
(2019) 03 DEL CK 0330

In the Delhi High Court

Case No : RC.REV. 297 Of 2018, Civil Miscellaneous Application No. 26573,
54589 Of 2018

Banwari Lal (Since Deceased) Thr Lrs & Anr

APPELLANT

Vs

Mahender Pal Gupta

RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1)(e)

Citation : (2019) 1 RLR 412 : (2019) 258 DLT 750 : (2019) 5 AD(Delhi) 74

Hon'ble Judges : Yogesh Khanna, J

Bench : Single Bench

Advocate : H.P.Aditya, Anil Kumar Sharma, Vikas Kumar Sharma, Sanjay Garg

Final Decision : Dismissed

Judgement

Yogesh Khanna, J

1. This petition challenges the impugned order dated 08.05.2018 passed by the learned Trial Court whereby the application for leave to defend

application of the petitioner was dismissed in eviction petition No.E837/2017 titled as Mahender Pal Gupta vs Banwari Lal (since deceased) in respect

of Shop No.10893/8, Ward No.XIV, East Park Road, Manakpura, Near Filmistan Cinema, Karol Bagh, New Delhi-110005 (hereinafter "tenanted

shop") and an eviction order was passed.

2. The respondent filed the eviction petition under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (hereafter "DRC Act") on the

following grounds:-

"Shri Sehdev Gupta son of Shri Sita Ram Gupta had purchased the property from Sh. Om Prakash Saini son of Shri Ch. Nanak Chand R/o Mohalia

Manak Pura, Delhi on 25th June, 1957 which was duly registered on 20th July, 1957. Sh. Sehdev Gupta expired on 26th March, 1999 and after his

death this property came in favour of the petitioner by way of registered Will dated 24th October, 1997 and after the death of Sh. Sehdev Gupta, the

respondent No.1 who was tenant of the petitioner, expired in 2002 but the representative of respondent No.1 does not disclose the death of the

respondent No.1 and were depositing the rent to the petitioner in the name of respondent No.1 upto 30th June, 2017 @ Rs.1,815/name of the

respondent No.1 per month in the name of respondent No.1.

That on 23rd May, 2017, the petitioner sent a legal notice to the respondent No.1 through registered AD/speed post/courier which was duly received

by the representative of the respondent No.1. But the representative of the respondent No.1, who is respondent No.2 herein, does neither reply the

same notice nor disclose the death of the respondent No.1 even in receiving the court summons on behalf of the respondent No.1 that the respondent

has ,already expired in 2002.

That on 21st July 2017 in eviction petition No.576/2017, the representative of the respondent No.1 has only submitted copy of death certificate on

record only. That neither L.Rs. of the respondent No.1 nor any party had made an application before the Hon'ble Court to be impleaded as party in

the above said eviction petition No.576/2017 and the same stands abated because the same petition was filed against a dead person.

That on 22nd August 2017, the petitioner has moved an application for possession of shop bearing No. 10893/8, Ward No. XIV, East Park Road,

Manak Pura, Near Filmistan Cinema, Karol Bagh, New Delhi-110005, in red colour in the site plan attached herewith before the Hon'ble Successor

Court in execution No. M-08/17 dated 23rd August, 2017. The Nazir has reported that "the main eviction petition was abated by the Ld. P.O. vide

order dated 21-07-2017, as the above said petition was filed against a dead person. However, no order regarding any stay or revision has been

received in this court till date.

That on 14th October, 2017, the Hon'ble Court has dismissed the said application for issue of warrants of possession against the representative of

the respondent No.1 without any eviction order passed against the said alleged representative of the respondent No.1 does not hold ground and

accordingly dismissed and file was consigned to record room.

That the petitioner is having four sons, who are not having space to run their business/shops and for running livelihood of their family, they are doing

work on rented shop.)The petitioner has many times requested the respondent to hand over peaceful vacant physical possession so that one of his

sons could be adjusted for running shop and the respondents did not care. Hence this case is for eviction on bonafide requirement on the following

amongst other grounds:-

1-8. xxx

9. That the petitioner is about 73 years of age and has, four sons and for arranging the family of his four sons, the 'petitioner is inclined to start the

business of his sons, so they could start their own business separate. All the four sons of the own families. Now the petitioner wants them to start their

own business separate which it is necessary to give one shop to Sh.Tarun Gupta, one shop to Sh. Arun Gupta and one shop to Sh. Gaurav Gupta and

one shop to Sh. Vineet Gupta. That on 15th April, 2017 in orally family settlement it is decideÂ¢ that the shop No.10893/B, Ward No.XIV, East Park

Road, Manak Pura, Near Filmistan Cinema, Karol Bagh, New Delhi 110005, exclusively shown in red colour in the site plan attached herewith will be

run by Sh.Gaurav Gupta, one son of the petitioner.

