
(2020) 11 DEL CK 0134

In the Delhi High Court

Case No : RC. REV. No. 172 Of 2020, Civil Miscellaneous No. 17010 Of 2020

R K Kainth Through Rakesh Kainth, Guardian

APPELLANT

Vs

Swadesh Kumar Bhagi & Ors

RESPONDENT

Date of Decision : 18-11-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 5, Order 41 Rule 5(3)(a)
Delhi Rent Control Act, 1958 — Section 2(l), 14(1)(c), 14(1)(e), 14(7), 19

Citation : (2020) 11 DEL CK 0134

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Advocate : Vikas Gautam, Ravinder Sethi, Puneet Sharma

Judgement

Navin Chawla, J

CM 19679/2020

1. This application has been filed by the respondent no.1 praying for a direction to the petitioner to pay market rent for the tenanted premises being

shop at Ground Floor of property bearing No.S-22, Green Park (Main) Market, New Delhi, during the pendency of the present petition as user and

occupation charges.

2. By an order dated 30.01.2020 passed by the learned Rent Controller (South District), Saket Courts, New Delhi in RC No.6140/2016, the petition

filed by the respondents under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'Act') was allowed after a

complete trial, directing the petitioner to evict from the tenanted premises.

3. The petitioner has challenged the said order by way of the present revision petition.

4. The applicant, in support of its application has placed on record a copy of a lease deed dated 17.03.2017 with respect to the ground floor of the property bearing no.S-2/B, Green Park, New Delhi admeasuring 310 sq. ft. which shows the rental of the said property as Rs.2,15,000/- per month.

The applicant has also relied upon another lease deed dated 06.03.2020 with respect to shop No.S-1A, Green Park, (Main) Market admeasuring 230 sq. ft. showing the rental of Rs.1,90,000/- per month.

5. Relying upon the judgments of this Court in *Sushi Enterprises vs. CEAT Ltd.* 254 (2018) DLT 593 and *Om Prakash Chopra & Ors. vs. SBI* 257

(2019) DLT 50, the learned senior counsel for the respondents submits that once evidence in form of lease deeds is adduced, the Court is bound to

determine the market rent of the tenanted premises on the basis thereof. He further submits that where the evidence of lease deed prior in point of

time is adduced, enhancement @15% per annum has to be granted for prime and centrally located locations like in the present case. He submits that

based on the principles set out by the Supreme Court in its judgments in *Atma Ram Properties vs. Federal Motors* 2005 (1) SCC 705; *Bombay*

Mercantile Co-op. Bank Ltd. vs. Sirajbhai G. Lehri & Ors. (2005) 13 SCC 446; and *Anderson Wright & Co vs. Amarnath Roy & Ors.* 2005 (6) SCC

489, the petitioner is liable to pay the market rent of the shop in question during the pendency of the present revision petition as a condition of stay on

the execution of the Impugned Order of the Rent Controller. He also places reliance on the similar orders being passed by Coordinate Benches of this

court in various other petitions pending before it.

6. On the other hand, the learned counsel for the petitioner/non-applicant has submitted that the Impugned Order, on the face of the record, did not

consider various submissions made by the petitioner in its right perspective. He further submits that the respondents had claimed the bona fide

necessity for the tenanted shop for running a Photostat business, therefore, the rent received for the other shops with respect to other businesses

cannot be the yardstick adopted for determination of the loss suffered by the respondent by continued possession of the shop by the petitioner. He

submits that the true determinative factor would be the loss of income which the respondents would incur due to the continued occupation of the shop

in question by the petitioner. No evidence having been led towards the same, in

spite of the respondent no.1's own brother using the adjoining shop for a business purpose, this Court has no basis for determining the mesne profits / damages that needs to be paid /deposited by the petitioner during the pendency of the present revision petition.

