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

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Judgment reserved on: 14.05.2024
Judgment pronounced on: 22.05.2024

+ **RC.REV. 339/2016 & CM APPL. 24392/2016 (stay)**

HARDIAL SINGH (DECEASED THROUGH LRs) Petitioner

Through: Mr. A.P.S. Ahluwalia, Sr. Advocate
with Mr. H.S. Arora and Mr.
S.S.Ahluwalia, Advocates.

versus

VIVEK GUPTA

..... Respondent

Through: Mr. Sanjeev Sindhvani, Sr.
Advocate with Mr. Asutosh Lohia,
Mr. Rohit Saraswat, Ms. Shraddha
Bhargava and Mr. Karan Sharma,
Advs.

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 the Rent Controller, North District, Delhi, whereby application of the petitioner/tenant seeking leave to contest the proceedings under Section 14(1)(e) of the Act was dismissed. On service of notice, the respondent/landlord 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 two ground floor shops (hereinafter referred to as “the subject premises”), in the larger premises bearing no.F-14/2-A, Model Town, Delhi filed eviction petition under Section 14(1)(e) of the Act against the present petitioner pertaining to the subject premises, pleading that the said larger premises was originally owned by his mother Smt. Nirmala Gupta, who passed away intestate on 27.01.2011 leaving behind him and his brother Dr. Pradeep Gupta as her only legal representatives; that the inheritance disputes between him and his brother led to a partition suit on the Original Side of this court, which suit culminated into a mediation settlement on 02.03.2015, and under the same, the subject premises came to his share; that originally, it is Shri Kulwant Singh, father of the present petitioner who was inducted as a tenant in the subject premises and after death of Shri Kulwant Singh, the tenancy devolved upon the present petitioner, who has been in an exclusive possession of the subject premises; that he is a qualified technocrat with vast experience in information technology and is a certified Microsoft Solution Developer, having also acquired post graduation in business management; that presently he is employed in Noida but residing in Model Town, Delhi, so he has to travel more than 70 kilometers a day for work, therefore, now he wants to start independent profession as a software developer/designer and for that purpose, he is in *bona fide* requirement of the subject premises; that he intends to start IT consultancy firm from the subject premises and also plans to utilize the portion behind the subject



premises for office of his staff and associates; and that he has no reasonably suitable alternate accommodation.

2.2 On service of summons in the prescribed format, the present petitioner appeared before the Rent Controller and filed application for leave to contest, admitting ownership of the present respondent over the subject premises and relationship of tenancy between the parties, and further pleading broadly that the partition decree obtained by the present respondent and his brother appears to have been manipulated and if it is not so, the petition is premature, having been filed in less than five years of the said partition; that the requirement set up by the present respondent is not *bona fide* because the shop adjoining the subject premises is lying vacant and the same is in possession of the present respondent and his brother Dr. Pradeep Gupta who inherited the same; that the present respondent is admittedly employed, though in Noida and the only reason given to seek eviction is that the respondent has to travel, but that is false because for past long time the present respondent has not been residing in the larger premises inherited by him and the same is being renovated; that the present respondent is residing in Noida in his own property or the property given to him by his employer as perquisite of employment and even otherwise there is a Metro connectivity between Model Town and Noida, so there is no inconvenience to travel; that just behind the subject premises in the said larger premises there are shops, facing Shalimar Park, which shops can be used for commercial purposes.



2.3 The present respondent filed reply to the application for leave to contest, denying its contents and reaffirming contents of the eviction petition. In the said reply, the present respondent, broadly speaking, pleaded that the shop adjoining the subject premises, picture whereof depicting the signboard “Nirmal Nursing Home” has been filed is not lying vacant and in any case, the same fell in exclusive share of his brother Dr. Pradeep Gupta in partition; that Dr. Pradeep Gupta is running his Nursing Home from the portion adjacent to the subject premises in the said larger premises; that he is residing in the other portions of the said larger premises in Model Town only and not in Noida as alleged by the present petitioner; that merely because of Metro connectivity between Model Town and Noida, he cannot be necessarily expected to travel for work daily; that presently he is employed in Noida but wants to start his independent business from the subject premises so as to avoid stress to his family members specially to his wife, who is working in Satyawati College in Ashok Vihar, Delhi; that he cannot be compelled to use the residential portions of the said larger premises for non residential purposes; that the portions behind the subject premises in the said larger premises are located in rear service lane, so not reasonably suitable for him to run office establishment to cater to the IT needs of business houses in not only India but even abroad; and that he does not own or possess any other immovable property in Delhi.



