

* **HIGH COURT OF DELHI : NEW DELHI**

+ **C.M(M) No.897 of 2006**

% **Date of decision: 08.01.2008**

Sh. Devki Nandan Rasia Petitioner
Through: Ms. Anamika Ghai, Advocate

versus

Shri Ram Nath Tomar Respondent
Through: Ms. Chandrani Prasad, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

VIPIN SANGHI, J

1. This petition under Article 227 of the Constitution of India is preferred against the order passed by the Additional Rent Control Tribunal in RCA No.588/2004 dated 13.03.2006. By the impugned order the learned Rent Control Tribunal dismissed the appeal preferred by the petitioner/landlord against the order passed by the learned Additional Rent Controller (ARC) dated 16.11.2004, whereby the ARC dismissed the eviction petition filed by the petitioner under

Section 14(1)(a) of the Delhi Rent Control Act (for short the 'Act').

2. The admitted position is that the respondent was inducted as a tenant by one late Sh. Krishan Chand in respect of one shop measuring 13 ft. X 8 ft. in premises No.15, Govind Puri Extension, Kalkaji, New Delhi. The rent deed was executed on 06.12.1978. The rate of rent was Rs.385/- per month. Admittedly, the respondent/tenant had not paid a rent since February, 1996. It is submitted by learned counsel for the respondent that in pursuance of the order dated passed under Section 15(1) of the Act, the arrears of rent were deposited from February, 1996 onwards and the respondent continued to deposit the same @ Rs.385/- per month from time to time. However, upon the dismissal of the eviction petition by the Additional Rent Controller on 16.11.2004, the respondent/tenant was permitted to withdraw the deposit made by him and consequently he has withdrawn the said amount. Thereafter he has admittedly not paid any rent to anyone.

3. The petitioner filed the aforesaid eviction petition under Section 14(1)(a) of the Act claiming to be the landlord of the property. Admittedly he is the son-in-law of late Sh. Krishan Chand, the original owner and landlord. The petitioner claimed right to recover the rent from the respondent on the basis of a Will executed in his favour by late Sh. Krishan Chand dated 06.04.1993, who passed away on 21.06.1994. The relevant portion of the said Will which was exhibited

as Ex.PW-1/3 before the trial Court reads as under: -

“WHEREAS I am owner/in possession of property bearing No.1666/1, Gobindpuri Extn., New Delhi, I have constructed a Mandir in the portion of the aforesaid property on an area 20'X60' and said Temple is known as “KRISHAN MANDIR”. Shri Devki Nandan is acting as PUJARI of the Temple and looking after the same properly. I have full faith in him.

I willingly make this WILL that after my demise the said portion the said portion of the property where “KRISHAN MANDIR” is constructed shall be the property of the said Temple and Petitioner. Devki Nandan shall be LEGATEE of that said property. He can get the said portion transferred in the name of Mandir in the records of all concerned authorities on the basis of this Will and shall act as executor till life of the said Mandir and shall be competent to make a WILL in respect of the said Temple to any other deserving Pujari/Person. If unfortunately the said Pujari predeceases me then I shall make another Pujari.”

4. The respondent sought to avoid its liability to pay the rent to the petitioner on the ground that there was a dispute between the heirs of late Sh. Krishan Chand with regard to the succession to the property in question, which is a part of the Krishan Mandir built on an area of 20' X 60'. It was argued by the respondent that after the demise of Sh. Krishan Chand his widow Smt. Rajkumari was realising the rent and the petitioner did not stake any claim at that stage. It was further argued that one of the sons of late Sh. Krishan Chand namely Sh. Lalit Kumar was disputing the Will set up by the

petitioner.

5. As aforesaid, the eviction petition filed by the petitioner was dismissed by the learned ARC and the Additional Rent Control Tribunal has also dismissed the appeal by the impugned order. The learned Tribunal accepts the Will Ex.PW-1/3 as duly proved since one of the attesting witnesses had appeared and testified to prove the Will. My attention is also drawn to the averment made by the respondent in his suit seeking permanent injunction against the petitioner, one Rajiv Kalsi and the MCD, wherein the respondent had himself stated that in an earlier suit filed by him seeking permanent injunction against Smt. Rajkumari and her four sons the *"said Raj Kumari & her sons as defendant no.1 to 5 filed a written statement in which they said they are not keeping any concern with the property, the property has already been declared in favour of defendant no.2 Pt. Devkinanda Rasia, however, said defendant no.2 never received any notice to the plaintiff with regard of his becoming the owner in the said property."*

