

Ashok Kumar Vs. Shashi Sharma

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Court : Delhi

Decided On : Oct-21-2013

Judge : Manmohan Singh

Appellant : Ashok Kumar

Respondent : Shashi Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Pronounced on: October 21, 2013 + RC. Rev. No.141/2013 & C.M. No.6030/2013 ASHOK KUMAR Petitioner Through Mr.S.C.Singhal, Adv. versus SHASHI SHARMA Respondent Through Mrs.Inderjeet Saroop, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. By way of filing the present petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (in short, called the DRC Act), the petitioner assails the order dated 22nd January, 2013 passed by the learned Addl. Rent Controller (South), Saket Courts, New Delhi, whereby the application filed by the petitioner for leave to defend was dismissed.

2. Brief facts stated in the eviction petition as per the respondent are : (a) The respondent is the landlord/owner of the premises kiosk/shop No.5, Ground Floor, G-48, Green Park, New Delhi-110016, measuring 8.3 x 3.3ft. as shown in red colour in the site plan (hereinafter referred to as the Tenanted Premises). The

tenanted premises was given to the petitioner on rent in the year 1984 by its registered owner Late Smt.Tara Devi Mehta who was the mother of the respondent. The rent of the tenanted premises was fixed at `310/per month exclusive of electricity charges. (b) Smt.Tara Devi Mehta died on 28th October, 2009 leaving behind two daughters, namely, Smt.Shashi Sharma, (the respondent herein) and Smt.Suman Sethi, who had inherited the property, i.e. G-48, Green Park, New Delhi-110016 (hereinafter referred to as the Suit Property) in equal shares. An oral partition has already been done between the parties. The entire ground floor of the suit property fell to the share of the respondent. Admittedly, the petitioner has attorned in favour of respondent and was/is paying rent to her. The first floor of the suit property fell to the share of her sister, Smt. Suman Sethi who is in possession of the same. (c) The respondent is about 68 years of age. At present, she is residing at House No.528, Tower-III, Mount Kailash, East of Kailash, New Delhi which is a duplex flat on the fifth floor. The age of her husband is about 75 years and that of her mother-in-law is more than 99 years. The case of the respondent is that since at present she herself, her husband and her mother-in-law are residing at the fifth floor and they have to climb the stairs very frequently, thus, the same is inconvenient and painful to them, as she is suffering from knee problem due to old age and there is also pain in her both legs. She is also suffering from slip disc. Thus, it is very difficult to use the stairs. Therefore, the ground floor of the suit property is suitable to her and her family members. (d) It is an undisputed fact between the parties that the entire ground floor of the suit property including the tenanted premises is lying sealed by the MCD since 2007, due to non-conforming user of the same and can be used for residence only. The husband of the respondent who is a management consultant is also suffering from old age problems like pain, breathlessness and general weakness. He also needs a separate study room. (e) Therefore, the eviction petition was filed by the respondent before the learned Trial Court on the ground of bonafide requirement for use and occupation by the respondent and her family members and her husband and mother-in-law. They want to shift to the suit premises on the ground floor. The mother-in-law of the respondent has hip fracture and she needs one bed room exclusively for her and a full time nurse to look after her. She moves with the help of a walker and needs to live on the ground floor as it is difficult to stay in a

duplex flat on the fifth floor. (f) The respondent has two married sons who are running business and enjoying good financial social status. The accommodation at 528, East of Kailash can accommodate only one family and the same is being occupied by Sh. Sameer Sharma (her son) and his wife and two school going children aged 10 and 5 years studying in DPS, East of Kailash which is adjoining to the said complex. The family of Sameer Sharma needs to live in the said flat and the present accommodation is insufficient for the respondent who wants to shift to the ground floor of the suit property along with her husband and her mother-in-law. She also needs a pooja room for herself and her family members. Her second son Sanjay Sharma and his family is forced to live in a rented flat No.136 Ground floor, Kailash Hills, New Delhi at a monthly rent of `25,000/- who would also be shifting to two room accommodation on the second floor of the suit property. (g) The respondents husbands brother resides in US and another brother resides in Indore and they keep on visiting Delhi and there are other relatives who visit the respondent quite often and therefore, there is a need for a separate guest room. (h) It was admitted by the respondent that the family of the respondent is running a company under the name & style of M/s EEZ Foil Pvt. Ltd. and EEZ Pack Pvt. Ltd. at B-143, DDA Sheds, Okhla Industrial Area, Phase-II, New Delhi, which is an industrial property. The husband of the respondent has also taken another industrial shed A-109, DDA Sheds, Okhla Industrial Area, Phase-II, New Delhi at a monthly rent of `36,000/-.

