

(2024) 02 DEL CK 0020

Delhi High Court

Case No: RC.REV. No. 91 Of 2022

Nirmal

APPELLANT

Vs

Gunwant Kaur Sethi

RESPONDENT

Date of Decision: Feb. 7, 2024

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 14A, 14B, 14D, 14(1)(e), 14(7), 25B, 25B(8)

Hon'ble Judges: Girish Kathpalia, J

Bench: Single Bench

Advocate: Sahil Chopra, Aadrisha Malhotra, Sakshi Nand, Anjali Sisodia, P.K. Rawal, Tarun Agarwal

Final Decision: Dismissed

Judgement

Girish Kathpalia, J

1. By way of this revision petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioner/tenant has assailed order dated 06.04.2022 of the learned Rent Controller whereby, on account of failure of the petitioner/tenant to file an application for leave to contest, eviction petition under Section 14(1)(e) of the Act in respect of one shop (hereinafter referred to as "the subject premises") in front portion of the larger premises No. F-103A, Bali Nagar, New Delhi was allowed and the petitioner/tenant was granted six months under Section 14(7) of the Act to vacate. On service of notice, the respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 The present respondent, claiming herself to be owner of the said larger premises filed an eviction petition under Section 14(1)(e) of the Act against the petitioner/tenant with respect to the subject premises, pleading that her now deceased husband Sardar Ajit Singh Sethi had acquired ownership of the said larger premises by way of registered sale deed dated 06.11.1982, followed by a conveyance deed registered on 05.10.1995 and after death of Sardar Ajit Singh, the said larger premises were inherited by his legal heirs, who executed registered relinquishment deed dated 22.08.2016 in favour of the respondent/landlord, thereby making her a sole and absolute owner of the said larger premises; that she purchased the premises No. F103B, adjoining the said larger premises by way of a sale deed; that when the said larger premises was

purchased by her husband, Shri Chote Lal, the now deceased husband of the present petitioner was already occupying the subject premises as a tenant and was running from there a shop under the name and style M/s Evergreen Auto Store; that after death of Shri Chote Lal, his wife - the present petitioner is occupying the subject premises as a tenant; that ground floor of the said larger premises consists of two shops facing the main road and out of those, one is the subject premises while the other is in occupation of another tenant Shri Harjinder Kumar Handa, who is running his business under the name and style Handa Refrigeration; that during his lifetime Sardar Ajit Singh inducted Smt. Kulbir Kaur as tenant in another portion on the ground floor and the first floor of the said larger premises by way of agreement dated 25.06.1984; that subsequent to death of Sardar Ajit Singh, all the said three tenants of the larger premises attorned the present respondent as landlord and started paying her rent; that the tenant Smt. Kulbir Kaur, having not been entitled to protection under the Delhi Rent Control Act, the present respondent filed a civil suit for recovery of possession, which was decreed in her favour and ultimately the portion in her tenancy was vacated by Smt. Kulbir Kaur and her family; that against the other tenant Harjinder Singh Handa she was instituting separate eviction proceedings; that currently the present respondent and her family are in occupation of the portion of the said larger premises vacated by Smt. Kulbir Kaur and they want to start their own business, but cannot do so because there is no entry to that portion from main road; that under these circumstances, the respondent and her family, especially her son dependent upon her are in bona fide need of the subject premises and they have no reasonably suitable alternate accommodation available; that from the adjoining premises No. F103B, consisting of ground floor, first floor and second floor, during his lifetime Sardar Ajit Singh started his business under the name and style M/s Singh Automobiles at ground floor and started using the upper floors for storage of stock; that family of the present respondent consists of her two married sons and one married daughter, the younger son having a daughter aged 15 years and son aged 24 years while the elder son having two sons aged 25 years and 23 years; that business of Sardar Ajit Singh after his death was taken over by his elder son while the younger son took a premises in Guru Harkishan Nagar at a monthly rent of Rs. 25,000/- from where he started business of readymade garments but during Covid pandemic that business had to be closed down and now he has no independent business, so intends to start a boutique or some other business from the subject premises after the same gets vacated.