2.4 The present petitioner filed rejoinder in response to reply of the present respondent, reiterating the contents of his application for leave to contest.

2.5 After hearing both sides, learned Rent Controller passed the impugned order, thereby dismissing the application for leave to contest and consequently directing eviction of the present petitioner. Hence, the present petition.

3. During arguments, learned senior counsel for petitioner took me through the above mentioned record and contended that the impugned order is not sustainable in the eyes of law. Learned senior counsel for petitioner contended that the learned Rent Controller wrongly observed in the impugned order that the present respondent has only the subject premises available to him on the ground floor and that is a perversity, which can be interfered with by this court under Section 115 CPC in view of judgments of the Hon'ble Supreme Court in the cases of *Masjid Kacha Tank, Nahan vs Tuffail Mohammad*, 1991 Supp (2) SCC 270 and *Gamini Bala Koteswara Rao vs State of Andhra Pradesh*, (2009) 10 SCC 636. It was also argued on behalf of petitioner that whenever the landlord pleads requirement of additional accommodation, leave to contest must be allowed as a thumb rule in view of law laid down by the Supreme Court in the case of *Santosh Devi Soni vs Chand Kiran*, 2000 (2) RCJ 579 (SC) but here, the Rent Controller did not even discuss as to why the present respondent needs



additional accommodation. It was further argued that the requirement projected by the landlord has to be the requirement in present and not in future, as held in the cases of *Deena Nath vs Pooran Lal* (2001) 5 SCC 705; and *Ashok Kumar Gupta vs Rajesh Kumar*, 2016 (154) DRJ 75, and since till date the portion behind the subject premises has not been put to use, it shows lack of *bona fide* on the part of the present respondent and the requirement being not in the present. It was argued that the learned Rent Controller did not at all examine the admission of the present respondent that he is in possession of the portion behind the subject premises, so there was no proper consideration of the *bona fide* requirement. Learned senior counsel for petitioner also referred to the judgment of a coordinate bench of this court in the case of *Khem Chand & Ors. vs Arjun Jain & Ors.*, 202 (2013) DLT 613.

4. On the other hand, learned senior counsel for respondent/landlord supported the impugned order and contended that the present petition is totally devoid of merit. Learned senior counsel for respondent commenced his arguments by taking me through order dated 13.07.2016 of the predecessor bench in the present case, whereby a limited notice had been issued only for settlement efforts. Learned senior counsel for respondent contended that reading the impugned order in its entirety would clearly show that there is no perversity. Learned senior counsel for respondent argued that correctness of the site plan filed by the respondent with his eviction petition is not in dispute and also referred to the detailed pleadings



to the effect that the respondent requires the subject premises as well as the portion behind the same, shaded green in the site plan. It was argued that landlord is the best judge of his requirement and in the present case the respondent had even given reasons for his choice. It was further argued that on vital aspects, contents of paragraphs 4 and 10 of the application for leave to contest are completely vague insofar as it is nowhere disclosed as to where Shalimar Park is, especially when the front side and rear side of the larger premises depicted in the site plan was not disputed, while the respondent in reply to the application for leave to contest clearly pleaded that the portion behind the subject premises faces service lane, so not suitable to run an IT establishment. It was also argued that even the photographs placed on record by the petitioner/tenant do not clearly show the main road and/or Shalimar Park. Learned senior counsel for respondent also took me through the complete impugned order to demonstrate that the learned Rent Controller was clearly conscious and not at all oblivious regarding placement of the subject premises and the portion behind the same, shaded green in the site plan, so there is no perversity.

