

Jai Dev Aggarwal Vs. Vijay Kumar Angrish

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Court : Delhi

Decided On : Sep-27-2013

Judge : Manmohan Singh

Appellant : Jai Dev Aggarwal

Respondent : Vijay Kumar Angrish

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: September 13, 2013 Judgment Pronounced on: September 27, 2013 + RC.REV. 39/2013 & C.M. No.1446/2013 JAI DEV AGGARWAL Through Petitioner Mr.Rajeev Saxena, Adv. versus VIJAY KUMAR ANGRISH Through Respondent Mr.Arjun Bhandari, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The present revision petition is filed by the petitioner under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) against the order dated 26th October, 2012 whereby the petitioners application for leave to defend was dismissed by the impugned order passed in an eviction under Section 14(1)(e) read with Section 25-B of the Act.

2. The case of the respondent before the learned trial Court was that he is the owner/landlord of premises bearing No.B-3/83, Ashok Vihar, Phase-II, Delhi. The petitioner is a tenant in the said property at a monthly rent of `460/- excluding

electricity and water charges.

3. The property was let out on 25th March, 1975 vide a lease deed. The respondent requires the premises in question for bonafide residential needs of his family members. The respondent is 71 years old and his wife is about 62 years of age.

4. The respondent at present is residing in Mumbai in flat No.14 on 4th floor consisting of a living room, two bed rooms, a kitchen with one small balcony, two bathrooms, one of which is attached with bed room, and one store room. The built up area of the plot is 1085 sq. feet and the carpet area is approximately 960 sq. feet as stated in the eviction petition.

5. The respondent has been suffering from bronchitis and hypertension for the last many years. The said ailments have been aggravated and have become chronic. Since humid climate where he is residing is not good for the respondents health, the bronchitis got further aggravated and due to deteriorating health, the respondent has stopped carrying on his business and has handed over the same to his daughter and son. He is leading a retired life.

6. It was also stated in the petition that the respondents wife is suffering from deformity in her left knee joint and thus, she cannot climb up the stairs to 4th floor in case of unavailability of lift. The said flat is situated in a very old cooperative housing society and the lift is frequently out of order confining both the respondent and his wife to the said flat. The copy of medical certificates of the respondent and his wife and letter of mandate of the Manager of HDFC Bank, Mumbai in favour of the respondents son and daughter, estimate quotation for repairing of the lift, plus maintenance charges were filed in the trial Court.

7. It was further submitted that the respondents son along with family consisting of his wife and two years old daughter had been residing in USA. However, in view of the deteriorating health of the respondent and his wife, his son shifted to Mumbai in February, 2010 and is staying with the respondent. The respondents daughter, who is divorced, frequently visits the respondent but due to shortage of accommodation, she is unable to come and stay with her family members. The

respondents mother-in-law is of 81 years and is staying alone in Gurgaon after the demise of her husband, she needs not only physical support but also emotional support from the respondent and his wife.

8. In view of the aforesaid reasons stated in the eviction petition, the respondent alongwith his wife wants to shift to Delhi so that they can spend time with their relatives. The respondent has got no other residential accommodation in Delhi except the house in question.

9. In the application for grant of leave to defend, various ground were raised by the petitioner in order to satisfy the learned trial court about the case of triable issue but the learned trial court after having considered the case of the petitioner hold that there is no triable issue raised by the petitioner and dismissed the application for leave to defend.

10. In reply/counter affidavit, it was stated that the respondent cannot shift to Delhi till the time petitioner vacates the property in question. It is reiterated that due to illness of the respondent his advancing age and deteriorating health, the respondent has stopped carrying on his business and has handed over the same to his daughter and his son and is leading a retired life. It is denied that he has actively involved or participating in business or that he does not require the tenanted premises. It is admitted that earlier he had filed petition for eviction around 34 years ago under Section 14(1) DRC Act on the ground of non payment of rent which was held to be made out and the respondent was given the benefit of Section 14(2) whereas the respondent has failed to satisfy the court with regard to his bonafide need with regard to clause 14(1)(e) of DRC Act. It was further stated that in view of the drastic change in circumstances and in view of the respondent and his wifes medical conditions and also since that he has retired from his business, he requires the premises for residential needs, as he and his wife are suffering from medical problems. It is denied by the respondent that in Delhi there would be no one to look after him and his wife or that he would not be able to get satisfactory treatment. It was submitted that the respondent and his wife lead a self sufficient life and have not been dependent upon on anyone to take care of them and they intend to maintain this pride till the end of their lives. The petitioner

