subsequent development during the post petition period is to be taken into account for judging the *bona fide* of the requirement pleaded by the landlord there would perhaps be no end



so long as the unfortunate situation in our litigative slow process system subsists.

12. In the present case, the eviction petition was filed by the present respondent on 12.08.2013. The sale of shop shaded red in the site plan to Ms Mumtaz Khan was more than one and a half years prior to institution of the eviction petition. The sale of shop shaded black in the site plan to Abdul Samad was more than six years after institution of the eviction petition. So, sale transactions of both said shops cannot be considered in order to determine *bona fide* of the requirement pleaded by the respondent/landlord.

13. The only shop, sold by the present respondent near the date of institution of the eviction petition was the one shaded green in the site plan, which was sold to Ms Parvin Jahan on 07.06.2013. As mentioned above, the respondent/landlord explained that the said shop, shaded green in the site plan had to be sold to Ms Parvin Jahan on account of financial difficulties of Mohd. Arif. That explanation, keeping in mind that the sale deed was executed by the respondent/landlord also acting as General Attorney of Mohd. Arif, does not sound implausible, much less an act of deliberately creating paucity of accommodation. I am unable to find any lack of *bona fide* on the part of present respondent simply because he had to sell away one of the shops to meet financial difficulties of his brother, who was a co-owner thereof.



14. As regards the plea of the petitioners/tenants that the respondent/landlord owns a reasonably suitable alternate accommodation on first floor of the larger premises and the premises at Kucha Chelan, Darya Ganj, Delhi, the respondent/landlord has specifically explained that the rooms on the first floor of the said larger premises are not suitable for the trading business which he intends to start and that the Kucha Chelan premises are residential house where his brothers and cousins are residing with their respective families.

15. As regards Kucha Chelan premises, the petitioners/tenants did not place on record even a shred of document to show that the same are owned by the respondent/landlord, despite specific averment of the latter that he does not own the same. Law in this regard is well settled that where a tenant in the application for leave to contest pleads that the landlord is owner of another premises, which pleading is denied by the landlord, mere affidavit of the tenant is not sufficient, and the tenant must place on record some document in support of his pleadings; grant of leave to contest on mere affidavit of tenant would completely defeat the very purpose of the provision under Section 25B of the Act. Reference in this regard can be drawn from the judgment of a coordinate bench of this court in the case of **Rajender Kumar Sharma & Ors vs Leelawati & Ors**, 2008 (106) DRJ 471.

16. As observed in the case of **John Impex (P) Ltd. vs Dr. Surender Singh & Ors**, 135 (2006) DLT 265, it has to be kept in mind that the landlord is the best judge of his requirement and cannot be dictated by the



tenant, terms on which the landlord should live and “*the requirement of law is not that every desire of the landlord has to be looked at with suspicion and the matter proved beyond reasonable doubt applying the test of criminal jurisprudence.*”

17. Coming to the judicial precedents cited on behalf of the petitioners/tenants, the legal propositions laid down therein are not disputed and have already been recapitulated above. But each case has to be tested on its peculiar facts and circumstances. The circumstances dealt with in the said judicial precedents cited on behalf of petitioners/tenants were completely different from the present case. The case of ***Puran Chand vs Yashpal***, 2004 (76) DRJ 365 was cited by learned counsel for petitioners/tenants in support of his argument that landlord’s self created paucity of accommodation cannot be read as his *bona fide* need; but in that case, the Rent Controller had given cogent reasons for arriving at the conclusion in view of the circumstances that each time a room fell vacant, the landlord used to convert the same into godown and/or for commercial purposes, which is not the present case as narrated above. In the case of ***Deena Nath Vs Pooran Lal***, (2001) 5 SCC 705, cited by learned counsel for petitioners/tenants a vacant shop was already in occupation of the landlord at the time of filing the eviction petition, which was not in the present case. Similarly, other judicial precedents cited on behalf of petitioners/tenants are completely distinguishable.



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18. In a case of the present kind, if leave to contest is granted, pushing the parties to undergo churning and rigmaroles of full dress trial, which can go on for years, it would be a travesty of justice and would militate against the basic principles underlying Chapter III of the Delhi Rent Control Act for summary proceedings. There is no triable issue in this case.

19. In view of the above discussion, I am unable to find any infirmity in the impugned order, so the same is upheld and consequently, the revision petition is dismissed. All the pending applications accordingly stand disposed of.

**GIRISH
KATHPALIA**

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**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 06, 2024/as