

(2013) 07 DEL CK 0491**Delhi High Court****Case No:** RC. Rev. No. 319 of 2012 and CM No. 12121 of 2012

Smt. Prakash Kaur

APPELLANT

Vs

Asha Chopra and Others

RESPONDENT

Date of Decision: July 30, 2013**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115
- Delhi Rent Control Act, 1958 - Section 14(1)(e), 25B, 25B(8), 50

Hon'ble Judges: Manmohan Singh, J**Bench:** Single Bench**Advocate:** D.D. Sharma, for the Appellant; Sunil K. Kalra and Mr. Vikram Gola, for the Respondent**Final Decision:** Dismissed**Judgement**

Manmohan Singh

1. The present petition u/s 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") has been filed by the petitioner/defendant against the eviction order passed against her by the learned trial court on 6th January, 2012. It is stated that the father of the respondent Nos. 1 to 5 and the husband of the respondent No. 6 i.e. Late Sh. Prithvi Raj was the owner of the property bearing No. C-4, Gururamdas Nagar, Laxmi Nagar, Delhi. The said property consists of 4 shops, out of which Shop No. 3 was given on rent to the petitioner. The 3 other shops are let out to other tenants. The suit premises i.e. Shop No. 3 was given to the petitioner on rent in September 2004 by Late Sh. Prithvi Raj at the monthly rent of Rs. 4,000/-. After the expiry of Late Sh. Prithvi Raj, the respondent No. 5 & 6 filed a suit for possession against the petitioner which was rejected on the ground that the same was barred u/s 50 of the Act.
2. Thereafter the petition u/s 14(1)(e) of the Delhi Rent Control Act was filed on the grounds that the suit property was bona fide required by the respondent no 6 for

herself and her daughters i.e. respondents No. 1-5. It was stated by the respondents that the eviction petition was filed for the 2 other tenanted shops as well in the said property. As far the Shop No. 4 is concerned, the tenant Ms. Priya Sabharwal had given an undertaking to vacate the shop in 3 months. It was contended that the tenancy of the petitioner was terminated by Late Sh. Prithvi Raj vide notice dated 24th December, 2005.

3. It was contended that the respondent No. 5 is unmarried and unemployed and requires a shop to run business and respondents No. 2-4 who are the son in-laws of the respondent No. 6 though can run their own business, but due to non-availability of shops, they are facing problems and therefore, the respondent No. 6 wanted that her all children be settled happily who were currently facing financial crises, and for this purpose, she required all the shops to be vacated by the tenants.

4. In the application for leave to defend, the petitioner stated that the said tenanted shop was let out to her for the rent of Rs. 1,000. However, respondent No. 6 and her husband quarreled with the petitioner to vacate the shop and subsequently petitioner No. 6 and her son-in-law also threatened her to vacate the shop due to which a suit for permanent injunction was filed and respondents were thereby restrained from disconnecting the electricity and dispossessing the petitioner. It was stated by the petitioner that respondent No. 5 is running a beauty parlour from one of the shops but has removed the board in order to file the eviction petition. It was contended that the tenant of Shop No. 4 Ms. Priya Sabharwal is a good friend of the respondents and hence agreed to be their witness against the petitioner. The eviction petition was contested and it was also contended that the husbands of respondent nos. 1 to 4 are leading a luxuries life and they did not have any requirement as claimed. As for respondents No. 5 and 6, it was stated that their source of income from the beauty parlour as well as rent was sufficient and there was no such need as alleged. It was also contended that respondent No. 6 has purchased another property in Jitar Nagar in the name of the respondent No. 5 wherein a branch of her beauty parlour is being run. The respondent nos. 1 to 4 are also well settled as explained in the application for leave to defend and there is no bonafide requirement as alleged. It was contended that the eviction petition was filed in a garb to enhance the rent.

5. In their reply, the respondents denied the contentions of the petitioner and reiterated their need to get the said premises vacant.

6. The learned trial court after considering the contentions of both the parties, on the contention of the petitioner that though respondents No. 5 & 6 were admittedly her landlords, respondents No. 1 to 4 were not so, observed that the definition of the term "landlord" under the Act included a person who is entitled to receive the rent on his own account. It was contended that even in the previous suit for possession against the petition was filed only by respondents No. 5 & 6 wherein they claimed to be the only legal heirs of the Late Sh. Prithvi Raj. However, the

learned trial court observed the stand of the petitioner was not that the respondents No. 1 to 4 were debarred by their father to succeed to his property or a will was executed in favour of Respondents No. 5 and 6. When respondents No. 5 and 6 themselves had filed the petition alongwith the respondents No. 1 to 4, it cannot be assumed that the latter had been excluded from their co-ownership rights over the tenanted property being the co-owners, they were entitled to receive rent and hence covered under the definition of the landlord under the Act.

7. It was further observed that the petition had to be treated on behalf of all 6 respondents and necessarily, the need of each and every petitioner is to be assessed. While assessing the same, it was observed that respondents No. 1 and 6 had not presented their peculiar requirement of the shops and respondents No. 2 to 5 had projected their requirement to get the possession of the shops. The requirement of respondents No. 2 to 4 is to run businesses of their respective husbands in order to earn livelihood and sustain their respective families. It was observed that a bonafide need may be also actuated by a desire to lead a respectable life having sufficient livelihood and so if respondents No. 2 to 6 wanted use their own property to earn livelihood in order to lead a respectable life, such desire cannot be said to be beyond their bonafide need. It was observed that if the husband of respondent No. 3 had vacated the tenanted premises voluntarily, as alleged by the petitioner, he could not be blamed since he had accepted the demand of his landlord. It did not mitigate the requirement of respondent No. 3 to have her own shop to run business for sustainability of her own family. Similarly, respondents No. 2 and 4 also had their bonafide requirement to get their own shop to run their businesses to aid the financial stability to their respective families. Respondent No. 5 is yet to marry and has every right to run her own business from her own property in order to set a platform on sound financial terms for her marriage and future life. As regards the contention that the respondent No. 6 had purchased another property in Jitar Nagar, it was observed that the same was not supported by any material on record. In view of the reasons set out, the application for leave to defend was dismissed and the eviction petition was allowed by the order dated 6th January, 2012.