10. That Sh.Gaurav Gupta is married and having children to support. Sh.Gaurav Gupta will start shop for doing wholesale supplier and marketing of

handicrafts jarry goods and the premises is good for this work. This work will run the livelihood of Sh. Gaurav Gupta and his family. As the petitioner

has no any other space and being an owner of the property it is necessary to run shop by the sons of petitioner and the petitioner has no other

reasonably suitable commercial accommodation and it is adjacent to residence of the petitioner. In difficulty at any hour, at the time of emergency, the

petitioner could call his son for his wife' s and his treatment and it is necessary that the sons of the petitioner shall remain present near the parents.

Hence this petition.

11. That the petitioner and his wife are senior citizens ailing from various diseases and residing alone due to non availability of premises and three sons

are residing separately on rented premises and at present they cannot live near the petitioner and his wife, as sons of the petitioner is not having shop

near the petitioner's residence.

3. The petitioner has challenged the bonafide need of the respondent and had filed an application for leave to defend alleging concealment on the part

of the respondent herein. It was alleged the site plan filed by the respondent along with eviction petition is incomplete. The petitioner herein rather filed

a site plan (at page No.117 of documents) to show the respondent owned four shops and a godown in the same property and the possession of shop

No.9 was handed over to the respondent just prior to filing of this eviction petition which shop is also in occupation of respondent herein through one of

his sons and rest three shops in the property are also lying vacant and are in possession of the respondent alongwith a godown on the ground floor

beneath these four shops.

4. The respondent's case is shop No.8 is in the tenancy of the petitioner herein, shop No.7 is in tenancy of some other tenant and whereas shops

No.9 & 10 are in possession of two sons of the respondent namely Tarun Gupta and Vineet Gupta and the godown being on the rear side of such

shops cannot be used as a shop. It is stated the respondent need to settle his son namely Gaurav, a married man with wife and children, as he does not

have sufficient source of income and presently is assisting his brother in his business, as an attendant. These facts are well noted in the impugned

order as well.

5. The plea of concealment is dealt with by court and the impugned order notes:-

18. It is averred by the respondent that the petitioner had filed a eviction petition bearing RC ARC No. 575/2017 titled 'Mahender Pal Gupta v.

Mohan Lal qua the shop bearing no. 10893/9, Ground Floor, Ward No. XIV, East Park Road, Nanakpura, Near Filmistan Cinema, Karol Bagh, New

Delhi-110005 (marked in green colour in the site plan filed by the respondent) before this Court and has successfully obtained the possession of the

said property. The petitioner has already received the possession of the said shop from the concerned tenant Mohanlal as per the mutual settlement

arrived between them and therefore the petitioner already has another suitable commercial property in their power and possession. The aforesaid

property was evicted in the month of August 2017 and the present petition was filed in the month of November 2017 even then the petitioner did not

disclose about the eviction of the said property in the present petition. The

respondent has also placed on record the copy of the order dated 03.08.2017 passed in RC ARC 575/2017. On the other hand, it is submitted by the petitioner that the petitioner has got vacated this shop no. 10893/9 from his tenant Mohan Lal for his son, namely, Tarun Gupta, who is running his business in this shop for the bread and butter for his family. Also judicial notice can be taken that RC ARC No. 375/2017 had been filed for bonafide requirement of son Tarun Gupta. No doubt the petitioners did not disclose the other accommodations as discussed above however as has been discussed above that the accommodations are not alternative reasonable suitable accommodations, shop being unavailable. In Surinder Singh v. Jasbir Singh 172 (2010) DLT 611 it has been held by Hon'ble High Court of Delhi as under:

â??25...The mere fact that, respondent did not disclose the accommodation of basement and first floor available with him in the eviction, would not prove fatal to the present case, since the same cannot be said to be an alternative suitable accommodation for the purpose of business.â?? Thus, the said shop cannot be said to be available with the petitioner for the bonafide requirement of his son Sh. Gaurav Gupta.

19. The respondent has also disputed the site plan filed by the petitioner stating that the petitioner has filed a wrong site plan as Annexure P-4 for the reason that the petitioner owns 4 shops adjoining each other and there is another big shop in the size of approx 200 square yards which is also meant for commercial purpose. The aforesaid big commercial shop is also adjoining to the shop in question. It is submitted that the petitioner has deliberately not disclosed the name of occupants of other afore-said shops. The respondent has also placed on record his own site plan showing the portion which is already in possession of the petitioner in Yellow colour in the said site plan. However, perusal of the site plan filed by the respondent shows that the godown which is alleged to be in possession of the petitioner is at the rear side and its entry is from a gallery and not from the main road and hence, even if the petitioner is in possession of the said godown, the same cannot be said to be an alternative suitable accommodation for starting business by the son of the petitioner Sh. Gaurav Gupta. In case landlord wishes to start his business then starting business in the front lane will have more profit as there would be easy excess of customer in the front lane than in the back lane

godown. In Pawan Kumar v. Paramjit Singh Gill 2015 IV AD (Delhi)

423 it is held that if tenanted premises is given for commercial activity and the landlord has a right to choose as per his suitability then the shop on

ground floor on the main road is more suitable than any other shop. Further, the respondent has himself shown shop no. 7 to be in possession of other

tenant. Shop no. 8 is the premises in question occupied by the respondent herein. Further, shop no. 9 is admittedly got vacated by the petitioner from

the tenant, namely, Sh. Mohan Lal, for the bonafide requirement of his son Sh. Tarun Gupta, who is presently running his business from the said shop

and shop no. 10 is in occupation of the elder son of the petitioner Sh. Vineet Gupta, with whom Sh. Gaurav Gupta is working as an attendant in order

to earn his livelihood. Thus, even if the site plan filed by the respondent is admitted to be correct, then also, no portion in the suit property is lying

vacant with the petitioner which can be used by him for settling his son Sh. Gaurav Gupta. Thus, the respondent has miserably failed to prove the

availability of any alternate suitable accommodation with the petitioner for his bonafide requirement.

