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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 10.02.2025*+ **RC.REV. 616/2019 & CM APPL. 47593/2019****MUSARRAT ALI**

.....Petitioner

Through: Mr. Vinay, Advocate.

versus

TASNEEM JAHAN

.....Respondent

Through: Mr. Diwan Singh Chauhan, Advocate.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed on behalf of the Petitioner/tenant seeking to challenge an order dated 26.04.2019 [hereinafter referred to as the "Impugned Order"] passed by learned Additional Rent Controller (Central) Tis Hazari Court, Delhi. By the Impugned Order, the Leave to Defend/Contest Application filed by the Petitioner/tenant has been dismissed and the Respondent/landlady has been found entitled to possession of the premises i.e., Shop bearing municipal No.1435-A, admeasuring 3.5 x 10 sq. ft., Ward No. IX, situated at Bazar Chitli Qabar, Jama Masjid, Delhi-110006, as shown in green colour in the site plan annexed with the Eviction Petition [hereinafter referred to as the "subject premises"].

2. A Coordinate Bench of this Court by an order dated 18.11.2019



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passed an order directing a stay of the execution of the Impugned Order till the next date of hearing subject to payment of user and occupation charges at the rate of Rs.5000/- per month. It is the case of the parties that the user and occupation charges are being paid regularly, however an interim stay is pending for the last more than five years.

3. The only contention that is raised by the Petitioner/tenant is that the subject premises is not owned by the Respondent/landlady. It is contended by the Petitioner/tenant that one Shri. Shafiq Ahmed, the previous owner of the property had made a declaration of Will on 03.02.1956 declaring that the father of the Petitioner/tenant would continue as tenant generation after generation until his legal heirs surrender possession of the tenanted premises. Thus, it is contended by the Petitioner/tenant that his tenancy is in perpetuity.

4. Learned Counsel for the Respondent/landlady submits that the issue in the present Petition is limited and that the Impugned Order does not suffer from any infirmity. Learned Counsel for the Respondent/landlady further submits that so far as concerns the aspect of landlord-tenant relationship and ownership of the subject premises, the Respondent/landlady is a co-owner and the learned Trial Court relied on rent receipts to give a finding of ownership in this behalf.

5. Learned Counsel for the Respondent/landlady further submits that the need, as set out by the Respondent/landlady in the Eviction Petition, is for her son opening a Chartered Accountant's office. The learned Trial Court has found, after examining the pleadings and documents, that there is no



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dispute that the son of the Respondent/landlady is a Chartered Accountant or that he needs space for his office. Thus, the learned Trial Court has found the need to be bonafide.

6. On the aspect of availability of alternate suitable accommodation, learned Counsel for the Respondent/landlady submits that the averment before the learned Trial Court was that there is a property bearing shop No. 1437, Ward No. IX, situated at Bazar Chitli Qabar, Jama Masjid, Delhi-110006 [hereinafter referred to as “Shop No. 1437”] which is available to the Respondent/landlady, which is an alternate suitable premises. The learned Trial Court has examined this contention and found that the Shop No. 1437 is in the occupation of the husband of the Respondent/landlady and that he is running his footwear business from the same premises. Thus, the shop is not available with the Respondent/landlady.

7. On the aspect of landlord-tenant relationship and ownership of the subject premises, the learned Trial Court has relied on the rent receipts placed on record by the Respondent/landlady duly signed by the Petitioner/tenant which have been issued by the Respondent/landlady and the fact that the Respondent/landlady has shown a chain of title documents of ownership held in favour of the Respondent/landlady. Relying on these documents, learned Trial Court has held that the Respondent/landlady is a co-owner of the subject premises as well as the existence of landlord-tenant relationship between the parties stands duly proved for the purposes of Delhi Rent Control Act, 1958 [hereinafter referred to as “DRC Act”].

8. The challenge to the title of a landlord by a tenant is barred by the



provisions of Section 116 of the Evidence Act, 1872/Section 122 of The Bharatiya Sakshya Adhiniyam, 2023, which provides for an estoppel on a tenant to deny the title of the landlord. Section 116 of the Evidence Act, 1872 is reproduced below:

“116. Estoppel of tenants and of licensee of person in possession. — No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession there of shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

8.1 The Supreme Court in the case of ***Bansraj Laltaprasad Mishra v. Stanley Parker Jones***,¹ has held that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and hence the equitable principle of estoppel has been incorporated by the legislature. The relevant extract of the ***Bansraj Laltaprasad Mishra case*** is reproduced below:

“13. The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.

14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got

¹ (2006) 3 SCC 91



and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.

15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time.”

[Emphasis Supplied]

8.2 Relying on the settled law, the learned Trial Court after considering the chain of title documents establishing ownership and duly signed rent receipts found the Respondent's co-ownership over the subject premises, as well as the existence of a landlord-tenant relationship between the parties, duly established for the purposes of the DRC Act. This Court finds no infirmity with this finding.

