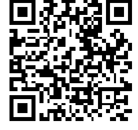

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 09.01.2025

\+ **<u>RC.REV. 143/2024 & CM Appl.29939/2024</u>**

SH ASHOK GUPTA .....Petitioner

Through: Mr. Roshan Vishwamitra, Adv.

versus

SMT KRISHNA WANTI .....Respondent

Through: Mr. Roshish Arora, Adv.

CORAM:

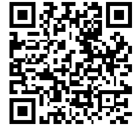
HON'BLE MS. JUSTICE TARA VITASTA GANJU

<u>TARA VITASTA GANJU, J.:</u> (Oral)

1. The present Petition has been filed on behalf of the Petitioner/tenant impugning the order dated 13.02.2024 [hereinafter referred to as "Impugned Order"] passed by the learned SCJ/RC (West), Tis Hazari Courts, Delhi with respect to premises i.e., shop no. 1A, plot no. 2, Karampura Shopping Centre, Delhi -110015 as shown in red colour in the site plan annexed with the Eviction Petition [hereinafter referred to as "subject premises"]. By the Impugned Order, the Application for leave to defend has been dismissed by the learned Trial Court.

2. In view of the fact that the execution proceedings have already been filed by Respondent/landlady, the matter has been taken up for hearing and disposal today.

3. A Coordinate Bench of this Court after examining the Petition on



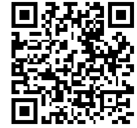
20.05.2024 passed an order rejecting the request for grant of ex-parte stay on the operation of the Impugned Order. The Coordinate Bench found that the issues as were raised by the Petitioner had also been raised before the learned Trial Court and were already dealt with.

4. The record reflects that so far as concern the landlord-tenant relationship and the ownership, there is no dispute that the Respondent/landlady is one of the co-owners of the subject premises. On the issue of bona fide need and availability of alternate suitable accommodation, the Coordinate Bench found that these have already been dealt with in the Impugned Order.

5. The only issue that was raised by the Petitioner/tenant before the Court was the fact that the Respondent/landlady is 88 years old and thus she cannot be "expected to work". This contention has already been rejected by the Coordinate Bench of this Court.

6. Learned Counsel for the Respondent/landlady submits that the pendency of this Revision Petition is being used by the Petitioner/tenant in the execution proceedings to delay the same.

7. On the aspect of landlord/tenant relationship and ownership of the subject premises, the Petitioner/tenant had denied that he is a tenant. It is the contention of the Petitioner/tenant that he was inducted in the subject premises by the husband of the Respondent/landlady, who was its co-owner jointly with his brother. It has not been denied by the Petitioner/tenant that after the death of the husband of the Respondent/landlady, the Respondent/landlady has stepped into the shoes of her husband. The only



objection that has been raised is that the subject premises is co-owned and that all the landlords have not been made party to the present Petition.

7.1 The law on this aspect is well settled. The Supreme Court in ***India Umbrella Manufacturing v. Bhagabandei Agarwalla (Dead) by L.R.s Savitri Agarwalla (Smt) and Others***[1] has held that a co-owner of a premises acts as an agent of the other co-owners and can file an eviction petition without joining the other co-owners. The consent of all co-owners is assumed unless shown to the contrary. The relevant extract of the ***India Umbrella*** case is reproduced below:

> "*6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed.* ***It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri Ram Pasricha v. Jagannath [(1976) 4 SCC 184] and Dhannalal v. Kalawatibai [(2002) 6 SCC 16], SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement.*** *In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law*."
>
> [Emphasis Supplied]

7.2 The Petitioner/tenant has been unable to show any objection from the other co-owners of the subject premises. In view thereof, this contention of

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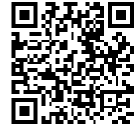
[1] (2004) 3 SCC 178



the Petitioner/tenant cannot be sustained.

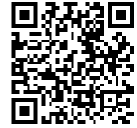
8. The need as projected in the Eviction Petition by the Respondent/landlady is that the subject premises is required bonafide for herself and for her daughter-in-law, who is dependent upon the Respondent/landlady to start a ladies' clothes boutique. The challenge as raised by the Petitioner/tenant to the bonafide need is that given that the Respondent/landlady is old, she would not be able to use the subject premises to run a business.

8.1 This submission has already been dealt with by the learned Trial Court in the Impugned Order. The learned Trial Court has also found that the plea of *bona fide* requirement is not to be adjudged by, considering the possibility by which the tenant may be allowed to continue on the premises but whether the requirement of the landlord is genuine or *bona fide*.