8. Assailing the impugned order, the present petition has been filed on the grounds mainly that:

a) Apart for the 4 shops let out in the suit property, two rooms on the first floor of the said property are let out to a tenant and a store in the middle of the stairs is also let out to another tenant. As claimed by the respondents in their petition the respondent no. 6 wishes to give the shops to her son-in-laws to settle their businesses, who are not the members of their family and since they have separate businesses, they cannot be said to be dependent on her and their need cannot be said to be the bonafide need of the respondent no. 6.

b) The impugned order is illegal invalid and not tenable as it failed to considered the law and the facts of the present case.

9. From the entire gamut of the matter, it has come on record that the husband of respondent No. 6 and the father of the respondent Nos. 1 to 5 was the absolute owner of the property in dispute which is measuring 100 sq. yard. During his life time, he served a legal notice dated 24th December, 2005 through his advocate thereby terminating the tenancy of the petitioner. He died on 2nd January, 2006. His wife, i.e. respondent No. 6 is a senior citizen and widow lady who has denied having any other property and is residing with respondent No. 5 i.e. her unmarried daughter in a part of the portion which is being used as residential purpose. In one portion there are four shops. Shop No. 3 is with the petitioner, shop No. 2 with one advocate who is using the same as his office being a tenant, shop No. 1 was with Mr. Ashok Kumar against whom an eviction petition was filed, shop No. 4 is with one Ms. Priya Sabharwal who had already given an undertaking to vacate the premises. The petitioner admitted that the rent of his suit premises is Rs. 1000/- thus the jurisdiction of the Additional Rent Controller cannot be denied by the petitioner.

10. Respondent No. 6 who is a widow and a senior citizen wants to give three shops to her four son-in-laws to settle their respective businesses and one shop to respondent No. 5 who is unmarried, to open her beauty parlour who is presently unemployed. She wants the petitioner to vacate the suit premises for welfare of her family in her lifetime. Thus, the eviction petition was filed.

11. In Smt. Sudesh Kumari Soni and Another Vs. Smt. Prabha Khanna and Another, this court observed that the suitability of the premises has to be seen from the convenience of the landlord and in Mahendra Trivedi Vs. Jai Prakash Verma, it was observed that in judging his special needs and convenience, the landlord would have a choice. Further, the need of respondent no. 6 can be seen as bonafide as children continue to be dependent on their parents even after they are fully settled in their lives. In this regard, this Court in Kharati Ram Khanna and Sons Vs. Smt. Krishna Luthra, observed that the requirement of the landlord to settle down her two sons separately and independently was found to be genuine and bonafide. In Sh. Labhu Lal Vs. Smt. Sandhya Gupta, it was observed that the landlord's son and daughter in law are dependent for accommodation on respondent the requirement of the landlord's son and daughter in law for expanding clinic being run in premises in question is genuine.

12. In view of the settled law, in short and substance, a wholly untenable defence may not entitle a tenant a leave to defend. A bare perusal of the case of the petitioner would show that the petitioner is not able to disclose any plausible defence to impress the Court that in case the matter is sent for trial, the petitioner would be able to demolish the claim of bonafide requirement of the respondents or the petitioner would disentitle the respondents from obtaining an order of eviction.

13. Another important factor is that in a revision petition, the Court is not a fact finding Court as on the basis of the facts placed by both the parties, learned trial court has passed the orders. The scope of interference is only on limited issues. Reliance in this regard can be put on the following:

(i) Mohan Lal Vs. Tirath Ram Chopra and Another, wherein a full bench of the Delhi High Court exhaustively considered the provision of Section 25B of the Act. On scope of the proviso to sub-section (8) of this section, after examining the judgment of Supreme Court in Hari Shankar Vs. Rao Girdhari Lal Chowdhury, and Bell and Co. Ltd. Vs. Waman Hemraj, it was laid down that the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision u/s 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction u/s 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist, the High Court would not be entitled to interfere with the order of the Controller in exercise if its jurisdiction under proviso to Section 25B(8) of the Act.

(ii) In Shri Praveen Jain and Others Vs. Dr. Mrs. Vimla it was observed that the powers of this Court u/s 25B(8) are not appellate powers and this Court has only to see that the Trial Court had acted in accordance with law and not transgressed the limits of its jurisdiction.

(iii) In John Impex (Pvt.) Ltd. Vs. Dr. Surinder Singh and Others, it was observed that what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate Court though the scope of scrutiny in rent revision would be more than a revision petition u/s 115 CPC.

(iv) In Sarla Ahuja Vs. United India Insurance Company Limited, it was held that the satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the rent controller is "according to law". In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order u/s 25B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the fact is so unreasonable that no Rent Controller should have reached such a finding on the materials available.

(v) In Ramesh Chand Vs. Uganti Devi, it was held that while exercising jurisdiction under Article 25B(8), this Court does not act as a Court of appeal. This Court has only

to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material available before it.

14. Accordingly, in view of the reasons mentioned above, there is no merit in the petition. The same is dismissed. In the interest of justice, equity and fair play, a further period of six months is granted from today to the petitioner to vacate the suit premises i.e. Shop No. 3, C-4, Guru Ram Dass Nagar, Laxmi Nagar, Delhi as shown in the red color in the site plan filed alongwith the eviction petition from the date of this order. Pending applications also stand disposed of. No costs