



2024:DHC:962



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 01.02.2024
Judgment pronounced on: 09.02.2024

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RC.REV. 358/2016**SHRI RAJIV KUMAR & ANR**

..... Petitioners

Through: Mr Alok Kumar, Sr. Advocate with
Ms Manisha A. Narain, Mr Amit
Kumar Singh, Mr Varun Maheshwari
and Mr Manan Soni, Advs.

versus

SHRI CHAMAN LAL & ORS

..... Respondents

Through: Mr. R.K. Alagh, Mr Chirag Alagh
and Mr Vivek Kumar Pandey, Adv.

CORAM:**JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****GIRISH KATHPALIA, J.:**

1. By way of this petition, brought under the proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioners have assailed order dated 24.02.2016 of the learned Rent Controller Delhi, whereby application of the present petitioners/tenants seeking leave to contest the proceedings under Section 14(1)(e) of the Act was dismissed and consequently the eviction order in respect of ground floor of the premises bearing private no. 523-524, Kucha Pati Ram, Sita Ram Bazar, Delhi (hereinafter referred to as “the subject premises”) was passed against the present petitioners/tenants. On service of notice, the present respondents/landlords entered appearance through counsel. I heard learned counsel for both sides.



2. Briefly stated, rival factual matrix, relevant for present purposes is extracted from pleadings below.

2.1 The present respondents, claiming themselves to be the co-owners of the entire larger premises No. 523-524, Kucha Pati Ram, Sita Ram Bazar, Delhi consisting of ground floor, first floor and second floor with a portion on ground floor beneath the staircase filed eviction petition against the present petitioners under Section 14(1)(e) of the Act with following pleadings. The subject premises, being ground floor of the said larger premises, was assigned Municipal No. 523 while the upper portion of the larger premises was assigned the No. 524. By virtue of Rent Deed dated 08.11.1993 the present petitioners were inducted as tenants in the subject premises for commercial purposes at a monthly rent of Rs. 500/- excluding other charges, which rent was enhanced over a period of time to Rs. 804/- per month. The subject premises are now required by the present respondents for their own use and for the use of their family members as they have no reasonably suitable alternate accommodation. The present respondent no. 1, aged about 60 years and unmarried, has been occupying one room on first floor above the subject premises, but now on account of multiple diseases he is unable to climb stairs so he needs accommodation on the ground floor. The present respondent no. 2 with his wife and children is staying in two rooms on second floor of the larger premises and his elder son aged 26 years is engaged in petty private job while his daughter aged 24 years is marriageable. The present respondent no. 3 is residing in the third room on the second floor of the larger premises with his wife, a daughter aged 20 years and a son aged 19 years. The said first three respondents are



sharing a common kitchen, latrine and bathroom. The present respondent no. 4 is staying in one room on first floor of the said larger premises with his wife and two sons aged 16 and 14 years. The present respondent no. 2 is engaged in private job and the present respondent no. 3 is engaged in business of job work of lamination (*related to printing press*), for which he has to keep his small machine in *verandah* at first floor and some time on the second floor of the said larger premises, while the present respondent no. 4 is an electrician, working mostly at the premises of his customers but has no commercial space to run his business of electric goods. Children of the present respondents no. 2-4, being grown up, also need a reasonable accommodation for themselves. On the other hand, the present petitioners already own property No. 839-840, Kucha Pati Ram, Sita Ram Bazar, Delhi, so would not be put to any inconvenience, if evicted from the subject premises.

2.2 On service of summons in the prescribed format, the present petitioners/tenants filed an application on affidavits seeking leave to contest the proceedings under Section 14(1)(e) of the Act, testifying as follows. Earlier, the present respondents had filed an eviction petition under Section 14(1)(a) of the Act but not under Section 14(1)(e) of the Act, which shows that their requirement is not *bona fide*. The requirement of the subject premises pleaded in the eviction petition is too vague and ambiguous insofar as the present respondents have sought eviction of the present petitioners on the ground of requirement for residential as well as for commercial purposes but one fails to understand as to how the subject premises can be used for both purposes. The present respondents have concealed that they are



already occupying first and second floors of property No. 524, Kucha Pati Ram, Sita Ram Bazar, Delhi for commercial and residential purposes, so the requirement projected by them is not *bona fide*. Besides, the present respondents also have commercial property bearing No. 66A, Ajmeri Gate, Main Road Delhi where the present respondent no. 2 and his son are running their business of PVC products. In addition, the present respondents also own three shops in Laxmi Nagar, where the present respondent no.4 is running his business of electric goods, wife of the present respondent no. 3 is running her business of artificial jewellery and the present respondent no. 3 is carrying out business of printing and lamination, in addition to the said business in the larger premises, of which the subject premises are part.

2.3 The present respondents/landlords filed reply on affidavits to the application for leave to contest, reiterating their eviction petition pleadings and denied having concealed any fact or having owned any other property as alleged in the application for leave to contest. The respondents/landlords specifically testified that the premises No. 66A, Ajmeri Gate are not owned by them and the present respondent no. 2 is only employed as salesman in a shop situated at that address owned by one Sunil Jain, working under the name and style Tufflon Industries; and that the present respondents do not own any shop in Laxmi Nagar, though wife of respondent no. 3 is running her business from one shop there on rent.