20. It is also contended by the respondent that no legal notice was ever served upon the respondent. However, the said contention of the respondent is

without any substance in the present eviction petition as the petitioner is not required to serve any notice upon the respondent/tenant prior to filing of

an eviction petition u/s 14 (1) (e) of the DRC Act, on the ground of bonafide requirement.

21. Further, it is averred by the respondent that the respondent is aged about 54 year having wife and children (3 daughter and a son) and there is no

other source of income to carry on the livelihood of the respondent and his family. The petitioner has opted to get vacated the shop in question to let

out the same at a higher rate of rent to someone. However, the said contention of the respondent is without any basis as it is a well settled principle of

law that a Rent Controller has to see the bonafide requirement of the petitioner and not the comparative hardship of the respondent. It is well settled

position of law laid by the Apex Court in Bega Begum v. Abdul Ahad Khan (1979) AIR 272 that "the inconvenience loss and trouble resulting from

denial of decree of eviction in favour of the landlord far outweigh the prejudice or the inconvenience which will be caused to the tenant." Moreover,

it has been pointed out by the Apex Court and Madras High Court in M/s Bentool Steel Products Pvt Ltd v. O.M.A. Mohammed Omar in CA No.

112 of 2002 that "comparative hardships of the tenant is unsustainable in the eye of the law" and "a little inconvenience to the tenant cannot be

called a hardship. In case of Mohd. Ayub v. Mukesh Chand (2012) 2 SCC 155, it was observed that "the hardship appellants would suffer by not

occupying their own premises would be far greater than the hardship the respondent would suffer by having to move out to another place. We are

mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the respondent is in

occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor".

The same has been reiterated in Puran Chand Aggarwal v. Lekh Raj 2010 (2014) DLT 449. Further, if the petitioner fails to use the property for the

bonafide requirement as stated in the present eviction petition and try to re-let the property at higher rate of rent, after obtaining eviction of the

respondent, then also, the respondent is protected u/s 19 (2) of the DRC Act, for taking re-possession of the same."

6. Hence there appears to be no concealment since Shops No.9 and 10 are being used by two sons, namely Tarun and Vineet of the respondent and

hence such shops are not available for his 3rd son namely "Gaurav, for whom this petition is filed. Though the petitioner relied upon G.M. Haryana

Roadways vs Jai Bhagwan & Another 2008(2) SCC 762(SC); and Mohammad Illyas vs Nooruddin & Others 184 (2011) DLT 590, but the said

decisions too say the concealment must be of a material fact and not otherwise. Hence if Shop No.9 had fallen vacant, since occupied by his son

Tarun, was rightly not available to the respondent herein to settle his 3rd son Gaurav and its non-disclosure is not material.

7. The second issue raised before me is the respondent did not accept the petitioner as his tenant & has referred him as trespasser in his reply to

application for leave to defend, hence the learned ARC had no jurisdiction to deal with the matter and the respondent herein ought to have filed a civil

suit against the petitioner. The argument is misconceived. A stray argument or an emotional averment made in reply or pleadings cannot be read in

isolation.

8. Admittedly, the father of the petitioner was a tenant of the shop premises has since expired and thus the tenancy has fallen upon his sons, including

respondent No.2 herein as a joint tenancy and it was not obligatory upon the respondent to implead each of the legal heirs of deceased tenant as

parties to the eviction petition. Even otherwise, it is only respondent No.2 who is using the shop for doing business. Hence, on this count too the

petitioner does not have a good case to interfere in the finding of the learned Trial Court.

9. Thus a bare perusal of the reasoning given by the learned Trial Court do show that it does not suffer from any error of law and is not perverse or

arrived at without consideration of the material evidence filed before it. It is only when such findings are based on no evidence or misreading of the

evidence or is grossly erroneous that if allowed to stand it would result in miscarriage of justice it is open to the High Court to upset such finding. If

this Court is satisfied qua the correctness, legality or propriety of any decision or the order impugned, this Court shall not exercise its power as an

appellate power to re-appreciate or reassess the evidence for coming to a different findings on fact. The revisional power cannot be equated with the

power of reconsideration of all questions of facts as a Court of first appeal, per Hindustan Petroleum Corporation Ltd vs Dilbahar Singh 2014

AIR(SC) 3708.

10. In view of above, the petition is dismissed with no order as to costs. The pending application(s), if any also stands dismissed.