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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 21.02.2024

Judgment pronounced on: 17.05.2024

+ **RC.REV. 178/2018, CM APPL. 17084/2018**

SHYAM SUNDER BATRA & ANR Petitioner

Through: Mr Mahesh K Chaudhary, Adv.

versus

GIRISH KAKKAR & ANR Respondents

Through: Dr Arun Mohan, Sr. Adv. with Mr
Arvind Bhatt, Ms Ritika Choubey and
Mr Yugant Kakar, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, (J)**

1. This is a petition under section 25B (8) of the Delhi Rent Control Act (hereinafter referred to as "DRC Act") seeking setting aside of the order dated 03.11.2017 ("impugned order") passed by the learned Additional Rent Controller-I, Central District, Tis Hazari Courts, Delhi, wherein an eviction order was passed in favour of the respondents and against the petitioners u/s 14(1)(e) r/w section 25B of the Delhi Rent Control Act in respect of part of premises bearing no 2269-70 and 2281, Naiwala, Laxmi Rani Dwar Marg, Karol Bagh, New Delhi-110005.

2. A detailed judgement has been passed in RC.REV. 156/2018. However, since each petition raises its own additional distinct issues, three



separate judgements are being passed dealing with those distinct issues. Issues which are common and overlapping have been dealt in RC.REV. 156/2018 and may be read as forming part of the judgement in RC.REV. 178/2018 and RC.REV.179/2018.

BACKGROUND OF THE CASE

3. Mr. Shyam Sunder Batra (petitioner No.1) and Mr. Ashish Batra (petitioner No.2) are the tenants in part of premises bearing no. 2269-70 and 2281, Naiwala, Laxmi Rani Dwar Marg, Karol Bagh, New Delhi-110005 (shown in red in the site plan, attached with the Eviction Petition, hereinafter referred to as “tenanted premises”).

4. Respondent No.1 and 2 are husband and wife and are stating themselves to be the landlords of the tenanted premises.

5. It is stated that one Mr. Godha Ram Batra and his son Mr. Paras Ram Batra were inducted as tenants in the tenanted premises by grandfather of respondent no.1, namely Mr. Ram Lal Kakar. However, after the death of Mr. Godha Ram Batra and Mr. Paras Ram Batra, the tenanted premises is being used and occupied by the petitioner, being the descendants of Mr. Godha Ram Batra and Mr. Paras Ram Batra.

6. An Eviction Petition was filed by the respondents under section 14(1)(e) of the Delhi Rent Control Act (“hereinafter called “DRC Act”) against the petitioners. As per the Eviction Petition, it was the case of the respondents that they require the tenanted premises *bonafidely* for themselves and their family members' use and occupation as their residence. The respondents have two sons who are students of Bal Bharti Public School at Ganga Ram Hospital Marg, New Delhi. Respondent No.1 has two sisters



who also visit him regularly with their respective husbands and children. It was submitted that the respondents and their children are residing at a rented accommodation at third floor of property bearing no. F-444, New Rajinder Nagar, New Delhi-110060 comprising of one drawing-cum-dining room besides three bedrooms. It was further submitted that the children require sufficient and suitable space for their studies which is scarce in the current residential accommodation of the respondents. It was averred that the residence of the respondents is on the 3rd floor of F-444, New Rajinder Nagar, New Delhi and it is difficult to climb three floors, while the tenanted premises from which eviction is sought is on the ground floor. Additionally, it was stated that the respondents have to vacate the premises in which they are residing and handover the possession of the same to their landlord since a suit for possession had already been filed by the landlord for obtaining the possession of the property. It was stated that respondents are desirous of shifting to their own house which shall be not only convenient for them, but also economical.

7. Notice of the Eviction Petition was served upon the petitioner Nos. 1 and 2 and an application seeking leave to defend was filed by the petitioners.
 - i. It was stated by the petitioners that there is no relationship of landlord and tenant between the petitioners and the respondents and the petitioners have never paid any rent to the respondents. The ancestor of the petitioners and the original tenant namely Mr. Godha Ram Batra was first paying rent to first Mr. Pran Nath Kakar and later to Mr. K.G. Kakar. They have never paid rent to the respondents and/or attorned them as their landlords.