7. The learned counsel for the petitioner further submits that the judgments of Atma Ram; Anderson Right and Bombay Mercantile (supra) as also the various orders on which reliance has been placed by the learned senior counsel for the respondents in support of the application, did not take into account the restriction placed by Section 19 of the Act on the landlord and the right created in favour of the tenants to re-enter the property in case the landlord does not use the premises for the purpose for which it had pleaded bona fide necessity, within two months of obtaining possession, or re-lets the same within three years of obtaining possession. He submits that therefore, it is not the rent which the landlord can reasonably expect to obtain from the premises but the loss of income which he would reasonably suffer due to an order of stay granted by this Court on the eviction of the petitioner, that would act as a reasonable yardstick for determination of the mesne profits payable by the petitioner during the pendency of the present petition.

8. On the market rent, he has placed reliance on the order dated 04.10.2016 passed in RC.Rev. No.13/2016 titled Girish Kumar Wadhwa (HUF) vs. S.R.Sharma, wherein, with respect to shop No.S-23A, Green Park (Main Market), New Delhi, the tenant therein was allowed to retain the property by paying user charges of Rs.10,000/- per month with effect from October, 2016. He submits that therefore, the claim of the respondent no.1 is completely exaggerated and cannot be sustained.

9. He further submits that in any case, in view of Section 14(7) of the Act providing for a protection to the tenant from eviction for a period of six months from the date of the order passed by the learned Rent Controller, the claim of the respondent for user charges from the date of the impugned eviction order cannot be sustained.

10. The learned counsel for the petitioner further submits that the petitioner is aged more than 85 years and is suffering from various ailments and is dependent on the shop for his livelihood and medicines. His entire earnings from the shop is about Rs.20,000 to 22,000/- per month and therefore,

would have no capacity to pay the user charges at the rate demanded by the respondent no.1.

11. I have considered the submissions made by the learned counsels for the parties.

12. In *Atma Ram Properties (supra)*, the Supreme Court had summarized the law on the conditions that can be imposed by the Court while granting

an order staying the operation of an order of eviction passed against the tenant, as under:

19. To sum up, our conclusions are:

(1) While passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate court does have

jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss

occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and insofar as those

proceedings are concerned. Such terms, needless to say, shall be reasonable.

(2) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in

clause (I) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with

the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and

occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant

would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the

decree.

(3) The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction

stands merged in the decree passed by the superior forum at a latter date.

13. It had further approved of the judgment of the Nagpur High Court in *Bhagwandas Lakhamsi vs. Kokabai* AIR 1953 Nag 186 holding that after

determination of the tenancy, the possession of the tenant is akin to that of a trespasser and he cannot claim that the measure of damages awardable

to the landlord should be kept tagged to the rate of rent payable under the

provisions of rent control order, in the present case, the Delhi Rent Control

Act. If the real value of the property is higher than the rent earned then the amount of compensation for continued use and occupation of the property

by the tenant can be accessed at the higher value.

14. The Supreme Court further observed as under:-

â??9. Dispossession, during the pendency of an appeal of a party in possession, is generally considered to be ""substantial loss"" to the

party applying for stay of execution within the meaning of clause (a) of sub-rule (3) of Rule 5 of Order 41 of the Code. Clause (c) of the

same provision mandates security for the due performance of the decree or order as may ultimately be passed being furnished by the

applicant for stay as a condition precedent to the grant of order of stay. However, this is not the only condition which the appellate court

can impose. The power to grant stay is discretionary and flows from the jurisdiction conferred on an appellate court which is equitable in

nature. To secure an order of stay merely by preferring an appeal is not a statutory right conferred on the appellant. So also, an appellate

court is not ordained to grant an order of stay merely because an appeal has been preferred and an application for an order of stay has

been made. Therefore, an applicant for order of stay must do equity for seeking equity. Depending on the facts and circumstances of a

given case, an appellate court, while passing an order of stay, may put the parties on such terms the enforcement whereof would satisfy the

demand for justice of the party found successful at the end of the appeal. In *South Eastern Coalfields Ltd. v. State of M.P.* this Court while

dealing with interim orders granted in favour of any party to litigation for the purpose of extending protection to it, effective during the

pendency of the proceedings, has held that such interim orders, passed at an interim stage, stand reversed in the event of the final decision

going against the party successful in securing interim orders in its favour; and the successful party at the end would be justified in

demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been

passed against it. The successful party can demand (a) the delivery to it of benefit earned by the opposite party under the interim order of

the High Court, or (b) compensation for what it has lost, and to grant such relief is the inherent jurisdiction of the court. In our opinion,

while granting an order of stay under Order 41 Rule 5 CPC, the appellate court does have jurisdiction to put the party seeking stay order

on such terms as would reasonably compensate the party successful at the end of the appeal insofar as those proceedings are concerned.