2.4 The present petitioners/tenants filed rejoinders in the applications for leave to contest, reiterating their stand.



2.5 Against the backdrop of above rival pleadings, learned Rent Controller heard both sides and passed the impugned eviction order after dismissing the application for leave to contest for want of any triable issue. In the impugned order, the learned Rent Controller arrived at the findings that the present petitioners had not denied that the present respondent no. 1 is old aged person suffering with various ailments, so unable to climb stairs and that members of the large family of the present respondents need accommodation for themselves. The learned Rent Controller also held that mere filing of the prior eviction petition under Section 14(1)(a) of the Act does not lead to any doubt about genuineness of the requirement set up by the present respondents in the eviction petition.

3. Hence, the present revision petition.

4. During final arguments, learned senior counsel for petitioners/tenants took me through the above records and contended that the impugned eviction order is not sustainable in the eyes of law. It was argued that going by the requirement set up by the present respondents, they would need atleast seven residential and three commercial rooms, which is not possible by getting the subject premises vacated, so the requirement projected by them is not a *bona fide* requirement, especially because the respondents failed to clearly plead as to which of them would occupy the subject premises. It was further argued by learned senior counsel that the present petitioners/tenants had specifically testified that the present respondents/landlords own and possess alternate accommodation, which was concealed from the court, so the requirement projected is not *bona fide*. As



regards the previous petition under Section 14(1)(a) of the Act, the learned senior counsel argued that since in the said petition, there was no mention about any *bona fide* requirement, the requirement set up in the present proceedings is an afterthought and not *bona fide*. Learned senior counsel also contended that the present respondents/landlords would admittedly change the structure of the larger premises, so they ought to have come under Section 14(1)(g) of the Act instead of Section 14(1)(e). Further, learned senior counsel also contended that the overall case of the present respondents/landlords being the requirement in order to meet the expansion of need, leave to contest has necessarily to be granted in view of law laid down in the case of **Santosh Devi Soni vs Chand Kiran**, 2001 (1) SCC 255. Lastly, with the help of the judgment in the case of **Khem Chand & Ors vs Arjun Jain & Ors**, 202 (2013) DLT 613, learned senior counsel for petitioners/tenants contended that where grounds raised in the application for leave to contest are plausible, trial is the only way out.

5. On the other hand, learned counsel for respondents/landlords supported the impugned eviction order and contended that the revision petition is devoid of merit. Learned counsel for respondents/landlords argued that since the respondents/landlords categorically testified that they have no property other than the larger premises, of which subject premises are a part, the petitioners/tenants ought to have brought on record some material in support of their bald averment qua availability of alternate accommodation. It was also contended on behalf of respondents/landlords that in the proceedings under Section 14(1)(a) of the Act, pleading of *bona fide* requirement is not necessary.



6. In rebuttal, learned senior counsel for petitioners/tenants argued with the help of an order of a co-ordinate bench of this court in the case of ***Rani Sethi vs Amarjeet Singh***, RC. Rev 539/2015 decided on 02.05.2018 that unless the landlord has obtained sanction to reconstruct the property, ground of reconstruction is not available for present purposes.

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. 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 properly adjudicated 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.

7.3 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.

7.4 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. It is not permissible for the High Court in such proceedings to arrive at a finding of fact different from the one recorded by the Rent Controller, unless the findings of fact recorded by the Rent Controller were so unreasonable that no Rent Controller would have recorded the same on the material available.

7.5 In the case of *Shiv Sarup Gupta vs Mahesh Chand Gupta*, (1999), 3SCR 1260, the Supreme Court held that 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, the factum of ownership of the present respondents over the subject premises and the jural relationship of tenancy between the parties is not in dispute. The petitioners/tenants have



largely assailed the genuineness of the requirement qua the subject premises set up by the present respondents/landlords.

9. Coming to the stand of the petitioners/tenants that the present respondents/landlords have concealed that they own and/or possess alternate accommodation, as mentioned above, the present respondents/landlords in their reply affidavit to the application for leave to contest, clearly testified denying that they own or possess any other alternate property. Despite such specific denial, the present petitioners/tenants did not produce even a shred of document in support of their allegation on this count. Rather, the present petitioners/tenants did not even disclose the specific address of any of the three properties of Laxmi Nagar allegedly owned and possessed by the present respondents/landlords. Law in this regard is well settled that where a tenant in the application for leave to contest pleads that the landlord owns another premises, which pleadings are denied by the landlord, mere affidavit of the tenant is not sufficient and the tenant must place on record some document in support of his pleadings. Reference in this regard can be drawn from the judgment of a co-ordinate bench of this court in the case of **Rajendra Kumar Sharma & Ors vs Leela Wati & Ors**, 2008 (106) DRJ 471. Grant of leave to contest merely on the basis of affidavit of tenant, contents whereof are denied by the landlord on oath and thereby pushing the parties to undergo rigmaroles of full dress trial would completely negate the sacrosanct principles underlying Chapter IIIA of the Delhi Rent Control Act.

