



2024:DHC:8630



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

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Date of Decision: 25.10.2024+ **RC.REV.293/2022****SMT RASHIDA BANO**

.....Petitioner

Through: Mr. Sunil Dutt Dixit, Mr. Shashwat
Dixit and Ms. Gauri Dixit, Advs with
Son of the Petitioner in person.

versus

MST YASMEEN BEGUM

.....Respondent

Through: Mr. M.S. Khan, Ms. Neha Khan &
Ms. Sheziya, Advocates.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J. (ORAL)**

1. The present Petition has been filed impugning the Order dated 31.10.2022 passed by the learned Trial Court [hereinafter referred to as the "Impugned Order"] with respect to the property bearing No. 1591, Portion of 3rd floor, Kucha Dakhani Rai, Pataudi House, Darya Ganj, New Delhi-2 [hereinafter referred to as the "subject premises"].

1.1 By the Impugned Order, the Application for Leave to Defend/Contest filed by the Petitioner/tenant dated 22.10.2020 has been dismissed and an Eviction Order has been passed.

2. This Court had by its order dated 18.12.2023 passed an order affixing the user and occupation charges in the sum of Rs.15,000/- per month in



terms of the Judgment passed by the Supreme Court in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd*¹.

2.1 The parties confirm that the user and occupation charges are being paid although it is contended, belatedly, and that the user and occupation charges have been paid for the period until October, 2024, which, as stated, were paid on 24.10.2024.

3. Learned Counsel for the Petitioner/tenant has raised several contentions. It is submitted that the Respondent/landlord is neither the owner nor the landlord of the subject premises. In addition, it is contended that no document has been placed on record with regard to the purchase of the subject premises by the Respondent/landlord. Further, no notice of attornment has been placed on record by the Respondent/landlord. He further submits that the Petitioner/tenant has been residing in the subject premises since the last 35-40 years along with her family members.

3.1 Learned Counsel for the Petitioner/tenant has further contended that the Impugned Order has been passed in respect of the property bearing No.1591 portion of 3rd Floor, Kucha Dakhani Rai, Pataudi House, Darya Gani New Delhi-110002, and since the Petitioner/tenant is in the occupation of property bearing municipal No. 1592 on the third floor, the Impugned Order does not pertain to the Petitioner/tenant.

4. Learned Counsel for the Respondent/landlord, on the other hand,

¹ (2005) 1 SCC 705



submits that so far as concerns the issue *qua* the municipal number of premises not tallying, the same is an after-thought and being raised for the first time before this Court. He further submits that the Affidavit dated 22.10.2020 filed along with Leave to Defend/Contest Application shows that the Petitioner/tenant herself is stated to be a resident of properties bearing Nos. 1590-1592. In addition, it is contended that the Aadhar card of the Petitioner's daughter states her address as being property No.1590 which has been filed along with her Petition.

4.1 It is explained by the learned Counsel for the Respondent/landlord that as is the case in many of the properties in old Delhi, multiple numbers are assigned to one building. It is contended that the subject premises is situated in one building and various rooms/shops contained in this building have different numbers, such as 1590, 1591 and 1592. However, these municipal numbers all pertain to the same building. It is further contended that the Petitioner/tenant is residing in one portion of the third floor of the said building which is compositely addressed as 1590-1592.

5. It is further contended that the family of the Respondent/landlord comprises of six family members, and the bonafide need, as has been prayed for in the Eviction Petition, is for the residence of the Respondent/landlord and the family of her son and daughter. The Respondent/landlord in her Eviction Petition had set out the names and details for all her family members, including her husband (who expired during the pendency), herself, her son and her 3 daughters comprising of six permanent members.



It is contended that the married daughter of the Respondent/landlord also regularly visits the accommodation and the need, as projected in the Eviction Petition, is for the residence of her dependant family members.

5.1 Learned Counsel for the Respondent/landlord further submits that on the issue of *bona fide* need, it is also settled law that the landlord is the best judge of his residential requirement. In this regard he seeks to rely upon the judgment of the Supreme Court in the case of ***Shiv Sarup Gupta Vs Dr. Mahesh Chand Gupta***².

