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

Date of Decision: 04.02.2025

+ **RC.REV. 339/2015 and C.M. Appl. No. 68127/2024**

SATYA NARAIN GUPTA

.....Petitioner

Through: **Mr. Ashish Mohan, Sr. Advocate with
Mr. Varun Garg and Ms. Komal
Bihani, Advocates.**

versus

ANIL KUMAR BANSAL

.....Respondent

Through: **Mr. Pankaj Gupta and Ms. Rimp
Gupta, Advocate along with LR (ii) of
the respondent in person.**

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present petition seeks to challenge the judgment dated 15.05.2015 [hereinafter referred to as the "Impugned Judgment"] passed by the learned CCJ-cum-ARC-1 (Central), Tis Hazari Courts, Delhi. By the Impugned Judgment, the learned Trial Court has allowed the Eviction Petition filed by the Respondent/landlord after a full trial in the matter. The Leave to Defend/Contest was granted to the Petitioner/tenant on 05.08.2014, and thereafter, a full trial in the matter was conducted. The premises in issue is one shop on the ground floor, admeasuring 7.5 ft. x 3.8 ft. and one duchhatti on the first floor with chhajja of property bearing no. 442, Katra Madgran,



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Khari Baoli, Delhi-110006 [hereinafter referred to as the “subject premises”].

2. Learned Senior Counsel for the Petitioner/tenant raises two contentions. It is submitted that the requirement as projected by the Respondent/landlord is fanciful. In addition, it is contended that the Respondent/landlord has concealed availability of space in the basement and has also concealed availability of space in the mezzanine floor of the subject premises. Learned Senior Counsel for the Petitioner submits that the Impugned Order suffers from an infirmity.

3. Learned Counsel for the Respondent/landlord refutes the aforesaid contentions. He submits that there has been no concealment by the Respondent/landlord. The basement as well as the mezzanine floor, both form part of the site plan which was annexed alongwith the Eviction Petition. Reliance is placed on the coloured copy of the site plan, which forms part of the Trial Court Record to submit that the Eviction Petition clearly sets out that the portions in blue are available, which include the basement as well as mezzanine, thus, there is no concealment.

3.1 Learned Counsel for the Respondent/landlord submits that so far as concerns the *bona fide* requirement, the Respondent/landlord had, in the Eviction Petition, more specifically in Paragraph 18(c) of the Eviction Petition, set out that the blue portion is already under use for godown purposes for storing goods. It is thus contended that the need of the Respondent/landlord is *bona fide* and not fanciful.

4. Leaned Counsel for the Respondent/landlord further submits that the



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contentions being raised before the Court today are being raised for the first time in this Court and that they do not form part of the Written Statement filed before the learned Trial Court.

5. This Court has examined the Impugned Order. The Application for leave to defend was permitted by the learned Trial Court on 05.08.2014. Thereafter, a complete trial was conducted in the matter. On the aspect of landlord-tenant relationship and ownership the learned Trial Court has held that the Petitioner/tenant has admitted the existence of the landlord-tenant relationship, and the Respondent/landlord has also established his ownership over the subject premises in virtue of a sale deed in his favour.

6. On the aspect of landlord tenant relationship and ownership, there is no challenge meted out by the Petitioner/tenant before this Court. The only challenge set forth before this Court is on the *bonafide* requirement and availability of alternative space with the Respondent/landlord for which contention has been set forth above.

7. The learned Trial Court has held that the need of the Respondent/landlord is *bona fide* since the premises available with the Respondent is too small for the Respondent to run his business. The learned Trial Court found that since the entry of the subject premises is from Katra Ishwar Bhawan which is better situated in comparison to the entry from the by-lane or common chowk, the Respondent cannot be denied his right of having a spacious office and run his properly. In addition, it gave a finding that since additional space is available in the subject premises for storing raw materials/ goods, the need of the Respondent/landlord is *bona fide*. The



relevant extract is set out below:

“21. Further, it has nowhere been denied by the respondent that the entry of the tenanted premises on the ground floor is from Katra Ishwar Bhawan, which is definitely a better place for entry as compared to the entry from the by-lane or common chowk. The petitioner cannot be denied of his right to have spacious office to entertain his clients in order to enhance his business and also to use Duchatti or Chajja for storing of raw materials. Hence, the Bonafide requirement of the petitioner qua the tenanted premises stands proved.”

[Emphasis Supplied]

7.1 On the aspect of availability of alternate suitable accommodation learned Trial Court has held property bearing no. 1183, Gali Baradari, behind Novelty Cinema, Delhi and Flat No. 504-A, 5th Floor, Plot No.4, Sector-5, Dwarka are not available since both the premises are residential accommodation and cannot be used for commercial purposes.

8. The Eviction Petition sets out clearly the requirement of the Respondent/landlord. It states that the Respondent/landlord is doing wholesale and retail business of milk powder and dairy products for a long time and that the space available with the Respondent/landlord is limited. The Respondent is currently running his business from a shop on the ground floor in the area of about 8.4' X 4.3' and that the Respondent needs space for the purpose of setting up his office space to run the business properly as the size of the premises which is already available with the Petitioner is small and inadequate for running an office.

