



2025:DHC:181



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

Date of Decision: 07.01.2025

+ **RC.REV. 314/2024**

KISHORE KUMAR ARORA

.....Petitioner

Through: Mr. Ankit Jain, Sr. Adv. with Mr. Kuber Giri, Mr. Aditya Chauhan, Mr. Rishabh Jain, Ms. Apurva Tyagi, Ms. Divyanshu Rathi, Adv. with Petitioner in-person

versus

MAYANK RASTOGI

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

CM APPL. 212/2025 [Exemption from filing certified copies]

1. Allowed, subject to just exceptions.
2. The Application stands disposed of.

CM APPL. 64745/2024 [Stay]

3. In view of the fact that a fresh Application for stay has been filed by the Petitioner being CM APPL.211/2025, learned Senior Counsel for the Petitioner, on instructions, seeks and is granted permission to withdraw the present Application.

4. The present Application is dismissed as withdrawn.

RC.REV. 314/2024 & CM APPL. 211/2025 [Stay]

5. This Court had on 06.11.2024 examined the matter and recorded the



following:

“5. The challenge of the Petitioner/tenant is two fold. It is contended by the learned Counsel for the Petitioner/tenant that the need of the Respondent/landlord is not bona fide since he already has another shop at Greater Kailash and one shop in a mall at Gurugram. It is contended that the shop at Greater Kailash is being used by the Respondent/landlord for commercial purposes and it has wrongly been stated as otherwise by the Respondent/landlord, hence, a triable issue has been raised.

6. With respect to the subject premises at Gurugram, learned Counsel for the Petitioner disputes the averment of the Respondent/landlord that the business was not thriving in Gurugram and hence there is a requirement for subject premises.

*7. Learned Counsel for the Respondent/landlord submits that the Respondent/landlord had filed another Eviction Petition (**RC ARC No.371/2019** captioned **Mayank Rastogi v. Des Raj Aneja**) for an adjacent shop on the same facts and circumstances which was also allowed by the learned Trial Court by an order which was *pari materia* to the Impugned Order. He submits that the Petitioner/tenant in that case had also approached this Court by filing **RC. REV. 168/2024** captioned **Des Raj Aneja v. Mayank Rastogi**, which Petition was dismissed by a Coordinate Bench on 18.08.2024.*

*7.1 Learned Counsel for the Respondent/landlord seeks to rely upon paragraphs 4 and 5 of order dated 14.08.2024 passed in **RC REV. 168/2024** which read as follows:*

“4. However, the perusal of the impugned order dated 15.04.2024 reflects that the trial court has considered all the relevant issues as raised by the parties and has passed a reasoned order. There is no ground to interfere in the impugned order dated 15.04.2024.

5. Mr. S. C. Singhal, Advocate for the petitioner on instructions from the petitioner stated that the petitioner shall be vacating the tenanted premises on or before 15.03.2025 and shall be handing over the possession of the tenanted premises to the respondent.”

8. After some arguments, learned Counsel for the Petitioner/tenant seeks some time to take instructions.”



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6. Subsequently, the Court had directed the parties to file written submissions in the matter. The matter has been listed before the Court today on an urgent application filed by the Petitioner/tenant setting out that the bailiff has been appointed and since there is no stay in the matter, this Petition may become infructuous.

7. None appears for the Respondent/landlord despite service.

8. Learned Senior Counsel for the Petitioner/tenant submits that in view of the urgency, the present Application be heard. Given that after hearing both parties, this Court had crystallised the issues on 06.11.2024 in the present Petition, it is taken up for final hearing and disposal today.

9. The present Petition has been filed on behalf of the Petitioner/tenant seeking to challenge an order dated 15.04.2024 passed by learned ACJ-cum-ARC, Central, Tis Hazari Courts, Delhi [hereinafter referred to as 'Impugned Order'] with respect to the shop bearing no. B-13, Ground Floor situated in Prehlad Market, Desh Bandhu Gupta Road, Karol Bagh, New Delhi-110005 [hereinafter referred to as 'subject premises'] wherein the application for Leave to Defend/contest filed by the Petitioner/tenant was dismissed.

10. As stated by learned Senior Counsel for Petitioner/tenant, there is no challenge to the aspect of landlord-tenant relationship between the parties or ownership of the subject premises and none has been pressed before this Court either.

11. The only challenge before this Court is to the *bona fide* need of the Respondent/landlord and to the availability of alternate accommodation which is set out in the extract in Paragraph 5 above.



12. The perusal of the Impugned Order shows that this challenge was also placed before the learned Trial Court and has already been dealt with in the Impugned Order.

13. The learned Trial Court has found that the landlord has described, in great detail, the requirement for which vacant possession of the subject premises is necessary, which is for running of a business of crockery items by himself and his mother. It has been further stated that the landlord requires two adjacent shops and that he has simultaneously filed Eviction Petitions for both shops. The learned Trial Court has relied on the judgments passed by Coordinate Benches of this Court and Supreme Court to submit that as per the law, the requirement need not only be for the landlord but also for his dependents. In addition, the learned Trial Court has relied upon the judgment of a Coordinate Bench of this Court in *Anil Kumar Gupta vs. Deepika Verma in RC. REV. 138/2015 dated 14.10.2015* to give a finding that the word 'dependent' may not mean financially dependent but also dependent in other ways. This aspect of another Eviction Petition was also recorded by this Court in paragraphs 7 and 7.1 of the order dated 06.11.2024 which is set out above.