9. It is settled law that what a landlord has to prove is a better title than the tenant to seek his eviction from a tenanted premises under Section 14(1)(e) of the Act. The Supreme Court in the case of ***Shanti Sharma v. Ved Prabha***² has held as follows:

“14. The word “owner” has not been defined in this Act and the word ‘owner’ has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be

² (1987) 4 SCC 193



as it is understood at present. **It could not be doubted that the term “owner” has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act.** This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. **In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term “owner” is vis-a-vis the tenant i.e. the owner should be something more than the tenant.** Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure....”

[Emphasis supplied]

9.1 In the case of *Swadesh Ranjan Sinha v. Haradeb Banerjee*³, the Supreme Court has, in the context of ownership in an eviction petition, further clarified that:

“9. All that a plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true owner. The rights of an owner are seldom absolute, and often are in many respects controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis the person challenging it....”

[Emphasis supplied]

10. In the present case, the Respondent/landlady has been able to prove a better title than the Petitioner/tenant. The contention of the Petitioner/tenant challenging the ownership of the Respondent/landlady is thus without any merit. This Court finds no infirmity with this finding of the learned Trial Court.

³ (1991) 4 SCC 572



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11. On the aspect of bonafide requirement, as discussed above, the requirement is for the son of the Respondent/landlady, who is a Chartered Accountant. There is no document placed on record much less any averment that contradictions in fact the son of the Respondent/landlady is not a Chartered Accountant. It is the contention of the Respondent/landlady that due to non-availability of a reasonable and suitable place, the son of the Respondent/landlady is unable to promote his career and do his independent practice. In this regard learned Trial Court has held that it is within the rights of the Respondent/landlady to seek eviction of the Petitioner/tenant from the subject premises owned by her in order to settle her son for his own independent practice as a Chartered Accountant.

11.1. No contention has been raised before this Court by the Petitioner/tenant challenging the *bona fide* need of the Respondent/landlady. This Court has after examining the Impugned Order finds no infirmity with the findings of the learned Trial Court in this regard.

12. On the aspect of availability of alternate suitable accommodation, it was the case of the Petitioner/tenant before the learned trial court that Shop No. 1437 has become available with the Respondent/landlady and Respondent/landlady is in the process of selling the same. Learned Trial examined this aspect and has held that the Petitioner/tenant had failed to file any documentary evidence in support of these contentions, these were mere bald assertion which cannot be relied upon.

12.1. No dispute has been raised by the Petitioner/tenant before this Court in terms of availability of alternate suitable accommodation with the



Respondent/landlady.

13. The jurisdiction of this Court is only revisionary in nature and limited in scope. The Supreme Court in *Abid-Ul-Islam v. Inder Sain Dua*⁴ while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the Act has held that this is a conscious omission. It was held that the High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the face of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. This has been elucidated at length by Supreme Court in *Abid-Ul-Islam* case in the following manner:

“Scope of revision

22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.

*23. The proviso to Section 25-B(8) **gives the High Court exclusive power of revision against** an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. **Thus, the High Court is***

⁴ (2022) 6 SCC 30



not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.

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25. The aforesaid decision has been recently considered and approved by this Court in Mohd. Inam v. Sanjay Kumar Singhal [Mohd. Inam v. Sanjay Kumar Singhal, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)

“22. This Court in Sarla Ahuja v. United India Insurance Co. Ltd. [Sarla Ahuja v. United India Insurance Co. Ltd., (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word “revision” was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)

‘11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.’

It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.



23. Again in *Ram Narain Arora v. Asha Rani* [*Ram Narain Arora v. Asha Rani*, (1999) 1 SCC 141] , this Court had an occasion to consider the aforesaid powers under the Delhi Rent Control Act, 1958. This Court observed thus : (SCC p. 148, para 12)

'12. It is no doubt true that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the Revisional Court to interfere with such a matter.'

It was thus held, that though the scope of revisional powers of the High Court was very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. It has also been held, that pure findings of fact may not be open to be interfered with, but in a given case, if the finding of fact is given on a wrong premise of law, it would be open to the Revisional Court to interfere with the same."

[Emphasis supplied]

14. The learned Trial Court has examined the contentions as raised by the Petitioner/tenant and has found that no triable issue has been raised. The examination by this Court does not show anything to the contrary. As stated above, the revisionary jurisdiction of this Court is limited and circumspect. All that the Court is required to examine, in terms of the judgment of the Supreme Court in *Abid-ul-Islam* case, is whether there is absence of adjudication for interference by this Court or any error apparent on the face of the record. This Court finds that no ground for interference has been made out by the Petitioners/tenants.



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15. For the reasons stated above, this Court finds no infirmity with the Impugned Order.

16. The Petition is accordingly dismissed. All Pending applications stand closed.

17. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

FEBRUARY 10, 2025/ ha

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