6. Consequently, so far as the respondent is concerned in my view the issue with regard to the identity of the person entitled to claim the rent was established beyond doubt. The learned ARC and the learned Tribunal in my view rightly held that the property i.e. Mandir had been bequeathed to the temple and the petitioner Sh. Devki Nandan had been given the right of Pujari only. He had been

authorised to get the property transferred in the name of Mandir in the revenue records. No doubt he did not become the absolute owner of the property and was only a Pujari. It is the deity/the Mandir, which was the owner and beneficiary. However, it is clear from the 'Will' that the petitioner was nominated as the manager who was to manage the temple and its property. Obviously, the deity could not have acted on its own and would have to act through a living person. Consequently, it was the petitioner who was entitled to act for and on behalf of deity and to recover the rent from the tenant. No doubt the petition had been filed by the petitioner Sh. Devki Nandan in his own name. However, to my mind is not fatal to the maintainability of the petition since he had relied on the 'Will' the terms of which are abundantly clear.

7. In my view, the Tribunal erred in concluding that since the petitioner had not served the notice on the respondent to recover the rent soon after the demise of late Sh. Kishan Chand, he cannot be considered to be the landlord. The widow of late Sh. Kishan Chand was still alive, and the petitioner was the son-in-law of the deceased late Sh. Krishan Chand and his widow. If he permitted Smt. Rajkumari to recover the rent from the respondent, it cannot be take to mean that he gave up his right to assert his claim to recover the rent as the Manager/Pujari of the temple. Merely because the petitioner had never earlier recovered the rent, even in his capacity of the Pujari of

the temple, it cannot be said that he was not entitled to do so in future. It is not that the petitioner was claiming the rent even for the period for which it stood paid to late Smt. Rajkumari. The petitioner did in fact serve a notice of demand on the respondent and this is evident from paragraph 18(b) of the written statement filed by the respondent in the eviction petition, wherein he states that he has received two notices one from Lalit Kumar and another from the petitioner and both of them claimed to be the owners of the tenanted premises.

8. Learned counsel for the petitioner concedes that the beneficiary under the Will is the temple, and that the petitioner Sh. Devki Nandan Rasia is only the Pujari and manager and that the petitioner would amend the cause title of the eviction petition to reflect the said position.

9. Learned counsel for the respondent has relied on the following decisions: -

1. **Kamla Devi (Mrs.) Vs. M/s Haji Amir** 2006 IV AD (DELHI) 423
2. **Chunni Lal & Anr. Vs. Smt. Vidya Devi & Ors.** 2007 II AD (DELHI) 523
3. **Kishan Chand (Sh.) Vs. Sri Chand** 2006 VII AD (DELHI) 285

10. The decisions in **Kamla Devi** (*supra*) and **Kishan Chand** (*supra*) are totally irrelevant for deciding the present controversy, as they deal with eviction on ground of sub-letting. As far the decision in

Chunni Lal (*supra*) is concerned, I find that the said decision in fact advances the case of the petitioner, inasmuch as, the Will in question has already been proved to the satisfaction of the tribunal by calling one of the attesting witnesses. The title of the landlord as concluded in the court below cannot be questioned by the tenant. Moreover, the Learned Single Judge in **Chunni Lal** (*supra*) held in the said decision that section 14(1)(a) of the Act uses the expression 'Landlord', which is defined in Section 2(e) of the Act, in contra-distinction to the word owner and by attempting to raise a title dispute, the tenant cannot avoid his liability.

11. In view of my aforesaid discussion, I set aside the impugned order passed by the Additional Rent Control Tribunal in RCA No.588/2004 dated 13.03.2006 as well as the order passed by the Additional Rent Controller dated 16.11.2004. I permit the petitioner to amend the cause title of the eviction petition as aforesaid. The respondent is directed to pay to the petitioner the arrears of rent from February, 1999 onwards till date within one month and to continue to pay the same in future regularly and punctually. The amended memo of parties be filed by the petitioner before the Additional Rent Controller within two weeks.

12. Petition stands disposed of.

January 08, 2008
Rsk

VIPIN SANGHI, J.