

(2023) 03 DEL CK 0076

In the Delhi High Court

Case No : RC.REV. No. 89 Of 2019, Civil Miscellaneous Application No. 6851 Of 2019, 7110, 14430 Of 2021, 20722 Of 2022

Kundan Lal Mahesh Chand

APPELLANT

Vs

Padam Chand Jain (Deceased Through Its Lrs)

RESPONDENT

Date of Decision : 10-03-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 11, Order 22 Rule 1(4), Order 23 Rule 1(4), Order 23 Rule 1(4)(b), Order 2 Rule 2
Delhi Rent Control Act, 1958 — Section 14(1)(e), 25B, 25B(8)

Citation : (2023) 03 DEL CK 0076

Hon'ble Judges : Sachin Datta, J

Bench : Single Bench

Advocate : Avinash Kumar Tyag, Ajay Gupta, Anant Gupta

Final Decision : Dismissed

Judgement

Sachin Datta, J

1. The present revision petition filed by the petitioner under Section 25-B(8) of the Delhi Rent Control Act, 1958 (the 'DRC Act') assails the eviction order dated 13.11.2018 passed in Eviction Petition No. E-100/15 (new no. 80422/2016). Vide the said order, the Additional Rent Controller has dismissed the leave to defend application filed by the petitioner. Consequently, the respondent has been held entitled to recover possession of the tenanted premises i.e., ground floor portion of the property bearing municipal no. 70, Kucha Sukha Nand Dariba Kalan, Delhi-110006 (the 'tenanted premises').

2. Notice in the present petition was issued on 13.02.2019. As recorded in the order dated 05.11.2019, learned counsel for the petitioner prayed for some time to take instructions with regard to grant of some reasonable time to vacate the tenanted premises. Thereafter, matter could not be taken up. In the meantime, the original respondent/landlord died. The legal heirs of the original respondent were brought on record on 08.04.2021. An application was filed by the

respondent seeking disposal of petition in terms order dated 05.11.2019 since reasonable time as prayed for by the petitioner on 05.11.2019 had already expired. However, learned counsel for the petitioner submitted that he would like to argue the petition on merits. Accordingly, the record has been perused and respective counsel for the parties have been heard.

3. The eviction petition was filed under Section 14(1)(e) of the DRC Act on the assertion that the tenanted premises was required for the purpose of bona fide requirement of the respondent, which is set out in the following terms in the eviction petition: -

"6. That the sons of the petitioner do not have any other premises from which the sons of the petitioner could have run their independent business. It is worthwhile to mention here that the family business of the petitioner and of his children is of gold smith and for preparation of the jewellery articles. It is worthwhile to mention here that the sons are in joint business with their father i.e. the petitioner and all of them wanted to do their independent business and therefore, the tenanted premises is required to the sons of the petitioner to do the business activities from the tenanted premises separately and independently without having any obstruction from any corner.

7. The suit/tenanted premises is located in the commercial heart of old Delhi viz. Chandni Chowk and which Chandni Chowk area is extremely well connected having almost adjacent to it within a short distance/stones through distance of the Inter-state Bus Terminal of Kashmere Gate, Old Delhi as also the Metro Station of Inter-state Bus Terminal. Beside: the suit/tenanted premises being situated in a sough, after and busy commercial area. The tenanted premises are ideally located and thus easily/conveniently accessible for out-station persons who come to Delhi from nearby small cities or towns etc. These customers will be able to access and come to the shop/showroom which sons of petitioner want to open in the suit/tenanted premises. It is also relevant that the tenanted premises is located on the main road connecting the Inter-state Bus Terminal Kashmere Gate and its Metro Station to the northern side entrance of the Old Delhi Railway Station and both of which are situated at barely a distance of about a kilometre from the suit/tenanted premises.

8. That it is the last wish of the petitioner to get settled his son individually and separately in the business activities as the son of the petitioner is fully dependent upon- him for residential as well as business activities.

