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

Reserved on: 12th March, 2021

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Date of Decision: 26th March, 2021

% **RC. REV. 320/2015**

ASHOK MITTAL Petitioner

Through: Mr. Rajat Aneja, Advocate with
Ms. Chandrika Gupta, Advocate.

versus

SUDESH MEHTA Respondent

Through: None

**CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH**

JASMEET SINGH, J.

1. The present petition has been filed under Section 25-B (8) of the Delhi Rent Control Act, 1958 challenging the order dated 27th September 2014 passed by learned ACJ/ARC/CCJ (West) in Eviction Petition No. 62/2012 titled Smt. Sudesh Mehta versus Sh. Ahok Mittal.

2. The learned ACJ/ARC/CCJ vide judgment dated 27th September 2014 was pleased to dismiss the application moved by the petitioner for grant of leave to defend and passed an eviction order under Section 14 (1) (e) of the Delhi Rent Control Act regarding the tenanted premises i.e. one covered hall of about 33'.6" X 47'.0" and open space

measuring approximate 91'.0" X 25'.0" in property bearing Municipal No. 650/I-A, situated at 14, Najafgarh Road, New Delhi.

3. The case of the respondent/landlady set out in the eviction petition was that the premises were required by the respondent/landlady for use and occupation for running a commercial establishment. The respondent/landlady was blessed with five daughters out of whom one had expired and was unmarried. The other four daughters of the respondent/landlady are married and are residing in their respective matrimonial homes. The respondent/landlady has further stated that in order to augment her income the respondent/landlady is desirous of starting a business with her eldest daughter Shabnam Mehra as there is a lucrative offer for dealership of a tractor company by the name of Preet Tractors Limited which company is having its office at Nabha in Punjab. The respondent/landlady has further stated that in order to run the business a minimum of 350 sq. yards of the commercial place is required and the portion under the tenancy of the respondent is about 400 sq. yards and hence the premises would be ideal for running the aforesaid business. The respondent/landlady has further stated that the grandson of the respondent namely Mr. Saurabh Mehra, son of her eldest daughter Smt. Shabnam Mehra is a qualified engineer in industrial production and is presently doing a job in Dubai. The grandson of the petitioner is also desirous of coming back to India and join the business. Lastly, the respondent has mentioned that similar accommodation in the vicinity would cost the respondent/landlady to

pay a rent of somewhere in the range of Rs.1,15,000/- per month which she cannot afford to pay.

4. The petitioner/tenant in his affidavit has urged the following grounds for the grant of leave to defend:

- A. The Eviction Petition was bad since it failed to implead all the LRs of the elder brother of the husband of respondent/ landlady.
- B. Tenancy was in the name of M/s Jyoti Plastic Udyog and not in the name of the Petitioner. In addition, the Eviction Petition was also bad for the non-joinder of other LRs of the Petitioner's father.
- C. The Petitioner alleged that the sole reason to file the Eviction petition was to harass the Petitioner and force him to pay higher rent.
- D. The Petitioner also claimed that the business of tractors requires hard work, but since the respondent/landlady is aged and lacked business experience, it would not have made sense for the Respondent and her daughter to start this business.
- E. The Petitioner further claimed that respondent/landlady was already living a comfortable life with her income from rents running in lakhs. The Petitioner also stated that the daughter of the respondent/landlady with whom the respondent/landlady desires to run the business is also rich while the other daughters are also not dependent on the respondent/landlady. Furthermore, even the grandson is highly placed in Dubai with a high income package.