and his wife do not require any assistance of their children at this juncture of their life. There are other family members in Delhi who would be of assistance to them in case of any unforeseen eventualities. Thus, the petitioner should not put suggestions as to how the respondent ought to lead his life.

11. As regards the allegation that in cooperative housing society, lifts cannot remain inoperative, it is submitted that the building is 45 years old and has 17 flats; three flats each on ground floor to fourth floor and two flats on fifth floor. The respondent resides at fourth floor and there is one functional lift in the building and in the light of this, it could be appreciated that as to why more often, the said lift is non functional as the people on the higher floors are limited and thus, the people on lower floors are not interested in repair of the lifts. It is further submitted that the accommodation available with the petitioner in Mumbai cannot be said to be sufficient available accommodation with the petitioner. It is not for the respondent to determine as to what is detrimental to petitioners health or not. It is further submitted that the respondent does not have to give his future plans to the petitioner since it is none of his business. Neither can the petitioner dictate as to how he should reside and where he should live. It is denied by the respondent that he was seeking eviction of the petitioner in order to earn more money by way of selling or letting out the property in question at much higher rent. It is further submitted that the distance between Delhi and Gurgaon is far less than that between Mumbai and Gurgaon but the petitioner fails to appreciate that parameter. It is further submitted that the father-in-law of the respondent had passed away in the year 2002 and since then his mother-in-law had been residing alone as the younger sibling of his wife resides abroad and the elder sibling of his wife resides in Mumbai but is taking care of her mother-in-law. It is further submitted by the respondent that he has never made any averment that he was expected to be looked after by his mother-in-law. It is further submitted that the change in circumstances have been clearly detailed in para 18(a) of the application. A period of 34 years has lapsed since the dismissal of earlier petition.

12. While dealing with the grounds taken by the petitioner in its application for leave to defend, the learned court has dealt with each ground raised in the following manner: i) The first ground taken by the petitioner was that the

respondent is a permanent resident of Mumbai and merely because he has delegated certain powers to handle his business to his son and daughter, it does not mean that he has wound up his business and has no stakes in Mumbai. The respondent has placed on record a letter of mandate from HDFC Bank which was denied by the petitioner to be a genuine document. The respondent has also placed on record a GPA executed by him in favour of his children which empowered his children to run his business and to operate the bank accounts of his business. There is not even prima facie evidence to the contrary on behalf of petitioner that the respondent continues to actively participate in business. The petitioner has denied that the respondent is not suffering from the ailments as alleged and he is 71 years old. Therefore, the learned trial court has taken the correct view that the respondent might be intending to retire from his business and he has executed a GPA in favour of his children to run the business. ii) The second ground taken by the petitioner is that there is nobody in Delhi to look after the respondent and his wife, that the doctor from whom the respondent is taking treatment is of Mumbai and that the respondent has been satisfactorily treated in Mumbai. The said concern of the petitioner for the respondents well being is without any merit as law is settled on this aspect. It is for the respondent to decide from which doctor he wants to take treatment and from which hospital he wants to be treated and whether he urgently needs anybody to take care of him or not. iii) As regards the claim of the petitioner that the respondent wants an exorbitant increase in the rate of rent. The said contention of the petitioner is contrary to the behaviour of the respondent for the past 38 years as it is an admitted fact that since 1975, the rate of rent is stagnant at `460/- per month. The respondent has not even increased it by 10% which he could do after the passage of every three years. Therefore, even this ground is without any merit. iv) In the other averments where the petitioner alleged that the respondent has already entered into an arrangement with a builder to sell the property, in absence of any details or the name of the builder with whom such an arrangement has been entered into. No prima facie proof of any nature was produced by the petitioner before the learned trial court. v) The next ground of the petitioner is that the respondent has another accommodation in Delhi in Ashok Vihar, the petitioner during the course of arguments before the learned trial court has stated that he does not have and