6. Learned Counsel for the Respondent/landlord further submits that although the relationship of landlord and tenant is disputed, it is not that the Petitioner/tenant claims to be the owner. The Petitioner/tenant is merely stating that the Respondent/landlord is not the owner without any basis whatsoever.

7. Learned Counsel for the Respondent/landlord seeks to rely upon the provisions of Section 116 of the Indian Evidence Act, 1872 along with judgments passed by this Court in the cases of ***Jiwan Lal vs Gurdial Kaur and Others***³, ***Smt Shanti Sharma & Ors. vs Smt. Ved Prabha & Ors.***⁴ and ***Ramesh Chand vs Uganti Devi***⁵, to say that it is settled law that it is sufficient for the landlord to prove or show that he is more than just a tenant.

8. So far as concerns the issue of alternate accommodation, reliance is

² AIR 1999 SC 2507

³ (1995) 57 DLT 262

⁴ AIR 1987 SC 2028

⁵ (2009) 157 DLT 450



placed on paragraph 9 of the Impugned Order by the Learned Counsel for the Respondent/landlord to submit that all the alternate accommodations, which are mentioned by the Petitioner/tenant, have already been dealt with in the Impugned Order. It is contended that these premises were sold by the husband of the Respondent/landlord much prior to the filing of the Eviction Petition, thus, these premises are not available.

9. In order to adjudicate a Petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as "DRC Act"], three main ingredients are to be present. The first being the plea of landlord-tenant relationship and of the ownership of the subject premises being present. The second being the bonafide need of landlord. The third being the availability of suitable additional/alternate accommodation.

10. The learned Trial Court has found that in the facts of the present case, the Respondent/landlord has established all ingredients of Section 14(1)(e) of the DRC Act. The learned Trial Court has also found that so far as concerns the bonafide need, considering the size of the family, the demand seems to be genuine and no doubts as to the bonafides of the Respondent/landlord exist which would require trial.

11. The Petitioner has not denied the size of the family of the Respondent/landlord. What has been contended however is that the Petitioner/tenant is not the tenant of the Respondent/landlord. However, no document was placed on record before the learned Trial Court or this Court evidencing their ownership. On a query put by the Court as to whether the



Petitioner/tenant had filed any proceedings challenging the title of Respondent/landlord in a civil Court, the response was in the negative by the Petitioner/tenant.

11.1 The contention of the Petitioner/tenant is that the Respondent/landlord is not the owner of the premises was taken by the Petitioner/tenant before the learned Trial Court and has adequately been dealt with by the learned Trial Court in Paragraphs 7 and 8 of the Impugned Order which are reproduced below:

*"7. It is settled principle that in an eviction petition under Section 14(1)(e) DRCA, a landlord is not required to prove his ownership in absolute terms over the tenanted premises but only required to show that he/she is more than a tenant (refer "Rajender Kumar Sharma vs. Smt. Leela Wati", 155 (2008) DLT 383). In the present case, **the petitioner has already placed on record the copy of her sale deed by virtue of which she has become owner of the tenanted premises. Respondent is not claiming under the said sale deed or Will to be entitled to challenge such documents.** Her objection that the Will has been registered after the death of the testator is also legally unsound in view of Section 40, Registration Act, which permits such post-death registration. Thus, all the objections surrounding the authenticity of the sale deed stand rejected.*

*8. Petitioner has been able to prove her ownership qua the respondent. The documents/ sale deed filed by her already bear the name of respondent as the tenant in the property. **On the other hand, respondent has not placed anything on record to show that if not the petitioner, then who else is the owner. She has also not been able to show under what capacity she is residing in the property, if not as petitioner's tenant. Simply by denying petitioner's ownership and claiming that the property is an Evacuee property without any supporting material is neither sufficient nor a plea capable of raising a triable issue. The documents/utility bills filed by her only show her occupation over the premises which is otherwise also not in dispute.***

In view thereof, it has to be held that the petitioner is the owner of the tenanted premises and that there exists a landlord-tenant relationship between the parties. The objection taken to the contrary stands overruled."