- ii. It was further stated that the tenanted premises is being used for commercial purposes as the petitioner No.1 has been running a business from the tenanted premises which is a shop in the name and style of Rexine House dealing in car seat covers. It was submitted that even an application form for grant of adhoc registration of traders under scheme 2006 for shops and commercial establishments was submitted to the MCD because the tenanted premises was covered under the said scheme. Even the property tax deposited shows that the property is a commercial property and cannot be used for residential purposes.
- iii. It was submitted that there is sufficient accommodation behind the tenanted premises which can be used for residence by the respondents. A similar Eviction Petition was filed by the respondents against another tenant, Mr. Rajender Aggarwal bearing no. 294/13. It was averred that the said tenant was occupying seven rooms, kitchen, toilet and open courtyard, along with one office in the same property in which the tenanted premises falls. It was stated that the petitioners are occupying a very small portion of the total premises as compared to the other tenants, namely Mr. Rajender Aggarwal, Mr. Talwar and Mr. Anand Saluja and the accommodation which was with another tenant, Mr. Rajender Aggarwal would be sufficient for residence by the respondents.
- iv. It was contended that the grandfather of respondent No.1 was the owner of property bearing No. 2290-91, Abdul Aziz Road, Karol Bagh, New Delhi. After his demise, this property was sold by the respondent No.1 and a property in Model Town was purchased by him. It was



further contended that the respondents have deliberately concealed this from the Court and the aforesaid property was sold for the purpose of having the tenants evicted from the tenanted premises on the ground of paucity of accommodation.

- v. It was stated that the respondents have not filed any rent agreement or rent receipts on record regarding property bearing no. F-444, Third Floor, New Rajinder Nagar, New Delhi, which was stated to be the residential address of the respondents.
- vi. It was further stated that the respondents have not brought on record any medical document to substantiate their difficulty in climbing to the third floor of their residential accommodation. The petitioners had pleaded that the alleged *bona fide* need of the respondents is *mala fide*.

8. After hearing both the parties, the learned ARC was of the view that there existed a landlord-tenant relationship between the parties and the respondents/landlords were competent to file the Eviction Petition as they were the owners as well as the landlords in respect of the tenanted premises. The learned ARC was also of the view that the respondents had made out a case of *bona fide* requirement. As far as the availability of alternate suitable accommodation with the respondents was concerned, the learned ARC took the view that there was nothing on record which disclosed that the respondents owned any of the properties as was averred by the petitioners which could be utilized as a suitably alternate accommodation. The order dated 03.11.2017 was passed by the learned ARC wherein a decree for eviction was passed in favour of the respondents and against the petitioners, directing them to vacate the tenanted premises.

9. Hence, the present petition.



SUBMISSIONS ON BEHALF OF THE PETITIONERS/TENANTS

10. Mr. Chaudhary, learned counsel for the petitioners submits that the learned ARC has exceeded its jurisdiction by going beyond the scope of section 25B (5) of the DRC Act. The learned ARC has decided the petition on merits by holding a full enquiry at the stage of hearing the application of leave to defend.

11. He further states that the learned ARC has wrongly observed that the residential accommodation of seven rooms available with the other tenant Mr. Rajender Aggarwal is not sufficient for the residence of the respondents. The respondents w.e.f. 30.06.2021 are in actual physical possession of this accommodation (a subsequent fact).

12. It is stated that the respondents have falsely alleged in the petition that the tenanted premises was let out for residential purposes because in fact, the front portion of the ground floor is being used by the tenants for commercial purposes, throughout. It is also stated that the learned ARC has wrongly observed that the assertion made by the petitioners that the respondents owned the property No. F-444, 3rdFloor, New Rajinder Nagar, New Delhi is a bald assertion and has also failed to appreciate that the suit filed by the alleged owner Ms. Pooja Mehta against the respondents was collusive. In fact, the respondents are residing in the said property as owners, having purchased the property as benami in the name of Ms. Pooja Mehta.

