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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 04.04.2024
Judgment pronounced on: 08.04.2024

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RC.REV. 313/2019 & CM APPL. 24126/2019

BABU LAL

..... Petitioner

Through: Mr. A.K. Singla, Sr. Advocate with
Ms. Shreya Gupta and Mr. Akshit
Sachdeva, Advocates

versus

ASHOK KUMAR

..... Respondent

Through: Mr. Sanjeev Sharma, Advocates.

CORAM: JUSTICE GIRISH KATHPALIA**JUDGMENT**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioner/tenant has assailed the order of learned Additional Rent Controller whereby application of the present petitioner seeking leave to contest the proceedings under Section 14(1)(e) of the Act was dismissed and consequently eviction order was passed. On notice of these proceedings, 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 ground floor shop bearing No. 1137, Main Bazar, Paharganj, Delhi (hereinafter referred to as “the subject premises”) filed against the present petitioner eviction petition under Section 14(1)(e) of the Act, pleading that the present petitioner was a tenant in the subject premises being used for commercial purposes but now the present respondent *bona fide* requires the subject premises to carry out his business as he has no reasonably suitable alternate accommodation. In his eviction petition, the present respondent pleaded that the premises bearing No. 1136-37, Main Bazar, Paharganj, Delhi were purchased by him from his father Shri Raizada Sanwal Dass Gupta by way of registered sale deed and at that time, the present petitioner who was already a tenant in the subject premises was informed about the said sale; that the present petitioner attorned the present respondent as his landlord and started paying him rent against receipts; that since prior to the said purchase of the subject premises, the present respondent was already in occupation of rear portion behind the subject premises and was running his printing press from there but had to close down the printing press in the year 2004 as he apprehended disconnection of electricity on the ground of misuse of residential property for industrial purposes; that after closing the printing press, the present respondent started trading activity from the said rear portion, but had to close down that also after receipt of notice from the municipal authorities as that portion could be used only for residential purposes; that in the year 2013, the present respondent was allotted a plot of land by DSIIDC in Bawana in lieu of closure of his printing press, but he



could not utilize the said plot on account of his old age, so surrendered the same to the DSIIDC; that he has only one son, who is engaged in independent business; that another shop on ground floor of premises No. 1136, Main Bazar, Paharganj, Delhi is in possession of a tenant and lying locked for past 6-7 years; that he had no reasonably suitable alternate accommodation to start his own business, so he is entitled to an eviction order pertaining to the subject premises.

2.2 On service of summons in the prescribed format, the present petitioner filed an application seeking leave to contest the proceedings, mainly on the grounds that the present respondent is of advancing age and has not been keeping good health, so the requirement of the subject premises as projected by him to carry out business is not *bona fide*; that the Bawana plot was surrendered by the present respondent as due to ill health, he was not able to carry out any business from there; and that the present respondent is in possession of not just two halls in the rear portion of the subject premises but another shop adjacent to the subject premises, though the present respondent has pleaded the said shop to be in occupation of another tenant.

2.3 In his reply to the leave to contest application, the present respondent denied the contents thereof and pleaded that the said application failed to raise any triable issue. The present petitioner filed a rejoinder and after hearing both sides, the learned Additional Rent Controller dismissed the application for leave to contest. Hence, the present petition.



3. During arguments, learned senior counsel appearing on behalf of the petitioner/tenant contended that the impugned order is not sustainable in the eyes of law since the present respondent in the eviction petition did not plead “any requirement, what to say of *bona fide* requirement” of the subject premises, so the eviction petition in itself ought to have been rejected outright. Further, in his elaborate address, the learned senior counsel for petitioner/tenant contended that according to the material on record, the present respondent is in occupation of “abundant” alternate accommodation. Learned senior counsel for petitioner/tenant contended that the main reason behind closure of the printing press followed by trading business was the ill health and old age of the petitioner, therefore, there is no *bona fide* requirement for the subject premises. Learned senior counsel for petitioner/tenant argued that had the present respondent genuinely been interested to start some business, nothing prevented him from using the halls in the rear portion behind the subject premises.