2.2 The eviction petition filed by the present respondent/landlord came up for the preliminary hearing before the learned Rent Controller on 26.02.2022 and summons in the prescribed format were issued to the petitioner/tenant returnable on 06.04.2022. According to both sides, the summons sent through ordinary process were served on the petitioner/tenant on 03.03.2022 while summons sent through registered post were served on 09.03.2022. But till 18.03.2022, the petitioner/tenant opted not to file any application seeking leave to contest. Rather, admittedly the petitioner/tenant never filed any application seeking leave to contest. Instead, the petitioner/tenant, on 14.03.2022 filed an application before the learned Rent Controller, praying that her appearance may be taken on record and she may be granted additional time to file the application for leave to contest since the copy of paper book supplied to her with the summons was incomplete, as it consisted of only 53 pages out of 54 pages and most papers were illegible. The said application of the petitioner/tenant was posted for the date fixed by the learned Rent Controller. On 06.04.2022, when the matter was taken up, learned counsel for the petitioner/tenant informed the learned Rent Controller that the present respondent/landlord had sent a reply to her notice qua incomplete paper book, informing that page no. 54 was only a vakalatnama, which was not required to be supplied. After examining the record, including the report of the process server which categorically mentioned service of 55 pages on the petitioner/tenant, the learned Rent Controller rejected the plea of the petitioner/tenant and passed the impugned eviction order, observing that the petitioner/tenant had failed to file an application for leave to contest within time prescribed by law and in view of the judgment of the Supreme Court in the case of Prithpal Singh vs Satpal Singh (Dead) through his LRs, (2010) 2 SCC 15, the Rent Controller had no power to grant extension of time to file application for leave to contest.

2.3 Hence, the present revision petition.

3. During final arguments, learned counsel for petitioner/tenant took me through the aforesaid and contended that the impugned eviction order is not sustainable in the eyes of law. Learned counsel for petitioner/tenant admitted that summons in the prescribed format having been served on 03.03.2022 through registered post and on 09.03.2022 through ordinary process, the time prescribed by law to file the application for leave to contest expired on 18.03.2022, by which date no such application was filed. But learned counsel for petitioner/tenant contended that since the paper book supplied with the summons was not complete and most of it was illegible, the learned Rent Controller ought to have extended time to file an application for leave to contest. Learned counsel for petitioner/tenant also contended that the learned Rent Controller having not granted extension of time, this court can exercise powers in terms with law laid down by a Division Bench of this court in the case of Director, Directorate of Education & Anr vs Mohd Shamim & Anr, (2020) 266 DLT 1 and grant extension of time with the directions to the learned Rent Controller to

consider the defence of the petitioner/tenant.

4. Per contra, learned counsel for respondent/landlord supported the impugned order and contended that in the light of judicial precedent from the apex court, the learned Rent Controller correctly refused to extend time to file the application for leave to contest. Learned counsel for respondent/landlord also referred to the correspondence between counsel for the parties and strongly refuted the allegation that paper book supplied with the summons was incomplete or illegible.

5. It would be apposite to briefly traverse through the legal position culled out of various judicial pronouncements, which should be guiding light for the High Court while exercising jurisdiction under proviso to Section 25B(8) of the Act.

5.1 By way of an amendment in the year 1976, Chapter IIIA was inserted into the Delhi Rent Control Act with retrospective effect from 01.12.1975 in order to stipulate summary trials pertaining to the eviction claims largely dealing with the situations where the landlord was in bona fide need of the tenanted accommodation. One such situation was already on the statute book in the form of Section 14(1)(e) of the Act and one more such situation was added by amendment of the year 1976 in the form of Section 14A. Subsequently, the amendment in the year 1988 added more such situations in the form of Section 14B to Section 14D of the Act.

