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

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Judgment reserved on: 15.02.2024
Judgment pronounced on: 23.02.2024

+ **RC.REV. 393/2019****SAROJ RANI**

..... Petitioner

Through: Mr. Ajay Kohli and Ms. Dipika
Prasad, Advs.

versus

LALIT KUMAR & BROTHERS

..... Respondents

Through: Mr Asheesh Jain with Mr Gaurav
Kumar and Ms Ria Khanna, Advs.

CORAM:**JUSTICE GIRISH KATHPALIA****GIRISH KATHPALIA, J.:**

1. By way of this petition, brought under the proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioner/landlord has assailed order dated 04.04.2019 of Additional Rent Controller whereby the eviction petition filed by her under Section 14(1)(e) of the Act was dismissed after full dress trial. On service of notice, the respondents/tenants entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, relevant circumstances extracted from pleadings and record are as follows.



2.1 The petitioner, claiming herself to be the owner on the basis of registered sale deed dated 29.12.1986 of the premises bearing no.909/8 to 912/8, Mehrauli Main Bazar, New Delhi, of which the premises no. 912/8 and a *chabutra* (open platform) are the subject premises, filed an eviction petition against the respondents, pleading as follows. The respondents are tenants in the subject premises at monthly rent of Rs.40/- for commercial purposes. The petitioner is in an urgent need of the subject premises for her only son Deepak Goel who was born after seven daughters. The petitioner with her husband and Deepak Goel with his wife and two children are residing at premises no. C-705, Ward No. III, Mehrauli, New Delhi. The petitioner has a *bona fide* requirement of the subject premises for her son so that he may start his own business from there. Presently, son of the petitioner is working from shop of her husband at premises no. 906/4, Ward No. VIII, Mehrauli, New Delhi and is helping her husband in the business of cattle feed and food grain. Now that son of the petitioner is married and has his own family, their needs have grown, so the petitioner wants to settle her son and make him independent through his business in the subject premises. The petitioner would need more space in addition to the subject premises, therefore, she filed another similar eviction petition against her other tenant namely Sh. Khillu Ram qua another property of petitioner bearing no.909/8, Main Bazar, Mehrauli, New Delhi. The petitioner has no reasonably suitable alternate accommodation.

2.2 Upon service of summons in prescribed format, the respondents filed an application for leave to contest the petition and the said application was dismissed vide order dated 21.03.2011 of the Additional Rent Controller.



However, the said order on being challenged by the respondents by way of proceedings under the proviso to Section 25B(8) of the Act, a coordinate bench of this court by way of consent order dated 14.03.2013 set aside the said order dated 21.03.2011 and granted leave to the respondents to contest the eviction petition.

2.3 Thereafter, the respondents filed detailed written statement before the Additional Rent Controller, which followed a replication from the side of the petitioner and full fledged trial. The proceedings before the Additional Rent Controller culminated by way of the impugned order, dismissing the eviction petition.

2.4 In the impugned order, the learned Additional Rent Controller held that the ownership of the petitioner over the subject premises and the *jural* relationship of tenancy between the parties stood established. As regards *bona fide* requirement set up by the petitioner, the learned Additional Rent Controller took a view that for the subject premises there is no *bona fide* requirement of petitioner, because the shop vacated by Sh. Khillu Ram remains not used for starting the business of cattle feed or food grains and it cannot be said that the business of cattle feed and the business of food grains must necessarily be started simultaneously. After detailed analysis of the evidence adduced on record, the learned Additional Rent Controller arrived at the findings that son of the petitioner is actually already engaged in the business, which business has been alleged to be of husband of the petitioner. The learned Additional Rent Controller held thus:



“Therefore, the totality of the fact circumstances strongly suggest that son is in fact running the family business which was earlier being run by the husband of petitioner. However, it is not the case of petitioner that the tenanted shop is required for the expansion of business so as her need may be scrutinized on such anvil. Moreover, PW3 has deposed that the shop from where the business of husband of the petitioner carried out is sufficient for said business. Hence, there is no case of requirement of additional accommodation for the existing business also. Therefore, from the totality of facts and circumstances. I have come to the conclusion that there is no such bonafide requirement of premises as alleged.”

The learned Additional Rent Controller in the impugned order dealt with each of the properties owned by the petitioner and held the same not available to the petitioner except the shop vacated by Sh. Khillu Ram. Regarding that vacant shop, the Additional Rent Controller on the basis of material on record held thus:

“IV. Shop no. 909/8

As per respondent, the aforesaid shop has been vacated by the earlier tenant of the petitioner namely Khillu Ram and hence same is available to the petitioner/her son but same is lying unused. As discussed earlier, the facts and circumstances indeed strongly suggest that said shop is still lying unused. The suitability of said shop has not been disputed by petitioner and the requirement of two shops as alleged by the petitioner stands disproved in view of the findings given regarding the bonafide requirement.