10. As observed in the case of **John Impex (P) Ltd. vs Dr Surender Singh & Ors**, 135 (2006) DLT 265, it has to be kept in mind that the



landlord is the best judge of his requirement and cannot be dictated by the tenant, terms on which the landlord should live and “*the requirement of law is not that every desire of the landlord has to be looked at with suspicion and the matter proved beyond reasonable doubt applying the test of criminal jurisprudence*”. In the social milieu of Indian society, joint families sharing the limited space available, each member accommodating the others be it for residential or commercial purposes is not unheard. There are a number of instances where due to paucity of space, the person carrying out business from the premises also sleeps in the same place after business hours. Therefore, I am unable to agree with the argument of learned senior counsel for petitioners/tenants that the respondents/landlords and their family members being such large in number, they ought to have disclosed as to who would occupy which portion of the premises. The petitioners/tenants cannot dictate the respondents/landlords that after vacation the subject premises be used only for residential purposes or only for commercial purposes, that too having not disputed that the present respondent no. 1 on account of old age ailments cannot climb stairs, so needs to be shifted to the subject premises on the ground floor.

11. Then comes the issue of the previous eviction petition under Section 14(1)(a) of the Act. It is trite that pleadings are concise statement of relevant facts and only the facts. For the purposes of proceedings under Section 14(1)(a) of the Act, the landlord is required to plead only qua non-payment of rent despite service of notice. The success or otherwise of a petition under Section 14(1)(a) of the Act does not depend upon the *bona fide* requirement of the landlord. That being so, in my view non-mentioning



of *bona fide* requirement in the previous petition under Section 14(1)(a) of the Act by the present respondents/landlords does not in any manner put cloud of suspicion over genuineness as regards their requirement.

12. So far as the argument on behalf of petitioners/tenants that the respondents/landlords ought to have come under Section 14(1)(g) of the Act and not under Section 14(1)(e) of the Act, the respondents/landlords have not brought their eviction petition with the specific object of building or re-building or substantially altering the said larger premises of which the subject premises are part. The relevant pleading through which learned senior counsel for petitioners/tenants took me through during arguments is at pdf page 117 of the records. The said portion of the reply to the application for leave to contest mentions thus: *“It is submitted that the deponent and other petitioners have categorically and unambiguously demonstration/averred as to the requirement in view of the need of the family. The applicants cannot question the need of the landlord specifically considering the size of the family of the petitioners as well as the existing available accommodation with them. It is the right of the landlord to merge or change the basic structure of the premises so as to accommodate and fulfil the requirement of the landlord and the members of the family dependent upon him”*. This extract amply establishes that the basic intention of the respondents/landlords behind these eviction proceedings is not to rebuild the premises. The said extracted portion, simply asserting their rights in order to meet the argument of large family cannot be handpicked and over stretched to mean that the respondents/landlords actually aim to do so. For the same reasons, the order in the case of **Rani Sethi** (supra) relied upon by



learned senior counsel for petitioners/tenants is completely distinguishable insofar as in the said case, the landlord specifically averred that after eviction he intended to demolish the existing structure and raise a residential building but the landlord was silent on vital aspects of permitted user of the premises and permissibility of alteration for its use from commercial to residential; and it is in that regard, the coordinate bench of this court held that case of the landlord for *bona fide* requirement could not be accepted because the landlord was silent on the issues qua building plans in accordance with which construction was intended to be carried out or the expenditure likely to be incurred with availability of resources. In the present case, no such pleadings or submissions are found that the respondents/landlords intend to demolish the larger premises, of which the subject premises are part. Therefore, the cited said order does not help the petitioners/tenants.

13. So far as the judgment in the case of ***Santosh Devi Soni*** (supra) is concerned, as mentioned in the judgment itself, it was a fact centric pronouncement and is clearly distinguishable from the present case insofar as the said case pertained to a widow who was already in occupation of first floor of the building and the Hon'ble Supreme Court clearly observed: "*As this is a case for additional accommodation and looking to the facts and circumstances of the case, especially in the light of additional accommodation which is subsequently made available to the respondent as mentioned by the appellant, the question of the respondent's need was required to be thrashed out on merits by a full-fledged trial*". It is not that whenever the respondent/landlord sets up a plea of expansion of requirement



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under Section 14(1)(e) of the Act that leave to contest must necessarily be allowed.

14. So far as the judicial precedent in the case of *Khem Chand* (supra) relied upon by learned senior counsel for petitioners/tenants is concerned, the legal position is not at all in dispute and has been recapitulated above to the effect that the learned Rent Controller while examining an application for leave to contest is not expected to examine the success or failure of the plea raised but has to examine merely a tenable case. As discussed above, I am unable to find any tenable case on any ground raised by the petitioners/tenants in their application for leave to contest.

15. I am unable to find any triable issue in this case. There is no infirmity in the impugned order, so the same is upheld and the revision petition is dismissed. All the pending applications accordingly stand disposed of.

**GIRISH
KATHPALIA**

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GIRISH KATHPALIA
Date: 2024.02.09
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**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 09, 2024/as