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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment reserved on: 08.05.2024**Judgment pronounced on: 13.05.2024*

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RC.REV. 405/2014 & CM APPL.20740/2014 (stay)**NEM CHAND JAIN**

..... Petitioner

Through: Mr. Ashok Kumar Chhabra and Ms.
Shefali Gupta, Advocates.

versus

SANJAY KUMAR JAIN & ANR

..... Respondents

Through: Mr S.K. Sharma, Mr Avinash
Sharma, Mr Rahul Sharma, Mr Tejas
Singh and Ms Akanksha Kapoor,
Adv.

CORAM: JUSTICE GIRISH KATHPALIA**J U D G M E N T**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioner/tenant has assailed the eviction order passed after full dress trial by the Additional Rent Controller, Central District, Delhi under Section 14(1)(e) of the Act. On service of notice, respondents/landlords entered appearance through counsel. I heard learned counsel for both sides.



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

2.1 The present respondents, claiming themselves to be the owners of shop bearing no. 897A (with basement), Chawri Bazar, Delhi (hereinafter referred to as “the subject premises”) filed eviction petition against the present petitioner under Section 14(1)(e) of the Act, pleading that they are engaged in the business of cards and stationery from tenanted premises bearing no.215, Chawri Bazar, Delhi under the name M/s. Sagar Chand Jain; that they are in *bona fide* requirement of the subject premises for their children as they have no reasonably suitable alternate commercial accommodation elsewhere; that earlier, they were using the first floor and upper floors of property no.896, Chawri Bazar, Delhi for residential purposes but later they shifted to a residential accommodation in Sainik Farms Delhi, so the said floors are being used as godown with the permission of owners Smt. Sunita Jain and Smt. Usha Jain, who acquired right to live therein by virtue of Will dated 11.03.1974; that two rooms and verandah on third floor of the property no.896, Chawri Bazar are in their possession but the same cannot be used as a shop; that they require the subject premises for their sons Shantanu and Toran for carrying out card and stationery business and for their daughter Sanjana, pursuing a degree in Fine Arts so that she may start her business of designing and wedding cards; that the subject premises would fulfill only part of their requirement, so they were filing eviction petitions against tenants of the shops adjacent



to the subject premises as well; that their father Sh. Ramesh Chand Jain who was in business with them passed away in July 2010; that the partnership firm M/s R.S. Jain & Company is in occupation of a godown in property no.929, Jain Market, Chhota Chhipiwara Khurd, Chawri Bazar, Delhi for supply of papers and boards; that no shop of the property no.929, Jain Market, Chhota Chhipiwara Khurd, Chawri Bazar, Delhi is in possession of either of the present respondents or any of their family members, as all shops have already been rented out long ago; that property no.896, Chawri Bazar, Delhi consists of ground floor, first floor, second floor and third floor; that subsequently shops were carved out on ground floor of property no.896 and those shops were separately numbered by Municipal Authorities as 897 to 899, all forming part of larger building no.896; that the present respondents became owners of the entire larger property no.896, Chawri Bazar as well as 929, Chhota Chhipiwara Khurd, Chawri Bazar, Delhi by virtue of Will dated 11.03.1974 of their grandmother, which Will was also got probated; that the present petitioner is liable to be evicted from the subject premises so that the same can be used for *bona fide* commercial requirement of their children.

2.2 On service of summons in prescribed format, the present petitioner filed application for leave to contest, which was rejected, but the said order on being challenged was set aside by this court, granting leave to contest.

2.3 Accordingly, the present petitioner filed a written statement, denying



the contents of the eviction petition and pleading that none of the children of the present respondents is interested or experienced to carry out paper business; that the present respondents own sufficient alternate accommodation on the first and second floors of property no.896, Chawri Bazar, Delhi and ground floor of property no.929, Chawri Bazar, Delhi, besides premises no.A-87, Shivalik, Malviya Nagar, New Delhi; that the premises no.897-899, Chawri Bazar, Delhi built up across an area of 100 sq. yards consists of ground floor to third floor and is a commercial building; that four shops with covered verandah on first floor, four shops with covered verandah on second floor and two rooms with covered verandah on the third floor of premises no.897-899 are lying vacant and not being used by the present respondents; that the premises no.929, Chawari Bazar, Delhi, consists of basement with three floors, out of which few shops on each floor are lying vacant and the same are not being used by the present respondents; that since despite availability, the present respondents have not been utilizing the vacant premises, the requirement set up in the eviction petition is not *bona fide*.

