



2025:DHC:9275



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

% ***Date of decision: October 09, 2025***

+ **RC.REV. 39/2024**

MS FARHEEN ISRAIL & ANR.

.....Petitioners

Through: Mr. Amit Dhalla and Mr. Sohan
Singh Rawat, Advocates

Versus

GHULAM RASOOL WANI & ORS.

.....Respondents

Through: Md. Zaryab Jamal Rizvi, Ms.
Firdouse Qutb Wani and Ms. Subia
Naaz and Mr. Dev Sharma,
Advocates for R-2 to R-8

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (O R A L)

1. The petitioners/ landlord¹ filed an eviction petition under *Section 14(1)(e)* of the Delhi Rent Control Act, 1958² before the learned ARC-01, Central District, Tis Hazari Courts, Delhi,³ seeking eviction of the respondent no.1/ tenant as well as respondent nos.2 to 8⁴ from the subject premises being two rooms, one kothri along with dalan, open courtyard with latrine, bathroom and two kitchen in property bearing no.745, Ground Floor, Phatak Dhobian, Farash Khana, Delhi ⁵.

2. Succinctly put, as per petitioners, the whole property bearing

¹ Hereinafter referred to as '*petitioners*'

² Hereinafter referred to as '*DRC Act*'

³ Hereinafter referred to as '*ARC*'

⁴ Hereinafter referred to as '*respondents*'

⁵ Hereinafter referred to as '*subject premises*'



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no.745, Phatak Dobian, Farsh Khana, Delhi-110 006⁶ was purchased by the grandfather of the petitioners *vide* a registered Sale Deed dated 06.01.1947, who inducted the father of the respondent no.1, namely, Sh. Ghulam Qadir Wani as a tenant in the subject premises. Subsequently, the subject premises was mutated in the name of mother of the petitioners and accordingly, the father of respondent no.1 started paying rent to her. Later on, the father of respondent no.1 wrongly handed over possession of the subject premises to one Sh. Syed Daud Meer, whose family members, being respondent nos.2 to 8, were residing therein.

3. Further, as per petitioners, they were in a *bona fide requirement* of the subject premises since the wife of petitioner no.2, having undergone caesarean surgery, was advised to avoid using stairs and to stay at the ground floor, as also since the premises wherein petitioners were residing was in an uninhabitable/ dilapidated condition, and that they had no other suitable alternative accommodation available for the said purpose.

4. Summons were served upon the respondent no.1 by way of publication in the newspaper, however, he did not file any application seeking leave to defend.

5. However, upon service of summons, the respondents filed an application seeking leave to defend disputing the petitioners being a landlord or the owner of the subject premises, particularly, since the aforesaid Sale Deed pertained to property bearing no. 746, Phatak Dobian, Farsh Khana, Delhi-110 006 and not the property wherein the subject premises was situated. As per them, the mother of the petitioners had executed a receipt dated 10.07.1997 acknowledging the receipt of

⁶ Hereinafter referred to as '*property*'



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Rs.50,000/- towards part payment of total consideration of Rs.2,00,000/- for sale of the entire property and thereafter the physical possession of the subject premises was given to the husband of the respondent no. 2. Lastly, as per them, the petitioners were having sufficient *alternative accommodation* at their disposal and therefore, their requirement of the subject premises was not *bona fide*.

6. The learned ARC, vide order dated 07.12.2023⁷, allowed the application for leave to defend of the respondents, holding that triable issue has been raised by them and therefore the petitioners' projected requirement needs to "*be tested at the touch-stone of evidence/ cross-examination*".

7. Aggrieved thereby, the present revision petition filed by the petitioners for setting aside the order dated 07.12.2023 passed by the learned ARC.

8. Mr. Amit Dhalla, learned counsel for the petitioners submits that the impugned order is liable to be set aside since the leave to defend application filed by the respondents, who were not tenants and were merely unauthorized occupant/ unlawful sub-tenants in possession of the subject premises, was not maintainable since there is no such provision under the DRC Act. Also, since the respondent no.1, who was the original/ sole tenant never filed any application for leave to defend before the learned ARC. The respondents are nobody to have challenge the ownership of the petitioners.

⁷ Hereinafter referred to as '*impugned order*'



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9. Mr. Amit Dhalla, learned counsel further submits that the learned ARC has wrongly framed a triable issue by placing reliance upon a receipt dated 10.07.1997, while overlooking the judgment dated 22.01.2002 passed by the learned Trial Court in Suit no. 347/1998 whereby the suit for specific performance filed by husband of respondent no. 2 on the basis of the said receipt already stood dismissed on merits. So much so, the appeal therefrom was also dismissed by this Court with costs. He further submits that the learned ARC has also failed to consider that the husband of respondent no. 2 as well as the other respondents, have themselves admitted in various proceedings that the possession of the subject premises was taken by the husband of respondent no. 2 from the father of respondent no. 1 and not from the mother of the petitioners.

