



2025:DHC:1359



\$~75

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 14.02.2025*+ **RC.REV. 186/2016, CM APPL. 10885/2016 & CM APPL. 40144/2021****RAJESH KUMAR**

.....Petitioner

Through: Mr. Vibhor Bagga, Ms. Esha Dogra,
Ms. Sunakshi Dogra, Adv. with
Petitioner in-person

versus

HARMINDER SINGH WALIA

.....Respondent

Through: Mr. Vinay Sharma, Adv.

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

1. The present Petition has been filed by the Petitioner/tenant impugning an order dated 18.11.2015 passed by Ld. SCJ-RC, Rohini Courts, Delhi [hereinafter referred to as 'Impugned Order']. By the Impugned Order, the Application for Leave to Defend/contest filed by the Petitioner/tenant was dismissed. The premises in issue is one shop on the ground floor of property bearing No. WZ-884, Rani Bagh, Delhi [hereinafter referred to as 'subject premises'].

2. As can be seen from above, the matter has been pending for almost nine years. This Court by an order dated 22.03.2016, while passing interim directions, had affixed user charges at the rate Rs.6,000/- per month in the matter. The matter has thereafter continued before this Court.

3. On 06.02.2025, this Court had briefly heard the Respondent/landlord in the matter in view of the fact that adjournment request sought by the



2025:DHC:1359



Petitioner/tenant was opposed by the learned Counsel for the Respondent/landlord.

4. So far as concerns the aspect of landlord-tenant relationship and *bona fide* need, the same stands admitted by the Petitioner/tenant. The only ground of challenge that has been raised before this Court is the availability of alternate suitable accommodation.

5. Learned Counsel for the Petitioner/tenant has made two submissions. In the first instance, he submits that the Petitioner/tenant had paid a pagri amount to the Respondent/landlord and thus the Petitioner had become the owner of the subject premises. Secondly, it is contended that there are three other alternate accommodations available which are located within the same building i.e. WZ-884, Rani Bagh, Delhi [hereinafter referred to as “subject building”]. In support of his contention *qua* availability of alternate suitable accommodation, learned Counsel for the Petitioner/tenant has relied upon paragraph L and M of his Application for Leave to Defend and site plan filed by the Respondent/landlord to evidence the same. It is stated that as per the site plan, there are four shops shown in the site plan, one of which is the subject premises and the other three are the alternate accommodations available with the Respondent/landlord.

5.1 Learned Counsel for the Petitioner/tenant also draws the attention of the Court to the Reply filed by the Respondent/landlord to the Application for Leave to Defend to submit that the Reply is just a bare denial. Thus, it is contended that the Impugned Order suffers from an infirmity.

6. Learned Counsel for the Respondent/landlord, in the first instance,



2025:DHC:1359



submits that so far concerns the challenge of giving of an amount in cash/pagri, the same is barred by the provisions of Delhi Rent Control Act, 1958 [hereinafter referred to as 'the Act']. Learned Counsel seeks to rely upon Section 13 of the Act to submit that in the event that there was any amount due from the Respondent/landlord, Section 13 provides that on an application made before the Rent Controller within one year, the payment is to be refunded.

6.1 Admittedly no such application has been made by the Petitioner/tenant. Thus, this averment of the Petitioner/tenant is without any merit.

7. So far as concerns the aspect of availability of alternate suitable accommodation, learned Counsel for the Respondent/landlord draws the attention of the Court to his Eviction Petition wherein the Respondent/landlord has disclosed that there were three shops available, more specifically shown as orange, brown and pink colour in the site plan. Learned Counsel submits that out of all these shops, two shops shown in orange and brown colour were with tenants while one shop in pink colour had been sold previously. Learned Counsel thus submits that this disclosure was made by the Respondent/landlord in the Eviction Petition, hence, in reply to the Application for Leave to Defend, the contentions have been simply denied.

8. This Court, after briefly hearing the parties on the last date of hearing, had directed the following:

“3. Learned Counsel for the Respondent/landlord submits that the matter has been pending for more than 9 years now and that he would



like the matter to be heard.

4. Learned Counsel for the Respondent/landlord submits that the issues involved in the present Petition are limited. He states that so far as concerns the landlord-tenant relationship, the same stands admitted. The Petitioner/tenant has admitted that he is a tenant and he had paid rental to the mother of the Respondent/landlord. It is contended that after the demise of his mother of the Respondent/landlord, Respondent/landlord has stepped into her shoes as the landlord.

4.1 Learned Counsel further contends that provisions of Section 116 of the Evidence Act, 1872 is applicable in the present case which state that an estoppel is applicable on a tenant from deny the title of the landlord once an admission of tenancy/ payment of rental is made to the landlord. Section 116 of the Evidence Act, 1872 states as follows:

“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.”

5. Learned Counsel for the Respondent/landlord submits that the mother of the Respondent/landlord had passed away and that the Respondent is the only legal representative, and thus, the Respondent has become the landlord in the present case. He seeks to rely upon Paragraphs 12 and 14 of the Impugned Order wherein the finding has been set out in this behalf.

6. On the aspect of bona fide need, the need as set out by the learned Counsel for the Respondent/landlord is for his own commercial use. There is no challenge to the bona fide need, however, the challenge as placed by the learned Counsel for the Petitioner/tenant is to the availability of alternate suitable accommodation.