2.4 The present respondent filed replication, reaffirming the petition contents, and on the basis of rival pleadings, trial was conducted before the learned Additional Rent Controller, culminating into the impugned eviction order. The learned Additional Rent Controller in paragraphs 11 to 14 of the impugned order minutely examined the pleadings and evidence on record pertaining to each of the portion of the above mentioned different premises,



allegedly available to the present respondents and concluded that those portions are either not available, being under the occupancy of tenants or are not suitable for the purposes of running business, which owing to its nature has to be on the ground floors. After elaborate analysis of material on record, the learned Additional Rent Controller allowed the eviction petition by way of the impugned eviction order.

2.5 Hence, the present petition.

3. During final arguments, the only challenge thrown on behalf of the petitioner/tenant against the impugned eviction order was that the present respondents concealed the complete details of the premises available with them which could be used for business purposes of their children. Learned counsel for petitioner/tenant contended that since the respondents/landlords concealed the total area including measurements as well as number of shops in each of their property with details of the tenants, the requirement projected by them has to be discarded as bereft of *bona fides*. It was argued that the respondents/landlords have falsely declared the available shops as godowns, so their plea to that extent has to be rejected. Learned counsel for petitioner/tenant placed reliance on the judgment of a coordinate bench of this court in the case of ***Khem Chand vs Arjun Jain***, 2013 IX AD (Delhi) 89 and contended that the reasonableness and suitability of the alternate accommodation is a question of fact and has to be examined on case to case basis instead of being a thumb rule that landlord is the best judge.



4. Per contra, learned counsel for respondents/landlords supported the impugned eviction order contending that the present petition is completely devoid of merits. Learned counsel for respondents/landlords took me through rival pleadings and evidence in support of his argument that claim of the petitioner/tenant about concealments is totally contrary to record as the respondents/landlords had clearly disclosed and explained each of the property available with them. It was argued on behalf respondents/landlords that even the site plan of the subject premises was duly proved in evidence and not challenged in cross examination. In support of his arguments, learned counsel for respondents/landlords referred to the judgment of a coordinate bench of this court in the case of *Mohd. Saleem vs Zaheer Ahmad*, 2023 SCC OnLine Del 1469.

5. At this stage, it would be apposite to briefly traverse through the legal position, which should be guiding light for the High Court while exercising jurisdiction under proviso to Section 25B(8) of the Act.

5.1 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 bonafide 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 bonafidely requires the tenanted premises should not suffer for long, awaiting eviction, but 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.

5.2 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 frustrate the legislative intendment of



expeditious remedy in certain specific kind of cases.

5.3 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. Unlike Section 115 of the Code of Civil Procedure dealing with the scope of revision in civil cases, the proviso to Section 25B of the Act does not expect the High Court to look for satisfaction as regards regularity of the proceedings under scrutiny or correctness, legality or propriety of any decision or order for recovery of possession passed in the summary proceedings under Section 25B of the Act. 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”.

5.4 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. Thus, scope of interference by the High Court in the proceedings of the present nature is quite restrictive and the High Court should not venture into disturbing the decision of the court of first adjudication unless it finds some error apparent on the face of record, which would only mean the absence of adjudication per se.

5.5 While examining the records of the Rent Controller in order to satisfy itself that the impugned order was passed according to law, the High Court should be cautious not to venture into a roving enquiry which would convert the power of superintendence into that of a regular first appeal, which in turn is completely forbidden by the legislature. 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. 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.

6. Keeping in mind the above mentioned limited contours of peculiar jurisdiction of this court under proviso to Section 25B of the Act, I have examined the record. As can be deduced from above material, there is no dispute of existence of *jural* relationship of tenancy between the parties and ownership of the respondents/landlords in the subject premises. The fulcrum of the present dispute rests on challenge to *bona fide* of requirement set up in the light of alternate accommodation available with the respondents/landlords. In pleadings, the present petitioner also stated that none of the children of respondents is experienced or interested to carry out paper business. In arguments before this court, as mentioned above major emphasis of learned counsel for petitioner/tenant was that the respondents/landlords concealed the extent of alternate accommodation available with them.

7. To begin with, there can be no disagreement with the proposition submitted on behalf of the petitioner/tenant that concealment and fraud vitiate all judicial proceedings. At the same time, it is also trite that not every non disclosure would amount to concealment. In the present case, the concealment alleged is that the respondents/landlords did not disclose measurements of various portions of the properties owned by them as well as details of tenants occupying the same.