cannot show anything to this court to even point towards the ownership of this property being with the respondent. No prima facie evidence of any kind was produced to show the ownership of the property with the respondent, leave to defend to cannot be granted because if that be the case, every tenant would give details of any property saying that the said property is owned by the landlord and on this mere allegation, claim right to defend a petition under Section 14(1)(e) of DRC Act. vi) As regards the allegation that the respondent owns a property in Gurgaon, the same is very vague allegation as the petitioner has not provided the details of the said property. Thus, the said ground is also failed with regards the allegation that the respondent having a residential property at Nehru Place, no details have been provided by the petitioner to substantiate his allegation whereas, the petitioner has given the details of the property and submitted that the property was a commercial property which he has already sold. vii) The other claim of the petitioner that the respondent is having sufficient accommodation with him in Mumbai, the respondent has sufficiently detailed the accommodation available with him in Mumbai. The petitioner has not denied the correctness of the details provided by the respondent. The premises available with the respondent in Mumbai is having a carpet area of 960 sq. feet. Such an accommodation for two couples with small children, some guests and a divorced daughter, who frequently visits the respondent, can hardly be said to be sufficient. Even otherwise, this is not the main ground and the same is the desire and need of the respondent to shift to Delhi. The said ground is totally irrelevant for the purpose of deciding the present case. viii) As regards the ground that the respondent concocted a story of lifts being inoperative and his wife and he is suffering inconvenience, the learned trial court found that even if for the sake of arguments it is agreed that the lift normally remains operative, a sporadic incident where the lift may not be functioning, can be very painful for aged couple, one of whom is suffering from bronchitis and asthma and once is suffering from knee joint pain and also found that living on the ground floor is an urgent need of the respondent and his wife. Thus, on this ground also, leave to defend to defend cannot be granted to the petitioner. ix) In the next ground, the contention that the damp and humid climate is not detrimental to the health of the respondent and this fact requires evidence, learned trial court has rightly found that once a person establishes that his health

is not good and he has been advised certain climate change, it is not for the petitioner to counter the same and the petitioner cannot do so because, the petitioner has nowhere stated that the respondent has not been advised to change the climate for his health benefits. The allegation of the petitioner, that the respondent with his family has been residing in Mumbai for last many years and thus, does not require the premises for improving his health, appears to be without any substance. With his deteriorating health, it does not mean that he should be forced to do so just because the petitioner thinks that the respondent might not have faced the inconvenience. x) The other ground is that the respondent has not given his future plans and has not given sufficient source of income to meet his expenses in daily life. In this regard, court below found that the contention of the respondent, that it is not for the petitioner to worry how the respondent is going to fend for himself, to be correct. The respondent had been running a business. The respondent is a man of means, therefore, it cannot be said that the respondent while living in Delhi, would not be able to fend for himself and his wife. And again, it is not for the petitioner to worry how the respondent will manage his household expenses. With regard to the contention that the respondent wants his 81 years old mother-in-law to take care of him, the respondent has nowhere stated in his petition that his mother-in-law is going to take care of him. On the contrary, the respondent intends to take care of his mother-in-law. xi) The last ground is that as the Gurgaon is 62 kms away from the place where the tenanted premises is situated in Delhi and, therefore, the respondent would not be able to take care of his mother-in-law. It has been rightly observed by the learned trial court that ground seems untenable because, considering the means of transport available today, the journey from Delhi to Gurgaon is at the most of 1 or 1 1/2 hours and therefore, the respondent in case of need, can easily and immediately reach his mother-in-law.

