



2024:DHC:9670



\$~103

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 27.11.2024***+ **RC.REV. 156/2024 & CM Appl.33074/2024**

SATYA PAL PATHAK THROUGH GPA

.....Petitioner

Through: Mr. Sanjay Katyal and Ms. Devika
Mohan, Advs.

versus

VIJAY KUMAR KAUSHIK

.....Respondent

Through: Mr. Raghunandan Sharma and Ms.
Usha Devi, Advs.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed on behalf of the Petitioner impugning the order dated 02.09.2023 [hereinafter referred to as “Impugned Order”] passed by the learned ARC-01, Central District, Tis Hazari Courts, Delhi whereby the leave to defend Application has been allowed by the learned Trial Court with respect to the premises i.e., 167, Second Floor, Vivekanand Puri, Sarai Rohilla, Delhi-110007 comprising of two rooms, one kitchen, an attached toilet/bathroom, one open lobby and a balcony as shown in red colour in the site plan [hereinafter referred to as “subject premises”].

2. A Coordinate Bench of this Court by its order 29.05.2024 while issuing Notice in the matter had given its *prima facie* view that the Impugned Order cannot be sustained and had directed that the proceedings before the learned Trial Court remain stayed.



2024:DHC:9670



3. The Eviction Petition was filed by the Petitioner seeking eviction of the Respondent from the subject premises. It was contended in the Eviction Petition that the tenancy was created by the Petitioner's father in favour of the Respondent for two years with effect from 01.06.1989 and was extended thereafter up to 2003.

3.1 The Petitioner has stated that after the death of his father, the subject premises devolved upon him by way of inheritance. The requirement as set out in the Eviction Petition was for the *bona fide* need of the Petitioner and for his family members. It was also contended by the Petitioner that the Respondent is not using the subject premises since October, 2021.

3.2 The leave to defend Application was filed by the Respondent wherein the following defences were raised:

- (i) That the Petitioner is not the owner of the subject premises and the landlord was the father of the Petitioner;
- (ii) All legal heirs of the father of the Petitioner have not been impleaded as a party and hence the Petition is not maintainable;
- (iii) The previous Petition filed by the Petitioner's mother under Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as "DRC Act"] has been dismissed and hence, the present Petition is barred by *res judicata*; and
- (iv) The need of the Petitioner is not bona fide since he already has enough accommodation available in the building itself being two rooms on the second floor and one room and kitchen/toilet on the third floor.



2024:DHC:9670



(v) It was further stated that the Petitioner's wife is almost healthy and not suffering from medical problems.

3.3 By the Impugned Order, the learned Trial Court gave its finding that so far as concerns the ownership of the Petitioner over the subject premises, a registered conveyance deed 01.03.1995 has been placed on record by the Petitioner which is in favour of his father and after the death of both his parents, the subject premises has devolved upon the Petitioner by inheritance.

3.4 A finding was also given that the Respondent has admitted the Petitioner to be his landlord but has disputed his ownership. The learned Trial Court has also relied upon a judgment of the Supreme Court in the case titled as *Shanti Sharma v. Ved Prabha & Ors.*¹ and gave a finding that since Respondent has admitted that the Petitioner is the landlord *qua* the subject premises, there is no dispute on the relationship of landlord-tenant and the same stands duly established.

3.5 However, on the availability of suitable alternate accommodation, the learned Trial Court found that a triable issue has been raised "as to whether one room on the ground floor is available for the daughter of the Petitioner or not". A finding was also given with respect to the availability of the room on the third floor, since no details of medical attendants and servants have been disclosed by the Petitioner in his Petition hence, this triable issue has been raised as to whether, the accommodation on the third floor is lying vacant or not.

¹ AIR 1987 SC 2028



4. Learned Counsel for the Petitioner submits that Petitioner is 80 years old and has served in the Indian Army from 1966-1972 and a 1971 war veteran. He is suffering from paralysis, parkinsons, fibrosis of the lungs, hypertension and other ailments which makes him bed ridden. He is also dependent for his day-to-day activities which require him to be fed by a tube and also has surgical intervention for catheterization. It is contended that the Petitioner needs assistance of round the clock medical attendants.

4.1 Learned Counsel for the Petitioner further submits that the wife of the Petitioner is 76 years old and suffering from critical medical ailments including Parkinson, kyphosis, COPD, hypertension etc. and requires '24 X 7 Oxygen' supply with round the clock medical attendance as well.