10. Controverting the above, Md. Zaryab Jamal Rizvi, learned counsel for respondents, at the very outset, submits that the present revision petition is, *per se*, not maintainable against an order of the learned Rent Controller allowing leave to defend, since the appropriate remedy available is under *Section 38* of the DRC Act. He then submits that the respondents in their application for leave to defend raised a substantial *triable issue* qua the ownership of the subject premises and the petitioners failed to establish their superior title over the respondents. Based thereon, the learned ARC have rightly granted them leave to defend. He also submits that the documents in previous proceedings relied upon by the petitioners do not pertain to the subject premises. He, lastly, submits that the impugned order is a well-reasoned, speaking order which suffers from no illegality, perversity or infirmity warranting interference from this



Court.

11. To support his aforesaid contention, learned counsel for respondents have relied upon *Shiv Sarup Gupta v. Dr. Mahesh C Gupta*⁸, *Abid-Ul-Islam v. Inder Sain Dua*⁹, *Precision Steel and Engineering Works & Anr. v. Prem Deva Niranjana Deva Tayal*¹⁰, *Inderjeet Kaur v. Nirpal Singh*¹¹.

12. Heard learned counsel for the parties as also gone through the documents and pleadings on record as also the judgments cited by the parties at Bar.

13. Regarding the issue of maintainability of the present revision petition under *Section 25B(8)* of the DRC, in view of what has been held by Hon'ble Division Bench of this Court in *R.S. Bakshi v. H.K. Malhari*¹², which has consistently been followed by the Co-ordinate Benches of this Court in *R.S. Bakshi v. H.K. Malhari*¹³, *Sanjay Mehra v. Sunil Malhotra*¹⁴, *Prem Lata v. Pawan Kumar Khurana*¹⁵, *Pravesh Jain v. Oswal Woollen Mills Ltd.*¹⁶, *Amrit Mohini and Another v. Brij Mohan Gupta*¹⁷, the same is very much maintainable.

14. As such, the issue of maintainability raised by the respondents is rejected.

15. Interestingly, there is no dispute by the respondents that the

⁸ (1999) 6 SCC 222

⁹ (2022) 6 SCC 30

¹⁰ AIR 1982 SC 1518

¹¹ (2001) 1 SCC 706

¹² (2002) 62 DRJ 272 (DB)

¹³ (2003) 67 DRJ 410

¹⁴ (2010) 117 DRJ 654

¹⁵ (2012) 187 DLT 340,

¹⁶ 2017 SCC OnLine Del 10882

¹⁷ 2023 SCC OnLine Del 6008



respondent no.1 is the actual/ original/ sole tenant of the subject premises. *Admittedly*, he never filed any application seeking leave to defend before the learned ARC, and it was only the respondents, who came into possession of the subject premises later and were allegedly only unauthorized occupant/ unlawful sub-tenants, who filed the said application seeking leave to defend. Thus, the application for leave to defend by them was hardly of any relevant value/ meaning. In view thereof, the *landlord-tenant relationship* stood established.

16. Even otherwise, the scheme of *Section 25B* of DRC Act is designed to provide a summary and speedy remedy to the landlords seeking eviction on the ground of *bona fide requirement* of the tenanted premises. The underlying intention of the legislature is manifest i.e., to obviate protracted trial. Since there was no contest from the respondent no.1, actual/ original/ sole tenant of the subject premises himself, allowing the other respondents to contest under the same facts and circumstances would defeat and frustrate the very intention and object of the enactment.

17. Be that as it may, the learned ARC has granted leave to the respondents primarily on account of the receipt dated 10.07.1997 produced by them, which is evidencing an agreement to sell the property to the husband of respondent no.2, as also the Sale Deed dated 06.01.1947 was pertaining to a different property number, not including the subject premises.

18. The respondents are merrily trying to sail in two boats as on one hand they claim that by way of an Agreement-cum-Receipt dated 10.07.1997 the petitioners' mother agreed to sell the property to the husband of respondent no.2, and even delivered the subject premises to



him pursuant thereto, whereas, on the other hand, they dispute the petitioners' ownership of the subject premises by alleging that the Sale Deed dated 06.01.1947 pertains to a different property. The same cannot go hand in hand and the respondents cannot be allowed to take mutually conflicting, self-contradictory and inherently destructive stands. The aforesaid, has been completely ignored by the learned ARC.

