



§~

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

%

Judgment reserved on: 08.05.2024
Judgment pronounced on 15.05.2024

+ **RC.REV. 358/2023 & CM APPL. 65174/2023 (stay)**

SCON FINANCIAL SERVICES PVT LTD Petitioner

Through: Mr. Vikas Gautam, Advocate

versus

S C KAURA Respondent

Through: Mr. Ravinder Sethi, Sr. Advocate
with Mr. Puneet Sharma, Advocate**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, the petitioner/tenant has assailed the order passed by learned Additional Rent Controller, New Delhi District, Delhi, whereby application of the petitioner for leave to contest the proceedings under Section 14(1)(e) of the Act was dismissed. Upon service of notice, the respondent 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 respondent, claiming himself to be owner of the ground floor flat bearing no.49, Basant Enclave, New Delhi (hereinafter referred to as “the subject premises”) filed eviction petition against the present petitioner in respect of the same under Section 14(1)(e) of the Act, pleading that by way of rent agreement, the present petitioner (earlier named as M/s Sareein Consultants Pvt. Ltd.) was inducted as a tenant in the subject premises with effect from 01.12.1988 for residential purposes of its General Manager Mr Shiv Kumar Vasesi at a monthly rent of Rs.2,420/-, excluding water and electricity charges; that now he is in *bona fide* requirement of the subject premises for residence for himself and he has no reasonably suitable alternate accommodation; that on account of his matrimonial discord, he had been staying with his sister in the government accommodation allotted to her, but after her retirement on 31.12.2004, they shifted to her flat in Dwarka; that after dissolution of his marriage, he remarried Ms Promila on 23.07.2005 and retired from service on 31.08.2005; that since May 2011, he had been residing in different tenanted premises with his wife and in the meanwhile, his wife also passed away.

2.2 On being served with the summons in prescribed format, the petitioner/tenant filed an application seeking leave to contest, pleading broadly that the respondent/landlord concealed his property in House No. 432, Sector 14, Gurgaon, Haryana and his share in property no. S-22, First Floor, Green Park Main, New Delhi as well as all other properties including his residence property no.176, MIG, Kautalya Apartment, Sector 14,



Dwarka, New Delhi; that concealment of the said additional accommodations available to him shows that the requirement of the subject premises as set up by the respondent/landlord is not *bona fide*.

2.3 The respondent/landlord filed reply to the application for leave to contest, denying its contents and reiterated his averments in the eviction petition. The respondent/landlord in his reply categorically denied having any right in the property bearing no. S-22, First Floor, Green Park Main, New Delhi and explained that in the said house, his second wife Smt. Promila had been residing prior to their marriage and even she did not hold any right in the same. As regards House No. 176, MIG, Kautalya Apartment, Sector 14, Dwarka, New Delhi, the respondent/landlord pleaded in the reply that the same was a tenanted premises. The respondent/landlord specifically pleaded that the petitioner/tenant had falsely alleged residence of the former as House No. 432, Sector 14, Gurgaon, Haryana.

2.4 The petitioner/tenant filed a rejoinder in the application for leave to contest and after hearing both sides, learned Additional Rent Controller passed the impugned order, thereby denying the petitioner/tenant leave to contest the proceedings.

2.5 Hence, the present petition.

3. During arguments, learned counsel for petitioner/tenant took me through the above mentioned rival pleadings and contended that the



impugned order is not sustainable in the eyes of law. It was argued on behalf of petitioner/tenant that the petition lacks *bona fide* since the respondent/landlord did not clearly disclose his connection with the Green Park property. Learned counsel for petitioner/tenant also argued that the rent deeds filed by the respondent/landlord to show his residences in tenanted premises are unstamped and unregistered, so the same ought to have been impounded by the learned Additional Rent Controller. In support of his arguments, learned counsel for petitioner/tenant placed reliance on the order of the Hon'ble Supreme Court in the case of ***Mohd. Hannan vs Abdul Basit***, Civil Appeal No.3879/2019 decided on 11.04.2019.