4.2 It is the case of the Petitioner that given the nature of their ailments, they are both housed in two separate bed rooms that are available on the ground floor of the building. It is submitted that the son of the Petitioner and his family members are living on the first floor and the second floor has two rooms which are uninhabitable as it does not have a bath room and a kitchen. It is further explained that third floor has an open terrace and is being used by the medical attendants.

4.3 It is further stated that the daughter of the Petitioner is 52 years old and a divorcee and after her divorce, she has been residing with the Petitioner. It is contended that the daughter of the Petitioner presently lives on the ground floor where she does not even have a bed room and hence, the subject premises is required for her *bona fide* use.

4.4 The only reason that the learned Trial Court has non-suited the



2024:DHC:9670



Petitioner is that two rooms on the ground floor are available as well as the fact that the rooms on the third floor are available as well and since, the details of medical attendants and servants have not been disclosed in the Petition, triable issue is raised. It is the contended that this finding of the learned Trial Court cannot be sustained. From a review of the medical records and photographs that have been placed on record by the Petitioner, there could possibly be no other conclusion other than the fact that both the Petitioner and his wife cannot be housed in one bed room together. On the aspect of non-disclosure of names of the servants and medical staff, it is stated that medical staff and domestic help did not wish for their names to be disclosed in the Petition as they did not want to be involved in a litigation.

4.5 It is further stated that in view of the fact that the Petitioner suffers from Parkinsons disease, the Petitioner makes involuntary loud sounds which is very disturbing for the wife and they have been advised by the doctors that both parents should not be in the same room.

4.6 Learned Counsel for the Petitioner has further explained that the ground floor has two bed rooms while the first floor is occupied by the son of the Petitioner and his entire family and the second floor has two rooms without the bath room/toilet or kitchen and thus is not habitable. The rooms on the third floor as explained are only servant rooms.

4.7 Lastly, it is contended by the learned Counsel for the Petitioner that the Respondent is not even residing in the subject premises since October, 2022 and this is also evidenced from a perusal of the service report dated 30.07.2024 which states that the concerned person does not reside at the



2024:DHC:9670



given address and that the Petitioner has been served through affixation and through his Counsel who appeared before the learned Trial Court.

4.8 Reliance is placed on the judgment of the Supreme Court in the case of *Abid-ul-Islam v. Inder Sain Dua*² to submit that the Supreme Court has clarified that for availing leave to defend under Section 25-B of the DRC Act, a mere assertion would not suffice as Section 14(1)(e) of the DRC Act creates a presumption qua the bona fide need of the landlord. In order for the same to be rebuttable, the tenant has to show some materials to substance while raising a triable issue which has not been shown.

5. Learned Counsel for the Respondent has submitted that the Petition is mala fide. The Petitioner has sufficient accommodation on the third floor as well as accommodation on the second floor. He submits that the Petitioner's family comprises of six members but they utilise nine rooms in the same building and thus, on the aspect of alternate accommodation, a trial is required to be conducted.

5.1 It is further submitted by the learned Counsel for the Respondent that the need of the Petitioner is fanciful. There is no reason why the daughter of the Petitioner cannot reside in the drawing room on the ground floor which is also a room. However, the Petitioner is shying away from leading evidence as his contentions are mala fide.

5.2 Lastly, it is submitted that the Petition as has been filed by the Petitioner is filed under Section 14(1)(e) of the DRC Act and not under

² 2022 (6) SCC 30



2024:DHC:9670



Section 25B of the DRC Act, thus it suffers from a defect. It is further submitted that the essential ingredient of Section 14(1)(e) of the DRC Act which is an averment that they do not have any other alternate accommodation in the building is absent from the Petition.

5.3 Learned Counsel for the Respondent relied upon the judgment of a Coordinate Bench of this Court in *Sanjay Chug v. Opendar Nath Ahuja & Anr.*³ to submit that in order to attract the provision of Section 14(1)(e) of the DRC Act, the twin thresholds of bona fide need as well as no other suitable accommodation are to be satisfied conjunctively and in the absence of one, the said provision is inapplicable.

5.4 Learned Counsel for the Respondent has relied upon the site plan which was filed by the Petitioner to submit that from a perusal of the site plan annexed with the Petition, it can be seen that there are nine rooms available in the building.

