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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 09.04.2024
Judgment pronounced on: 22.04.2024

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RC.REV. 209/2018 & CM APPL. 19800/2018**SURESH CHAND**

..... Petitioner

Through: Mr Kuldeep Jauhari, Ms A. Mishra,
Ms Antra Verma and Mr Anubhav
Tyagi, Advs.

versus

VIJAY SHANKAR

..... Respondent

Through: Ms Sonali Malhotra, Adv.

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RC.REV. 210/2018 & CM APPL. 19803/2018**SURESH CHAND**

..... Petitioner

Through: Mr Kuldeep Jauhari, Ms A. Mishra,
Ms Antra Verma and Mr Anubhav
Tyagi, Advs.

versus

VIJAY SHANKAR

..... Respondent

Through: Ms Sonali Malhotra, Adv.

CORAM: JUSTICE GIRISH KATHPALIA**COMMON JUDGMENT**

1. These two petitions brought under proviso to Section 25B(8) of the Delhi Rent Control Act are taken up together for disposal on account of

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similar factual and legal matrix. Both these petitions assailed orders of the learned Additional Rent Controller whereby applications for leave to contest filed by the present petitioner in proceedings under Section 14(1)(e) of the Act were dismissed. On issuance of notice, the respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances leading to the present petitions are as follows.

2.1 The present respondent filed two eviction petitions, both against the present petitioner, pertaining to shops No. 1 and 2 (hereinafter collectively referred to as “the subject premises”) forming part of first floor of the larger premises bearing No. 37, Vijay Market, Main Bazar, Paharganj, New Delhi, owned by the present respondent. In the said eviction petitions filed under Section 14(1)(e) of the Act, the present respondent pleaded that the present petitioner was inducted as a tenant for non-residential purposes in the subject premises by way of rent note dated 24.12.1981; that the present respondent is in occupation of shops no. 11 and 13 as well as a godown on the ground floor and two godowns on the first floor of the said larger premises, besides which he also has residential accommodation consisting of four rooms, latrine, bathroom and open terrace on first floor of the said larger premises; that the present respondent is engaged in trading of electronic and electrical goods in shops no. 11 and 13, using the godowns for storage of stock; that his son Aakash Goel graduated in electronics from Delhi University in 2015 and wants to start his independent business of



export of garments and handicrafts, for which he needs atleast 100 sq yards in the said larger premises for creating his office and godowns on the first floor; that therefore, the subject premises are *bona fide* required by the present respondent for his son and they have no reasonably suitable alternate accommodation for that purpose.

2.2 On service of summons in the prescribed format, the present petitioner filed applications in both eviction petitions, seeking leave to contest mainly on the grounds that the requirement set up by the present respondent is not *bona fide* as he owns a number of properties including property bearing No. 86, Krishna Gali, Main Bazar, Paharganj, Delhi, where he and his family are residing; that the present respondent also owns commercial properties in Laddu Ghati Paharganj, Ram Nagar, Sadar Bazar, and Bhagirath Place, Delhi; that even in the said larger premises No. 37, Main Bazar, Paharganj, New Delhi, the present respondent is in possession of shops bearing Nos. 1,1A, 2, 3, 4 and 5 out of which shop No. 4 is lying locked for many years as its tenant had vacated the same while shops No.1A and 5 were sublet unauthorizedly, but the present respondent took no action; that shop No. 6 situated behind the subject premises also has been lying closed for past more than five years after the same was vacated by tenant Ram Prasad; that on ground floor of the said larger premises also, the present respondent is in possession of shops no. 11,12 and 13 which can be used for his son; that the present respondent also raised fresh construction on front portion of the said larger premises in the form of one small shop and two big shops and one big hall on first floor about two years



back and the same are lying vacant; that a big hall on first floor and shops no. 14 and 15 on the ground floor of the said larger premises are in occupation of tenants Kesar Dass and Ravi Arora, who have their own shop in the Main Bazar, Paharganj; that the entire rooftop of the first floor including a tin shed is in possession of the present respondent; that the present respondent alongwith his son is engaged in flourishing business of electronic and electrical goods, so it is not believable that son of the present respondent would start new independent business; and that the present respondent and his sister also own a commercial property bearing No. 4A/44, Old Rajender Nagar, New Delhi, which is lying vacant.

2.3 The present respondent filed detailed replies to the applications for leave to contest, thereby reiterating the eviction petition contents and denying the averments made in the applications. In the said replies, the present respondent also explained the status of the alleged alternate accommodation. After hearing both sides, the learned Additional Rent Controller passed the impugned orders, thereby dismissing the applications for leave to contest and consequently, passing eviction orders.

3. Hence, the present petitions.

4. During arguments, learned counsel for petitioner/tenant took me through the above mentioned record and contended that the orders impugned in these petitions are not sustainable in the eyes of law. It was argued on behalf of petitioner/tenant that the requirement of the subject



premises as set up by the present respondent in his eviction petitions does not appear to be *bona fide* because son of the respondent/landlord graduated in electronics and the respondent/landlord already being engaged in a flourishing business of electronic goods, it is not believable that his son would engage himself in the new business of handicraft export. Besides, it was argued by learned counsel for petitioner/tenant that the respondent/landlord is already in possession of a number of premises which can be utilized by his son for running his business.

