



2024:DHC:10076



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 18.12.2024

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RC.REV. 294/2024**MUNNI DEVI****.....Petitioner**

Through: Mr. Nishant Mandal, Mr. Jitendra Thakur, Mr. Rajiv Ranjan Shukla, Mr. Rahul Dev and Mr. Raman Raj Gangwar, Advocates.

versus

M/S OLIVE EXIM PVT. LTD. & ORS.**.....Respondents**

Through: Mr. Ankur Mahindro, Mr. Shubham Aggarwal, Mr. Soumil Gonsalves and Ms. Vishali Sivagnanam, Advocates.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CM APPL. 62704/2024 [*Delay in filing the Petition*]**

1. This is an Application seeking condonation of delay of 55 days in filing the present Petition.
2. For the reasons stated in the Application, the delay is condoned.
3. The Application stands disposed of.

RC.REV. 294/2024, CM APPL. 62703/2024 [*Additional documents*], **CM APPL. 62705/2024 [*Stay*], **CM APPL. 74359/2024 [*For placing additional document on record*] & **CM APPL. 74358/2024 [*Stay*]******

4. The present Petition has been filed impugning an Order dated 16.04.2024 passed by the learned SCJ cum RC (Central District), Tis Hazari Courts, Delhi by which leave to defend/contest Application filed by the Petitioner/tenant was dismissed. The parties have been briefly heard in the



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matter.

5. Learned Counsel for the Petitioner/tenant has raised two contentions. In the first instance, he submits that the provision to run/construct a hotel or as was the bona fide need placed on record by the Respondents/landlords in the Eviction Petition, is not present in the Articles of Association and Memorandum of Association [hereinafter referred to as “MoA”] of the Respondent/company and thus, the need of the Respondent/company is not bona fide. In addition, it is contended that the Respondent/company “*is barred by law from filing the present Petition.*” However, the Petitioner/tenant has been unable to show which law the Respondent/company is barred by law to file the Petition. Learned Counsel for the Petitioner/tenant has also drawn the attention of the Court to paragraphs 4, 5, 6 and 9 of the application for Leave to Defend in this regard, to submit that triable issues were raised.

6. During the course of arguments, in view of the objections raised by the Petitioner/tenant, learned Counsel for the Respondents/landlords has handed over a compilation of documents which includes the amended Memorandum of Association of the Respondent/company. The Petitioner has also placed on record a Memorandum of Association of the Respondent/company before this Court. However, it is admitted by the Petitioner/tenant that this is a new document which was not placed before the learned Trial Court.

7. Learned Counsel for the Respondent/Company has submitted that the Court in an Eviction Petition is required to examine three aspects in a Petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958. In the



first instance, the relationship of landlord-tenant/ownership of the subject premises. Secondly, the bona fide need coupled with alternate suitable accommodation, as the third ingredient.

8. It is contended that so far as the availability of alternate suitable accommodation is concerned, the Petitioner/tenant in his Affidavit filed along with the leave to defend in Paragraph 10 has set out that the property bearing 2517, Nalwa Gali, Chuna Mandi, Paharganj, Delhi, is available, when in fact this is the subject premises. Secondly, he submits that so far as the bona fide need is concerned, he seeks to rely upon Clause 7 of the MoA of the Respondent/company wherein the Respondent/company amongst its main objects, also has an object to take over/construct houses, hotels, guest houses, etc. across the country and abroad. The relevant extract of Paragraph 7 of the MoA is below:

“7. To establish, conduct, manage, takeover, construct, acquire, purchase, sell, lease, rent, promote, develop and run holiday resorts, boarding and lodging houses, hotels, restaurants, cafes, resorts, vacation resorts, villas, commercial and residential buildings, warehouses, shared workplaces, castles, inns, houses, motels, rest houses, guest houses, cottages, holiday camps, spas, health rejuvenation centres, housekeepers, clubs, breweries, pubs, bars, swimming pool and other facilities, accommodations of all descriptions across the country and abroad. To carry on the business of providing food, drink, entertainment, accommodation and other facilities for customers, guests and general public, act as caterers, event planners.”

9. Learned Counsel for the Respondents/landlords thus submits that this objection raised by the Petitioner/tenant is without any merit.

10. On the aspect of the challenge the landlord-tenant relationship/ownership of the Respondent, learned Counsel for the Respondents/landlords draws the attention of the Court to the discussion in



the Impugned Order, more specifically Paragraphs 19-22 of the Impugned Order to submit that the Petitioner/tenant has already admitted during the arguments on leave to defend, as is recorded by the learned Trial Court that the Petitioner/tenant is tendering rent to Respondents/landlords. It is thus contended that based on this admission, the learned Trial Court found that jural relationship of landlord and tenant is admitted and thus, there is no triable issue *qua* this aspect.

11. On the aspect of ownership, learned Counsel for the Respondents/landlords submit that it is a settled law that all that a landlord is required to show is that he has a better title than the tenant and that the Respondent/landlord is relying on a sale deed dated 06.08.2010 executed in favour of the Respondents/landlords in support of their title.

12. The learned Trial Court found that although contention was raised by the Petitioner/tenant regarding the *bona fide* need of the Respondent/company, there was no document placed on record by the Petitioner/tenant in support thereof. The learned Trial Court analysed this objection and held that there is no impediment for a company to start a new business. Reliance is also being placed by the learned Counsel for the Respondent on the judgment of a Coordinate Bench in ***Tilak Raj Chadha v. Vijay Kumar Arora***¹ to submit that a company at any point can commence a new business.

