



2025:DHC:1449



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 12.02.2025*+ **RC.REV. 326/2024 & CM APPL. 66207/2024****SACHIN NAGPAL**

.....Petitioner

Through: Vikas Khatri, Mr. Manas Khatri, Ms.
Khushboo Pathak & Ms. Seema
Khatri, Advocates.

versus

GOPAL KRISHAN

.....Respondent

Through: Mr. Kunal Kher, Advocate.

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

1. The present Petition has been filed by the Petitioner/tenant seeking to challenge the order dated 25.09.2024 passed by the learned CCJ cum ARC (Central) Tis Hazari Courts, New Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Leave to Defend/Contest Application filed by the Petitioner/tenant has been dismissed. The premises in issue is a private Shop No.11, situated at First Floor of Property bearing No. 413, Gali Rajan Kalan, Kashmere Gate, Delhi-110006 [hereinafter referred to as the "subject premises"].

2. This Court had examined the Impugned Order on the last date of hearing as well as today.

3. The Petitioner/tenant had, on the previous date, raised the same contention that he has raised today. It is stated by the learned Counsel for the



Petitioner/tenant that the Respondent/landlord has 26 shops available in the same building as the subject premises is situated and that this was not disclosed by him in the Eviction Petition.

4. Learned Counsel for the Petitioner/tenant, in addition, has sought to rely upon paragraphs 8 and 13 of the Impugned Order to submit that there were other shops available and that the Petitioner/tenant should have been given an opportunity to lead evidence with respect to the availability of alternate suitable accommodation. Learned Counsel for the Petitioner/tenant has laid emphasis on the fact that these shops were not mentioned in the Eviction Petition by the Respondent/landlord.

5. Learned Counsel for the Respondent/landlord, on the other hand, seeks to rely upon the Impugned Order as well as his Reply to the Leave to Defend/Contest Application to submit that of the 26 shops being referred to by the Petitioner/tenant, one is the subject matter of the present Petition while the remaining 25 are in the occupation of other tenants. Learned Counsel further submits that this was set out in his Reply to the Leave to Defend/Contest Application as well. The relevant extract of the Reply to the Leave to Defend/Contest Application filed by the Respondent/landlord is reproduced below:

*“5.That in reply to para no.5 of the application that the petitioner is the owner of entire property bearing 413, Gali Rajan Kalan, Kashmere Gate, Delhi. **It is denied that the petitioner has concealed material facts regarding the said property is built-up property. It is submitted that said property having 25 shops and all the shops are under tenancy including one shop is also in the occupation of respondent.**”*

[Emphasis Supplied]

5.1. In addition, learned Counsel for the Respondent/landlord seeks to rely upon the discussion in that aspect of the matter in the Impugned Order, more



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specifically as is set out in paragraphs 12 to 16 of the Impugned Order.

6. So far as concerns the aspect of landlord-tenant relationship and the ownership of the subject premises, the same was not the subject matter of challenge before the learned Trial Court nor is the same being challenged before this Court.

7. The bonafide need which has not been materially controverted, is for the need of the Respondent/landlord to set up his own business. It is the case of the Respondent/landlord that he is unemployed and wants to set up his business of motor parts. The Respondent/landlord has also averred that he has no other suitable premises except for the subject premises.

8. This Court has examined the Impugned Order. As stated above, the relationship of landlord and tenant between the parties and ownership of the subject premises was admitted by the Petitioner/tenant and hence there is no dispute on this aspect.

8.1. On the aspect of *bona fide* need of the Respondent/landlord, learned Trial Court has held that no material was placed on record by the Petitioner/tenant to controvert the *bona fide* need of the Respondent/landlord and it is not for the Court or tenant to sit in the armchair of the landlord and take a decision about the usage of property or the requirement of the business and hence the learned Trial Court has held that the need of the Respondent/landlord is *bona fide*.

8.2. On the aspect of availability of suitable alternate accommodation with the Respondent/landlord, learned Trial Court has held that the Petitioner/tenant had only vaguely stated that some of the shops are available with Respondent/landlord, however the details of the



property/shops lying vacant was not specified by the Petitioner/tenant and hence learned Trial Court has held that no triable issue has been raised by the Petitioner/tenant.

9. The provisions of Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as the “DRC Act”] have been provided for with care by the Legislature. On the aspect of availability of alternate suitable accommodation, it is not only that the accommodation is to be alternate, it is also required to be available and suitable. The Supreme Court in *Shiv Sarup Gupta v. Mahesh Chand Gupta*¹ has held for an eviction petition to fail on the ground of alternate suitable accommodation being available, the other accommodation must be suitable and convenient in all respects as the tenanted accommodation from which the landlord seeks eviction of. It has been held that:

*“14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. **Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation,** may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. **Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial**”*

¹ (1999) 6 SCC 222



of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”

[Emphasis Supplied]

10. The other issue that has been taken by the learned Counsel for the Petitioner/tenant is concealment of the 25 available shops in the same building as that of the subject premises. This submission is without any merit. It is settled law that for a premises to be set out in the eviction petition, it must actually be available. Failure to disclose a premises which is not available to the landlord cannot be considered as concealment.