5. In rebuttal, learned senior counsel submitted that the site plan filed with the partition suit shows the green shaded portion facing the front side of the larger premises.

6. At this stage, it would be apposite to briefly traverse through the legal position, which should be guiding light for the High Court while



exercising jurisdiction under proviso to Section 25B(8) of the Act. As regards the legal position, there is no dispute between the parties to this case.

6.1 By way of an amendment in the year 1976, Chapter IIIA was inserted into the Delhi Rent Control Act with retrospective effect from 01.12.1975 in order to stipulate summary trials pertaining to the eviction claims largely dealing with the situations where the landlord was in *bona fide* need of the tenanted accommodation. One such situation was already on the statute book in the form of Section 14(1)(e) of the Act and one more such situation was added by amendment of the year 1976 in the form of Section 14A. Subsequently, the amendment in the year 1988 added more such situations in the form of Section 14B to Section 14D of the Act. The broad scheme of Chapter IIIA precludes a tenant from contesting the eviction proceedings of those specific situations as a matter of right, unless the tenant obtains leave to contest from the Controller; and if the leave is declined, an order of eviction would necessarily follow. The whole idea is that a landlord who *bona fidely* requires the tenanted premises should not suffer for long, awaiting eviction, though at the same time, the tenant also must not be subjected to eviction like any other civil consequence without being afforded an effective opportunity to defend himself in such civil proceedings. The court has to cautiously and judiciously strike a fine balance between the right of the landlord to eviction through summary proceedings and right of the tenant to continue tenancy.



6.2 Notably, the provision under sub-section (8) of Section 25B of the Act places complete embargo on any appellate scrutiny of an order for recovery of possession of the tenanted premises passed by the Rent Controller in accordance with the summary procedure laid down under Section 25B. The underlying principle was to ensure expeditious remedy to the landlord who is in *bona fide* need of the tenanted premises. It is also significant to note that the proviso, enacted in Section 25B(8) of the Act to lift the blanket of scrutiny in a limited manner has to be understood and used in such a manner that it does not frustrate the legislative intendment of expeditious remedy in certain specific kind of cases. At the stage of seeking leave to contest, it is sufficient if the tenant makes out a case by disclosing such facts as would disentitle the landlord from obtaining an eviction order. At the stage of seeking leave to contest, the tenant is not required to establish such a strong case that would non-suit the landlord. At the stage of seeking leave to contest, the test to be applied is as to whether the facts disclosed in the affidavit of the tenant *prima facie* show that the landlord would be disentitled from obtaining the eviction order and not that the defence may fail in the end.

6.3 At the same time, the court also has to be conscious that a leave to contest cannot be granted for mere asking or in a routine manner, as that would defeat the object behind Chapter IIIA of the Act. It is only when the pleas and contentions raised by the tenant in the application seeking leave to contest make out a triable issue and the dispute on facts demands that the



matter be properly adjudicated after ascertaining the truth through cross-examination of witnesses that leave to contest must be granted. Each case has to be decided on its merits and not on the basis of any generalized suppositions. The court also cannot ignore a situation where the case set up by the tenant has been so set up with the sole object of protracting the proceedings so as to lead to the landlord giving up in frustration, which would in turn frustrate the process of law. Where the tenant seeks leave to contest, pleading anything and everything, pulled out of thin air and claims to have raised a *prima facie* case, the court is under a duty to read between the lines so as to ensure justice to the process established by law.