- F. The Petitioner had asserted that neither the premises were suitable for the business of tractors nor is the market in which the premises in question is situated was meant for such business of tractors.
- G. The Petitioner further expounded that considering that the respondent/landlady had let out a portion of her property to M/s Agarwal Packers and Movers through a registered lease deed dated 15.12.2011, it implied that the respondent/landlady was not in the need of any premises.
- H. The Petitioner has also asserted that the area and the site plan of the tenanted premises in question placed on record by the respondent/landlady was not correct as well as that the respondent/landlady had also filed eviction petitions against five other tenants.
- I. The Petitioner asserted further that the respondent was misrepresenting the premises in question as another property
5. The learned ARC after analysing all the grounds has dealt with each ground as under:

A. The Eviction Petition was bad since it failed to implead LRs of the elder brother of the husband of the Respondent/landlady

The Learned ARC after examining the material before him has held that respondent/landlady has a better title than the Petitioner with respect to the premises in question and thus is entitled to file the present petition. Further, the learned ARC

relied on various judgments¹ and held that it is not essential that the eviction petition is to be filed by all the co-owners of the property. Thus, the respondent/landlady was entitled to file the Eviction Petition without impleading the other co-owners.

B. Tenancy in the name of M/s Jyoti Plastic Udyog and not in the name of the Petitioner. In addition the Eviction Petition was also bad for the non-joinder of other LRs of the Petitioner's father.

- (i) The learned ARC noted that the Respondent/landlady in her reply to the application to Leave of Defend has stated that though the tenancy is in the name of M/s Jyoti Plastic Udyog, it is Mr. Ashok Mittal who was the proprietor thereof. Moreover, the Petitioner did not deny that he was in the possession of the premises in question and that he paid rent in regards to the same premises. Hence the learned ARC observed that there was no need to implead M/s Jyoti Plastic Udyog separately.
- (ii) As regards the LRs of the petitioner's father not having been impleaded in the Eviction Petition, the learned ARC held that the Petitioner was in possession of the premises in question and it was the petitioner who was paying rent to the respondent/landlady. The learned ARC further held that no objections were raised by the petitioner when the

¹ *Kanta Udham Jagasia Vs C.K.S Rao (1998) 1 SCC 403; Surender Kumar Jhamb Vs Om Prakash Shokeen 2000 (2) RCR 540*

rent receipts were issued and other LRs of the petitioner's father were not mentioned in those receipts. The learned ARC relied on the judgment passed by the Hon'ble Supreme Court titled *Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors. 155 (2008) DLT 383* wherein it was stated that **an eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as the joint tenancy is one tenancy and is not a tenancy split into different LRs.**

Thus, it was sufficient and proper for the Respondent/landlady to implead the Petitioner

C. Harassment and increasing Rent

The learned ARC placed reliance on *Vinod Kumar Bhalla Vs Sh Nanak Singh 1982 (2) RCR (Rent) 715* wherein it was stated that allegations regarding increasing of rent after getting it vacated are without any foundation since the landlords are not in the position to sell/re-let the tenanted premises for period of three years. The learned ARC thus held that this defence raised by the Petitioner was a sham defence.

D. Age of the respondent/ landlady

The age of the respondent/landlady and her ability to conduct her business are not triable issues. The learned ARC placed reliance on judgment on *Manika Rani Ghosh & Ors vs Dharwinder Kaur 197 (2013) DLT 18* wherein it was stated

that lack of business experience or age of the landlords or suitability of the suit shop for a business proposed by the landlord does not constitute a triable issue.

E. Grandson/Daughters being Rich and independent

The contention that the grandson is highly placed or that the daughters are not dependent on the respondent/landlady was not supported by any material and hence cannot be relied upon. Besides, the Delhi High Court² has observed that it is a moral duty of parents to help establish their children.

F. Premises unsuitable

The Petitioner is not to judge the suitability of the market for the Tractor business. As was stated in *Raghvendra Kumar v. Firm Prem Machinery AIR 2000 Supreme Court 534* the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter.

G. Site Plan incorrect & Misrepresentation

With respect to the incorrect site plan, the learned ARC stated that since it is not the case of the Petitioner that he owns the premises other than the premises in question, the incorrectness of the site plan does not grant him the leave of defend. Moreover, the site plan filed by the Petitioner was the copy of the site plan filed by the respondent/landlady in an earlier case.

² Pawan Kumar Vs Sant Lal R.C. Rev 303/2012 decided on 06.08.2012 on page 11; Labhu Lal vs Sandhya Gupta 2011 (I) RCR page 12.