5. On the other hand, learned counsel for respondent/landlord supported the impugned orders and contended that the petitions are devoid of merit. Learned counsel for respondent/landlord argued that no material at all has been placed on record by the petitioner/tenant to support his plea of alternate accommodation in possession of the respondent. It was further argued that merely because son of the respondent/landlord has graduated in electronics, his decision to start business of handicraft export cannot be looked down with suspicion.

6. Thence, the issues of ownership of the respondent/landlord over the subject premises and *jural* relationship of tenancy between the parties are not in dispute. The questions to be examined in these cases are as regards the *bona fide* requirement and availability of reasonably suitable alternate accommodation.



7. 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.

7.1 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, though 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.



7.2 At the stage of seeking leave to contest, it is sufficient if the tenant makes out a case by disclosing such facts as would disentitle the landlord from obtaining an eviction order. At the stage of seeking leave to contest, the tenant is not required to establish such a strong case that would non-suit the landlord. At the stage of seeking leave to contest, the test to be applied is as to whether the facts disclosed in the affidavit of the tenant *prima facie* show that the landlord would be disentitled from obtaining the eviction order and not that the defence may fail in the end.

7.3 At the same time, the court also has to be conscious that a leave to contest cannot be granted for mere asking or in a routine manner, as that would defeat the object behind Chapter IIIA of the Act. It is only when the pleas and contentions raised by the tenant in the application seeking leave to contest make out a triable issue and the dispute on facts demands that the matter be exhaustively adjudicated upon after ascertaining the truth through cross-examination of witnesses that leave to contest must be granted. Each case has to be decided on its merits and not on the basis of any generalized suppositions. The court also cannot ignore a situation where the case set up by the tenant has been so set up with the sole object of protracting the proceedings so as to lead to the landlord giving up in frustration, which would in turn frustrate the process of law. Where the tenant seeks leave to contest, pleading anything and everything, pulled out of thin air and claims to have raised a *prima facie* case, the court is under a duty to read between the lines so as to ensure justice to the process established by law.



7.4 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.

7.5 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. 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.

8. Falling back to the present case, merely because son of the respondent/landlord graduated in electronics, in which field the respondent/landlord has a flourishing business, decision of his son to enter into a new venture of handicraft export cannot be looked down with suspicion. Until and unless the tenant produces some cogent material or argument, the genuineness of the requirement set up by the landlord cannot be brought under shadow of doubt. In the present case, it cannot be said that no reasonable person acting objectively would have disbelieved the *bona fide* of the requirement set up by the respondent/landlord *qua* the subject premises for being used by his son who plans to venture into the business of handicraft. It is not unheard or even strange to find the younger generation opting to test the waters independent of their parental generation. There are countless cases where the grown up children would opt not to join the



occupation of their parents, though in studies they would take up a particular subject of their parents' ambition. The petitioner/tenant has not brought even iota of material or any convincing argument to show that son of the respondent/landlord cannot be believed to be desirous of entering into a new business field. Therefore, I find no reason to suspect the *bona fide* of the requirement set up by the respondent/landlord in these cases.

9. As regards the availability of reasonably suitable alternate accommodation, it is no longer *res integra* that in the proceedings of the present nature where a tenant alleges availability of reasonably suitable alternate accommodation, he has to place before the Rent Controller some reliable material showing the actual availability of such accommodation; mere assertion of the tenant that the landlord has alternate accommodation available would not suffice. Further, mere existence of actual availability of accommodation other than the tenanted premises also is not enough to decline eviction. That actually available accommodation has also to be reasonably suitable to meet the requirement projected by the landlord. It is also trite that landlord is the best judge to decide reasonable suitability of the said premises. For example, where a landlord sets up requirement of ground floor tenanted premises in commercial area for the purposes of starting his own business, availability of accommodation with the landlord on upper floors or in non commercial area would not be considered as reasonably suitable alternate accommodation.



10. In the present case, the petitioner/tenant, in his applications for leave to contest alleged two kinds of properties in possession of the present respondent, out of which one kind is where no specific particulars have been disclosed while the other kind is where the property in question is not vacant and/or available. The premises no.86, Krishna Gali, Paharganj, New Delhi is a residential property, not suitable for commercial purposes according to the present respondent; despite such clear stand of the present respondent, no material was placed before the court by the present petitioner to show otherwise. As regards the commercial property situated in Laddu Ghati Paharganj, Ram Nagar, Sadar Bazar and Bhagirath Place, allegedly in possession of the present respondent, no specific particulars were disclosed by the petitioner/tenant in order to enable the court to ascertain the suitability of the same for the purpose in question. As regards the commercial premises bearing no.4A/44, Old Rajinder Nagar, New Delhi, despite specific pleadings of the present respondent that the said property is owned and possessed by his sister Ms. Sarita Aggarwal, no material was produced by the present petitioner to show otherwise. As regards the remaining shops in the said larger premises, even according to the present petitioner, those shops are already in possession of other tenants, so not available. In replies to the applications for leave to contest, the present respondent specifically named the persons who are in occupation of the remaining shops of the larger premises as tenants, but no material was produced by the present petitioner to show otherwise. The present petitioner, being a tenant, has no right to claim that the present



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respondent who is the landlord must get those other shops vacated instead of seeking eviction of the petitioner.

11. In view of the aforesaid, I am unable to find any infirmity in the impugned orders, so the same are upheld and both petitions as well as pending applications are dismissed.

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(JUDGE)**

APRIL 22, 2024/as/ry