7. Learned Counsel for the Respondent/landlord submits that there is no suitable alternate accommodation available. He seeks to rely upon the site plan which has been filed with the Eviction Petition of the other four shops which were previously available with the Respondent/landlord. Two of these shops are with the tenants, one was sold in the year 2001 and one is the subject premises.



2025:DHC:1359



8. Learned Counsel for the Respondent/landlord submits that the Respondent/landlord is a senior citizen and after having retired from the service of the Railways, he wishes to set up his own business but is not being able to do so owing to the pendency of the present Petition. No other suitable alternate accommodation has been placed on record by the learned Counsel for the Petitioner/tenant.....”
9. As stated above, the landlord-tenant relationship and the ownership of the subject premises is not disputed by the Petitioner/tenant and the same has been dealt with in the Impugned Order. The Impugned Order shows that the Petitioner/tenant has admitted to being a tenant and his tenancy has been created by the mother of the Respondent/landlord and after her death, the Petitioner/tenant was paying rent to the Respondent/landlord until the filing of the present Petition. The ownership of the Respondent/landlord or the fact that the Petitioner is a tenant has not been denied at any stage except at the time of filing the Eviction Petition.
- 9.1. The learned Trial Court has also relied upon the provisions of Section 116 of the Indian Evidence Act, 1872 to state that an estoppel is applicable to a tenant from denying the title of the landlord once an admission of tenancy/ payment of rental to the landlord is made.
- 9.2. This Court agrees with the Impugned Order passed by the learned Trial Court that no triable issue on this aspect has been raised.
10. So far as concerns the *bona fide* need, as stated above, the need of Respondent/landlord is for setting up his own business after having retired from service in the Railways. The learned Trial Court has examined this need and found that the need is genuine and thus held that that there is no challenge on this aspect as well. No challenge has been raised before this Court on this aspect either. Thus, the *bona fide* need also stands proved.



11. On the aspect of availability of alternate suitable accommodation, this Court has examined the Eviction Petition as well as the Impugned Order. The Respondent/landlord had in Annexure-A, Paragraphs 18(a)(ix) and 18(a)(x) discussed the alternate shops in the subject building. It was stated as follows:

“(ix) That apart from the tenanted premises petitioner is also having 2 shops which are under the use and occupation of different tenants. Portion shown in Orange colour is occupied by the earst while tenant Sh. Anup Kumar Kapur and he was inducted by the father of the petitioner in the year 1985. The other portion shown in brown colour is under the tenancy of Sh. Baldev Raj Chabra who is running the Dental Clinic since 1999.

(x) That the portion shown in Pink colour is under the possession and ownership of Smt. Lalit Rani. Initially his husband Sh. Charanjeet was the tenant in the suit premises since 1973 and on 2007 his wife purchased the said portion/shop from the petitioner under settlement vide Sale Deed.

(xi) That the son of the petitioner Sh. Manjot Singh Walia is doing business of property dealing from the suit premises i.e. WZ-884, Rani Bagh, Delhi and even he has no other alternative space/accommodation to run his office/shop and unfortunately due to paucity of commercial accommodation, he is running his shop from parking area as shown in yellow colour of the site plan apart from the parking. Thereby petition has been filed by the petitioner against the tenant Sh. Anoop Kumar Kapur U/s 14 (1) (e) of D.R.C. for requirement of himself as well as for his son Sh. Manjot Walia use. The above said petition was disposed off whereas the aforesaid tenant gave undertaking before the Hon'ble High Court of Delhi to vacate the said premises on or before 30-10-2015. It is pertinent to mentioned here that said premises will be occupied by Sh. Manjot Singh Walia after its vacation from the erstwhile tenant/occupier.”

[Emphasis Supplied]

11.1 A perusal of the Application for Leave to Defend also shows that the plea as set out by the Petitioner/tenant is simply that the Respondent/landlord has three shops other than the subject premises in the



subject building and that these shops have been let out to different tenants.

The relevant extract is reproduced below:

“M) That apart from property in dispute the malicious petitioner has 3 other shops in property bearing no. WZ-884, Rani Bagh which he has rented out to different tenants after receiving heavy amount as PAGDI.”

[Emphasis Supplied]

11.2. The learned Trial Court has examined and dealt with these contentions in the Impugned Order itself. The learned Trial Court has found that the ground taken by the Petitioner/tenant is that the landlord has “enough” commercial accommodation available. Given the fact that it was disclosed in the Eviction Petition that the three shops in the subject building are not available, the additional accommodation is clearly not available. The learned Trial Court has also found that the plea of availability of alternate accommodation is not supported by any document or any other evidence and is also devoid of particulars.

12. The provisions of Section 14(1)(e) of the Act have been provided with care by the legislature, not only is the accommodation to be ‘alternate’, but it is also required to be suitable. The Supreme Court in the ***Shiv Sarup Gupta v. Mahesh Chand Gupta***¹ has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects as the tenanted accommodation from which the landlord seeks eviction of the tenant. It was 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

¹ (1999) 6 SCC 222



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 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]

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*² 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

² (2022) 6 SCC 30



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 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.**

xxx

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.

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 Petitioner/tenant.

15. The present Petition is accordingly dismissed. All pending Applications stands closed.

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

TARA VITASTA GANJU, J

FEBRUARY 14, 2025/jn

[Click here to check corrigendum, if any](#)