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

% *Judgment reserved on: 16.04.2024*
Judgment pronounced on: 26.04.2024

\+ **RC.REV. 564/2015 & CM APPL. 23823/2015 (stay)**

SHEHNAZ BEGUM & ORS ..... Petitioners

Through: Ch. Ranjit Singh, Advocate.

versus

KARAMVIR SAINI & ANR ..... Respondents

Through: Mr Anuj Soni, Advocate with R-1 in person.

CORAM: JUSTICE GIRISH KATHPALIA

JUDGMENT

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioners/tenants have assailed the eviction order dated 25.02.2015, passed after full dress trial by the learned Additional Rent Controller, Central District, Delhi in the proceedings under Section 14(1)(e) of the Delhi Rent Control Act ("the Act"). The present petitioners and the present respondent no. 2 (*proforma respondent*) are legal representatives of the originally inducted tenant Mohd Usman. For convenience, the respondent no. 1 (*landlord*) herein is referred to as "the present respondent" since the respondent no. 2, being one of the legal representatives of the originally inducted tenant, opted not to join these

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proceedings. On issuance of notice of these proceedings, the respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 The present respondent, claiming himself to be owner of the subject premises (*shop forming part of property bearing No. 3075-77, Bahadur Garh Road, Delhi*), filed eviction petition under Section 14(1)(e) of the Act against the predecessor of the present petitioners and the present respondent no. 2, pleading that their predecessor Mohd Usman was originally inducted as a tenant in the subject premises and after death of Mohd Usman, his son Mohd Akhlaq (*husband of the present petitioner no 1, father in law of the present petitioner no. 2 and father of the remaining petitioners*) acquired possession of the subject premises; that family of the present respondent consisted of his wife, younger brother Surender Kumar, sister in law and their sons; that the present respondent is engaged in business under the name and style M/s Bharti Plastics from one tenanted shop bearing No. 3103/4, Bahadurgarh Road, Delhi and his younger brother Surender Kumar is running business from another tenanted shop bearing No. 1454 Bahadurgarh Road, Delhi; that the present respondent wants to expand and run his business from his own property, so has *bona fide*

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requirement of the subject premises, from where he and his brother can run their business; that they have no reasonably suitable alternate accommodation.

2.2 On service of summons in the prescribed format, three sons of Mohd Usman, namely Mohd Akhlaq (*predecessor of the present petitioners*), Mohd Saeed (*the present respondent no. 2*) and Mohd Iqbal (*now deceased*) entered appearance through counsel and sought leave to contest, which was allowed. Thereafter, the present petitioners, being legal representatives of Mohd Akhlaq, filed a written statement and on the basis of rival pleadings, trial was conducted before the learned Additional Rent Controller, which culminated into the impugned eviction order.

2.3 In their written statement, the present petitioners denied the relationship of landlord-tenant between the present respondent and Mohd Usman, pleading that Mohd. Akhlaq during his lifetime remained tenant in the subject premises under one Kishan Lal who had purchased the subject premises by virtue of registered conveyance deed dated 11.02.1966, so for petitioners, it is only Kishan Lal who was owner and landlord; that the subject premises was owned by Athey Ram and Prem Chand, who sold the same to Ram Kishore vide registered sale deed dated 12.04.1979 and he in turn sold the subject premises to one L.D. Bhattar on 29.04.1981; that L.D. Bhattar filed a collusive suit against Dayanand Bharti for recovery of

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money and the special attorney of L.D. Bhattar made a statement in the court on 12.05.1987 declaring Dayanand Bharti as a tenant and the suit was dismissed; that Dayanand Bharti could not have become tenant of L.D. Bhattar since much earlier Kishan Lal had become owner of the subject premises and had inducted Mohd. Akhlaq as tenant; that Dayanand Bharti and one Surender Kumar filed a suit against Mohd. Akhlaq claiming themselves to be tenant in the subject premises and that suit was dismissed by the Civil Court; that during pendency of that suit, Dayanand Bharti died and was substituted by his widow Sushila Devi, son Karamvir Saini (*the present respondent*), Saroj Rani and Surender Kumar Saini; that in the said suit the present respondent Karamvir never claimed to have become owner of the subject premises; that therefore, the present petitioners dispute ownership of the present respondent over the subject premises; that the sale deed dated 07.04.1989 propounded by the present respondent is a sham document and it is Kishan Lal who remained owner of the subject premises; that on the basis of a stale agreement to sell, a time barred suit for specific performance was filed, which led to a collusive decree, leading to the sale deed propounded by the present respondent; that the relinquishment deed dated 13.07.1989 is not a valid document for want of registration and stamp duty. In the written statement, the present petitioners also pleaded that the alleged requirement of Surender Kumar cannot be treated as *bona fide* need of the present respondent because Surender Kumar is not a member of family of the present respondent.

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2.4 On the basis of above rival pleadings, trial was conducted which led to the impugned eviction order against the present petitioners. In the impugned order, the learned Additional Rent Controller minutely analyzed the pleadings and evidence and rejected the challenge raised by the present petitioners against the ownership of the present respondent and *jural* relationship between the parties.