13. The Supreme Court ***Abid-ul-Islam v. Inder Sain Dua***² has held that the jurisdiction of this Court is only revisionary in nature and limited in

¹ MANU/DE/3604/2016

² (2022) 6 SCC 30



scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the said Act has held that this is a conscious omission. The High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the face of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. The relevant extract of the *Abid-ul-Islam* case is as follows:

“Scope of revision

“22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.

*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.

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25. The aforesaid decision has been recently considered and approved by this Court in Mohd. Inam v. Sanjay Kumar Singhal [Mohd. Inam v. Sanjay Kumar Singhal, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)

“22. This Court in Sarla Ahuja v. United India Insurance Co. Ltd. [Sarla Ahuja v. United India Insurance Co. Ltd., (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word “revision” was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)

‘11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.’

It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.”

[Emphasis supplied]

14. This Court has examined the challenge of the Petitioner/tenant. The leave to defend Application filed by the Petitioner/tenant before the learned Trial Court raises several issues, including adverse/hostile possession of the subject premises. An issue is also raised that the property belongs to Delhi Development Authority and the Petitioner/tenant has also gone to the extent of saying that the property was earlier used for keeping “the Britisher’s horses” in Affidavit filed with Leave to Defend Application. However, the



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examination of all these contentions raised in the leave to defend is not necessary to be undertaken by this Court since they have not been supported by any documents.

15. In any event and as stated above, the examination in revisionary jurisdiction is limited to an examination of the Impugned Order. The learned Trial Court has given a finding based on the documents filed as well as on the factum of admission by the Petitioner/tenant of the payment of rent by the Petitioner/tenant to the Respondents/landlords by cheque in the sum of Rs.1183/-. The Petitioner/tenant has also not claimed ownership of the subject premises.

16. On a query being put to learned Counsel for the Petitioner/tenant, on instructions he submits that the Petitioner/tenant is not the owner of the subject premises. The relationship of landlord-tenant being admitted and the Respondents/landlords having placed on record a registered sale deed, the learned Trial Court gave a finding in favour of the Respondents/landlords. This Court finds no reason to interdict the said finding being in accordance with law.

17. On the aspect of bona fide need, as reproduced above, the MoA of the company does give the Respondent/company authority to set up hotels, guest houses, etc. The challenge raised by the Petitioner/tenant on the aspect of the fact that the earlier MoA of the Company did not allow it, is without merit. There is no bar on a Company amending its Articles/Memo of Association at any point in time. Section 13 and 14 of the Companies Act, 2013 provides that company may alter the provisions of its Articles/Memo of Association provided the procedure as set out is complied with. Thus, the



challenge on this aspect is without merit as well. On the alternate suitable accommodation availability, no document, record or averment has been made by the Petitioner/tenant, as is also noticed above.

18. A Coordinate Bench of this Court in the case of ***K.B. Watts v. Vipin Kalra***³, has held that what will be examined as is the documents and averments which form part of the Application for leave to defend and no examination beyond that is requisite. The relevant extract is set out below:

“27. It is trite law that the tenant cannot take new pleas beyond those taken in the leave to defend application as the amendments would have the effect of extending the time to file the leave to defend application which is not permissible unless they are subsequent events which are also required to be considered continuously.”

19. In view of the foregoing discussions, this Court finds no infirmity with the Impugned Order.

20. At this stage, learned Counsel for the Petitioner/tenant submits that if some additional time could be granted in view of the fact that the Petitioner/tenant is a senior citizen. The Petitioner/tenant, on instructions from the son of the Petitioner, who is physically present in the Court, requests for four months’ time to vacate the subject premises.

21. In view thereof, let an Undertaking by way of an Affidavit be filed by the Petitioner/tenant, within a period of two weeks undertaking that:

(i) The Petitioner/tenant shall hand over the physical possession of the property i.e., property bearing No.2517, Plot No.55 and 56, Khasra No.522, Block-B, Ward No.XV, Nalwa Street, Chuna Mandi, Paharganj, New Delhi-110055 [hereinafter referred to as the “subject Premises”] on or before



18.04.2025;

(ii) The vacant, physical and peaceful possession of the subject premises will be handed over by the Petitioner/tenant to the Respondents/landlords on or before 18.04.2025;

(iii) The Petitioner/tenant undertakes and confirms that the entire subject Premises are under their occupation and control;

(iv) The Petitioner/tenant 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 Petitioner/tenant undertakes that they will not create any third party 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 Petitioner/tenant shall remain bound by the aforesaid Undertaking.

22. An advance copy of the Undertaking shall be served on the Respondents/landlords.

23. Subject to the Petitioner/tenant filing the aforesaid Undertaking before this Court within one week from today, execution of order dated 16.04.2024 passed in RC/ARC No. No. 518/2023 [hereinafter referred to as the “Eviction Order”] shall remain stayed till 18.04.2025.

24. In the event that the Petitioners/tenants defaults in complying with the terms of the Undertaking filed, the interim protection granted hereinabove

³ 2015 SCC Online Del 9488



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shall automatically stand dissolved and Respondent/landlord will be at liberty to take recourse to appropriate proceedings for recovery of possession and for recovery of the use and occupation charges from the Petitioners/tenants at market rate for the period from the date of the Eviction Order, in accordance with law.

25. The Petition and all pending Applications are accordingly dismissed.

26. List for compliance on 20.01.2025.

TARA VITASTA GANJU, J

DECEMBER 18, 2024/pa/r

Click here to check corrigendum, if any