13. The question before this Court is, as to whether said findings call for any interference by the Courts in revisionary jurisdiction or not in view of the facts and circumstances of the present case. i) In the case of Ramesh Chand Vs. Uganti Devi, 157(2009) Delhi Law Times 450, it has been held that while exercising jurisdiction under Section 25(B)(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. ii) A Full Bench of this Court in Mohan Lal v. Ram Chopra and Anr., 1982 (2) RCJ 161 exhaustively considered the provisions of Section 25B of the Act. On the scope of the proviso to Sub-section (8) of this Section, after examining the judgment of Supreme Court in Hari Shanker and Ors. v. Rao Girdhari Lal Chowdhury, A.I.R. 1963 S.C. 698 and Bell and Co. Ltd. v. Waman Hemraj, AIR 1938 Bom (223) it was laid down as follows:

In our opinion the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision under Section 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 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 of its jurisdiction under proviso to Section 25B(8) of the Act.

iii) In the case titled as Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta, reported in AIR 1999 Supreme Court 2507, it has been held as under:- ..The revisional jurisdiction exercisable by the High Court under S.25-B (8) is not so limited as is under S.115, CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or reappraisal 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 reappraisal 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. Ignoring the weight of evidence, proceeding on wrong

premise of law or deriving such conclusion for the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller not according to law calling for an interference under proviso to sub-sec. (8) of S.25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law.

iv) The Supreme Court in another case titled as Chaman Prakash Puri vs. Ishwar Dass Rajput and Another, 1995 Supp (4) Supreme Court Cases 445 has examined with regard to High Courts power to interfere in revision against the finding as to bonafide requirement of landlord. It has been held that if the Rent Controller finds that landlord was in bonafide need of premises, the High Court in revision was not entitled to re-appreciate evidence and reverse the finding. v) The Apex Court in Sarla Ahuja versus United India Insurance Company Ltd., reported in AIR (1999) SC 100 held as under:

6. ..The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. 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 the 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 under Section 25-B. 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 facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.

14. Reliance can also be placed upon the case titled as Sarla Ahuja vs. United India Insurance Co. Ltd., reported in AIR 1999 Supreme Court 100. The facts of this matter were that the petitioner who was a widow wanted to shift her residence from Calcutta to New Delhi to occupy her own building which was in the possession of her tenant M/s United India Insurance Company Limited. Though she got an order of eviction from the Rent Controller under Section 14(1)(e) of the Delhi rent Control Act 1958 (for short the Act), a single Judge of this Court non-suited her by reversing the order which she challenged before the Supreme Court

by way of Special Leave to Appeal. It was held by the Supreme Court that:

.....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.

15. In the present case, the petitioner during the course of arguments has not countered the issue of ownership of the suit property. The petitioner has also not disputed the illness of the landlord and his wife. The only apprehension is that they may not shift to Delhi even if the premises is vacated by the tenant. I do not accept the submissions of the petitioner/ tenant that the landlord is unlikely to shift to the suit property, as the said submission cannot be accepted at the stage of passing the eviction order because in case, a landlord abuses the process of Court by not shifting or let out the property on higher rate of rent or sells the same, then the tenant is always provided with a remedy under Section 19 of the Act for restitution of the premises.

16. When a landlord or his wife are unable to climb the stairs due to old age or ailment where they are residing at the time of eviction petition and wanted to shift to another house owned by the landlord, such a need of the landlord is bonafide as he is entitled for his convenience, particularly, on health ground. His intention to shift residence for better medical treatment cannot be doubted and there is no malafide attributed, as he cannot be deprived of the beneficial enjoyment of his property.

17. In view of the aforesaid reasons, facts and circumstances of the present case, there is no merit in the petition and the same is dismissed. However, in the interest of justice, the petitioner is granted six weeks time to vacate the suit premises bearing No.B-3/83, Ashok Vihar, Phase-II, Delhi shown as C-1 of the site plan filed alongwith eviction petition.

18. During this period, the petitioner shall not sublet and create any third party interest in the suit premises.

19. No costs. (MANMOHAN SINGH) JUDGE SEPTEMBER 27 2013

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