2.5 Hence, the present petition.

3. During arguments, learned counsel for petitioners assailed the impugned order strongly on the ground that the issues of *bona fide* requirement and availability of alternate accommodation have not been dealt with by the trial court despite having passed the impugned eviction order after full dress trial. It was also argued by learned counsel for petitioners that by the time the eviction petition came to be filed, Mohd. Iqbal, one of the legal representative of Mohd. Usman had already died and a petition against dead person is a nullity. Learned counsel for petitioners also submitted that in his cross examination, the present respondent specifically stated that he has not been paying rent of the shop from where he is currently running business, which goes to show that there is no threat to the present respondent of being evicted from that shop, so there is no *bona fide* requirement for the subject premises.

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4. On the other hand, learned counsel for the present respondent took me through entire material on record and supported the impugned eviction order. It was argued that the present respondent being owner of the subject premises by way of registered sale deed, the challenge in that regard is not sustainable.

5. 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.

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 *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

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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.

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 negate 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

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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".

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. 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.

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5.5 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.

6. Falling back to the present case, it would be significant to keep in mind that as mentioned above, the impugned eviction order in the present case was passed by the learned Additional Rent Controller after full dress trial and after threadbare analysis of pleadings and evidence on record. The fulcrum of the present case rests only on the issues of ownership of the present respondent over the subject premises and the *bona fide* of the requirement projected by the present respondent.

7. Since the present petitioners in their pleadings and evidence did not allege with specific details any property other than the subject premises to be owned by the present respondent, there was no occasion for the learned Additional Rent Controller to delve deep into this aspect. Evidently, the shops from which the present respondent and his brother are running their respective business are on rent and not owned by either of them. Rather,

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going by the arguments of petitioners' counsel, the present respondent being in default of payment of rent, there is clear danger of his being evicted from that shop and consequently he has *bona fide* requirement of the subject premises.

8. So far as the argument of learned counsel for petitioners that the eviction petition was nullity since by the time it was filed, Mohd Iqbal had died, suffice it to note that the undisputed case of both sides is that it is only Mohd. Akhlaq who was in possession of the subject premises at the time of institution of the eviction petition. Therefore, this argument must fail.

9. As described above, one of the major planks on which the petitioners/tenants have challenged the impugned order is that the present respondent is not owner of the subject premises insofar as the suit for specific performance filed by him was a collusive suit and the Sale Deed and Relinquishment Deed being unregistered documents cannot be considered as valid transfer of title. So far as the allegation of the suit being collusive one, the present petitioners have no *locus standi* to raise this challenge as they were neither party to that suit nor they claim ownership of the subject premises. The sale deed in favour of the present respondent was executed on behalf of the Sub Judge, Ist Class, Delhi on 26.04.1989. The copies of the Sale Deed and the Relinquishment Deed on the basis whereof, the present respondent has claimed ownership over the subject premises are

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Ex. PW1/1 and Ex. PW1/2 on the trial court record and the same are duly registered instruments. Therefore, I find no infirmity in the view taken by the learned Additional Rent Controller holding the present respondent to be owner of the subject premises.

10. Coming to the other plank of challenge to the impugned order, the argument advanced on behalf of the present petitioners that brother of the present respondent being not a member of the family of the present respondent, his requirement cannot form part of *bona fide* requirement of the present respondent cannot be accepted in view of specific stand of the present respondent that the subject premises are required *bona fide* for business activities of not just his brother but of himself as well.

11. In the case of ***Sarla Ahuja vs United India Insurance Co. Ltd.*** (1998) 8 SCC 119, the Supreme Court held that the Rent Controller shall not proceed on the assumption that the requirement set up by the landlord for occupation of the tenanted premises is not *bona fide;* and that the principle to be kept in mind is that the tenant is not to dictate terms to the landlord as to how the property could be utilized and how the landlord has to adjust himself. 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*

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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 cases of ***Prativa Devi (Smt.) vs T.V. Krishnan***, (1996) 5 SCC 353; and ***Ragavendra Kumar vs Firm Prem Machinery & Company,*** (2000) 1 SCC 679, the Supreme Court held that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live.

12. It is the specific case of the present respondent that he is in joint family with his younger brother. Merely because brother of the present respondent is carrying out separate business from separate tenanted premises, the present respondent being desirous of taking care of the former's requirement cannot be faulted with. It is trite that the expression "family member" for present purposes includes a member with not just financial dependence but emotional dependence as well. Reference in this regard can be drawn from the case titled: ***Joginder Pal vs Nawal Kishore Behal***, (2002) 5 SCC 397.

13. It is also trite that the court has to take pragmatic and practical view of social circumstances while ascertaining if the requirement set up by the landlord is *bona fide* or not. In the Indian social milieu, it is not unprecedented or even surprising to note brothers supporting the economic welfare and carrier growth of each other. There is nothing on record to

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even feebly suggest that the present respondent has no emotional bonding with his brother and is not genuinely interested for the welfare and economic well-being of his brother. So, I find no reason to suspect *bona fide* of the present respondent if he wants to repossess the subject premises and ensure use thereof by himself and his younger brother.

14. In view of the aforesaid, I find no infirmity in the impugned order, so the same is upheld and the present petition and the application are dismissed.

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GIRISH KATHPALIA
(JUDGE)

APRIL 26, 2024/*as*

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