

(2019) 05 DEL CK 0283
In the Delhi High Court
Case No : RC.Revision No. 321 Of 2019

Mela Ram Malhotra

APPELLANT

Vs

Krishan Kumar Sachan

RESPONDENT

Date of Decision : 21-05-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115
Evidence Act, 1872 — Section 116
Delhi Rent Control Act, 19(2), 25B(8)

Citation : (2019) 05 DEL CK 0283

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Dinesh Rohilla, Rahul Rohilla, Mohan Singh

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

CM. No. 24445/2019 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

CM. No. 24443/2019 (Condonation of delay)

1. For the reason stated in the application delay of 41 days in filing the revision petition is condoned.
2. Application is disposed of.

RC.Rev. 321/2019 and CM. No. 24444/2019 (Stay)

1. The present proceeding has been filed by the petitioner/tenant assailing the order of eviction dated 27.11.2018 passed in the Eviction Petition No. 867/2014 (New No. 77496/2016) by the ARC-1, Central District, Tis Hazari Courts, Delhi.

2. The respondent/landlord had filed the eviction petition with respect to a shop on the ground floor measuring 10 ft. x 12 ft. admeasuring 70 Sq. yards in property bearing No. A-649, Shastri Nagar, Delhi-110052 (here in after refer to as the "premises in question").

3. The case set-up by the respondent/landlord in the eviction petition was that he was the absolute owner by virtue of a registered sale deed in his name. The ground floor of the "premises in question" has two shops and one car garage. The garage is used by the son i.e. Mr. Rahul Sachan, for parking his car. The daughter of the respondent/landlord, namely, Ms. Pragya Sachan, is a qualified doctor and one shop on the ground floor is used by her for running a clinic. The other shop was tenanted with the petitioner/tenant. The respondent/landlord retired from the MCD, as a Pharmacist on 31.12. 2012 and is unemployed. The tenanted shop was required by the respondent/landlord for opening a medical store as he has the qualification of a Pharmacist. He has no other alternate shop either in Delhi or elsewhere for running the medical store. It was also stated that the petitioner/tenant had three shops in property bearing No. WZ-136, Nimri Village, Shastri Nagar, Delhi from where he is carrying business of general store under the name and style of M/s Malhotra Stores.

4. The leave to defend filed by the petitioner/tenant was allowed. A written statement was filed, where an objection was taken to the maintainability of the eviction petition on the account of non-joinder of the necessary parties. It was pleaded that the respondent/landlord did not join the other co-owners i.e. his son and daughter as parties in the eviction petition, who had become the owners after the death of their mother, Vimla Sachan. It was also pleaded that the respondent/landlord was not the landlord of the "premises in question" though it was stated that Smt. Vimla Sachan, the deceased wife of the respondent, had given the "premises in question" to the petitioner in the year 1984 and she had also issued rent receipts. The bona fide need of the respondent/landlord was challenged on the ground that the clinic on the ground floor was, in fact, run by the respondent/landlord himself albeit, in the name of his daughter. Along with the written statement certain photographs were filed which showed the respondent sitting in the clinic and examining some person. It was pleaded that the respondent/landlord is a quack and a separate complaint was being filed before the Delhi Medical Council. It was also pleaded that the area shown as car parking was rather used by the respondent/landlord himself for sale/purchase of old sacks (bardana business). It was further pleaded that the petitioner/tenant was running his business from the said shop for the last more than 30 years and would like to live his remaining life with peace and independence, while running his shop from the "premises in question".

5. During the trial, the respondent/landlord examined himself as PW-1. Along with the evidence by way of affidavit (Ex.PW-1/1), the following documents were filed:-

i. Ex. PW-1/A is the site plan

ii. Ex. PW-1/B is the copy of the ration card issued to the petitioner. Original was seen and returned.

iii. Ex. PW-1/C is copy of the sale deed dated 04.07.2007. Original was seen and returned.

iv. Mark 'A' is copy registration certificate issued by Delhi Medical Council to Ms. Pragya Sachan.

v. Mark 'B' is the copy of office order dated 31.12.2012 by which petitioner was held to have retired from service.

6. The petitioner/tenant examined himself as RW-1 and filed his evidence by way of affidavit (Ex. R1/A). He relied on copy of certain receipts which were marked A.

9. The scope of the revisional jurisdiction has been described by the Supreme Court in *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, (1999) 6 SCC 222 as follows:-

"11. The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is "for the purpose of satisfying if an order made by the Controller is according to law". The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law". For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available".

To the same extent, is the decision of the Supreme court in *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh* (2014) 9 SCC 78.