[Emphasis supplied]



12. The Supreme Court in the *Shanti Sharma* case has held that the term 'owner' in the context of the provisions of Section 14(1)(e) of DRC Act, a tenant *viz-a-viz* should mean more than a tenant. The relevant extract reads as follows:

"14. The word "owner" has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and in this view of the matter it could not be thought of that the legislature when it used the term "owner" in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term "owner" has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase "owner" thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term "owner" is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term "owner" as is contemplated under this section. This term came up for consideration before the Delhi High Court and it was also in reference to Section 14(1)(e) and it was held by the Delhi High Court in *T.C. Rekhi v. Smt Usha Gujral* [1971 RCJ 322, 326 (Del HC)] as under:...."

[Emphasis supplied]



13. A Coordinate bench of this Court in *Jiwan Lal v. Gurdial Kaur & Ors.*⁶ case has held that there is a tendency on the part of the tenants to deny ownership in cases under Section 14(1)(e) of the DRC Act, however, these petitions are not title cases involving disputes of title to the property and ownership is not to be proved in absolute terms. The relevant extract of the judgment is reproduced below:

"3. There is a tendency on the part of tenants to deny ownership in cases under Section 14 (1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner." In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the ownership of the premises. He is only a tenant and according to him was inducted by Kuldip Kaur, daughter of deceased Raghubir Singh. Raghubir Singh held lease of the premises from Kanna Mal Chhanna Mal. AW 1 Smt. Gurdayal Kaur has stated that the lease of the property was in the name of her husband Raghubir Singh and after his death she has inherited the same. House tax bill AW 1/2 is in the name of Raghubir Singh. Therefore, I do not find anything to disturb the finding of the Court below on this point."

[Emphasis supplied]

13.1 The ratio of the *Jiwan Lal* case squarely applies to the fact of the present case. Thus, the Court finds no merit in this contention of the Petitioner/tenant

14. The aspect of *bona fide* need of the Respondent/landlord has not been pressed before this Court. In any event the *bona fide* as set out in this eviction petition was for the use of residence of the Respondent/landlord and her family members who are six in number and that they are residing in a

⁶ 1995 SCC OnLine Del 18 : (1995) 57 DLT 262



part portion of the building, and thus, the only suitable accommodation for Respondent/landlord's family members would be another part of the same building and this aspect has not been disputed by the Petitioner/tenant.

15. In the *Anil Wadhwa & Anr. Vs. M.M.L. Kapur*⁷, this Court while adjudicating upon the bonafide need of the landlord for his residence purposes and the suitability of the alternative accommodation, has held that the need is required to be examined keeping in mind a host of factors, including the way of living of landlord and their family member, and the convenience and safety. The relevant extract reads as follows:

"21. The Supreme Court in the case of M.L. Prabhakar v. Rajiv Singal [(2001) 2 SCC 355], has also directed that the suitability of the alternate accommodation is to be seen basis on the basis of the way of living landlord and his family members as follows:

"8. It is thus to be seen that the suitability has to be seen from the convenience of the landlord and his family members and on the basis of the totality of the circumstances including their profession, vocation, style of living, habits and background."

[Emphasis supplied]

16. The Supreme Court in the case of *Shiv Sarup Gupta* case has held that alternate accommodation available must be suitable in comparison to the premises from where the landlord is seeking eviction, and in this regard, the convenience and safety of the landlord and his family members would be of relevance. The relevant extract is reproduced below:

"14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all

⁷ 2024 SCC OnLine Del 7



respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. *Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.*”

[Emphasis supplied]

17. On the aspect of suitability of this accommodation in view of the fact that the Petitioner/tenant is residing in another part of the subject premises, the portion occupied by the Petitioner/tenant would be most suitable for Respondent/landlord.

18. The only other issue pressed before this Court was the issue regarding the municipal numbers of the subject premises being at variance from the number where the Petitioner/tenant was residing. It was contended by the Respondent/landlord that the Petitioner resides in building which has multiple numbers, and that the Petitioner/tenant was aware of the same.