9. That the tenanted premises is situated at ground floor of the main road of Chandni Chowk from where the sons of petitioner could have called the customer who are passersby and can also attract the customer by opening a showroom, thus the suit premises is most suitable accommodation to the sons of petitioner in all manners.

10. That the petitioner does not have any other reasonable or suitable accommodation to himself or to his family members from where the said

business activity can be carried out.”

4. The eviction petition itself discloses certain other premises owned by the respondent which were, however, stated to be unsuitable/unavailable for the purpose of the respondent (landlord) and his family.

5. The eviction petition was resisted by the petitioner primarily on two grounds. Firstly, it was contended that the respondent had previously filed an Eviction Petition No. 219/2012, which came to be dismissed as withdrawn on 13.11.2014, without seeking liberty to file a fresh petition. Consequently, it was contended that the eviction petition itself was barred under Order XXIII Rule 1(4) CPC.

6. The other contention of the petitioner in the leave to defend application was that the respondent, being the owner of several other properties had sufficient other alternative accommodation.

7. The impugned order has rendered elaborate findings taking into account the respective contentions of the parties.

8. With regard to the existence of landlord-tenant relationship, it has been held in the impugned order as under:-

“9. Now coming to the facts of the present case under consideration. So far as the ownership of the petitioner qua the demised premises and the relationship of landlord and tenant between the parties is concerned, the same has not been denied by the respondent.

Therefore, in the light of the pleadings of the parties and other material placed before this court, in so far as the purpose of clause (e) of sub-section (1) of section 14 of Act 59 of 1958 is concerned, the petitioner is found to be the owner of the premises and it is also found that there exists relationship of landlord and tenant between the parties.”

9. With regard to the assertion/allegation that the respondent is in possession of sufficient alternative accommodation, the impugned order holds as under:-

“10. According to the respondent, the petitioner is in possession of sufficient alternate accommodation more than his requirements. However, the respondent has failed to support his averments with any supporting document.

11. On the other hand, the petitioner has very categorically denied the availability of any alternative accommodation as alleged by the respondent. The petitioner has been able to bring supporting documents on record to discard the grounds raised by the respondent in his leave to defend application whereas the respondent has failed to file any supporting documents so as to disbelieve the bonafide need of the petitioner.

12. The respondent has given details of various properties allegedly available with the petitioner. However, it is pertinent to mention at the outset that no supporting document has been filed on record by the respondent to substantiate

the averments put forth by the respondent in his application. So far as availability of any alternative accommodation is concerned, at H.no. 1712, Gali Piyau Wali, Dariba Kalan, Delhi-06, the petitioner has denied availability of any such property. Otherwise also, as per the respondent's own submissions ground floor and first floor of the property are not available as the same are already in use having jewellery showroom.

Property no. 70, Kucha Sukhanand, Gali. Khazanchi, Dariba Kalan, Delhi-06 has been disclosed by the petitioner himself in his petition as the same is already occupied. The ground floor is in possession of respondent whereas second floor and top floor is already in possession of other tenant. The first floor is also occupied being used by the labourers of the firm M/s Neel Padam Jewels and thus no portion of the said property can be said to be available with the petitioner.

So far as the properties i.e. rented shop in property no. 99, Dariba Kalan, Delhi-06 measuring 18 x 30 having the basement on. the ground floor and rented shop in property no. 1664, Dariba Kalan, Delhi-06 measuring 8x15 where the elder son Ritesh Jain is doing the jewellery in partnership with his uncle Arun Jain with the help of. salesmen, are concerned, as per his own submissions the said properties are rented shops and thus the same are being owned by the petitioner and therefore, cannot be said to be available so as to fulfill bona-fide needs of the petitioner being rented premises it cannot be said to raise any triable issue.

Property no. 56, Kucha Sukhanand, Dariba Kalan, Chandni Chowk, Delhi is being used by the petitioner for residential purposes and the entire property is already occupied and thus not available to the petitioner for his commercial purposes.