10. At the outset, on a specific query put by the Court, the counsel for the petitioner/tenant submitted that he is confining the arguments to the genuineness of the bonafide need only. Even otherwise, the challenge to the ownership of the respondent/landlord was made on the ground that he was not the sole owner of the tenanted premises. In this regard a perusal of the

registered sale deed dated 04.07.2007 reveal that the said sale deed was executed between one Malti Sachan (vendor) and Krishan Kumar Sachan (vendee). The respondent/landlord is the absolute owner of the premises in question. The challenge made by the petitioner/tenant to the ownership of the respondent/landlord, has no legs to stand as admittedly the other alleged co-owners i.e. son and daughter of the respondent never objected to the filing of the eviction petition. The petitioner/tenant himself admitted to be inducted as a tenant in the "premises in question", by the wife of the respondent/landlord and as such is estopped from challenging the petitioner's title in view of Section 116 of the Evidence Act. Even, during his cross-examination, the petitioner/tenant admitted to payment of rent to the son of the Late Vimla Sachan.

11. So far as the arguments with respect to the parking space/garage is concerned it is an admitted case of the parties that the same is on the rear side of the building whereas the tenanted premises are on the front side, facing the road. Although in the written statement, the petitioner/tenant stated that the respondent/landlord was doing the business of sacks/bardana from the garage, however, during his cross-examination, he admitted that the garage/godown was given on the rent. The relevant cross-examination of the petitioner/tenant is reproduced below:-

"On the ground floor, there is one shop with me, one shop with the petitioner and one godown is given on rent."

It is noteworthy that the respondent/landlord, while being cross examined, denied the suggestion that he was doing any business of bardana. He clarified that some part of garage was used by the tenant for storing for bardana and the other was using for parking the car. It has come in his evidence that the said godown/garage is given on rent @ 6000/- pm. And is used by him as a parking place in the night.

12. That brings me to the bonafide need pleaded in the eviction petition. It was stated that the tenanted shop was required by the respondent/landlord to open a "medical store", as he having retired from MCD as a Pharmacist, was unemployed.

13. The petitioner/tenant has disputed the requirement of the respondent/landlord by arguing that the respondent's daughter was working in Bombay and the clinic in the adjacent shop was rather run by the respondent/landlord himself albeit in the name of his daughter. The counsel for the petitioner has sought to rely heavily on the following statement of the respondent made voluntarily during his cross examination.

"Vol- She is employed at Delhi itself and visit Bombay for job purposes"

14. The counsel for the petitioner has also pointed out certain photographs that would show the respondent/ landlord examining some persons. However, none of the photographs were proved during the trial.

15. A perusal of the evidence on record would reveal that the respondent/landlord has testified that out of the two shops on the ground floor, the bigger one is with the petitioner. He has categorically stated that the clinic was run by his daughter. He also denied that his daughter was working in Bombay. In this regard it would be relevant to reproduce the cross-examination of the respondent/landlord which reads as follows:

" It is wrong to suggest that I am running the clinic independently, vol. the said clinic is running by my daughter and myself being a retired person and being a BAMS, casually sits there to spend my retirements evening some time and sees the patient also".

16. It is relevant to note that besides giving only a bald suggestion, no evidence worth its name was brought on record by the petitioner/tenant to support his contention that the respondent's daughter was employed in

17. It is noteworthy that during the cross-examination of the respondent/landlord, the petitioner/tenant himself had given a suggestion where he admitted that the clinic was run by the daughter of the respondent/landlord, in the adjacent shop. For the sake of felicity, the relevant part of the cross examination is reproduced:

"It is wrong to suggest that the medical store can be opened in this shop where my daughter is running her clinic".

18. The above suggestion contains an implied admission by the petitioner/tenant that a clinic is being run in the adjacent shop, by the daughter.

19. Next, the counsel for the petitioner/tenant has laid emphasis that the medical store can be opened either in the clinic or in the garage/godown on the rear side of the building. It is settled law that landlord is the best judge of his requirement for residential or business purposes. [Ref: Prativa Devi (Smt) V. T.V. Krishnan (1996) 5 SCC 353, Sarla Ahuja v. United India Insurance Co. LTD. (1998) 8 SCC 119, Ragavendra Kumar v. Firm Prem Machinery & Co. (2000) 1 SCC 679 and Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal (2005) 8 SCC 252]

20. The petitioner/tenant is protected under Section 19 (2) of the Delhi Rent Control Act which provides for recovery of possession of the tenanted premises for occupation if the landlord does not use the premises for the need shown in the eviction petition.

21. In the present case, I find no reason to hold that the conclusion arrived at by the ARC is not in accordance with law. Accordingly, the present petition is dismissed along with the pending application. No order as to costs.

22. Copy of this order be sent to the court of ARC-1, Central District, Tis Hazari Courts, Delhi.