4. On the other hand, learned counsel for respondent/landlord supported the impugned eviction order and contended that the present petition is devoid of merits. Learned counsel for respondent/landlord made a reference to order dated 18.12.2023 of the predecessor bench and contended that notice of the present proceedings was issued to the respondent/landlord on the limited aspect of the Green Park property and after taking me through the rival pleadings, contended that no case at all was made out by the petitioner/tenant for grant of leave to contest. In support of his argument that a tenant cannot be allowed leave to contest on the basis of bald averments without any supporting material, learned counsel for respondent/landlord relied upon a bunch of judicial precedents including the cases titled: ***Abid-Ul-Islam vs Inder Sain Dua***, 2022 (6) SCC 30; ***Hari Shankar vs Madan Mohan Gupta***, 111 (2004) DLT 534 and ***Suresh Chand vs Vijay Shankar***, 2024:DHC:3113 and few others.



5. Thence, to begin with, the factum of ownership of the respondent/landlord over the subject premises and *jural* relationship of tenancy between the parties is not in dispute. The dispute in the present case is that according to the petitioner/tenant, the requirement set up by the respondent/landlord is not *bona fide* because the respondent/landlord has concealed three properties available to him as reasonably suitable alternate accommodation. In reply to the application for leave to contest, the respondent/landlord has specifically explained as to why the said three properties cannot be treated as reasonably suitable alternate accommodation.

6. So far as the legal position is concerned, according to the respondent/landlord, mere bald averments without any supporting material are not sufficient to grant leave to contest on the questions of *bona fide* requirement and availability of reasonably suitable alternate accommodation. On the other hand, according to the petitioner/tenant, mere averments in the affidavit seeking leave to contest are enough in order to raise a triable issue and in this regard, learned counsel for petitioner/tenant referred to the order passed by the Hon'ble Supreme Court in the case of ***Mohd. Hannan*** (supra).

7. So far as the case of ***Mohd. Hannan*** (supra) is concerned, the Hon'ble Supreme Court specifically observed in the said order having traversed through the affidavit of the tenant that there were sufficient



averments, so at that stage, proof of facts was not required.

8. However, subsequently in the case of *Abid-Ul-Islam* (supra), the Hon'ble Supreme Court elaborately examined the contours of Chapter IIIA of the Delhi Rent Control Act as well as various provisions of the Act including Section 19 and held thus:

“18. For availing the leave to defend as envisaged under Section 25-B(5), a mere assertion per se would not suffice as Section 14(1)(e) creates a presumption subject to the satisfaction of the learned Rent Controller qua bona fide need in favour of the landlord which is obviously rebuttable with some material of substance to the extent of raising a triable issue. The satisfaction of the Rent Controller in deciding on an application seeking leave to defend is obviously subjective. The degree of probability is one of preponderance forming the subjective satisfaction of the Rent Controller. Thus, the quality of adjudication is between a mere moonshine and adequate material and evidence meant for the rejection of a normal application for eviction.

....

20. Dealing with a pari materia provision, this Court in Baldev Singh Bajwa v. Monish Saini [Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778], was pleased to clarify the aforesaid position holding the procedure as summary. In such a case, the tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of a declaration sufficient to raise a triable issue”.

(emphasis supplied)

The Supreme Court in the said case also elaborately discussed the legal position pertaining to the scope of proceedings under proviso to Section 25B(8) of the Act, holding thus:

“28. The High Court, while ignoring the aforesaid conduct of the respondent, as noted by the learned Rent Controller, proceeded to allow the revision by treating it like an appeal. It did not even reverse the findings of the learned Rent Controller, but proceeded to hold that the denials of the appellant in his reply to the application seeking



leave to defend are vague, qua the plea of alternative accommodation, notwithstanding the rejection of the contention of the respondent that he cannot question the title. This approach, in our considered view, cannot be sustained in the eye of the law.

29. Section 14(1)(e) deals with only the requirement of a bona fide purpose. The contention regarding alternative accommodation can at best be only an incidental one. Such a requirement has not been found to be incorrect by the High Court, though it is not even open to it to do so, in view of the limited jurisdiction which it was supposed to exercise. Therefore, the very basis upon which the revision was allowed is obviously wrong being contrary to the very provision contained in Section 14(1)(e) and Section 25-B(8).

30. We have already discussed the scope of Section 14(1)(e) vis-à-vis Section 25-B(8) of the Act. Therefore, the mere existence of the other properties which are, in fact, denied by the appellant would not enure to the benefit of the respondent in the absence of any pleadings and supporting material before the learned Rent Controller to the effect that they are reasonably suitable for accommodation.