Property no. 82/1, Chandni Chowk, Delhi-06 has been disclosed by the petitioner himself as the first and second floors of the said property are already in occupation and possession of Sh. Happy Jain and Sh. Ganeshi Lai respectively. No other portion of the said property is being owned by the respondent. Therefore, by no stretch of imagination it can be said to be available to the petitioner, so as to raise any triable issue.

Property no. 62 and 63, Dariba Kalan, Delhi has been denied to be available with the petitioner and as per case of the petitioner none of the shops or portion of the said property are in occupation and possession of the petitioner.

Availability of Property no. 69, Kuch Sukhanand, Gali Khazanchi, Dariba Kalan, Delhi-06 has also been denied by the petitioner and no supporting document has been filed by the respondent, in support of his submissions and in the absence of any such document it appears to be bald averments which does not raise any triable issue."

10. With regard to withdrawal of the earlier eviction petition, the impugned order holds that the same does not constitute any bar to the filing of a fresh eviction petition, inasmuch as, the ground afforded by Section 14(1)(e) of the DRC Act

constitutes a continuing cause of action. The relevant findings/observations in the impugned order with regard to the said aspect are as under:-

"16... The respondent has raised one more issue that earlier an eviction petition was filed by the petitioner which was dismissed as withdrawn without obtaining leave of the court. Thus, the present petition is not maintainable. In the considered opinion of this court this arguments is not sustainable as the present petition has been filed u/s 14 (1) (e) DRC Act seeking eviction of the respondent on the ground of bona-fide requirement which is a continuing cause of action. It is now well settled that provisions of Section 11 of CPC or order 2 rule 2 CPC are not applicable in an eviction petition filed u/s 25B of the DRC Act. Otherwise also, Ld. Counsel for the petitioner has relied upon, one judgement of Hon'ble Supreme Court in N.R. Narayan Swamy Vs B. Francis Jagan, decided on 31.07.2001 in Civil Appeal 4800 of 2001.

In the abovesaid judgment Hon'ble Supreme Court had held that the order 22 rule 1(4) CPC is not applicable in a proceedings initiated for recovering the suit premises on the ground of bona-fide requirement which is a recurring cause."

11. In the present revision petition, the petitioner/revisionist once again sought to urge that the second eviction petition filed by the respondent [in which the impugned order has been passed] is barred under Order XXIII Rule 1(4) CPC. Further, attention is drawn to the pleadings filed in the previous eviction petition to contend that there is dichotomy between the averments therein and the averments in the instant eviction petition regarding availability of suitable alternative accommodation with the respondent.

12. No merit is found in the contentions raised by learned counsel for the petitioner for reasons enumerated hereunder.

13. The impugned order rightly notes that Order XXIII Rule 1(4) CPC is not applicable to the proceedings initiated to recover possession of tenanted premises on the basis of bona fide requirement. The legal position in this regard has been settled by the Supreme Court in the case of N.R. Narayan Swamy v. B. Francis Jagan (2001) 6 SCC 473, wherein it has been held as under:

"9. The next question would be — whether Order 23 Rule 1 sub-rule (4) CPC is applicable to the facts of the present case. Sub-rule (4) reads thus:

"1. (4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim."

10. The aforesaid Rule would have no application in a proceeding initiated for recovering the suit premises on the ground of bona fide requirement which is a recurring cause. Order 23 Rule 1(4)(b) precludes the plaintiff from instituting any fresh suit in respect of such subject-matter or such part of the claim which the plaintiff has withdrawn. In a suit for eviction of a tenant under the Rent Act on the ground of bona fide requirement even though the premises remain the same, the subject-matter which is the cause of action may be different. The ground for eviction in the subsequent proceedings is based upon requirement on the date of the said suit even though it relates to the same property. Dealing with a similar contention in *Vallabh Das v. Dr Madan Lal* [(1970) 1 SCC 761] this Court observed thus: (SCC p. 763, para 5)

"The expression 'subject-matter' is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit."

