

Laxmi Devi Vs. Babulal Verma

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Court : Delhi

Decided On : Jan-02-2014

Judge : Manmohan Singh

Appellant : Laxmi Devi

Respondent : Babulal Verma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment pronounced on: January 02, 2014 + RC. Rev. No.518/2012 & C.M. No.17926/2012 LAXMI DEVI Through Petitioner Mr.Sudhir Sharma, Adv. with Mr.Sandeep Grover, Adv. versus BABULAL VERMA Through Respondent Mr.M.K. Verma, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The petitioner (petitioner in the eviction petition) has assailed the order dated 3rd August, 2012 passed by the learned Additional Rent Controller (Central), Delhi, in eviction petition, being E-122/2011, whereby the application for leave to defend filed by the respondent/tenant was allowed as the learned trial court found that the respondent had been able to raise triable issue in view of the grounds raised in the application for leave to defend, by filing of the present civil revision petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as Act).

2. The grounds on which the eviction of the respondent was sought by the petitioner are that she required the premises for her own use as she desired to open a grocery store to earn her livelihood. In order to set up the said grocery store, she would be helped by her sons. The petitioner did not have any other alternate space available to run the store except the premises bearing address 3752, Kucha Parmanand, New Delhi. The petitioner had no permanent outlet to carry on business to earn decent income and maintain herself with dignity. The petitioner at present is maintaining herself from Rs.4,200/- approximately that she gets as pension after the unfortunate demise of her husband. The petitioner had a divorced daughter who predeceased the petitioner and left behind a son named Mayank Verma, who has been supported by the petitioner. Mayank, who is 19 years old is being financially supported and maintained by the petitioner pursuant to the death of the daughter of the petitioner till date. His education expenses, daily needs are being provided to him by the petitioner. Further, since the petitioner is 80 years old, she has her medical expenses. The petitioner in spite of being from a reputed family is living in a piteous condition, much against the economic and social status that was enjoyed by her during the lifetime of her husband. The petitioner has no other source of income to maintain herself and the son of her predeceased daughter.

3. In the eviction petition, it was admitted by the petitioner that the shop No.1669C which was in the possession of one Mr. Nand Kishore had been vacated on 11th April, 2011. However, the petitioner did not start any business as she seeks to combine shops No.1669A, 1669B, 1669C and 1669D to open a grocery store with quality products. Therefore, the petitioner has initiated separate proceedings for eviction against other tenants with regard to Shops No.1669B and D which are pending for disposal. The respondent filed an application for leave to defend. Apart from challenging the relation between the tenant and landlord, the respondent has stated that the shop in question was let out to him on 15th September, 1970 by Sh.Mahavir Parshad son of Shri Umrao Singh resident of 3752, Kucha Parmanand, Darya Ganj, Main Bazar, Delhi on the basis of a rent deed dated 14th September, 1970 which is being signed by Smt.Mahavir Parshad. The respondent/tenant had paid a sum of Rs.25,000/- to late Shri Mahavir Parshad as pagri amount at the time of taking possession of the shop in question on rent. The

site plan as filed by the petitioner is wrong, false and not according to site. The petitioner has not disclosed the availability of shop (which was got vacated from Sh.Nand Kishore on 11 th April, 2011) and 6 vacant room on ground floor, open court yard, 3 WC/Latrine, one bathroom, one store on ground floor and the accommodations of rooms on the first floor and mezzanine floor of property No.1669-A, Dakhni Rai Street, Darya Ganj, New Delhi-110002 and property No.3752, Kucha Parmanand, Darya Ganj, New Delhi-110002 in the site plan. The petitioner has not given the property site plan of Shop No.1669-A, Kucha Dakshni Rai, Darya Ganj, Delhi, which is a separate property bearing separate municipal number and the other property bearing No.3752, Kucha Parmanand, Darya Ganj, New Delhi-110002 is a different property as described in para 3-B of the petition.

4. The petitioner is neither the owner nor landlady of the suit property. The respondent/deponent has come to know that the said property was sold by Sh.Mahavir Parshad, Sh. Pardeep Badal and Sh.Kuldeep Sagar in 1995 and this fact was never disclosed by the petitioner. No notice of attornment was sent to the deponent.

5. In paras 8 and 9, the respondent has also raised other grounds in order to show the triable issue in the matter which read as under:

8. That the petitioner has suppressed the material facts regarding the availability of her accommodation. The petitioner in para No.19 of her Petition has stated that, one tenant namely Mr.Nand Kishore had vacated another Shop No.1669-C, forming part of the suit property and handed over its possession to the petitioner. The area of that shop is much bigger than the area of the shop in occupation of the deponent. In the back of such vacated shop No.1669-C, the petitioner is in possession of vacant 7 rooms besides a barsati, which can be used for starting her proposed grocery store as alleged. The said accommodation available with the Petitioner is already more suitable and sufficient to her needs. The Petitioner has stated in her alleged notice dated 01.10.2010 that she required the premises for opening a grocery store. In Petition, she stated in para No.19 that one Mr.Nand Kishore-tenant had vacated and handed over the shop on 11.04.2011. It is respectfully submitted that the Petitioner has not opened any grocery store so far

which prima facie shows that she does not require the shop in question for her alleged needs and her present Petition is totally mala fide, false, frivolous, baseless and just to misuse the process of law and to harass the deponent unnecessarily.