14. On 06.11.2024, learned Counsel for the Respondent/landlord has also pointed out that the Eviction Petition was filed for the adjoining shop, which include the subject premises. In both Eviction Petitions, the Applications for Leave to Defend/contest had been similarly dismissed by the learned Trial Court. Reliance was placed on an order of a Coordinate Bench of this Court dated 14.08.2024 in RC. Rev. 168/2024 captioned as *Des Raj Aneja vs. Mayank Rastogi*, where the Revision Petition was also disposed of.



15. As set out above, the Respondent/landlord has in the Eviction Petition contended that his need for the subject premises is to run a business of crockery items by his mother and himself. It is contended in the Eviction Petition that the mother of the Respondent/landlord has been running a business as a proprietor of M/s. Ceramics Home Decoratives from the year 2000 and the business was being run from a residential premises in Greater Kailash, Part - I, New Delhi by the mother. However, in the year 2006, these premises were sealed for “*misuser*” since commercial activities were being carried out in a residential premises by the MCD. Subsequently, the business was shifted to shop in a mall in Mega Mall, Gurugram in the year 2007. However, on account of the size of the shop and its location, the retail part of the business could not thrive unlike the wholesale part. The Eviction Petition also described in detail about other premises which were taken on lease by the mother of the Respondent/landlord including a farm premises at MG Road, Delhi for this business from time to time, however since the rentals were very high, these had to be vacated. Additionally, it was stated by the Respondent/landlord that now the Respondent/landlord has also gotten actively involved with the business and is assisting his mother in the said business.

16. It is further contended by the Respondent/landlord that the subject premises will be used as a showroom for display of the products of such business and also for the purpose of storage.

17. A review of the Eviction Petition shows that the Respondent/landlord has described in great detail his *bona fide* need for the subject premises. No document has been shown by the Petitioner/tenant to controvert this finding.



Accordingly, the Court finds no infirmity with the Impugned Order on the aspect of *bona fide* need.

18. So far as concerns the submissions of the Petitioner/tenant that there are other shops available with Respondent/landlord at Greater Kailash, Delhi and Gurugram, Haryana, this contention was also raised by him before the learned Trial Court and the learned Trial Court has found that the premises at Greater Kailash, Delhi is a residential accommodation and cannot be used. So far as concerns the shop at Gurugram, Haryana, it was explained by the landlord that retail part of the crockery business could not thrive at the said place and thus the shop could not be considered as a suitable alternate accommodation. It was further contented by the landlord that at present, the mother of the Respondent is running her business out of a rented accommodation and is paying an exorbitant rent per month, and as such there is no suitable alternative accommodation available with Respondent/landlord.

19. The provisions of Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as “the Act”] have been provided with care by the legislature, not only is the accommodation to be ‘alternate’, but it is also required to be suitable. The Supreme Court in the *Shiv Sarup Gupta v. Mahesh Chand Gupta*¹ has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects as compared to the tenanted accommodation from which the landlord seeks eviction of the tenant. The relevant extract of *Shiv Sarup* case reads as

¹ (1999) 6 SCC 222



follows:

*“14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. **Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation,** may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. **Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction.** Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”*

[Emphasis Supplied]

20. The Respondent/landlord has explained that the premises in Greater Kailash was sealed by the MCD on account of mis-use of the premises for commercial activities in the year 2006 itself. Thus, there is no question of use of those premises today for commercial activities. The premises at Gurugram, Haryana was not found as suitable for retail and the retail outlet had to be shut down. The Petitioner/tenant has also set out that the Respondent/landlord can use the premises at farm on MG Road, New Delhi



available with the Respondent/landlord as an alternate accommodation. The Respondent/landlord had clarified in its Eviction Petition itself that the land being a farm land, the said premises cannot be used for commercial activities. Accordingly, this Court finds no infirmity with the Impugned Order on this aspect of the matter as well.

21. In view of the discussions above, this Court finds no reason to stay the Impugned Order. CM APPL. 211/2025 is accordingly dismissed.

22. The Supreme Court in *Abid-ul-Islam v. Inder Sain Dua*² has held that the jurisdiction of this Court is only revisionary in nature and limited in scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the Act has held that this is a conscious omission. The High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the face of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. The relevant extract of the *Abid-ul-Islam* case is as follows:

“Scope of revision

“22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which

² (2022) 6 SCC 30



is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.

23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.

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25. The aforesaid decision has been recently considered and approved by this Court in Mohd. Inam v. Sanjay Kumar Singhal [Mohd. Inam v. Sanjay Kumar Singhal, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)

“22. This Court in Sarla Ahuja v. United India Insurance Co. Ltd. [Sarla Ahuja v. United India Insurance Co. Ltd., (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word “revision” was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)

‘11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.’

It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi



Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.”

[Emphasis supplied]

23. While examining the Application for Stay, this Court has undertaken a complete examination of the Revision Petition as well including on merits. As set out above, in terms of the judgment of the Supreme Court in the *Abid-ul-Islam* case, the Court has to satisfy itself on the findings in the Impugned Order. In view of the foregoing discussion, this Court finds no ground to entertain the present Petition.

24. The present Petition and all pending Applications are accordingly dismissed.

25. The next date of hearing i.e. 13.02.2025 stands cancelled.

26. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JANUARY 7, 2025/ jn/x/ ha

Click here to check corrigendum, if any