11. The Court further observed that the mere identity of some of the issues in two suits would not bring about identity of the subject-matter in two suits."

14. Even the contentions raised by the petitioner regarding availability of suitable alternative accommodation with the respondent, are devoid of merit. In this regard, it is notable that the eviction petition itself refers to certain other premises owned by the respondent and also explains as to why the same were unsuitable for the bonafide need of the respondent. In this regard attention is drawn to the following averments in the eviction petition:-

"1. That the petitioner is the owner/landlord of property bearing Municipal No.70, Kucha Sukhanand, Dariba Kalan, Chandni Chowk, Delhi-110 005 - This property is consisting of ground floor, first floor and second floor. The ground floor portion is in use, occupation and possession of Respondent. The first floor portion of the said property is being used by the labourers of the firm M/s Neel Padam jewels, who are residing and doing the manufacturing activities of gold and silver articles from the said first floor portion. However, the second floor portion of the said property is in use, occupation and possession of a tenant namely Smt. Kaushalaya Devi. Previously the said portion was in use, occupation and possession of Shri Raghubir Prasad, who had sublet, assigned and/or otherwise parted with the possession and transferred the said portion to Smt. Kaushalaya Devi and the petitioner herein has also filed a petition- for grant of permission from the Competent Authority (Slum) against the said Smt. Kaushalaya Devi and the necessary documents in this regard have already been placed on the record of this Hon'ble Court.

2. That the petitioner is also the owner/landlord of property bearing Municipal No.56, Gali Khazanchi, Dariba Kalan, Chandni Chowk, Delhi-110006 - It is

submitted that the property in question is a residential property, consisting of ground floor, first floor, second floor and third floor and Each and every floor is being separately used by the petitioner and his sons separately. The ground floor portion is in use and occupation of the petitioner, his wife and mother. Since all of them are old and senior citizens, as such, they are enjoying the ground floor portion. The first floor portion is in use, occupation and possession of the elder son of the petitioner namely Shri Ritesh Jain, who is enjoying the same with his family members i.e. his wife namely Smt. Sonia Jain and children. The second floor portion is in use, occupation and possession of the younger son of the petitioner namely Shri Nitin Jain, who is also enjoying the same along with his wife and children. Similarly, the third floor portion of the said property is in use, occupation and possession of Shri Harsh Jain, another son of the petitioner who is enjoying the said portion with his wife namely Smt. Jyoti Jain and his children. However, the younger son of the petitioner namely Shri Happy Jain is having no space to live in the property bearing No.56, Gali Khazanchi, Dariba Kalan, Chandni Chowk, Delhi-110 006 and as such, he has shifted and is now residing in the suit property as narrated in the petition.

3. That the petitioner is the owner/landlord of Residential -cum - Commercial property i.e. the suit property bearing Municipal No.82/1, Chandni Chowk, Delhi-110 006 –The petitioner is the owner of the first floor and second floor of the this property. The first floor portion of the said property is in use, occupation and possession of Shri Happy Jain, younger son of the petitioner while the second floor portion in use, occupation and possession of the tenant Ganeshi Lal Kishori Lal.

4. That the petitioner is the owner/landlord of Residential cum commercial property bearing Municipal No.87, Chandni Chowk, Delhi-110 006 - This property is jointly owned by the petitioner along with his brother Shri Arun Jain, as such petitioner does not have any exclusive right over the said property moreover the ground floor portion of the same is occupied by one tenant namely Shri Madan Lal Awasthi. Similarly, the first floor portion of the said property is occupied by one tenant namely Pushp Raj Mehta and the second floor of the said property is in very dilapidated condition which cannot be used and is in abandoned condition. The necessary photographs in this regard are also being enclosed herewith for the kind perusal and ready reference of this Hon'ble Court.