H. Let out other premises

The learned ARC has observed that the Petitioner in his averment had claimed that the respondent/ landlady let out her properties but failed to bring anything on the record to show that it was done so after the offer for tractor business was received. Further, the petitioner has failed to show that the respondent/landlady had no requirement for the premises in question. Consequently, it is only fair that the respondent/landlady, in order to augment her income, lets out the other portion of the property.

I. Filed other Petitions

The learned ARC has observed that the Petitioner had failed to bring any material on record to show against whom and on what grounds, such other petitions were filed.

J. Landlady being Rich

With regards to the landlady/respondent being rich, the learned ARC relying on the Hon'ble Delhi High court judgment *Aero Traders Pvt. LTD Vs Mohan Singh and Anr., & other* judgements stated that being rich does not preclude the landlady from seeking eviction for their bonafide requirement. The Petitioner cannot dictate how and in what manner should the landlady/respondent live.

6. I have only briefly culled out the defences raised by the Petitioner in his leave to defend and as to how they have been dealt by

the learned ARC for the purpose of brevity. The learned ARC has considered each of the defences raised by the Petitioner in detail and thereafter the learned ARC has come to the conclusion that no triable issue has been raised by the petitioner/tenant and consequently eviction order has been passed.

7. At the outset I may point out that on 29th October, 2015 Mr. Aneja learned counsel for the petitioner/tenant informed this Hon'ble Court that the premises in question have already been retrieved by the respondent.

8. Mr. Aneja has relied upon the following four judgments to argue on Section 144 CPC seeking restitution:

- (i) *M/s. S.K. Seth & Sons v. Vijay Bhalla, MANU/DE/3496/2012*
- (ii) *Khairati Ram Nayyar v. K.B. Advani, MANU/DE/0364/1971*
- (iii) *Mohd. Jafar & Ors. v. Nasra Begum, MANU/DE/3136/2012*
- (iv) *Binayak Swain v. Ramesh Chandra Panigrahi & Anr., MANU/SC/0024/1965.*

9. Another judgment titled *Visalakshamma v. Balaji Agencies, MANU/KA/0242/1985* has been cited by the learned counsel for the petitioner to highlight that the jurisdictional error committed by the learned ARC can be interfered with in revision petition.

10. I have heard the arguments and reserved the orders on 12th March, 2021.

11. This Court sitting in revisional jurisdiction does not act as a Court of Appeal. This Court has only to see whether the learned ARC has committed any jurisdictional error and has passed order on the basis of material available before it.

12. The Apex Court in *Sarla Ahuja v. United India Insurance Company Ltd., reported in AIR (1999) SC 100* held as under:-

“6.....The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

13. It was further held by the Supreme Court that:-

“14.The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the

requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

14. Similar views have been expressed in various other judgments of the Hon'ble Apex court as well as this Hon'ble High Court.³

15. In my view the learned ARC has committed no jurisdictional error and has passed the order of eviction on the basis of material available before it.

16. Having held that there is no jurisdictional error and the order dated 27th September, 2014 of the learned ARC is not calling for any

³ *Mohan Lal v. Ram Chopra* 1982 (2) RCJ 161; *Hari Shanker v. Rao Girdhari Lal Chowdhury*, A.I.R. 1963 S.C. 698; *Bell and Co. Ltd. v. Waman Hemraj*, AIR 1938 Bom (223); *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta* AIR 1999 Supreme Court 2507 and *Chaman Prakash Puri v. Ishwar Dass Rajput*, 1995 Supp (4) SCC 445

interference and having noted that the possession of the tenanted premises has already been retrieved by the respondent/landlady, there is no question of any restitution under Section 144 CPC. Thus, the judgments referred and relied upon by the learned Counsel of the Petitioner in Para 8 are neither relevant nor germane to the issue in question. In view of my conclusions above, the present Revision Petition is dismissed.

MARCH 21, 2021
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JASMEET SINGH, J



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