



2024:DHC:9369



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 20.11.2024

+ **RC.REV. 191/2024 & CM Appl.40880/2024**

SH. PAWAN DURGANI & ANR.

.....Petitioners

Through: Mr. Kuldeep Rai and Ms. Rehana,
Advs.

versus

SH. RAJENDER PRASAD JAIN

.....Respondent

Through: Mr. Ashok Kumar Sharma, Adv.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.:** (Oral)**CM Appl.40881/2024/Exemption from filing certified copies]**

1. Allowed, subject to just exceptions.
2. The Application stands disposed of.

RC.REV. 191/2024 & CM Appl.40880/202/Stay]

3. The present Petition has been filed on behalf of the Petitioners impugning the order dated 21.02.2024 [hereinafter referred to as "Impugned Order"] passed by the learned CCJ-cum-ARC (Central), Tis Hazari Courts, Delhi. By the Impugned Order, the leave to defend Application filed by the Petitioners has been rejected with respect to the premises i.e., shop forming part of property bearing no. 5211, Kohlapur Road, Subzi Mandi, Delhi 110007 [hereinafter referred to as "subject premises"].
4. Learned Counsel for the Petitioners has raised one issue in the matter. He submits that the Petitioners have been running their business from the subject premises for the last almost 30 years. He further submits that there is no *bona fide* need of the Respondent for the subject premises and this aspect



is a triable issue.

5. On the other two requirements of Section 14(1)(e) of the Delhi Rent Control Act, 1958 i.e., the landlord-tenant relationship and the ownership, the same have not been disputed by the Petitioners and the suitable alternate accommodation also has not been disputed. Hence, the only issue that has been raised is the need of the Respondent is not *bona fide*.

6. It is settled law and has been dealt in the Impugned Order that the landlord is required to show that he has a bona fide need. The bona fide need as shown in the Eviction Petition is that the younger son of the Respondent requires to set-up a business and that the Respondent wishes to settle his son. The need of the Respondent thus cannot be said to be *not bona fide*.

7. The Supreme Court in the *Abid-ul-islam v. Inder Sain Dua*¹ while relying on the judgment in the case of *Sarla Ahuja case* has clarified the scope and ambit of the proviso to Section 25-B(8) of the Act. It has been held that the Legislature was very clear in its intent to consciously remove the right of 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 Trial Court. It was further held that the suggestion of the High Court must be confined to the limited sphere that the order of the Rent Controller is in accordance with law and that the Rent Controller would have reached such a finding based on the facts involved, as follows:

*“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,***

¹; (2022) 6 SCC 30



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]

8. After some arguments, learned Counsel for the Petitioners seeks some time to vacate the subject premises.
9. Learned Counsel for the Respondent, on instructions from the Respondent, submits that the Respondent is agreeable to grant the Petitioners three-month time for vacation of the subject premises.
10. In view thereof, let an Undertaking by way of an Affidavit be filed by the Petitioners, within a period of one week undertaking that:
 - (i) The Petitioners shall hand over the physical possession of the premises i.e., shop forming part of property bearing no. 5211, Kohlapur Road, Subzi Mandi, Delhi on or before 28.02.2025;
 - (ii) The vacant, physical and peaceful possession of the subject premises will be handed over by the Petitioners to the Respondent on or before 28.02.2025;
 - (iii) The Petitioners undertakes and confirms that the entire subject premises are under their occupation and control;
 - (iv) The Petitioners will pay all the utility bills such as electricity and water and any other dues, for the subject premises till the date of handing over of the vacant, physical and peaceful possession thereof;
 - (v) The Petitioners undertakes that they will not create any third party



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rights or part with possession of the subject premises and that they shall not damage the subject premises in any manner whatsoever prior to its vacation;

(vi) The Petitioners shall remain bound by the aforesaid Undertaking.

11. An advance copy of the Undertaking shall be served on the Respondent.

12. Learned Counsel for the Respondent is at liberty to file appropriate proceedings for recovery of rental/user and occupation charges in accordance with law.

13. Subject to the Petitioners filing the aforesaid Undertaking before this Court within two weeks from today, execution of order dated 21.02.2024 shall remain stayed.

14. In the event that the Petitioners defaults in complying with the terms of the Undertaking filed, the interim protection granted hereinabove shall automatically stand dissolved and Respondent will be at liberty to take recourse to appropriate proceedings for recovery of possession from the Petitioner/tenant, in accordance with law.

15. The present Petition and pending application is accordingly disposed of.

16. List for compliance on 13.12.2024 in the supplementary list.

17. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

NOVEMBER 20, 2024/r

Click here to check corrigendum, if any