8.2. In addition, a Coordinate bench of this Court in the case of ***Babu Lal v. Ashok Kumar***[2], has held that merely on account of old age, a person cannot be deprived of the right to livelihood and the consequent right to live with dignity. The relevant extract of the ***Babu Lal*** case is reproduced below:

> *11. Then comes the stand taken on behalf of the present petitioner that looking into the age and health of the present respondent, it is not believable that he would carry out any business from the subject premises, if the same are vacated. In the impugned order, the learned Additional Rent Controller has correctly rejected this argument.* ***The bona fides of the requirement set up by the landlord cannot be shrouded with doubts on such presumptive arguments. Merely because the landlord suffers old age and frail health, it cannot be presumed that he does not require the tenanted premises to run his business or is not capable to earn livelihood.*** *There is nothing on record to even feebly*

[2] 2024 SCC OnLine Del 2536



suggest that the present respondent is completely bedridden and/or being taken care of financially by his son engaged in the independent business. The surrender of the Bawana plot by the present respondent was because of long distance between Bawana and the place of residence of the present respondent. But that cannot be read to mean that he is incapable of earning his livelihood through business from the subject premises. ***Merely on account of old age and frail health, a person cannot be deprived of right to livelihood and the consequent right to live with dignity.***

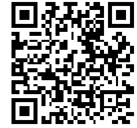
[Emphasis supplied]

8.3 In any event, the fact that the Respondent/landlady has said that she wishes to open her shop with her daughter-in-law would mean that she would not be operating the shop on her own but with the help of her daughter-in-law. The need as projected by the Respondent/landlady is not wishful or whimsical but is genuine. In these circumstances, this objection of the Petitioner/tenant must also fail.

9. It has also been contended in the Eviction Petition that the subject premises being on the ground floor in a commercial space is the most suitable for opening of a boutique. The Supreme Court in the case of ***Prativa Devi (Smt) v. T.V. Krishnan***[3] has held that a tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. This Court while relying on the Prativa Devi case has in the ***R.S. Chadha (Through SPA) v. Thakur Dass***[4] held:

"13.1 ***It is settled law that the tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. It is also not for the Courts to adjudicate that the landlord has a bonafide need or not. The Courts will generally***

[3] (1996) 5 SCC 353
[4] 2024 SCC OnLine Del47

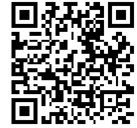


accept the landlords need as bonafide. *The Supreme Court in the case of Prativa Devi (Smt) v. T.V. Krishnan [(1996) 5 SCC 353] has directed:*

> *"2. The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv Nath Mukherjee, has been staying as a guest with Shri N.C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjung Enclave, New Delhi. There is nothing to show that she has any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference.* ***The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own****. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for.* ***There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances****."*

13.2 In any event, it is only the Respondent/landlord and his family who can decide what is sufficient space as per their needs and requirements. Sufficiency of residential accommodation for any person would essentially be dependent on multiple factors, including his living standard and general status in society. In view of the fact that admittedly the Respondent/landlord has a large family, it is not open to the Petitioner/tenant to contend that requirement of 6 rooms as pleaded by the Respondent/landlord, is not bonafide.

13.3 The Trial Court has dealt with the sufficiency of accommodation of the Respondent/landlord in the Impugned Order. This Court finds no reason to impugn these findings."



[Emphasis supplied]

10. So far as concerns the plea of availability of alternate accommodation, the learned Trial Court found that the Petitioner/tenant has made an assertion that the Respondent/landlady is the owner of various commercial properties which are available in the same building. However, the Petitioner/tenant was unable to give any details of the same. In view thereof, the learned Trial Court found on this aspect that no triable issue has been raised.

10.1 The Petitioner/tenant has not been able to show any details of alternate accommodation before this Court either.

11. The Supreme Court ***Abid-ul-Islam v. Inder Sain Dua***[5] 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 said 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 fact 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

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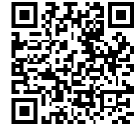
[5] (2022) 6 SCC 30



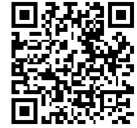
"22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of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

xxx

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]

12. The learned Trial Court has examined the contentions as raised by the Petitioner/tenant and has found that no triable issue has been raised. The examination by this Court does not show anything to the contrary. The revisionary jurisdiction of this Court is limited and circumspect. All that the Court is required to examine, in terms of the judgment of the Supreme Court in ***Abid-ul-Islam*** case, is whether there is absence of adjudication for interference by this Court or any error apparent on the face of the record. This Court finds that no ground for interference has been made out by the Petitioner/tenant.

13. For the reasons stated above, this Court finds no infirmity with the Impugned Order.

14. The Petition is accordingly dismissed. Pending applications, if any, stand closed.

TARA VITASTA GANJU, J

JANUARY 9, 2025/r/jn/ *ha*