3. The main grounds raised by the petitioner in the present petition are that the tenanted premises is a shop which is commercial in nature. There are other five shops on the ground floor which were let out for commercial purposes. Since there is no water connection in the said shop, thus the ground floor of the property in question cannot be used for residential purposes. Earlier, the mother of the respondent, late Smt. Tara Devi Mehta was using the first and second floor of the suit property for residential purpose and even the portion in her occupation on the ground floor was used as a Godown. Late Smt. Tara Devi also got evicted earlier tenants from two rooms on the ground floor but did not use the same and used it for commercial purpose and even that portion was also sealed by MCD and no steps were taken either by the respondent or late Smt. Tara Devi to get the same de-sealed. On the other hand, it is the petitioner who has taken steps with MCD to

get the same de-sealed and also deposited the conversion charges in 2007. However, the MCD refused to deseal the same.

4. The petitioner has also challenged the ownership of the respondent by stating that Smt.Suman Sethi was the necessary and property party, as part of the suit property has fallen to the share of Smt.Suman Sethi who is the sister of the respondent. The respondent has not filed the documents to show the ownership or any partition of the suit property. Thus, the learned Trial Court fell into an error by passing the impugned order. As per the petitioner, the learned trial Court has incorrectly held that three bed rooms, one drawing, dining, study room in duplex flat is insufficient for the respondent. Since the respondent has let out the tenanted premises for commercial purposes, the same cannot be used for residential purposes by the respondent.

5. It is also stated that the learned Trial Court has failed to appreciate that in the whole of the eviction petition, the respondent has not pleaded a word that she wants to reconstruct the property. The petitioner states that the reconstruction is not possible until Smt.Suman Sethi, the sister of the respondent joins the respondent, as she is occupying the first floor, thus, no reconstruction can be done on the ground floor which is totally a new construction without demolition.

6. The issue before this Court is, whether the findings of the learned Trial Court call for any interference by this Court in revisionary jurisdiction in view of the facts and circumstances of the present case or not. It is settled law and it has been held from time to time by various courts that the revision under Section 25-B(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. In other words, this Court has only to see whether the learned Rent Controller has committed any jurisdictional error and has passed the order on the basis of material available before it. 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 25-B(8) of the Act.

7. 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 would have reached on the material available before him.

8. The Apex Court in *Sarla Ahuja versus United India Insurance Company Ltd.*, reported in AIR (1999) SC100 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.

9. As far as the relationship between the parties as landlord and tenant is concerned, it is an undisputed fact that late Smt.Tara Devi, mother of the respondent, was the owner of the suit property. The respondent has filed sufficient evidence before the learned trial Court about the mutation of the suit property in the name of the respondent. The mutation letter dated 3rd June, 2010 issued by the MCD was produced which shows that the property in question has come to the share of the respondent and her sister Smt.Suman Sethi. The other fact of the matter is that the petitioner was paying the rent to the respondent. Thus, the relationship of landlord and tenant between the parties is proved in accordance

with law.

10. As far as the contention raised by the petitioner that Smt.Suman Sethi, the sister of the respondent, is a necessary party is concerned, the same is totally misconceived, as the bonafide requirement of the respondent is in respect of the ground floor only, which fell to the share of the respondent. Therefore, the question of becoming a party by Smt.Suman Sethi does not arise. The findings of the learned Trial Court are correct on this aspect. The respondent has placed on record the proposed site plan of entire building in order to show that the premises in question has to be reconstructed in order to use the same for residence of the entire family members of the respondent.

11. With regard to the other contentions raised by the petitioner that the mother of the respondent had let out the tenanted premises to the petitioner for commercial purposes, therefore, now the same cannot be used for residential purposes. The said argument is also without any force, in view of the judgment passed by the Supreme Court in Satyawati Sharma vs. Union of India, 148(2008) DLT705SC wherein it is held that such petition under Section 14(1)(e) of the DRC Act is maintainable in respect of non-residential premises also.

12. In the case of Kuldip Mahajan vs. Smt. Krishna Uppal and others, 2002 V AD (Delhi) 61, wherein the requirement of landlady affected with arthritis, not finding it convenient to live on first floor when she owned a ground floor accommodation who held to be not bona fide.

13. As regards the bonafide requirement in the present case, this Court is fully satisfied with the submissions of the learned counsel for the respondent. The present case is a fit case in which the bonafide requirement has been proved by the respondent. The details given in the eviction petition with regard to the family have not been disputed by the petitioner. The petitioner has also not disputed the fact that the property is sealed for the last more than 6 years due to non-confirming user. Despite of taking various steps, the petitioner was not able to get the property desealed from the MCD.

14. After having considered the facts of the case, this Court is of the view that the ground floor of the suit property is a suitable accommodation for the respondent who has been able to prove her case within the four corners of Section 14(1)(e) of the DRC Act. The question of interference in the impugned order dated 22nd January, 2013, under these circumstances, does not arise, as the learned Trial Court has dealt with all the grounds raised by the petitioner in his application for leave to defend from paras 19 to 24 of the impugned order.

15. The present petition is accordingly dismissed. Pending application also stands disposed of. (MANMOHAN SINGH) JUDGE OCTOBER21 2013

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