9. It is stated in the Eviction Petition that in the absence of the required space for an office, the Petitioner has been unable to run his business properly and hence the subject premises is required. The relevant extract of



the Eviction Petition, i.e. paragraph 18(C) is set out below:-

“(C) That the Petitioner/Landlord is doing the business of Milk Power and Dairy Products since long for the said whole Sale and retail business, the Petitioner requires the office on G.F. in the area of about 20' X 5' to run the said business. Apart from it, the Petitioner required the accommodation for godown purpose and storing the goods. However the goods used, to come from the companies' in bulk quantity. At present the Petitioner is having only one shop on G.F. measuring about 8.4' X 4.3' and the same is opened towards common chowk. For the purpose of office to run the said business, the main entry is. required from main road or Katra. Moreover the size of office which is available with the petitioner is very small and in the said office nobody can sit properly. The blue portion as shown in site plan is used by Petitioner for Godown purpose for storing the goods. Moreover in. the absence of required office, the petitioner is unable to run his business properly. Even the whole sale and retail customers cannot sit in the office due to very shortage of accommodation. Hence the tenanted premises is required urgently. It is pertinent to mention here even the Petitioner cannot sit properly inside the office. No table or chair can be installed in such office due to lack of accommodation. Moreover the opening gate of the office of Petitioner is towards the common chowk. If the tenanted shop is merged with the shop of petitioner, the opening of the shop shall be towards main gate and further the petition shall be able to put table and chairs for office for attending his customers. Hence the tenanted portion is required urgently for his own use and occupation to run his business smoothly. It is pertinent to mention here that the petitioner is. attaining the age of about 60 years.”

[Emphasis Supplied]

10. The Respondent/landlord has given detailed reasons for his requirement. The learned Trial Court examined the same and found them to be *bona fide*. The examination by this Court does not show otherwise. The Petitioner/tenant has not stated that the need is fanciful.

10.1 Based on the record, the learned Trial Court found that there were certain admitted facts. This is set out in paragraph 15 of the Impugned Order in the following terms:

“15. Admitted Facts:-

► The relationship of the landlord & tenant between the petitioner and the



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respondent.

➤ *That two shops at Kashmere Gate, Delhi are tenanted premises under the tenancy of Delhi Wakf Board.*

➤ *That the extend [sic. extent] of tenancy is with respect to one shop on the ground floor and one Duchatti with Chajja on the first floor.*

➤ *That the ground floor of the tenanted premises open towards Katra Ishwar Bhawan, whereas, Duchatti with Chajja on the first floor open towards Katra Medgran.*

➤ *That the shop in possession of the petitioner [sic. "is"] near the tenanted premises open towards the common chowk."*

10.2 The learned Trial Court has given a finding that the need of the Respondent/landlord is bona fide and he cannot be asked to accommodate his business in the small area already available.

11. The Impugned Order also records that the premises stated to be available by the Petitioner/tenant were in fact residential premises. It has been argued before this Court that the Respondent/landlord has concealed a mezzanine and a basement space. The Respondent/landlord had filed a site plan in the Eviction Petition which is exhibited as Ex.PW1/1 clearly showing the space in his possession.

11.1 As stated above, the Respondent/landlord had, in its Eviction Petition, set out the portions which are available for his use and which are being used by them, as well as the subject premises. It has been stated by the Respondent/landlord that the Respondent is already in use of the portions in blue and he needs the additional portion in red, which is the subject





ground floor premises.

11.3 It is well-settled that the ground floor is more suitable for commercial purposes and businesses. If there is availability of space on the ground floor with the landlord, there is no question of the tenant asking the landlord to take alternate premises or to operate out of the top floor. In ***Uday Shankar Upadhyay v. Naveen Maheshwari***¹, the Supreme Court has held that the Court cannot dictate to the landlord as to the extent which floor he must use for his business. Besides shops and businesses are usually set up on the ground floor. The relevant extract of the ***Uday Shankar Upadhyay*** case is reproduced below:

“7. In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of Plaintiff 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained. As regards the finding that the sons of Plaintiff 1 are getting a salary of Rs 1500 from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court.”

[Emphasis Supplied]

12. In any event, it is settled law that neither the Court nor the tenants can dictate the landlord as to how to use his premises. This Court in the case of ***Swaranjit Singh v. Saroj Kapoor***², while relying on the judgement of the Supreme Court in the case of ***Sait Nagjee Purushotham & Co. Ltd. v.***

¹ (2010) 1 SCC 503

² 2023 SCC OnLine Del 7396



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*Vimalabai Prabhulal*³ and in *Anil Bajaj v. Vinod Ahuja*⁴, has held that the tenant cannot dictate to the landlord as to which premises is more suitable for the landlord to run the business. The relevant extract of the *Swaranjit Singh case* is reproduced below:

“46. The law is well settled that a tenant cannot dictate to the Respondent/Landlady as to which premises is more suitable to satisfy the bona fide requirement under the DRC Act. Reference in this regard may be made to the decision of the Supreme Court in Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal[(2005) 8 SCC 252] and in Anil Bajaj v. Vinod Ahuja[(2014) 15 SCC 610], wherein the Supreme Court has reiterated this principle in the following words:

*“6.What the tenant contends is that the Landlady has several other shop houses from which he is carrying on different businesses and further that the Landlady has other premises from where the business proposed from the tenanted premises can be effectively carried out. **It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the Landlady as to how the property belonging to the Landlady should be utilized by him for the purpose of his business.**”*

[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*⁵ case 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

³ (2005) 8 SCC 252

⁴ (2014) 15 SCC 610



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

25. 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

⁵ (2022) 6 SCC 30



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interfere with the same.”

[Emphasis supplied]

14. 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. In view of the foregoing discussions, the Petition is accordingly, dismissed. All pending Applications stand close.

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

TARA VITASTA GANJU, J

FEBRUARY 4, 2025/r/pa