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

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Judgment reserved on: 24.04.2024
Judgment pronounced on: 29.04.2024

+ **RC.REV. 626/2019**

SATPAL SINGH SARNA & ORS Petitioners

Through: Mr T.C. Sharma, Adv.

versus

SATYA PRAKASH BANSAL Respondent

Through: Mr S.K. Gupta and Ms Monika Devi,
Adv. with respondent in person.**CORAM:****JUSTICE GIRISH KATHPALIA****J U D G M E N T**

1. By way of this petition brought under proviso to Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”), the landlords have assailed order dated 04.09.2019 of the learned Rent Controller, West District, Delhi whereby the eviction petition under Section 14(1)(e) of the Act filed by the petitioners was dismissed after full dress trial. Upon service of notice of these proceedings, the respondent/tenant entered appearance through counsel. I heard learned counsel for both sides.



2. Briefly stated, circumstances leading to the present petition are as follows.

2.1 The present petitioners claiming themselves to be owner of premises bearing ground floor shops No. 3 & 4 (hereinafter referred to as “the subject premises”) forming part of larger premises bearing No. C-141, Clock Tower, Hari Nagar, New Delhi filed eviction petition under Section 14(1)(e) of the Act against their tenant (*respondent herein*), pleading that the subject premises were earlier owned by their mother Smt Kulwant Kaur, who bequeathed the same to the petitioners and passed away, which followed probate of that Will thereby making the petitioners owners of the subject premises; that the respondent attorned the petitioners as landlords and paid them rent till December 2015; that about 05 years back, the respondent shifted his business to another premises, bearing No. RZ199B, Gali No. 3, Vaishali, Dabri, New Delhi and since then, the subject premises are not being used and are lying locked; that petitioner No. 1 with his wife and two married sons is residing in and running business from rest of the said larger premises; that petitioners No. 2 and 3 with their respective wives and children are residing in Canada and keep visiting India but find hardship in staying in the said larger premises due to shortage of space; that the petitioners own in the said larger premises, five shops out of which in shop No. 1 and 2, sons of petitioner No. 1 are running their business under the name and style Sunny Shoe Point and Sunny Punjabi Juti while shop No. 5 is being used by them as godown; that out of three rooms on ground floor of



the said larger premises, two rooms are occupied by one son of petitioner No. 1 and one room is used as guestroom while two rooms and store on the first floor are in occupation of the other son of petitioner No. 1; that the said larger premises being in dilapidated condition, the petitioners want to reconstruct the same according to their need because petitioners No. 2 and 3 intend to return to India, as they want to get their children married and settled here, so they have *bona fide* requirement of the subject premises and they do not have available with them any reasonably suitable alternate accommodation.

2.2 After grant of leave to contest the proceedings, the respondent/tenant filed written statement, admitting *jural* relationship of tenancy between him and the petitioners but further pleaded that since mother of the petitioners during her lifetime had filed eviction petition under Section 14(1)(a)(b)&(j) of the Act, which got dismissed, the requirement now set up by the petitioners is not *bona fide*; that the petitioners No. 2 & 3 and their respective families, who are residing in Canada, might have visited India but it is not disclosed as to when and for how long they intend to stay here; that the petitioners intend to re-let the subject premises at higher rent after getting the same vacated; that petitioner No. 1 has been committing various acts aimed at harassing the respondent in order to get the subject premises vacated.

2.3 The petitioners filed replication, which followed a full dress trial on



the rival pleadings, culminating into the impugned order of dismissal of the eviction petition.