13. Learned counsel for the petitioners also submit that the learned ARC has wrongly come to the conclusion that the petitioners have failed to raise any triable issue.



**SUBMISSIONS ON BEHALF OF THE
RESPONDENTS/LANDLORDS**

14. The respondents have disputed the submissions of the petitioners and have filed identical written submissions noted in detail in R.C. REV. 156/2018. The same are not repeated herein for the sake of brevity.

ANALYSIS/CONCLUSION

15. I have heard learned counsel for the parties.

16. The parameters of revisional jurisdiction in rent revisions have been reiterated time and again. In a connected matter being RC.REV. 156/2018, I have already dealt in detail with regard to:

- a. Scope of a Rent Revision Petition.
- b. The DRC Act having outlived its utility.
- c. Learned ARC only being required to sift/comb through the application for leave to defend.
- d. Presumption of landlord's need being *bona fide*.
- e. Court not to sit in the armchair of the landlord to decide the suitability of suitable accommodation.

17. With these five parameters, I will proceed to deal with the arguments of the petitioners/factual matrix of this case.

18. In order to succeed in a petition under section 14(1)(e) of the DRC Act, the landlord is required to establish:-



- i. Landlord- Tenant relationship between the parties
- ii. The tenanted premises must be *bonafidely* required by the landlord either for himself or for his family members
- iii. There should not be any other alternate suitable accommodation available with the landlord.

19. As regards the landlord-tenant relationship is concerned, the learned ARC has correctly held as under:-

“20. It is not in dispute that Late Shri Ram Lal Kakar, grandfather of the petitioner Girish Kakar was the owner of the tenanted premises and he had inducted Mr. Godha Ram Batra and Mr. Paras Ram Batra as tenants in the tenanted premises and was receiving rent for his own benefit. He died leaving behind and was survived by his three sons. A renewal lease was granted by DDA in favour of the three sons. The father of the petitioner Mr. Prem Nath Kakar also died leaving behind his wife Smt. Surendra Kakar the petitioner Girish Kakar and his two daughters who became co-owners in respect of the property in question by way of intestate succession. The respondent has no right to object to the same. The daughters sold their share in respect of the tenanted premises to their mother late Smt. Surendra Kakar by registered sale deed, a copy of which has been placed on record. Smt. Surendra Kakar also died. She executed a Will by virtue of which the present property devolved upon the petitioners Girish Kakar and his wife Smt. Sarita Kakar. Thus, they are now the owners of the tenanted premises.

...



24. *The principle is very clear that once a tenant always a tenant. The tenant cannot dispute the title of his landlord or his successor in interest. It cannot be disputed that the petitioners are the successors in interest of Late Sh. Ram Lal Kakar by virtue of operation of law of interstate succession. The respondents have admitted that their ancestors were inducted as tenants in the premises by Late Sh. Ram Lal Kakar, grandfather of petitioner Girish Kakar and accordingly, they are estopped from challenging the title of the father of the petitioner Girish Kakar in view of the provisions of section 116 of the Evidence Act. Once they cannot challenge the title of the father of the petitioner Girish Kakar, they also cannot question the title of the petitioner Girish Kakar.*”

20. The respondents/landlords are only required to show a title better than that of the tenant.¹ The learned ARC has correctly appreciated that the respondents have admitted that their ancestors were tenants in the subject premises, inducted by late Shri Ram Lal Kakar (grandfather of respondent No.1). Hence, the petitioners cannot challenge the landlord-tenant relationship between the parties.

21. The learned ARC has also correctly held that in the present case, the need of the respondents-landlords is *bona fide*. The operative paras read as under:-

¹ *Babu Ram Gupta v. Chander Prakash* [2023 SCC OnLine Del 1467]



“46. In view of the settled legal position it is not for the respondent to dictate to the petitioners that they should manage their family in whatever accommodation is available with them. The tenanted premises belongs to the petitioners and it is for the petitioners to see that how they can manage their family. It is the right of the petitioners to look after their comfort and comfort of their family and if the tenanted premises, even if is of one room, is suitable as per their needs, they have every right to possess the said premises and the respondent cannot contend that they should manage their family otherwise. The petitioners are themselves facing eviction since a suit for possession has already been filed against them by their landlady. In order to sustain themselves and their children it is normal for the petitioners to contend that they require the tenanted premises and it cannot be said that the demand of the petitioners for it is not bonafide. While deciding the question of bonafide requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlords could have adjusted.