5. That the family of the petitioner is consisting of himself, his wife and four sons. All the four sons of the petitioner are married and are having their respective family members and as such, it is not possible for the petitioner as well as his family members to accommodate themselves in property bearing No.56, Gali Khazanchi, Dariba Kalan, Chandni Chowk, Delhi-110006 and therefore, after the purchase of the property bearing Municipal No.87, Chandni Chowk, -Delhi-110 006, the youngest son of the petitioner namely Shri Happy Jain, started to live in the said property along with his wife and two sons. The portion which is in occupation and possession of the said son of the petitioner in

the said property has been more specifically shown and delineated in green colour in the site plan annexed with the present petition."

15. The impugned judgment [in para 12 thereof (*supra*)] has minutely considered the plea of the petitioner (tenant) regarding availability of suitable alternative accommodation with the respondent, taking into account the averments made by the respective parties, and has rightly reached the conclusion that no triable issue arises between the parties with regard thereto. It was noticed that the averments of the petitioner (tenant) were not substantiated by any cogent document/material. The impugned order also notices that availability of property No.56, Kucha Sukhanand, Dariba Kalan, Chandni Chowk, Delhi-110005, (where the family members of the respondent were stated to be residing) and property No.82/1, Chandni Chowk, Delhi-110006 (first and second floors of which are in occupation and possession one of the sons of the respondent and a tenant, respectively) does not detract from the bonafide requirement asserted by the respondent (landlord).

16. The law is well settled that any plea of availability of alternative accommodation set up by the tenant must be based on some material; bald assertions made by a tenant are not to be considered sufficient for grant of leave to defend. In this regard reference is made to the judgment of this Court in *Rajender Kumar Sharma v. Smt. Leela Wati & Ors.* (2008) 155 DLT 383, wherein it has been held as under:

"....Only those averments in the affidavit are to be considered by the rent Controller which have same substance in it and are supported by some material. Mere assertions made by a tenant in respect of landlord's ownership of other buildings and in respect alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed the whole purpose of Section 25-B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence defeating the very purpose of the statute. The Rent Controller is thus not precluded from considering the material placed before it by the landlord in response to leave to defend to show that the tenant's assertions and averments were totally false."

17. The law is also well settled that it is not for the tenant to dictate to the landlord as to how he should accommodate itself. Further, mere assertion on the part of the tenant would not be sufficient to rebut the presumption in the landlord's favour that his requirement of occupation of the premises is bonafide. In this regard reference may be made to the judgment of the Supreme Court in *Sarla Ahuja v. United India Insurance Co. Ltd* AIR 1999 SC 100, wherein it has been held as under:

"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."

17.1 In *Baldev Singh Bajwa v. Monish Saini* (2005) 12 SCC 778, it has been held as under:

"A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine."

17.2 In *Anil Bajaj v. Vinod Ahuja* (2014) 15 SCC 610, it has been held as under:

"It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same is any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business."

17.3 In *Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal* (2005) 8 SCC 252, it has been held as under:

"It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business."

18. The impugned order rightly reaches the conclusion that the petitioner herein has failed to support his contentions regarding availability of suitable alternative accommodation with the respondent, with any supporting documents. As such, it was rightly concluded that no triable issue can be said to arise necessitating grant of leave to defend to the petitioner.

19. As such, no infirmity is found in the impugned order dated 13.11.2018; the same does not call for interference in exercise of revisional jurisdiction under Section 25-B(8) of the DRC Act.

20. It is notable that the Supreme court in *Abidul Islam vs. Inder Sen Dua*

(2022) 6 SCC 30 also emphasized that that the scope of interference in the revisional jurisdiction is very restricted, and except in cases where there is an error apparent on the face of the record, this court would not proceed to disturb the findings rendered in the final judgment of the rent controller. In this regard reference is made to the following observations in the said judgment:

"23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature."

21. In the circumstances, no merit is found in the present petition and the same, along with pending applications, is accordingly dismissed, however with no orders as to costs.