6.4 A careful examination of the proviso to Section 25B(8) of the Act would show that it does not specifically use the term “revision”. But the provision read in its entirety shows that the power conferred under the said proviso is a revisional power, completely distinct from appellate power in the sense that the appellate power is wide enough to afford the appellate court to scrutinize the entire case and arrive at fresh conclusion whereas the revisional power is quite restricted to superintendence and supervision aimed at ensuring that the subordinate courts and tribunals operate within the bounds of law. Unlike Section 115 of the Code of Civil Procedure dealing with the scope of revision in civil cases, the proviso to Section 25B of the Act does not expect the High Court to look for satisfaction as regards regularity of the proceedings under scrutiny or correctness, legality or propriety of any decision or order for recovery of possession passed in the



summary proceedings under Section 25B of the Act. The proviso to Section 25B(8) of the Act confines the satisfaction of the High Court to the extent that the order impugned before it was passed by the Controller under Section 25B “in accordance to law”.

6.5 It is trite that the power of revision conferred upon the High Court by the proviso to Section 25B(8) of the Act being in the nature of superintendence over the court of first adjudication on the decision making process, including compliance with the procedure laid down by law, the High Court cannot substitute and supplant its view over that of the court of the first adjudication by exercising parameters of appellate scrutiny. The High Court has a superintendence role only to the extent of satisfying itself on the process adopted. Thus, scope of interference by the High Court in the proceedings of the present nature is quite restrictive and the High Court should not venture into disturbing the decision of the court of first adjudication unless it finds some error apparent on the face of record, which would only mean the absence of adjudication per se. While examining the records of the Rent Controller in order to satisfy itself that the impugned order was passed according to law, the High Court should be cautious not to venture into a roving enquiry which would convert the power of superintendence into that of a regular first appeal, which in turn is completely forbidden by the legislature. It is not permissible for the High Court in such proceedings to arrive at a finding of fact different from the one recorded by the Rent Controller, unless the findings of fact recorded by



the Rent Controller were so unreasonable that no Rent Controller would have recorded the same on the material available. In the case of *Shiv Sarup Gupta vs Mahesh Chand Gupta*, (1999), 3SCR 1260, the Supreme Court held that the High Court in such proceedings is obliged to test the order of the Rent Controller on the touchstone of whether it is according to law and it is for the limited purpose of ascertaining whether the conclusion arrived at by the Rent Controller is only unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available that the High Court can examine the matter.

7. Falling back to the present case, as mentioned above, there is no dispute about ownership of the present respondent over the subject premises and *jural* relationship of tenancy between the parties. The fulcrum of this case rests on challenge to the requirement set up by the present respondent in his eviction petition. According to the present petitioner, the requirement of the subject premises set up by the present respondent is not *bona fide* for the reasons that the present respondent already owns a shop adjoining the subject premises, which can be used by him instead of seeking eviction of the present petitioner; that the present respondent is residing in Noida near his workplace, so does not require the subject premises which are situated in Model Town; that alternatively, there being Metro connectivity between Model Town and Noida, the requirement claimed by the present respondent for initiating his own consultancy business of Information Technology is a ruse; that the present respondent is



already in possession of a portion (shaded green in the site plan) behind the subject premises, so it is a case of additional accommodation required by him and since he has not started using that portion, his requirement as projected is not *bona fide*.

8. To begin with, admittedly the subject premises were owned by mother of the present respondent and she passed away, leaving behind two sons, namely the present respondent and Dr. Pradeep Gupta. The present respondent instituted a partition suit on Original Side of this court, which suit was registered as CS(OS) 3515/2012. That suit got settled on 02.03.2015 before the Mediation Centre, Delhi High Court and the Settlement Agreement was accepted by a learned Single Judge of this court vide order dated 24.08.2015, copy whereof is at *pdf* page 131 of the paper book. In the light of order dated 24.08.2015 of the learned Single Judge of this court accepting the Settlement Agreement, the argument that the said partition decree was obtained in collusion is found completely baseless and is rejected. According to the Settlement Agreement dated 02.03.2015 recorded before the Mediation Centre, Delhi High Court (*copy whereof is at pdf page 134 of the paper book*), the subject premises fell in the share of the present respondent and the shop adjoining the same fell to the share of his brother Dr. Pradeep Gupta. Therefore, it is wrong to say that the shop adjacent to the subject premises, which shop admittedly bears the signboard “Nirmala Nursing Home” is owned by the present respondent and can be used to open his IT Consultancy office. Even otherwise, the present



respondent being master of his choice, cannot be compelled by the present petitioner or even this court to open his office from the said adjoining shop instead of the subject premises.