8. I am unable to agree with the argument of learned counsel for petitioner/tenant that since the respondents/landlords declared some of the portions of the said properties as godowns, instead of shops, it can be treated as a concealment fatal to the eviction petition. The expressions “godown” and “shop” are expressions of use of the premises. Nothing prevents a landlord from using the available room as a godown or as a shop or as an office or any other lawful mode.

9. There is another aspect. The godowns in question are on first and upper floors or towards rear sides of ground floor of the properties under reference. Admittedly those portions are not on the ground floor facing the main road, unlike the subject premises, so for business purposes, it cannot be disputed that keeping in mind the accessibility, it is always preferable for a person to use a ground floor room facing the main road for business purposes. On ground floor in portions facing the main road, customer footfall would certainly be much higher as compared to other portions of the property. If the respondents/landlords prefer the subject premises which are on ground floor facing the main road for the purposes of business activities of their children, their *bona fides* cannot be a suspect.

10. So far as the argument that none of the children of the respondents/landlords has experience of running paper business, suffice it to note that admittedly the respondents/landlords are in the same business,



so there is no reason to think that they would not guide their children in the said business. Moreover, as noted above, daughter of one of the respondents/landlords for whose benefit the subject premises are required has acquired professional qualification. Besides, in the premises in Malviya Nagar, children of respondents/landlords have already been interning in paper business.

11. The respondents/landlords clearly disclosed in paragraph 18 (a) (vi) of the eviction petition that only one of the rooms in premises no.929, Jain Market, Chawri Bazar, Delhi, is in the occupation of their partnership firm M/s R.S. Jain & Company and the same is being used as godown of paper and board etc. with no access to customers, while the remaining rooms are in occupation of other tenants for past long time. In paragraph 19 of the eviction petition the respondents/landlords described in detail the status of property no.896, Chawri Bazar as regards the rooms and floors therein as well as ownership of the same. Further, in their replication (*pdf page 331 onwards in LCR II*), the respondents/landlords enlisted in detail the name of each of such tenant along with nature of their business, in response to the written statement pleadings. Further, in their replication, the respondents/landlords categorically responded to the status of each portion of which reference was made by the petitioner/tenant in his written statement. It is trite that replication does not form part of pleadings; but it is equally trite that once it is taken on record, the replication becomes part of pleadings so its contents cannot be ignored.



12. The position emerging from rival pleadings and evidence related to the property no.A87, Shivalik, Malviya Nagar, Delhi, is that the respondents/landlords as well as their children are carrying on their business of paper from there, but the said premises are owned by mother of respondents while role of the children of the respondents in that business is only as interns, learning work. It also cannot be disputed that Chawri Bazar, where the subject premises are located is the business hub when it comes to trading of paper and in that regard Malviya Nagar does not enjoy such high business value. The petitioner, being tenant has no right to expect the respondents/landlords to make their children commence their business of paper from Shivalik, Malviya Nagar premises in preference over the subject premises.

13. The position emerging from rival pleadings and evidence related to the property no.897-899, Chawri Bazar, Delhi is that it consists of four floors, and the ground floor has four shops including the subject premises, all of which are occupied by the tenants, so none of the same is vacant; that the floors above the ground floors of that property are already being used by the respondents/landlords as godowns for storage of papers and in any case, the same are not fit for being used as retail shops. In that regard, even according to the petitioner/tenant, the rooms on the floors above ground floor are lying locked; that lends credence to the stand of the respondents/landlords that those portions are being used as godowns. The



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learned Additional Rent Controller in the impugned order has traversed in detail through the evidence on record to rightly conclude that retail business in the concerned area of Chawri Bazar is being mainly carried out from ground floors while the upper floors are being generally used as offices of different firms.

14. The position emerging from rival pleadings and evidence on record as regards premises no.929, Jain Paper Market, Chawri Bazar, Delhi, is that the said premises has thirteen shops on the ground floor out of which one is in possession of the respondents/landlords and they are running business of M/s R.S. Jain & Company from there; that the remaining twelve shops are in occupation of different tenants and the same are situated in a narrow lane, not on main road, so not suitable for retail business; that so far as the floors above the ground floor are concerned, the same also are occupied by different tenants and not suitable for retail business.

15. In view of the aforesaid, I am unable to find any infirmity, much less any perversity in the impugned order, so the same is upheld and this petition as well as pending application are dismissed.

**GIRISH
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(JUDGE)**

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