In view of aforesaid discussion, the petitioner has been unable to prove all the ingredients of section 14(1) (e) of DRC Act. Hence, petition stands dismissed. Parties to bear their own costs.”

2.5 Hence, the present petition.

3. During final arguments, learned counsel for petitioner took me through the above mentioned factual matrix and contended that the impugned order of dismissal of the eviction petition is not sustainable in the eyes of law. It was contended on behalf of petitioner that throughout her



pleadings and evidence, the case consistently set up by the petitioner was that she needed two shops for her son to become financially independent, so the shop vacated by Sh. Khillu Ram after passing of the order declining leave to contest cannot be treated as a factor to dismiss the present petition. It was also argued by learned counsel for petitioner that the Additional Rent Controller in the impugned order missed to notice that the subject premises are adjacent to the shop vacated by Sh. Khillu Ram and that being so, the subject premises is the most suitable premises for son of petitioner to start his business instead of expecting him to use his father's shop which is at quite a distance. Learned counsel for petitioner also argued that the Additional Rent Controller arrived at the findings of lack of *bona fide* requirement, wrongly proceeding on parameters as if it was an Income Tax dispute. In support of his argument regarding moral obligation of the petitioner to make her son financially independent, learned counsel for petitioner placed reliance on judgments in the cases titled ***Joginder Pal vs Naval Kishore Behal***, [MANU/SC/0453/2002], ***Ram Babu Aggarwal vs Jay Kishan Dass***, [2009(2) RCER 455 SC], ***Khairati Ram Khanna & Sons vs Krishna Luthra***, [MANU/DE/2576/2010], ***Puran Chand Aggarwal vs Lekh Raj***, [210 (2014) DLT 131] and ***Bhupinder Singh Bawa vs Asha Devi***, [MANU/SC/1473/2016]. In support of his argument that tenant cannot dictate terms to landlord how to use the available premises, learned counsel for petitioner placed reliance on judgements in the cases titled ***Gurcharan Lal Kumarr vs Smt. Satywati & Ors.***, [MANU/DE/1078/2013], ***Sudesh Kumar Soni & Anr. vs Prabha Khanna & Anr.***, [153(2008) DLT 652] and ***Sait Nagjee Purushotham & Co. Ltd. vs Vimalabai Prabhulal and Others***, (2005) 8 SCC 252.



4. On the other hand, learned counsel for respondents/tenants supported the impugned order and contended that the revision petition is devoid of merit. Learned counsel for respondents/tenants argued that there are no clear pleadings that the two shops required by the petitioner have to be adjacent to each other and since husband of the petitioner has passed away, his shop is now being used by her son.

5. In rebuttal, learned counsel for petitioner/landlord reiterated his above submissions and contended that petitioner needs one big space, which can be created using two adjacent shops.

6. At this stage, it would be apposite to briefly traverse through the legal position culled out of various judicial pronouncements, which should be guiding light for this court while exercising jurisdiction under proviso to Section 25B(8) of the Act.

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 *bona fide* 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 *bona fide* requires the tenanted premises should not suffer for long, awaiting eviction. 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 *bona fide* 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 negate the legislative intendment of expeditious remedy in certain specific kind of cases.

6.3 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. 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”. 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. 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.

6.4 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.

6.5 In the case of *Abid-ul-Islam vs Inder Sain Dua* (2022) 6 SCC 30, the Supreme Court recapitulated the legal position as regards scope of proceedings under proviso to Section 25B(8) of the Act and held thus:

“23. Proviso to Section 25B(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.”
(emphasis supplied)

7. Falling back to the present case, the most important aspect to be kept in mind by this court in these proceedings is the settled legal position that in view of extremely limited scope of proceedings under the proviso to Section 25B(8) of the Act, this court has only to ensure that the order impugned in the present proceedings was passed in accordance with law and the same does not suffer the *vice* of perversity in the sense that it cannot be said that no other reasonable person would have objectively arrived at same findings as arrived in the impugned order. It also has to be kept in mind that for the said limited purposes, if after scrutinizing the records this court comes to a finding of fact different from the one arrived at in the impugned order, the



view of the Additional Rent Controller cannot be substituted or supplanted with the view of this court.