2.4 The learned Rent Controller in the impugned order arrived at decision to dismiss the eviction petition for the reasons that the petitioners had not produced specific evidence to show frequent visits of petitioners No. 2 and 3 to India, for which they suffer paucity of accommodation; that from his passport, petitioner No. 3 appears to have received one time visa for one year to visit India but does not show the period of his actual stay in India and petitioners have not produced air tickets or boarding passes in that regard; that similarly, there is no evidence of actual visits of petitioner No. 2 and family members of petitioners No. 2 and 3 to India; that the petitioners have also led no evidence to prove that they have been negotiating any matrimonial alliance for their children in India, though petitioner No. 2 in cross examination stated that on two occasions families of prospective brides for his sons had rejected the matrimonial proposal due to paucity of accommodation with the petitioners, but details of those families were not disclosed; that no evidence has been produced to show that petitioners No. 2 and 3 are winding up their commercial activities/job/business in Canada or they are planning to dispose of their assets in Canada for returning to India and getting permanently settled here. After holding that the petitioners had failed to prove that they are in *bona fide* requirement of the subject premises, the learned Rent Controller held that there is no need to examine the remaining requirements of Section 14(1)(e) of the Act.



2.5 Hence, the present petition.

3. During arguments, learned counsel for petitioners took me through the above records and contended that the impugned order is not sustainable in law. Learned counsel for petitioners contended that the impugned order, on the face of it, suffers the vice of perversity, calling for intervention of this court. Learned counsel for petitioners argued that in order to succeed in this petition, mere desire of the petitioners to return home at this old age in itself is a *bona fide* requirement. In support of his arguments, learned counsel for petitioners placed reliance on judgment of a coordinate bench of this court in the case of *Sarwan Dass Bange vs Ram Prakash*, 2010:DHC:515.

4. On the other hand, learned counsel for respondent argued that the scope of interference by this court in proceedings under proviso to Section 25B(8) of the Act is extremely narrow and this court cannot re-appreciate evidence. It was argued on behalf of respondent that petitioners failed to prove on record Aadhar Cards of children of petitioners in order to establish their grown up age. Learned counsel for respondent also argued that requirement set up by the petitioners is not *bona fide* as they have been trying all sorts of means to somehow evict the respondent.

5. During final arguments, in response to a specific query based on the rival pleadings, learned counsel for respondent on instructions of his client



present in the court room strongly affirmed that the subject premises are till date being used by the respondent for his business. But when learned counsel for petitioners requested and this court agreed to appoint a Local Commissioner in order to ascertain the truth, the respondent and his counsel took a U-turn and admitted that for past many years the subject premises are not being used by the respondent. This aspect is vital in order to decide the extent to which leverage should be extended to a tenant. It is commonly seen that the tenant, not desirous or not able to use the tenanted premises would keep the same locked in order to arm twist the landlord into offering money to vacate. Such practices are severely detrimental to the desired effects of the rent control legislations and must be curtailed.

6. Of course, scope of proceedings under proviso to Section 25B(8) of the Act is extremely limited and does not permit the High Court to venture into re-appreciation of evidence. But where the view taken and reasoning advanced by the Rent Controller suffers the vice of perversity, this court cannot, but intervene.

7. It is not in dispute that petitioner No. 1 with his family is residing in India while the remaining petitioners with their respective families are residing abroad. There is also no serious dispute through pleadings and evidence on record that children of petitioners are grown up adults while petitioners themselves are aged 60 years or more. In such circumstances, desire of the petitioners nos. 2 and 3 to return home and spend rest of their



life in their land of birth cannot be looked down with suspicion. It is often seen that Indians spending their life abroad develop strong urge to take last breath in the place where they were born. Such strong emotional requirement cannot be downgraded to a simple whim or an ordinary desire. In the case of *Mohan Lal vs Tirath Ram Chopra*, AIR 1982 Delhi 405, full bench of this court recognized that it is a natural aspiration for a landlord in his old age to stay in his own house in the evening of his life and such desire to spend last few years of his life in his own house cannot be regarded as fanciful, especially where the tenant does not disclose facts which would show otherwise.

