

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

+ **RC.REV. 233/2013**

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Reserved on: 7th May, 2015
Decided on: 29th May, 2015

SMT AMRIT KAUR Petitioner
Through Mr. Amarjit Singh, Adv.

versus

SHRI RATTAN LAL Respondent
Through Mr. R.P. Bhardwaj, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Petitioner Amrit Kaur filed an eviction petition against Rattan Lal under Section 14(1)(e) and 14(d) read with Section 25B of the Delhi Rent Control Act, 1958 (in short the DRC Act) which was dismissed vide the impugned order dated 16th May, 2013 after the parties led their evidence.

2. In the eviction petition Amrit Kaur stated that she was the owner of premises X/1225, Satsang Marg, Rajgarh Colony, Gandhi Nagar, Delhi and around 35 years ago the respondent Rattan Lal was inducted as a tenant in one big shop having two shutters, who has been carrying on the business of manufacturing speaker and columns by using two horsepower electric motor for running a big cutter for cutting wooden ply and other hardwood from the tenanted premises. The rent of the tenanted premises was initially ₹450/- per month excluding electricity charges and in January 2005 the same was

enhanced to ₹ 2450/-. Amrit Kaur has four shops of which two shops have been given by her to her two sons who are running their respective business in the two shops and the other two shops which have been combined into one big shop with two shutters are in use and occupation of Rattan Lal. After September 2005 Rattan Lal stopped paying the rent illegally and is creating nuisance in the said shop. The other two sons of Amrit Kaur i.e. Yashpal Singh and Harpal Singh are jobless and thus the tenanted premises is required to settle these two sons of the petitioner. Averments with regard to non-payment of rent and electricity charges were also made which was not material for the decision of the present petition.

3. In the written statement Rattan Lal denied the bonafide requirement of Amrit Kaur or that he was creating nuisance. It was stated that Harpal Singh owns another shop in the vicinity in premises X/969 which he had let out on rent @ ₹8000/- per month to ED-Tech Tutorials. Thus there was no bonafide requirement of Amrit Kaur to get the tenanted premises vacated.

4. In the replication Amrit Kaur reiterated that she had four sons and three daughters. The three daughters were married. Narender Singh her elder son aged 44 years has one shop in his possession from where he is running artificial jewellery shop. The second son Ajeet Singh aged 42 years along with his wife is running beauty parlour. Both the sons have large family with three school going children each and thus they are able to meet their own requirements only. Rattan Lal has converted two big shops into one big shop the size of which is 10 feet x 12 feet. Her son Harpal Singh is aged 36 years who has three children. Harpal Singh is jobless. Amrit Kaur denied the averment that Harpal Singh is carrying on business in partnership with Rajesh Jain. She stated that Rajesh Jain was running a tuition school

whereas Harpal Singh was hardly VIII class pass and thus cannot be a tutor. Her third son Yashpal Son aged 38 years who is also married having three children is also not having any job. Thus, her two sons are jobless. With regard to shop in ownership of Harpal Singh bearing No. X/969 it is stated that Harpal Singh has nothing to do with the shop.

5. Smt. Amrit Kaur entered the witness box and reiterated her averments in the eviction petition. In cross-examination Smt. Amrit Kaur stated that she had no other property except property bearing No. X/1225, Satsang Marg, Gandhi Nagar i.e. the suit property. She admitted that X/969 was owned by her son Harpal Singh, however the said shop was mortgaged by Harpal Singh to Neelam for three years and after obtaining the rent from the said shop Harpal Singh gives the same to his sister Neelam. It was stated that rent of the shop was ₹2000/- per month or ₹2500/- per month. She reiterated that her son Yashpal was not doing any work. Thus, the only fact brought out in the cross-examination of Amrit Kaur was that Harpal Singh was owning shop No.X/969 which she stated to be mortgaged and the rent was being given to Neelam.

6. Be that as it may in the entire evidence no material has been shown that Yashpal has a shop or he is running any business. Thus requirement of Yashpal Singh could not be refuted. Yashpal Singh appeared in the witness box as PW-2 and reiterated the facts stated by his mother. He stated that he was married having three daughters who were school going and has no source of income or livelihood and was fully dependent on his old mother who does not have sufficient source of income and was in urgent need to start the business. In cross-examination he stated that he learnt making artificial jewellery 8-10 years back from his brother and he was making

artificial jewellery in the house of his mother, which house comprises of four rooms on the ground floor and four rooms on the first floor and his mother was bearing the expenses of his family. He reiterated that the shop purchased by Harpal Singh was mortgaged. Amrit Kaur also produced independent witnesses.