19. The case qua the receipt dated 10.07.1997 produced by the respondents also falls flat as the same has already been adjudicated against the husband of the respondent no.2 *vide* judgment dated 22.01.2002 by the learned Trial Court in Suit no. 347/1998 entitled '**Syed Doud Meer v. Smt. Naeema Begum**', appeal wherefrom has also been dismissed by this Court *vide* order dated 06.01.2012 in RFA 394/2003. Strangely, though the same was very much within the knowledge of the learned ARC, the same has been overlooked and the leave has been granted to the respondents by the learned ARC. The respondents surely cannot be allowed to have a second bite at the same cherry.

20. In any event, the petitioners were sufficiently able to demonstrate in form of sale deed in the name of their grandfather, mutation in favour of their mother, and the Aadhar Card establishing their relationship with their mother. There was, thus, hardly any material of any credence before the learned ARC to doubt the ownership of the petitioners so as to warrant grant of leave by the learned ARC.

21. Regarding the aspect of *bona fide requirement* of the subject premises by the petitioners, it has been their consistent case that it was required by them for their own accommodation, since the wife of petitioner no.2, having undergone caesarean surgery, was advised to avoid



stairs and the premises wherein they were residing was in uninhabitable/dilapidated condition. For these, the petitioners produced sufficient proof in form of medical report of wife of petitioner no.2 and photographs of their current accommodation in dilapidated condition. The same were sufficient for concluding that the petitioners indeed had *bona fide requirement* of the subject premises, more so, since the respondents were not able to raise any *triable issue* qua that before the learned ARC.

22. Regarding, availability of *alternative accommodation* with the petitioners, it was their consistent stand that the said accommodations were either in a dilapidated condition or already under tenancy, and thus were not suitable to meet their requirement. In any case, it is a settled law that once landlord establishes that the property wherefrom he is seeking eviction is required *bona fide* by him, then the issue of availability of alternative accommodation is merely incidental. Moreover, it is the prerogative of the landlord, based on his subjective assessment, to choose an accommodation that reasonably satisfy his requirement. A landlord being the the best judge of his needs cannot be thrust with the opinion of the tenant or the Court. Reference in this connection can be made to **Anil Bajaj & Anr. v. Vinod Ahuja**¹⁸ and **Akhileshwar Kumar v. Mustaqim**¹⁹. Consequently, there was no *triable issue* qua that raised by the respondents before the learned ARC, who has, while dealing with the leave to defend wrongly held “*that a triable issue has also been raised by the respondents no.2 to 8 with respect to availability of alternate accommodation with the petitioners.*”

¹⁸ (2014) 15 SCC 610

¹⁹ (2003) 1 SCC 462



23. At this stage, learned counsel for the respondents submits that the possession of the respondents is protected under the *doctrine of adverse possession*. However, this being self-implicating, is another way for the respondents to have one more bite at the cherry.

24. Lastly, though this Court in revisional jurisdiction cannot assume the powers of an appellate Court and substitute its views in place of those expressed by the learned ARC, it is nonetheless well settled that while acting in supervisory jurisdiction under *Section 25B(8)* of the DRC Act this Court can test whether the impugned judgment/ order suffers from any arbitrariness, perversity, illegality, impropriety or the like. Upon finding manifest errors of the such nature apparent on the face of the record, it becomes the bounden duty of this Court to invoke its powers under revisional jurisdiction. Reference in this connection can be made to ***Hindustan Petroleum Corporation Limited v. Dilbahar Singh***.²⁰

25. In view of the aforesaid analysis, this Court is of the opinion that there is a manifest error in the impugned order dated 07.12.2023 passed by the learned ARC, particularly, since the facts have been overlooked and the respondents were unable to raise any *triable issue* before the learned ARC thereby warranting the grant of leave.

26. Accordingly, an eviction order is passed in favour of the petitioners in respect of the subject premises being two rooms, one kothri along with dalan, open courtyard with latrine, bathroom and two kitchen in property bearing no. 745, Ground Floor, Phatak Dhobian, Farash Khana, Delhi. However, in view of *Section 14(7)* of the DRC Act, the order for recovery

²⁰ (2014) 9 SCC 78



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of possession of the subject premises shall not be executed before expiry of six months period from today.

27. The present petition stand disposed of in the aforesaid terms, leaving the parties to bear their respective costs.

SAURABH BANERJEE, J.

OCTOBER 9, 2025/NA/GA