5.5 Learned Counsel for the Respondent has submitted that since the averment of availability of alternate accommodation has not been disclosed in the Petition, the Petition itself is not maintainable.

6. In rejoinder, the learned Counsel for the Petitioner draws attention of the Court to the Eviction Petition, more specifically paragraph 18(a)(F) of the Eviction Petition, to contend that the averment on no alternate accommodation is present in the Eviction Petition and the submission of the Respondent is misconceived and all ingredients of Section 14(1)(e) of the

³ 2014 (207) Delhi Law Times 271



2024:DHC:9670



DRC Act are covered.

6.1 Learned Counsel for the Petitioner further contends that the Petition has been filed under Section 14(1)(e) of the DRC Act and was adjudicated in terms of the procedure as set out under Section 25-B of the DRC Act.

7. The issue that requires examination by this Court is on the basis of which the learned Trial Court has granted leave to defend that is the availability of suitable alternate accommodation both on the ground floor as well as on the third floor. The learned Trial Court has found that whether one room on the ground floor is available or not is a triable issue and since the details of the medical attendants and servants of the Petitioner have not been disclosed, this is also a triable issue. This Court is unable to agree with either ground. Undisputably, the site plan of the subject premises has been filed by the Petitioner along with the Eviction Petition. The site plan shows that there are two rooms, drawing room, dining, kitchen and store and two toilets available on the ground floor. The record available before the learned Trial Court also shows that the Petitioner had filed substantial documents in support of its contentions which included medical documents of the Petitioner along with photographs of the condition of the Petitioner and his wife, the divorce decree of the daughter of the Petitioner as well as her provisional employment certificate.

8. The Eviction Petition also sets out in great detail how the Petitioner and his wife who are 80 and 76 years of age are bed ridden and living in separate rooms. The site plan also evidences that a part of the second floor which is in occupation of the Respondent contains a toilet and a kitchen,



2024:DHC:9670



however, the only space available on second floor is two store rooms while the third floor is primarily an open terrace with one room, toilet and kitchen. This site plan has not been disputed by the Respondent and as stated above, in fact, been used by the Respondent to make submissions before the Court today.

9. This Court has also reviewed the photographs which are available on the record and they reflect the condition of the Petitioner and his wife which is pitiful. The photographs also reflect the fact that at this juncture of their life, they require complete care and round the clock attendance. Clearly, in such a situation, the attendants and medical staff would require to be used within the premises and thus, this Court finds no reason to question the *bona fides* of the Petitioner. No document to the contrary has been shown by the Respondent either.

10. As stated above, there is no dispute with respect to the ownership that has been raised by the Respondent on the relationship of landlord and tenant. The Respondent has admitted that he was earlier the tenant of the father of the Petitioner. The learned Trial Court has given its finding that there is no issue with respect of ownership or challenge to landlord-tenant relationship has arisen. We find no infirmity with the said finding in view of the settled position of law and the provisions of Section 116 of the Indian Evidence Act, 1872.

10.1 The Supreme Court in *Abid-ul-Islam* case has while clarifying that what is required to be shown in the leave to defend Application is that suitability of the premises has to be seen from the perspective of the landlord



and not the tenant. In addition, it has been held that the presumption in favour of the landlord is only rebuttable where there is some relevant material of substance which would evidence a triable issue shown by the tenant. The relevant extract of *Abid-ul-Islam* case is below:

*“15. Section 14(1)(e) carves out an exception to the regular mode of eviction. Thus, in a case where a landlord makes an application seeking possession of the tenanted premises for his bona fide requirement, the learned Rent Controller may dispense with the protection prescribed under the Act and then grant an order of eviction. Requirement is the existence of bona fide need, when there is no other “reasonably suitable accommodation”. **Therefore, there has to be satisfaction on two grounds, namely, (i) the requirement being bona fide, and (ii) the non-availability of a reasonably suitable residential accommodation. Such reasonableness along with suitability is to be seen from the perspective of the landlord and not the tenant.** When the learned Rent Controller comes to the conclusion that there exists a bona fide need coupled with the satisfaction that there is no reasonably suitable residential accommodation, the twin conditions mandated under Section 14(1)(e) stand satisfied.*