5.2 The broad scheme of Chapter IIIA precludes a tenant from contesting the eviction proceedings of those specific situations as a matter of right, unless the tenant obtains leave to contest from the Controller; and if the leave is declined, an order of eviction would necessarily follow. The whole idea is that a landlord who bona fide requires the tenanted premises should not suffer for long, awaiting eviction, though at the same time, the tenant also must not be subjected to eviction like any other civil consequence without being afforded an effective opportunity to defend himself in such civil proceedings. The court has to cautiously and judiciously strike a fine balance between the right of the landlord to eviction through summary proceedings and right of the tenant to continue tenancy. The court also has to be conscious that a leave to contest cannot be granted for mere asking or in a routine manner, as that would defeat the object behind Chapter IIIA of the Act. It is only when the pleas and contentions raised by the tenant in the application seeking leave to contest make out a triable issue and the dispute on facts demands that the matter be properly adjudicated after ascertaining the truth through cross-examination of witnesses that leave to contest must be granted. Each case has to be decided on its merits and not on the basis of any generalized suppositions. The court also cannot ignore a situation where the case set up by the tenant has been so set up with the sole object of protracting the proceedings so as to lead to the landlord giving up in frustration, which would in turn frustrate the process of law.

5.3 Notably, the provision under sub-section (8) of Section 25B of the Act places complete embargo on any appellate scrutiny of an order for recovery of possession of the tenanted premises passed by the Rent Controller in accordance with the summary procedure laid down under Section 25B. A careful examination of the proviso to Section 25B(8) of the Act would show that it does not specifically use the term “revision”. But the provision read in its entirety shows that the power conferred under the said proviso is a revisional power, completely distinct from appellate power in the sense that the appellate power is wide enough to afford the appellate court to scrutinize the entire case and arrive at fresh conclusion whereas the revisional power is quite restricted to superintendence and supervision aimed at ensuring that the subordinate courts and tribunals operate within the bounds of law. The proviso to Section 25B(8) of the Act confines the satisfaction of the High Court to the extent that the order impugned before it was passed by the Controller under Section 25B “in accordance to law”. It is also significant to note that the proviso, enacted in Section 25B(8) of the Act to lift the blanket of scrutiny in a limited manner has to be understood and used in such a manner that it does not frustrate the legislative intent of expeditious remedy in certain specific kind of cases. It is also trite that the power of revision conferred upon the High Court by the proviso to Section 25B(8) of the Act being in the nature of superintendence over the court of first adjudication on the decision making process, including compliance with the procedure laid down by law, the High Court cannot substitute and supplant its view over that of the court of the first adjudication by exercising parameters of appellate scrutiny. It is not permissible for the High Court in such proceedings to arrive at a finding of fact different from the one recorded by the Rent Controller, unless the findings of fact recorded by the Rent Controller were so unreasonable that no Rent Controller would have recorded the same on the material available.

6. In view of the above described legal position qua the extremely restricted scope of jurisdiction vested in this court under proviso to Section 25B(8) of the Act, the learned Rent Controller having delivered a clear finding on the basis of record, thereby rejecting the plea of the petitioner/tenant that the copy of paper book supplied to her with the summons was incomplete and/or illegible, this court shall not venture into examining that issue. Besides, nothing prevented the petitioner/tenant to inspect the judicial record or apply for certified copies, even if the paper book supplied to her was incomplete or illegible. Not only this, the summons served twice on the petitioner/tenant were in the prescribed format clearly informing her the time prescribed by law to file application for leave to contest and the consequences of failure to do so. But despite service of summons in the prescribed format on 03.03.2022, she kept waiting till 14.03.2022 even to move an application for supply of copies and there is absolutely no whisper explaining that laxity.

7. So far as the reliance placed by learned counsel for petitioner/tenant on the Division Bench judgment of this court in the case of Mohd. Shamim (*supra*) and calling upon this court to exercise discretion of condonation of delay, the reliance is misplaced insofar as the petitioner/tenant has admittedly not filed any application for leave to contest till date. As laid down by the Division Bench of this court, this court would be empowered to set aside the eviction order only if the tenant passes the dual test of its having been prevented by reasons beyond its control from applying for leave to contest within the prescribed period and if the tenant has made out a substantial case for consideration of application for leave to contest.

8. Even in the present revision petition, the petitioner/tenant did not specifically plead any clear ground, on which leave to contest the eviction petition can be considered by the Rent Controller. During arguments also, not a single utterance was made, assailing the merits of the grounds on which eviction petition was filed.

9. In view of the aforesaid, I find no infirmity in the impugned order, so the same is upheld and the revision petition is accordingly dismissed.