10.1 This Court in the case of *Shakuntala Devi v. Mohan Das*², while relying on the case of *Meenal Eknath Kshirsagar (Mrs) v. Traders & Agencies*³ has held that mere omission to state alternate accommodation in the pleadings cannot be regarded as sufficient for disentitling the landlord from claiming a decree of eviction. The relevant extract of the *Shakuntala Devi case* is reproduced below:

“This evidence of the Petitioner has gone unrebutted in her cross-examination. The responses given by the Respondent in his cross-examination are also mostly evasive. Since, the accommodation referred to was not suitable, it cannot be said to be an alternate accommodation available. Given the law in this regard, it cannot be said that the non-mention of the Vikaspuri premises would tantamount to concealment by the Petitioner. The finding in this regard which has been impugned is thus set aside. In the case of Meenal Eknath Kshirsagar (Mrs) v. Traders & Agencies[2024 SCC OnLine Del 8514], Supreme Court has held that mere omission to state alternate accommodation in the plaint cannot be regarded as sufficient for disentitling the landlord from claiming a decree of eviction.

² 2024 SCC OnLine Del 8514

³ (1996) 5 SCC 344



The relevant extract is reproduced below:

“18...It would have been better if she had referred to those facts but mere omission to state them in the plaint cannot be regarded as sufficient for disentitling her from claiming a decree for eviction, if otherwise she is able to prove that she requires reasonably the suit premises for her occupation. We are, therefore, of the opinion that the appellate bench and the High Court clearly went wrong in holding that the said omission was sufficient to disentitle her from getting a decree of eviction and it also disclosed that her claim was mala fide and not bona fide as required by law.”

[Emphasis supplied]

10.2 A similar view has been taken by a Coordinate Bench of this Court in the case of **Praveen & Anr. v. Mulak Raj & Ors.**⁴, has held that it is not necessary for the landlord to disclose the accommodations which are not considered as alternate accommodation and such non-disclosure would not make tenant entitled for leave to defend. The relevant extract is reproduced below:

“50. As far as the argument of the petitioners that the respondents have failed to disclose all the accommodation available with them is concerned, I am in agreement with the submissions made by the respondents that all the alternate accommodation has been disclosed by the respondents. The accommodation which was not disclosed was not considered as an alternate accommodation by the respondents. The non-disclosure of the other alternate accommodation, if any, is of no consequence and does not make the tenant entitled to leave to defend. The learned counsel for the respondents has rightly placed reliance upon the judgments in this regard. This Court in “Amolak Raj Singh v. Narender Kumar Dang” [2017:DHC:6652] held that:—

“32. As far as the contention of the counsel for the petitioner/tenant, of the respondent/landlord in the petition for eviction having not disclosed the allotment at Holambi Kalan is concerned. Supreme Court in Ram Narain Arora v. Asha Rani (1999) 1 SCC 141 held that the non-disclosure of accommodation which the Court also agrees cannot be alternate suitable accommodation, cannot be fatal to the petition for eviction. I have also in judgment dated 12th January, 2009 in RC (R) No. 78-79/2005 titled Mumtaz Begum v. Mohd. Khan held that non-disclosure of other accommodation available is not always

⁴ 2023 SCC OnLine Del 7721



fatal. To the same effect are Surinder Singh v. Jasbir Singh (2010) 172 DLT 611, Sukhbir Singh v. Dr. I.P. Singh (2012) 193 DLT 129, Manju Devi v. Pratap Singh (2015) 219 DLT 260 and Hameeda Shahzad v. Shahjahan Khatoon 2017 SCC OnLine Del 7203. I have recently in Sunil Kumar Goyal v. Harbans Singh 2017 SCC OnLine Del 9289, referring to earlier judgments, also held that once the facts have come before the Court and the Court has, after dealing therewith held in favour of landlord, the petition for eviction cannot be dismissed on ground of concealment.”

51. Similar is the view of Meenal Eknath Kshirsagar and Har Lal Gupta (supra).

52. Hence, keeping in view the position of law related to non-disclosure of alternate premises, the argument of the petitioners that there is concealment of alternate accommodation by the respondents and the Eviction Petition should be dismissed on this ground, is hereby rejected. Even otherwise, there is no alternate property which has been concealed by the respondents.”

[Emphasis Supplied]

10.3 Since, the accommodation referred to by the Petitioner/tenant was not available, it cannot be said to be an alternate accommodation. Given the law in this regard, it cannot be said that the non-mention of these shops would tantamount to concealment by the Petitioner.

11. The examination by a Court in a Revision Petition is limited and circumspect. The Supreme Court in ***Abid-ul-Islam v. Inder Sain Dua***⁵, has held that the jurisdiction of this Court is only revisionary in nature and limited in its scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the said Act has held that this is a conscious omission. 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

⁵ (2022) 6 SCC 30



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 legislature has consciously removed the two stages Appeal which existed priorly. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. The relevant extract of the *Abid-ul-Islam* case is as follows:

“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 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.

[Emphasis supplied]

12. 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 Petitioner/tenant.

13. From the discussion above and in view of the settled position of law, this Court finds no infirmity with the Impugned Order.



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14. The Petition is accordingly dismissed. All pending Applications stand closed.

TARA VITASTA GANJU, J

FEBRUARY 12, 2025/ ha/jn

Click here to check corrigendum, if any