8. So far as the judicial precedents cited on behalf of petitioner are concerned, there is no dispute to the legal propositions that the expression “family” with regard to the landlord has to be construed widely to include not just financial dependence but also emotional dependence of the concerned family member; and that being so, moral obligation of the landlord to ensure financial independence of his/her children also has to be kept in mind while dealing with proceedings under Section 14(1)(e) of the Act. There is also no dispute to the legal proposition that the tenant cannot be allowed to dictate the landlord as regards the manner in which the available space should be utilized instead of seeking eviction of the tenant. But in the present case, these are not the issues. In the present case, the issues are as to whether the requirement of the subject premises as projected by the petitioner is a *bona fide* one and as to whether the petitioner has reasonably suitable alternate accommodation.

9. With regard to the above two issues, namely *bona fide* requirement and availability of reasonably suitable alternate accommodation, I traversed through the pleadings and evidence available on trial court record with the limited purpose to ensure that the impugned order was passed in accordance with law and the same is not perverse.

10. As mentioned above, petitioner filed the eviction petition under Section 14(1)(e) of the Act, pleading that she *bona fide* requires two



adjoining shops for her son to commence his business of cattle feed and food grain; and that one of the required shops is the subject premises while the other required shop is the one earlier occupied by her tenant Sh. Khillu Ram, against whom also she filed eviction proceedings and subsequently, Sh. Khillu Ram vacated that shop. The case set up by the petitioner before the Additional Rent Controller was the need to commence the business of her son and not expansion of his business.

11. According to the petitioner, presently her son who has his own family of wife and two children is simply helping his father in the business of cattle feed and food grains. On this aspect, there being self contradictions on the part of petitioner and her son in their testimony as to whether her son is simply helping his father or is salaried employee of the latter, the Additional Rent Controller analyzed the evidence threadbare and it is in this context that the Additional Rent Controller referred to an audit report of business of husband of the petitioner, regarding which learned counsel for petitioner mistakenly referred to traversing through the Income Tax law. Having examined the material on record of the trial court, I find no infirmity in the findings arrived at in the impugned order to the effect that son of the petitioner is actually carrying out the joint family business from the premises where his father was running the shop of cattle feed and food grains. That being so, the petitioner ought to have set up a truthful case that she wants to support her son to expand his business instead of pleading that she wants to settle her son financially by commencing his business from the subject premises.



12. Further, according to testimony of son of the petitioner, the shop which was earlier occupied by Sh. Khillu Ram was vacated in or around the year 2016. It is nobody's case that business of cattle feed and food grains to be run from two shops has to be commenced simultaneously. It remains unanswered as to why till date no business has been commenced by son of the petitioner from the shop vacated by Sh. Khillu Ram despite categorical stand of the petitioner that the said shop also has to be used by her son for business. Rather, according to the testimony of son of the petitioner, the said shop, after the same was vacated by Sh. Khillu Ram, is being used for storage of scrap articles like old boxes and old beds etc. There being no material even before this court that in the past eight years son of the petitioner has commenced even any other business from the shop vacated by Sh. Khillu Ram, I am in complete agreement with the Additional Rent Controller that the requirement of the subject premises as projected by the petitioner was not *bona fide*.

13. Sh. Rakesh Kumar, a neighbour of the petitioner, examined as her attorney PW3 in his cross examination categorically stated that the shop from where the cattle feed business of husband of the petitioner was being carried out has sufficient space for that business. And as mentioned above, the case set up by the petitioner is not of expansion but fresh commencement of business of her son. The factual position, as borne out of evidence on record is that petitioner's son is running the said shop which was earlier being run by his father.

14. It is not a matter of the respondent/tenant or even this court dictating



the petitioner to use the shop vacated by Sh. Khillu Ram or the shop already being run by her son in preference to the subject premises. It is a matter of scrutinizing the genuineness or otherwise of the requirement set up by the petitioner despite availability of reasonably suitable alternate accommodation, which has been lying unused by the petitioner for past eight years. The situation would have been different had the petitioner pleaded that the shop vacated by Sh. Khillu Ram is not reasonably suitable for her son to carry out his business of cattle feed and/or food grains; in such a situation, this court would not have been in a position to foist the said premises on her as reasonably suitable alternate accommodation in view of settled legal position that the landlord is the best judge of reasonable suitability of the alternate accommodation. In the present case, as mentioned above, even according to the petitioner, the shop vacated by Sh. Khillu Ram is certainly suitable for her son to carry out to his business, but admittedly for past eight years it has not been put to use for that purpose.

15. In view of the aforesaid, I find no infirmity in the impugned order, so the same is upheld and the revision petition is dismissed.

**GIRISH
KATHPALIA** Digitally signed by
GIRISH KATHPALIA
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**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 23rd, 2024/ry