xxx

xxx

xxx

*20. Dealing with a pari materia provision, this Court in Baldev Singh Bajwa v. Monish Saini [Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778], was pleased to clarify the aforesaid position **holding the procedure as summary. In such a case, the tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of a declaration sufficient to raise a triable issue. One cannot lose sight of the object behind Section 25-B in facilitating not only the expeditious but effective remedy for a class of landlords,** sans the normal procedural route...*

xxx

xxx

xxx

*17. In Shiv Sarup Gupta v. Mahesh Chand Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] this Court while dealing with the aspect of bona fide requirement has said that the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, refers to a state of mind prevailing with the landlord. **The only way of peeping into the mind of the landlord is an exercise undertaken by the Judge of facts by placing himself in the armchair** of the landlord*



and then posing a question to himself — whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere and honest.

xxx

xxx

xxx

19. ... In our view there are inbuilt protections in the relevant provisions for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of course, subject to the tenant's right to rebut it but with strong and cogent evidence. In our view, in the proceeding taken up under Section 13-B by the NRI landlords for the ejection of the tenant, the court shall presume that the landlord's need pleaded in the petition is genuine and bona fide. But this would not disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.”

[Emphasis supplied]

11. The Supreme Court *Abid-ul-Islam* case further held that before a presumption can be drawn, the landlord is duty bound to place *prima facie* material along with adequate averments to attract the provisions of Section 14(1)(e) of the DRC Act.

11.1 A perusal of the site plan clearly shows the number of bed rooms/habitable rooms available in the entire building. The Eviction Petition also sets out in detail the medical condition of the Petitioner, his wife and other family members. The entire space available is shown as being utilised. Thus, it is clearly not a case of requirement of additional accommodation.



12. The contention of the Respondent that the daughter of the Petitioner can easily reside in the living room of the ground floor is also unsustainable. It is settled law that the tenant cannot dictate terms to the landlord.

12.1 The Supreme Court in the case of ***Prativa Devi (Smt) v. T.V. Krishnan***⁴ has held that tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. This Court while relying on the ***Prativa Devi case*** has in a case titled ***R.S. Chadha (thr. SPA) v. Thakur Dass***⁵ held:

“13.1 It is settled law that the tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. It is also not for the Courts to adjudicate that the landlord has a bonafide need or not. The Courts will generally accept the landlords need as bonafide. The Supreme Court in the case of Prativa Devi (Smt) v. T.V. Krishnan [(1996) 5 SCC 353] has directed:

*“2. The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv Nath Mukherjee, has been staying as a guest with Shri N.C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjung Enclave, New Delhi. There is nothing to show that she has any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. **The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.** The High Court is rather solicitous about the age of the appellant and*

⁴ (1996) 5 SCC 353

⁵ 2024 SCC OnLine Del 47



thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances."

13.2 In any event, it is only the Respondent/landlord and his family who can decide what is sufficient space as per their needs and requirements. Sufficiency of residential accommodation for any person would essentially be dependent on multiple factors, including his living standard and general status in society. In view of the fact that admittedly the Respondent/landlord has a large family, it is not open to the Petitioner/tenant to contend that requirement of 6 rooms as pleaded by the Respondent/landlord, is not bonafide.

13.3 The Trial Court has dealt with the sufficiency of accommodation of the Respondent/landlord in the Impugned Order. This Court finds no reason to impugn these findings."

[Emphasis supplied]

13. So far as concerns, the issue of details of medical attendants and servants not being provided, this finding cannot be sustained in view of the fact that the Respondent has not placed anything on record to show contrary. The medical records and photographs which have been placed on record by the Petitioner undoubtedly reflects the various illness from which the Petitioner and his wife suffers which include paralysis, parkinsons, fibrosis of the lungs, hypertension, etc. Thus, whether or not they require round the clock attendance cannot possible be a triable issue.

14. The only other averment made by the Respondent before this Court is with respect to Section 14(1)(e) of the DRC Act that there is no averment in



the Petition that shows that the Petitioner does not have any suitable alternate accommodation. This contention is also belied from the record itself. As stated above, the Eviction Petition in paragraph 18(a) F and G clearly sets out that son and daughter of the Petitioner and the Petitioner himself do not own any other premises in Delhi and that all medical facilities are available to the Petitioner and his wife near the subject premises and it will not be possible for them to shift anywhere. Paragraph 18(a) F and G of the Eviction Petition are reproduced below:

“18...