18.1 The record shows that the Affidavit which was filed alongwith the Application for Leave to Defend/contest shows that the Petitioner herself gives her address as 1590-1592 third floor, Kucha Dakhani Rai, Pataudi House, Darya Ganj, New Delhi-110002. Thus, the Petitioner/tenant has admitted her address in her Affidavit annexed alongwith her Application for leave to defend to include that of the subject premises. In addition, the address of her daughter (who resides with her in subject premises) in her Aadhaar card is shown to be No. 1590.

19. This Court in *Vijay Singh v. Sher Singh*⁸ while relying on the judgements of Supreme Court in *Ariane Organchem Private Limited v. Wyeth Employees Union*⁹ and of this Court in *K.B Watts v. Vipin Kalra*¹⁰, clarified that a defence not taken by the Petitioner/tenant before the Trial Court cannot be taken in a revision before this Court, as no evidence can be permitted to be adduced on an issue unless a factual foundation for the same has been raised and only a pure legal issue can be raised at any stage in the proceedings. The relevant extract of *Vijay Singh case* reads as follows:

“14. Admittedly, the issue with respect to non-applicability of the DRC Act was not raised by the Petitioner/tenant either in his Leave to Defend Application or in his Written Statement. As a consequence thereof, no evidence was led by either party on this issue. Thus, there is no discussion on this aspect in the Impugned Order.

15. The Supreme Court in Ariane Organchem case while relying on the Judgment of National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad [(2011) 12 SCC 695)] has held that no evidence can be permitted to be adduced on an issue unless a factual foundation for the same has been

⁸ 2023 SCC OnLine Del 7929

⁹ (2015) 7 SCC 561

¹⁰(2015) 220 DLT 402



raised and only a pure legal issue can be raised at any stage in the proceedings. The relevant extract of the National Textile case reads as follows:

“18. In view of the above, the law on the issue stands crystallised to the effect that a party has to take proper pleadings and prove the same by adducing sufficient evidence. No evidence can be permitted to be adduced on a issue unless factual foundation has been laid down in respect of the same.

19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, **however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings.** [See Sanghvi Reconditioners (P) Ltd. v. Union of India [(2010) 2 SCC 733 : AIR 2010 SC 1089] and Greater Mohali Area Development Authority v. Manju Jain [(2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639 : AIR 2010 SC 3817].]”

[Emphasis supplied]

16. As stated above, no pleadings have been made with respect to this issue and neither has any evidence been led by the Petitioner/tenant in this regard before the Trial Court.

17. It is no longer res integra that a defence not taken by the Petitioner/tenant before the Trial Court cannot be taken in a revision before this Court. [See : K.B. Watts v. Vipin Kalra [(2015) 220 DLT 402] and Swaranjit Singh v. Saroj Kapoor [2023 SCC OnLine Del 7396] in this regard].”

[Emphasis supplied]

19.1 Undisputably, this issue that the Petitioner/tenant was not residing in the subject premises (1591) but was residing in 1592, was not raised by the Petitioner/tenant in her Application for Leave to Defend. In addition, no reason or explanation has been given by the Petitioner/tenant in the Revision Petition as to why this ground was not agitated before the learned Trial Court. None is offered before this Court either. In these circumstances and



given the affidavit of the Petitioner/tenant, this Court finds no reason to doubt the submissions of the Respondent/landlord about the subject premises being housed in a building containing shops/premises with multiple numbers. This Court also finds merit in the contention of the Respondent/landlord that this issue has only been raised before this Court to delay adjudication of the Revision Petition.

20. The powers of the Court in revisionary jurisdiction are supervisory and this aspect has been reiterated by the Supreme Court in the case of *Abid-ul-Islam vs Inder Sain Dua*. This Court in *Anil Wadhwa* case discussed these powers and held:

“15. The Supreme Court in Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta [1999 (6) SCC 222] has explained the powers of this Court, as revisional in nature, 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 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]

21. In view of the foregoing discussions, and in any event, this Court finds that the Impugned Order does not suffer from any infirmity which would merit interference by this Court in revisional jurisdiction. The Respondent/landlord has established all ingredients of Section 14(1)(e) of the DRC Act.



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22. The Petition is accordingly dismissed.
23. Parties shall act based on a digitally signed copy of the order.

OCTOBER 25, 2024/ha/r

TARA VITASTA GANJU, J

Click here to check corrigendum, if any