9. That apart from the above, the Petitioner has another shop at 1836-A/5, 1st Floor, Electric Market, Bhagirath Place, Chandni Chowk, Delhi-110006 in which she is carrying on business of electricity goods through his son Mr. Pradeep Badal in the name of M/s. Moonlight. The Petitioner has deliberately concealed this fact also from this Honble Court.

6. In reply to the leave to defend application, the petitioner has admitted about the availability of six rooms on ground floor, open court yard, 3 WC/Latrines, one bathroom, one store on ground floor as well as the accommodation of rooms on the first floor and mezzanine floor of 1669-A, Dakhni Rai Street and 3752, Kucha Parmanand. She has admitted that she has got vacated one shop bearing No. 1669-C which was handed over to her by one Mr. Nand Kishore. The area of said shop is bigger than the tenanted shop i.e. 1669-A. She does not want to do any business in the vacated shop as she desires to combine three shops to set up a big grocery store, though she admitted that she could open a grocery store in the accommodation available but she has not opened as on that date. With regard to another shop bearing No. 1836-A/5, 1st Floor, Electric Market, Bhagirath Palace, Chandni Chowk, is concerned, she has clarified that the said shop belongs to the son of the petitioner namely Mr. Pradeep Badal, who runs his firm M/s. Moonlight and supports his family.

7. The learned trial court while discussing the rival submissions of the parties in para 12 of the impugned order has come to the conclusion that the respondent has succeeded to raise the triable issue. Para 12 of the impugned order reads as under:

12. Alternative accommodation & Bonafide requirement The respondent has contended that petitioner has a shop bearing no. 1669-C which was got vacated by Sh. Nand Kishore and the area of the said shop is bigger than the shop in question. Respondent further contended that there are six vacant rooms on the ground floor along with store and open courtyard and they are also in possession of the

petitioner. Respondent further contended that petitioner is also having a shop at property no.1836-A/5, first floor, Electric Market, Bhagirath Place, Chandni Chowk, Delhi. The petitioner is also having property bearing municipal no.3752, Kucha Parmanand, Daryaganj, New Delhi which is different property. On the other hand petitioner stated that property no.3752, Kucha Parmanand, Daryaganj, New Delhi is not a separate property from 1669-A, Kucha Dakhni Rai Daryaganj, Delhi. It is a same property but has two entrance, one entrance from Dakhni Rai which is commercial entrance and one is from Kucha Parmanand which is residential entrance. The petitioner has not disputed that there are six rooms, behind the shop in question alongwith store. According to the petitioner, the same are residential accommodation. The petitioner denied that the shop at property bearing no.1836-A/5, first floor, Electric Market, Bhagirath Place, Chandni Chowk, Delhi belong to her. According to the petitioner, the said shop belongs to her son. It is not in dispute that shop bearing no.1669-C has been got vacated by the petitioner on 11.04.2011 before the filing of the present petition and the said shop is having bigger area than the shop in question. It is the case of the petitioner herself that she is 80 years old and needs money for her medical expenses. The question arises, if the petitioner who has already a shop which is having bigger area than the shop in question then why she has not started her store in the said shop. The plea of the petitioner that she wants two more shops in adjoining to shop no.1669-C and the shop in question for opening grocery store is itself is triable issue. Whether a lady of 80 years old needs four shops to run one grocery store. The petitioner has further stated that the property bearing no.1669-A and 3752, is same property having two entrance, one entrance is commercial and another entrance is residential. The petitioner has not filed any document on record to show that these two properties are same properties but having two different municipal number. I am of the considered view that it is also a triable issue whether the property no.1669-A and 3752 are same property or separate property. The rulings relied upon by Ld. Counsel for the petitioner are not applicable at this stage as respondent raised triable issues.

8. The issue before this Court is, whether said findings 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 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. 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 25B(8) of the Act. 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. The Apex Court in *Sarla Ahuja vs 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. After having considered the pleadings, documents as well as impugned order and hearing both sides, I am of the prima facie view that the respondent in the present case has been able to raise triable issue. The impugned order does not suffer from any infirmity. At present, it appears to the Court that it is merely a desire of the petitioner to open a grocery store by vacating all the shops of the tenants. Thus, it is to be examined in evidence as to whether the requirement of the petitioner is bonafide and genuine or it was merely a desire. Thus, the present petition and pending application are dismissed as this Court is of the view that no interference is called for. In the interest of justice, however, directions are passed to expedite the trial court proceedings. (MANMOHAN SINGH) JUDGE
JANUARY02 2014

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