31. The respondent made substantial claims on the judgment of this Court in Precision Steel [Precision Steel & Engg. Works v. Prem Deva Niranjana Deva Tayal, (1982) 3 SCC 270] . We do not find the said decision helping the case of the respondent, in the light of the discussion made on the scope of the relevant provisions, as leave to defend cannot be granted on mere asking. We can only reiterate that we do not find any perversity in the decision rendered by the learned Rent Controller and the High Court has not only certainly abdicated its jurisdiction, but also exceeded in a way.”

(emphasis supplied)

9. In the case of ***Hari Shankar*** (supra), a coordinate bench of this court held thus:

“17. In my considered view, there has to be at least a prima facie case on the basis of disclosure of facts for the tenant to be granted leave to defend. The Additional Rent Controller has found no such case and I see no reason to interfere with the said finding in the present Revision Petition. In fact, it was put to learned senior counsel for the petitioner during his elaborate submissions running into almost two hours, that the present case is one of revision petition and it is within those parameters that the impugned order has to be examined. The scope of



*enquiry may be more than a revision petition under Section 115 of the Code of Civil Procedure, 1908, since this is the first court after the order of the trial court which examines the matter. However, this is to be seen as per the legal pleas as are available to a tenant. **The summary procedure in Section 25-B of the said act cannot be defeated by merely making frivolous and vague allegations which can never be substantiated. It is the stage before trial but there has to be some plausibility to the defence which could give rise to a conclusion that these are such facts as would require trial and if proved during the course of trial, would disentitle the landlord of an order of eviction. Applying the said parameters, the case of the petitioner cannot succeed.***

(emphasis supplied)

10. I am of the considered view that the tenant must be expected to furnish some reliable material in support of his averments in the affidavit seeking leave to contest, otherwise in every case, smart drafting of the affidavits would lead invariably to grant of leave to contest, thereby frustrating the very object with which Chapter IIIA was inserted in the Act in 1976. Sadly, ours is not a legal system which would ensure adjudication of the *lis* in reasonable time. It takes almost a decade or at times even more for a tenancy litigation under the Delhi Rent Control Act to see final decision. And even after final decision from the apex court, starts the second round of litigation before execution court, followed by further challenges to the dismissal of objections. In such scenario, grant of leave to contest merely on averments in the affidavit of tenant without any supporting material would defeat the purpose of this law.

11. Falling back to the present case, as mentioned above, according to the petitioner/tenant, there are three immovable properties available to the respondent/landlord as reasonably suitable alternate accommodation. Those



three properties are premises bearing no.432, Sector 14, Gurgaon, Haryana; S-22, First Floor, Green Park Main, New Delhi; and 176, MIG, Kautalya Apartment, Sector 14, Dwarka, New Delhi. In support of his claim in that regard, the petitioner/tenant did not furnish any reliable material.

12. On the other hand, the respondent/landlord in his reply to the application for leave to contest categorically denied any right in any of those three properties and specifically pleaded that he has no right, title or interest in Gurgaon property; that the Green Park property was being used by his wife prior to their marriage and even she did not hold any right in the same; and that the Dwarka flat was the premises in which he lived as a tenant. The petitioner/tenant failed to produce any material to rebut the averments of the respondent/landlord in that regard.

13. As regards the Green Park property, the petitioner/tenant placed on record of the present proceedings certain handpicked documents of some other judicial proceedings in which Smt. Promila, the now deceased wife of the respondent/landlord was a party and those judicial proceedings pertained to the Green Park property. With the help of those selective documents, learned counsel for petitioner/tenant tried to project that after death of his wife, the respondent/landlord had secured an interest in the Green Park property. On the other hand, learned counsel for respondent/landlord demonstrated that it was complete misreading of those documents. However, in the course of final arguments, on being pointed out that those documents were never produced before the Additional Rent



Controller and also that those documents do not divulge complete information about the said *lis*, learned counsel for petitioner/tenant in all fairness opted not to rely upon the same and confined his case to the record which was before the Additional Rent Controller at the time of passing the impugned order.

14. The argument of learned counsel for petitioner/tenant that the lease deeds filed by the respondent/landlord to show his status as a tenant of those tenanted premises cannot be relied upon because the same are unstamped and unregistered has been recorded to be simply rejected. Each of those tenancies was for a period of 11 months only.

15. In view of the aforesaid, I am unable to find any infirmity in the impugned order, so the same is upheld and the present petition as well as pending application are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

MAY 15, 2024/ry