8. One wonders what evidence could be produced by the petitioners to prove acts done towards arranging a matrimonial alliance of their children. It would be practically impossible to expect a person to bring or summon into the witness box someone to say that they are or were working on matrimonial alliance of their children with each other. Not all matrimonial alliances are done through assistance of the professional entities by way of registration. In that regard, there was not even any effective cross examination of either of the petitioners. I am unable to find any force in the reasoning of learned Rent Controller that petitioners failed to lead any evidence to show their intent to get their children married and settled in India.

9. Another reasoning advanced in the impugned order, which fails to



convince, is that there is no evidence to show that the petitioners have started winding up their occupation and disposing of their assets in Canada. It is unfortunate that the litigation in this country, especially the tenancy litigation under the rent control legislations takes more than a decade to fructify. It would be absurd to expect the landlord to wind up their occupation and dispose of assets abroad and return to India and keep waiting for culmination of the litigation. It is not just the culmination of the eviction proceedings in the court of first instance. After decade or more in that exercise, the litigant has to swim through the tunnels of multiple appellate/revisional scrutiny. Even after that starts the second round from the court of first instance in the form of execution proceedings which include objections, disposal thereof and further scrutiny at multiple levels. In such grim scenario, it would be quixotic to expect the landlord to dispose of his assets and come to India till the tenanted premises get actually and not just on papers vacated.

10. There is another aspect. It is trite that mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in landlord's favour that his requirement of the occupation of the tenanted premises is real and genuine; in this regard, the tenant has to submit the necessary pleadings as well as cogent evidence to prove his plea. Reference in this regard can be drawn from the judgment of Supreme Court in the case of **Baldev Singh Bajwa vs Monish Saini**, (2005) 12 SCC 778. In the present case, what to say of leading evidence in affirmative, the counsel for



respondent did not even carry out effective cross examination of either of the petitioners in order to elicit facts and rebut their claim that they want to return to India with their children and get them married and settled here.

11. Going a step deeper, even where the landlord permanently residing abroad desires to occasionally visit India, she or he cannot be deprived of her or his right to claim stay in her or his own house and in such case, the tenant cannot claim better right. In the case of *Saroj Khemka vs Indu Sharma*, 79 (1999) DLT 120, this court upheld the rejection of leave to contest, holding that no court can compel a person to stay in the house of his relative or in a hotel because he is staying abroad and his owned premises are occupied by a tenant. In the case of *S.P. Kapoor vs Kamal Mahavir Prasad Murarka*, 97 (2002) DLT 997, this court held that where the landlord is permanently settled out of Delhi but during his visits to Delhi wants to stay in his own premises, which are under occupation of a tenant, *bona fide* of his desire and requirement cannot be a suspect.

12. In my considered view, the reasoning advanced by the learned Rent Controller as described above is completely perverse and calls for intervention of this court under proviso to Section 25B(8) of the Act.

13. To recapitulate, on account of complete absence of specific pleadings from the side of respondent, complete absence of affirmative evidence coupled with no effective cross examination, I find no reason to suspect the



genuineness of requirement of subject premises as set up by the petitioners that they want to return home and settle down here after getting their children married here in this country of their birth. Going by the size of families of the three petitioners coupled with their grown up children, whose respective families also would grow in short span, the overall space available to them in the said larger premises would certainly be insufficient, and that justifies their plan to re-construct the same, therefore, their requirement of the subject premises is certainly *bona fide*.

14. In view of the aforesaid, the impugned order is set aside. Consequently, the eviction petition is allowed and the petitioners are held entitled to recover possession of the subject premises, i.e. shops No. 3 & 4 forming part of larger premises bearing No. C-141, Clock Tower, Hari Nagar, New Delhi, as depicted in red shaded portion of the site plan Ex. PW1/3.

15. However, in view of Section 14(7) of the Act, this order of recovery of possession of the subject premises shall not be executed before expiration of six months from this date.

**GIRISH KATHPALIA
(JUDGE)**

APRIL 29, 2024/as