7. Respondent Rattan Lal produced J.R. Miglani with regard to rent agreement between the parties who stated that no rent agreement was entered in his presence. Rattan Lal examined himself as RW-2. In his evidence Rattan Lal stated that Smt. Amrit Kaur has four sons who are engaged in the business of fabricating gold jewellery in two shops and the rooms in their premises. One shop was purchased by her son Harpal Singh in premises No. 969 which has been let out in order to show the bonafide requirement. He however did not deny the landlord relationship and his main endeavour was that he had been making payments as per consumption of electricity and not creating any nuisance and that the tenanted premises was required by him and his son as the entire family was surviving from the income of the said shop.

8. Before considering the evidence on record it would be appropriate to note the scope of interference in a revision petition against the order passed by the learned ARC dismissing the eviction petition, especially when the right to appeal under Section 38 DRC Act has been taken away by the Statute. It is well-settled that if material evidence is ignored by the Trial Court then in the exercise of revisional jurisdiction this Court is required to interfere in the same.

9. In Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta (1999) 6 SCC 222 the Supreme Court laid down the law in relation to scope of interference by the High Court in a petition under Section 25B(8) DRC Act which was further clarified by the Constitution Bench in Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh (2014) 9 SCC 78 wherein it was held-

“32. Insofar as the three-Judge Bench decision of this Court in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] is concerned, it rightly observes that revisional power is subject to well-known limitations inherent in all the revisional jurisdictions and the matter essentially turns on the language of the statute investing the jurisdiction. We do not think that there can ever be objection to the above statement. The controversy centres round the following observation in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] , “... that jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also....” It is suggested that by observing so, the three-Judge Bench in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] has enabled the High Court to interfere with the findings of fact by reappreciating the evidence. We do not think that the three-Judge Bench has gone to that extent in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] . The observation in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] that as the expression used conferring revisional jurisdiction is “legality and propriety”, the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the statute is wider than the power conferred on it under Section 115 of the Code of Civil Procedure; it is not confined to the jurisdictional error alone. However, in dealing with the findings of fact, the examination of findings of fact by the High Court is limited to satisfy itself that the decision is “according to law”. This is expressly stated in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] . Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and

ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the appellate court or the appellate authority or such power is coextensive with that of the appellate authority or that the concluded finding of fact recorded by the original authority or the appellate authority can be interfered with by the High Court by reappreciating evidence because Revisional Court/authority is not in agreement with the finding of fact recorded by the court/authority below. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the court/authority below. Rather, it emphasises that while examining the correctness of findings of fact, the Revisional Court is not the second court of first appeal. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not cross the limits of Revisional Court as explained in Dattonpant [Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval, (1975) 2 SCC 246] .

33. Rai Chand Jain [Rai Chand Jain v. Chandra Kanta Khosla, (1991) 1 SCC 422] that follows Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] also does not lay down that the High Court in exercise of its power under the Rent Control Act may reverse the findings of fact merely because on reappreciation of the evidence it has a different view on the findings of fact. The observations made by this Court in Rai Chand Jain [Rai Chand Jain v. Chandra Kanta Khosla, (1991) 1 SCC 422] must also be read in the context we have explained Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] .

34. In Shiv Sarup Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] , the observations of this Court with reference to revisional jurisdiction of the High Court under the Delhi Rent Control Act that the High Court, on the touchstone of “whether it is according to law” and for that limited purpose, may enter into reappraisal of evidence must be understood in the context of its

observations made preceding such observation that 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 and the observations following such observation that the evidence is examined by the High Court to find out whether the court/authority below has ignored the evidence or proceeded on a wrong premise of law or derived such conclusion from the established facts which betray lack of reasons and/or objectivity which renders the finding not according to law. Shiv Sarup Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] also does not lay down the proposition of law that in its revisional jurisdiction under the Rent Control Act, the High Court can rehear on facts or reappraise the evidence to come to the conclusion different from that of the trial court or the appellate court because it has a different view on appreciation of evidence. Shiv Sarup Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] must also be understood in the context we have explained Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131].”

10. Thus from the evidence of the parties as noted above it is proved that Amrit Kaur has no other available accommodation except the tenanted premises. The alternate accommodation if available was with Harpal Singh and Yashpal Singh has no available accommodation. Even as per the admission of Rattan Lal, Yashpal Singh was doing the work from his residential premises and his bonafide requirement cannot be thus denied.

11. One of the contentions of learned counsel for Rattan Lal is that in the entire eviction petition Amrit Kaur did not state that she has no other alternative suitable accommodation. Indubitably, she did not state so in the eviction petition, however in her cross-examination Amrit Kaur clarified that besides the suit property she has no other accommodation.

12. Since the impugned order ignores the material evidence that Yashpal has no suitable accommodation to run his business, the same is set aside.

The eviction petition filed by Amrit Kaur under Section 14(1)(e) DRC Act is allowed. The respondent is directed to vacate the premises within six months from the date of this order.

13. The petition is disposed of.

(MUKTA GUPTA)
JUDGE

MAY 29, 2015
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