F. That the son, daughter, wife of the Petitioner and Petitioner himself does not own any other premises in the vicinity of the Delhi.

G. That the Petitioner further submits all medical facilities are available near the premises and for this reason, the Petitioner will not be able to shift anywhere.”

15. Reliance placed by the Respondent on the judgment of a Coordinate Bench of this Court in ***Sanjay Chug*** case can be distinguished as the facts in that case were that the Petitioner in the ***Sanjay Chug*** case had several properties and the Court found that the Petition was filed *prima facie* for the purpose of requiring additional accommodation. The facts are thus entirely distinguishable and reliance cannot be placed on this decision by the Respondent to ‘non-suit’ the Petitioner. The relevant extract is below:

“18. In the present case, it is also the case of the petitioner that the respondents have various other properties and their family members including sons and wife, for their purpose the tenanted premises is required. The details given by the petitioner of said properties are referred as under:

i) Property No. 29/3, UGF, Front Side, East Patel Nagar, New Delhi.

ii) Property No. 6/11, 1st Floor, Front Side, East Patel Nagar,



2024:DHC:9670



New Delhi.

iii) 45/6, 1st Floor, East Patel Nagar, New Delhi.

iv) 12/11, Ground Floor, East Patel Nagar, New Delhi.

v) House No. 652 in Khasra No. 336, Village Bijwasan, New Delhi.

vi) B2-4, Mahatta Tower, 54, B-Block, Community Centre, Janakpuri, New Delhi.

vii) Entire property No. 9/21, East Patel Nagar, New Delhi consisting of Ground Floor, First Floor and Second Floor.

xxx

xxx

xxx

21. From the facts of the eviction petition and reply to the application for leave to defend, prima facie, it appears that the respondents have filed the petition for the purpose of requiring additional accommodation. Presently, two sons of the respondents are using the commercial space for sale of paints, hardware and sanitary items.

xxx

xxx

xxx

24. Admittedly, in the present case, the respondents have in their possession of commercial accommodation from where their two sons are operating business, their need projected would be nothing but that an additional accommodation for setting up a new business by one of son or expanding the existing business. The projected requirement is to be examined at the time of trial. If the leave to defend is refused, an opportunity to test the requirement as averred by landlord is denied which is not the scheme of the Act.”

[Emphasis supplied]

16. The examination of this Court in revisionary jurisdiction has also been discussed as limited as circumscribed in the judgment of *Abid-ul-Islam* case. The Supreme Court in the *Abid-ul-Islam* case while relying on the judgment in the case of *Sarla Ahuja v. United India Insurance Co. Ltd.*⁶ has clarified these revisional powers and the scope and ambit of the proviso to Section 25B(8) of the Delhi Rent Control Act, 1958. It has been held that the Legislature was very clear in its intent to consciously remove the right of

⁶ (1998) 8 SCC 119



two stages of appeal and replace it with the power of revision. The scope of interference has been confined to an error apparent showing absence of adjudication *per se*, the High Court should not interfere with a decision of the learned Trial Court. It was further held that the suggestion of the High Court must confine itself to the limited sphere and examination that the order of the Rent Controller is in accordance with law and that the Rent Controller has reached such a finding based on the facts in issue. The following extract is relied upon:

*“23. The proviso to Section 25-B(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]

16.1 A similar view has been taken by the Supreme Court in ***Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta***⁷ where revisional powers of this Court as set forth in the proviso to Section 25B(8) of the DRC Act have been explained in the following extract:

“11. ...Under the proviso to sub-section (8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is “for the purpose of satisfying if an order made by the

⁷ (1999) 6 SCC 222



2024:DHC:9670



Controller is according to law". The revisional jurisdiction exercisable by the High Court under Section 25-B (8) is not so limited as is under Section 115 CPC nor so wide as that of an appellate court. The High Court cannot enter into appreciation or reappraisal of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'"

[Emphasis supplied]

17. In view of the above discussions, the Impugned Order cannot be sustained and is set aside. The Respondent is, however, granted six months to vacate the subject premises in terms of Section 14(7) of the DRC Act.

18. Accordingly, the Petition and pending Application stand disposed of.

TARA VITASTA GANJU, J

NOVEMBER 27, 2024/r

[Click here to check corrigendum, if any](#)