9. The portion (shaded green in the site plan) situated behind the subject premises has to be used by the present respondent for his back office accommodating his staff and associates, according to clear pleadings in the eviction petition itself. The respondent/landlord also clearly pleaded that since the said portion (shaded green in the site plan) is not facing the main road but the service lane, it is not fit to be used as main office of the IT Consultancy, though it can be and would be used for back office. It cannot be challenged that a portion on front side, facing the main road is economically more viable for the user in view of comparatively higher footfall of clients. Where a landlord wants to use a portion of his property facing the main road, he cannot be deprived by directing him to use a rear portion instead of seeking eviction of the tenant from the portion facing the main road.

10. Merely because the present respondent has so far not started using the portion (shaded green in the site plan) behind the subject premises, the requirement projected by him cannot be suspected to be not *bona fide* or that it is not the requirement in present. As clearly pleaded by the present respondent, the said portion has to be used by him as back office. So, till the subject premises are vacated so as to enable the present respondent start



his IT Consultancy Office, starting the back office beforehand would be impractical, especially in view of the existing scenario where the tenancy litigations, especially under the Delhi Rent Control Act take more than a decade to reach culmination. The landlord cannot be expected to start partial work from the portion available to him, awaiting the eviction of the tenant from the other portion.

11. The argument of learned senior counsel for petitioner that whenever the landlord sets up a case of requirement for additional accommodation, leave to contest must mandatorily be granted as a thumb rule is not correct reading of the order in the case of *Santosh Devi Soni* (supra). It is not correct to say that in the said case the Hon'ble Supreme Court laid down law that as a matter of thumb rule, the requirement for additional accommodation must always be tested through trial. The said order was passed in specific factual backdrop of that case. In the said case, the landlady, a widow was already in occupation of first floor of the premises and had also acquired additional accommodation subsequently, therefore, the Supreme Court considered it fit to grant leave to contest. Each case is an individual island of its peculiar factual matrix. The present case, where the landlord wants restoration of possession of the tenanted premises to him so that he may utilize the same by opening his IT Consultancy Office and by using the portion already available with him as back office, cannot be treated at par with the circumstances in the case of *Santosh Devi Soni* (supra).



12. I also find no substance in the argument that since there is Metro connectivity between Model Town (*residence of the present respondent*) and Noida (*workplace of the present respondent*), there is no inconvenience of travel, so the requirement set up by him is not *bona fide*. It is not just a matter of inconvenience of travel. It is more a matter of career choice of the landlord, who wants to switch over from salaried employment to own business establishment. As regards claim of the present petitioner that the present respondent is residing in Noida in accommodation provided by his employer, despite specific denial by the present respondent, not even a shred of reliable material was placed on record by the present petitioner to show that the present respondent is residing in Noida.

13. Coming to the argument of perversity in the impugned order, as contended by learned senior counsel for petitioner, the impugned order has to be read in its entirety, and having done so, I find no perversity at all. The observation of the learned Rent Controller in the impugned order that the present respondent has only the subject premises available to him on ground floor has to be clearly understood as the premises available for opening the IT Consultancy Office towards the main road. The availability of the portion (shaded green in the site plan) behind the subject premises does not mean that the learned Rent Controller was oblivious of the same and the impugned order suffers any perversity. As mentioned above, the learned Rent Controller was fully conscious that for the purposes of



opening an IT Consultancy Office, the subject premises are the only premises available on ground floor since the portion behind the subject premises can be used only as a back office, while the portion adjoining the subject premises is Nirmal Nursing Home, which is in occupation of Dr. Pradeep Gupta.

14. I am unable to find any infirmity, much less any perversity in the impugned order that would warrant intervention of this court, so the impugned order is upheld. The petition and the pending application are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

MAY 22, 2024/ry