4. On the other hand, learned counsel for respondent/landlord supported the impugned eviction order and contended that the petition is devoid of merits. Learned counsel for respondent/landlord took me through the documents on record in support of his contention as regards *bona fide* requirement of the respondent/landlord.

5. In rebuttal arguments, learned senior counsel for petitioner/tenant referred to para 4 of the eviction petition pointing out that the subject



premises are commercial property, so the halls behind the same could be used by the respondent/landlord for his business.

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, the rival factual matrix can be best understood with the help of the site plan (*pdf page 188 of LCR*) of the subject premises. There are three differently shaded portions of the ground floor premises. The subject premises are shaded red; the two halls with a room behind the subject premises are shaded green; and another room adjacent to and behind the halls is shaded yellow. The subject premises being shop are on the main road while the halls shaded green and the room shaded yellow are at the rear end of the property, next whereto is the property of the other person. It is only the red shaded subject premises which have been assigned number 1137.



8. So far as the room shaded yellow is concerned, admittedly, the same was occupied by another tenant, so not available to the present respondent at the time of institution of the eviction petition or even passing of the impugned eviction order dated 15.01.2019. It is during pendency of the present proceedings that by way of application bearing CM APPL 47107/2022 the learned predecessor bench allowed the present petitioner to place on record a copy of order dated 15.12.2021 of the Rent Controller whereby an eviction order pertaining to the said yellow portion was passed. Firstly, there is nothing on record to show that in compliance with the said eviction order, the said yellow portion stands restored to the present respondent. Secondly, in view of the said yellow portion being at the rear end of the property, next to which is the property of some other person, utility of the same for running shop of the present respondent remains contentious. In any case, the subsequent event in the form of passing of the eviction order *qua* the shop shaded yellow in the site plan cannot be taken into consideration in these proceedings in view of law laid down by this court after detailed analysis of various judicial pronouncements in the case titled: ***Gopal Krishan vs Vijay Kumar Aggarwal & Anr***, 2024:DHC:1977; 2024 SCC OnLine Del 1757.

9. So far as the green shaded halls are concerned, those also being at the rear portion behind the subject premises, utility thereof for running shop of the present respondent would remain contentious. Moreover, as mentioned above, it is admitted case of both sides that the portion in which those halls are situated is a residential portion, so cannot be used for any



other purpose. For clarity, it is reiterated that it is only the subject premises facing towards the main road which according to both sides can be used for running a shop while the halls behind the same can be used only for residential purposes.

10. As regards the Bawana plot, the admitted position is that the present respondent has already surrendered the same long ago, so the same is not available with the present respondent to be used as a shop.

11. Then comes the stand taken on behalf of the present petitioner that looking into the age and health of the present respondent, it is not believable that he would carry out any business from the subject premises, if the same are vacated. In the impugned order, the learned Additional Rent Controller has correctly rejected this argument. The *bona fides* of the requirement set up by the landlord cannot be shrouded with doubts on such presumptive arguments. Merely because the landlord suffers old age and frail health, it cannot be presumed that he does not require the tenanted premises to run his business or is not capable to earn livelihood. There is nothing on record to even feebly suggest that the present respondent is completely bedridden and/or being taken care of financially by his son engaged in the independent business. The surrender of the Bawana plot by the present respondent was because of long distance between Bawana and the place of residence of the present respondent. But that cannot be read to mean that he is incapable of earning his livelihood through business from the subject premises. Merely on account of old age and frail health, a



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person cannot be deprived of right to livelihood and the consequent right to live with dignity.

12. In view of the aforesaid, I am unable to find any infirmity in the impugned order, so the same is upheld and the petition is dismissed.

**GIRISH
KATHPALIA**

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**GIRISH KATHPALIA
(JUDGE)**

APRIL 08, 2024/as