47. The net result is that petitioners have been able to establish that the tenanted premises is required bonafide for their and their children, who are dependent upon them, as their residence and they have no other reasonably suitable alternative accommodation in their possession. The respondents have failed to raise any reasonable triable issue. The application for leave to defend is dismissed.”



22. In present case, the respondents have averred that they require the tenanted premises *bonafidely* for the purpose of their residence and there is nothing which has come on record to show that the needs of the respondents were either *mala fide*, whimsical or fanciful. The court is to presume the need of the landlord as genuine and *bona fide* and there can be no better *bona fide* need than the need of a landlord to give up his rented accommodation to shift into his own accommodation.

23. The learned ARC has also rightly come to the conclusion that there is no other alternate suitable accommodation available to the respondents to meet their needs.

24. In R.C. REV. 156/2018, I have already held that premises vacated by Mr. Rajender Aggarwal is not an alternate suitable accommodation to the respondents. I have also held in R.C. REV. 156/2018 that it does not matter if the premises are let out for commercial purposes if the landlords are now desiring to use them for their residence.

25. In R.C. REV. 156/2018, with regard to the property bearing no. F-444, New Rajinder Nagar, New Delhi, I have returned a finding that the respondents are no way in occupation of this premises, be it on rent or by way of ownership. In addition to this, I have also dealt with the controversy of the suit between Ms. Pooja Mehta and respondent No.1 not being collusive in nature.

26. The only additional issue which is required to be answered is with regard to the scope section 25B (5).

27. Section 25B(5) of the DRC Act reads as under:-

“25B

...



(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A.”

28. The Supreme Court in ***Abid-Ul-Islam*** (supra) has dealt with the scope of section 25B (5). The relevant portion reads as under:-

“18. For availing the leave to defend as envisaged under Section 25-B(5), a mere assertion per se would not suffice as Section 14(1)(e) creates a presumption subject to the satisfaction of the learned Rent Controller qua bona fide need in favour of the landlord which is obviously rebuttable with some material of substance to the extent of raising a triable issue. The satisfaction of the Rent Controller in deciding on an application seeking leave to defend is obviously subjective. The degree of probability is one of preponderance forming the subjective satisfaction of the Rent Controller. Thus, the quality of adjudication is between a mere moonshine and adequate material and evidence meant for the rejection of a normal application for eviction.”

29. In order to succeed in obtaining a leave to defend, a mere denial that the need of the landlord-tenant is not *bonafide* is not sufficient. The tenant is required to disclose/show cogent and compelling reasons along with documents to rebut the presumption that is in favour of the landlord, i.e the need of the landlord for the tenanted premises is *bona fide*.



30. This Court in “*Sarwan Dass Bange v. Ram Prakash*” [2010 SCC OnLine Del 351] has opined that the learned ARC is required only to sift/comb through the averments made in the leave to defend application and see whether the tenant has established with cogent and material defence, facts which disentitle the landlord from an Eviction order. The scope, therefore, is only to see whether any triable issue(s) has been raised by the tenants which entitle the tenant to leave to defend. In the present case, the tenants have not been able to raise any triable issue(s).

31. The order dated 03.11.2017 does not suffer from any illegality or infirmity. The learned ARC has correctly dismissed the leave to defend application and has also rightly appreciated the settled law and the facts of the case.

32. With these observations and the observations made in R.C. REV 156/2018, the order dated 03.11.2017 passed by the learned Additional Rent Controller-I, Central District, Tis Hazari Courts, Delhi passing an eviction order in respect of part of premises bearing no. 2269-70 and 2281, Naiwala, Laxmi Rani Dwar Marg, Karol Bagh, New Delhi in favour of respondents and against the petitioners, is upheld.

33. Accordingly, the petition is dismissed and the interim order stands vacated.

JASMEET SINGH, J

MAY 17th, 2024/st