Thus, for example, though a decree for payment of money is not ordinarily stayed by the appellate court, yet, if it exercises its jurisdiction to

grant stay in an exceptional case it may direct the appellant to make payment of the decretal amount with interest as a condition precedent

to the grant of stay, though the decree under appeal does not make provision for payment of interest by the judgment-debtor to the decree-

holder. Robust common sense, common knowledge of human affairs and events gained by judicial experience and judicially noticeable

facts, over and above the material available on record - all these provide useful inputs as relevant facts for exercise of discretion while

passing an order and formulating the terms to put the parties on. After all, in the words of Chief Justice Chandrachud, speaking for the

Constitution Bench in *Olga Tellis v. Bombay Municipal Corpn.*: (SCC p. 574, para 35)

Common sense which is a cluster of life's experiences, is often more dependable than the rival facts presented by warring litigants."?"

15. Applying the above test, on the petitioner making out a prima facie case in his favour, he is entitled to an interim order against execution of the

impugned decree of eviction, however, at the same time, has to be put to terms so as to also protect the interest of the respondent in case the petition

is finally decided against the petitioner. The balance in terms of the judgment in *Atma Ram Properties* (supra) is achieved by putting the petitioner on

such reasonable terms as would compensate the decree-holder/respondent for the loss occasioned by the grant of stay on the execution of the decree.

In the present case, the submission of the learned counsel for the petitioner that the yardstick for such compensation can only be the loss of earnings

from business that the landlord/respondent proposes to start on eviction of the tenant/petitioner, cannot be accepted. Though this can be one of the

criteria to be kept in view by the court while determining the reasonable condition to be imposed on the tenant, other considerations like the rent of

similar properties, would be equally, if not more, relevant for such determination. The yardstick for determining the mesne profits/terms that would reasonably compensate the decree holder for loss occurred in delay in execution of the decree would not only be the loss of income from the business for which the landlord intends to put the property to use but the rent which the landlord may have to pay for obtaining a similar premises on rent for running the business which he intends to run from the tenanted premises. For this purpose, the lease deeds of the premises in the same locality are the best comparatives, duly adjusted for the area and the conditions of the tenanted premises. The paying capacity of the petitioner/tenant cannot normally be a relevant consideration for such determination.

16. As far as the submission of the learned counsel for the petitioner based on Section 19 of the Act is concerned, the same again cannot be accepted.

Section 19 of the Act is reproduced hereinunder:

19. Recovery of possession for occupation and re-entry. -

(1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (c) of the proviso to sub-section (1) of section 14 [or under sections 14A, 14B, 14C, 148 and 21], the landlord shall not, except with the permission of the Controller, obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made on him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in

possession of the premises or to pay him such compensation as the Controller thinks fit.

17. A reading of the above provision would show that the landlord on obtaining the possession of the tenanted premises under Section 14(1)(c) of the Act needs to obtain permission of the controller to re-let the whole or part of the premises within three years from the date of obtaining such possession. In case the landlord does not occupy the premises within two months of obtaining possession or, the premises having been so occupied, at any time within three years are re-let to any person without obtaining the permission of the Controller or is transferred to any other person, which does not appear to the Controller to be bona fide, Controller may, on the application of the tenant, direct the landlord to put the tenant in possession of the premises or to pay him the compensation as the Controller thinks fit. Therefore, there is no complete embargo on the landlord re-letting the premises to a third party, however, before doing the same, the landlord is to take the permission of the Controller. Even otherwise, the said provision can have no effect on the determination of the damages that the landlord would be entitled to during the pendency of the revision petition.

18. In the present case, the tenanted premises is a shop admeasuring 302 sq. ft located in the Green Park, main market, which is certainly a prime location. The respondent no.1/applicant has placed on record a registered lease deed dated 17.03.2017 with respect to the property bearing No.S-2B, Ground Floor, Green Park admeasuring 310 sq. ft. showing a rental of Rs.2,15,000/- per month. He has placed another lease deed dated 06.03.2020 for shop no.S-1A, Green Park, Main market, admeasuring 230 sq. ft. and a rental of Rs.1,90,000/- per month. Based thereon, the learned senior counsel for the applicant has vehemently submitted that the petitioner should be directed to deposit Rs.2,50,000/- per month from the date of the eviction order during the pendency of the present petition.

19. The above lease deeds can certainly be taken as evidence of the reasonable rent expected out of the properties in the area in question. However, at the same time, the condition of the tenanted property as compared to these properties is also to be kept into consideration. It is also to be kept in consideration that these lease deeds are of a long duration of nine and six years respectively. Therefore, certain adjustment has to be made with

respect to the rental shop in the present case.

20. In *State of Maharashtra & Anr. v. Super Max International Private Limited & Ors.*, (2009) 9 SCC 772, the Supreme Court, while affirming the

law laid down by *Atma Ram Properties*, further held that in fixing the amount of interim user and occupation charges as a condition of stay granted in

appeal/revision against an order of eviction, the court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

21. In my opinion, keeping in view the facts of the present case, Rs.1,25,000/- per month would be a reasonable determination of the amount that the

petitioner must pay/deposit as a condition of stay against the order of eviction passed by the Rent Controller.

22. In such determination, I am not persuaded that the order dated 04.10.2016 passed by this Court in RC.Rev. No.13/2016 titled *Girish Kumar*

Wadhwa (HUF) vs. S.R.Sharma, inasmuch as the said order was passed on an undertaking of the tenant therein to vacate the property and also by

the consent of the parties. The same was not a determination of reasonable rent by the Court.

23. At the same time, the learned counsel for the petitioner is correct in his submission that in view of the protection granted to the tenant under

Section 14(7) of the Act, the order directing the tenant to deposit /pay the user and occupation charges during the pendency of the revision petition

must operate after expiration of a period of six months from the date of the eviction order.

24. In *Super Max (supra)*, the Supreme Court further held that ordinarily the amount directed to be paid by the tenant over and above the contractual

rent, should be asked to be deposited in court and the deposited amount along with interest be paid to the party succeeding in such appeal/revision at

the end of such proceedings. It was held that in case the court decides that this amount be paid to the landlord during the pendency of the proceedings,

conditions should be put to ensure that the same is returned back by the landlord to the tenant in the event of his/her success.

25. In view of the above and keeping in view that the premises were required by the respondent/landlord for setting up his business on retirement, I

deem it appropriate to direct the petitioner to pay a sum of Rs.75,000/- per month to the respondent no.1, subject to the respondent no.1 giving an

undertaking to this Court that incase the petitioner is to succeed in this petition, amount so received by the respondent no.1 from the petitioner pursuant

to the present order, shall be returned by him to the petitioner with interest @6% per annum. The petitioner shall continue to deposit another amount of

Rs.50,000/- per month with the Registry of this Court, which shall be invested in a fixed deposit and the release of such amount with interest accrued

thereon shall be directed by this Court at the time of final adjudication of the present petition. The amount shall be paid/deposited by the 10th day of

each calendar month.

26. In case the respondent no.1 fails to give such undertaking, the petitioner shall deposit the amount of 1,25,000/- with the Registry of the Court on a monthly basis by the 10th day of each month.

27. The arrears of amount with effect from 01.08.2020 shall be paid /deposited in the same ratio within four weeks of the present order.

28. There shall be a stay on the execution of the Impugned Order dated 30.01.2020 passed by the Rent Controller (South District), Saket Courts, New

Delhi in RC No.6140/16 titled Swadesh Kumar Bhagi and Ors. vs. R.K. Kainth during the pendency of the present revision petition, subject to the

compliance of the above conditions by the petitioner.

29. With the above directions, the application is disposed of.

RC. REV. 172/2020

Let the Trial Court Record be summoned.

List for hearing on 3rd March, 2021.