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HIGH COURT OF DELHI : NEW DELHI

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R.C.R NO.37 OF 2007

& C.M. Appl. No. 10428/2007

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Dated : February 27th 2008

Shri T.B. Jain

.....Petitioner

Through: Mr. R.K. Saini, Advocate

versus

Smt. Savita Ravi & Anr.

..... Respondent

Through: Mr. Rahul Gupta,
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? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.(ORAL)

1. This revision petition has been preferred to challenge the order dated 28.04.2007 passed by the learned Additional Rent Controller (ARC), Delhi in E-563/07/05 filed by the respondent landlady under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act (the Act) whereby the learned ARC has dismissed the application of the petitioner seeking leave to defend holding that no triable issue has been raised, and has passed an eviction order against the petitioner.

The petitioner is a tenant in the tenanted premises comprising of a two rooms set on the first floor of property bearing No.40/1, Shakti Nagar, Delhi. No issue with regard to the ownership of the respondent, the relationship of landlord and tenant and the purpose of letting being residential was seriously raised either before the Rent Controller or before me by the petitioner.

2. It is not disputed that on the first floor of the said property, there are two independent two bedroom units, one of which is let out to the petitioner and the other is lying vacant and is available with the respondent. The husband of the respondent is the Senior General Manager (Finance) with the Power Finance Corporation and presently the respondent is residing with her family in a tenanted two bedroom accommodation in Masjid Moth taken by her husband on lease. The family of the respondent consists of herself, her husband, one son-who was around 14 years of age at the time of filing of the eviction petition in 2005, and one college going daughter. The father-in-law of the respondent sometimes resides in Chennai and sometimes in Delhi. The respondent also has two married sisters-in-laws (husband's sisters) and two brothers-in-laws (husband's brothers). The minimum requirement of the landlady was stated to be of four rooms apart from other living areas, such as drawing-cum-dining room, kitchen & toilet.

3. Mr. R.K. Saini, learned counsel for the petitioner firstly submits that while deciding the application seeking leave to defend, the learned ARC has gone into the merits of the defence. He submits that the ARC was only required to examine whether the defence disclosed by petitioner raised any triable issues, and if it did, the petitioner ought to have been granted the leave. He submits that the learned ARC has conducted a pre-trial, and without granting an opportunity to the petitioner to file his written statement or to lead evidence in support of his defence, the defences raised by the petitioner have been rejected.

4. The further submission of Mr. R.K. Saini is that the petitioner was not served with the documents filed along with the eviction petition. Merely the eviction petition along with the site plan as filed by the respondent was served along with the summons and in the absence of the documents the petitioner was deprived of a fair opportunity to file a proper application and affidavit seeking leave to defend. He submits that in the application seeking leave to defend, this point had specifically been raised by the petitioner. He submits that this itself entitled the petitioner to the grant of leave to defend the eviction petition.

5. The next submission is that even though the property in question had devolved equally and jointly in favour of the respondent

landlady and her mother by virtue of a 'Will' of the maternal grand mother dated 14.11.1983, and a registered partition dated 29.01.2001 had been between the respondent and her mother, according to which the first floor and a portion on the barasati floor of the said property had fallen to the share of the respondent, for all these years the respondent had not felt the need to occupy any portion of the said property. The notice dated 19.4.2005 issued by the respondent to the petitioner prior to filing of the eviction petition did not even make a whisper about the bona fide need of the respondent. These facts, according to the petitioner raise a triable issue about the bona fide need of the respondent.

6. The further submission of the petitioner is that the respondent landlady had deliberately concealed and mis-stated the extent of accommodation that was already available to her in the property in question. She had failed to disclose the one room accommodation available on the second/barsati floor. If the same is taken into account, the respondent would have three bedroom accommodation available with her, which is sufficient to meet her needs considering the size of her family. Counsel for the petitioner submitted that the aforesaid disclosure made by the petitioner in the application seeking leave to defend also raised a triable issue. At the stage of consideration of the said application the Controller had merely to see whether a triable issue had been raised or not, and not to

conduct a pre-trial and reach a conclusion whether the tenant would ultimately fail or succeed in case he is granted leave to defend the eviction petition. He has relied on ***M/s Nahar Enterprises vs. M/s Hyderabad Allwyn Ltd. & Anr.*** 2007(1) RCR 345 wherein the Supreme Court has held that when summons is sent calling upon a defendant to appear in court and file his written statement, it is obligatory on the part of the court to send a copy of the plaint and other documents appended thereto in terms of Order 5 Rule 2 CPC. He also relied on ***Ltd. Col. S.S. Puri vs. S.P. Malhotra*** 95(2002) DLT 399 in support of his submission that at the stage of considering the aspect of grant of leave, the real test should be whether the facts disclosed in the affidavit seeking leave to defend, prima facie, show that the landlord would be disentitled from obtaining an order of eviction, and not whether in the end, the defence may fail. It is well to remember that when the leave to defend is refused, serious consequences of eviction follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination.

7. On the other hand, Mr. Rahul Gupta who appears for the respondent has defended the impugned order. He submits that the learned ARC has applied the well established parameters while considering the petitioners application seeking leave to defend. While denying that the petitioner had not been supplied with a complete set

of documents as filed along with the eviction petition, he submits that, assuming that documents had not been supplied along with the summons in the eviction petition, mere non supply of documents does not lead to the conclusion that the tenant would be entitled to grant of leave to defend the eviction petition. He submits that from August, 2005 when the application seeking leave to defend had been filed by the petitioner till April, 2007, when the same was considered by the Rent Controller, no application to seek supply of documents was filed before the Rent Controller or any such request made to the respondent. He submits that, in fact, the petitioner had attorned to the respondent on being satisfied about the existence of the registered 'Will' of the respondent's maternal grand mother and the subsequent partition deed whereby the tenanted premises fell to the share of the respondent. He further submits that it was open to the petitioner to have inspected the records, and it is difficult to believe that the petitioner did not inspect the record for over two years when the application seeking leave to defend remained pending. He also submits that a perusal of the application seeking leave to defend and the affidavit filed by the petitioner shows that the petitioner had all the documents before him at the time of preparation of the same.

8. On merits, learned counsel for the respondent submits that the respondent is living in rented accommodation and she cannot be dictated terms by the petitioner tenant to require her to remain in

rented accommodation when she has expressed her desire to occupy premises owned by her. With regard to non disclosure of the barasati room as accommodation available to her for her residence by the respondent landlady, the submission of Mr. Gupta is that the said room is in fact a servants room and that the landlady was expected to disclose only that accommodation which she reasonably considered as proper for her occupation and that for her family. He submits that a bare perusal of the plan of the barsati floor relied upon by the petitioner would show that the latrine and bathroom are small, and are situated in one corner, while the room is disjuncted from them. In between the room on the one side and the latrine & bathroom on the other side of the terrace floor, there is open sky. He further submits that the existence of the room on the barasati floor is evident from the partition deed between the respondent and her mother which was placed on record, and the law does not require the landlord to file a plan of the accommodation available with her. He has also referred to the various authorities considered by the learned ARC while disposing of the application seeking leave to defend the eviction petition.

9. Having considered the rival submissions of the parties, I am inclined to reject that petition, since I am satisfied that the learned ARC has properly exercised his jurisdiction and applied the correct principles in coming to the conclusion that the petitioner had not raised any triable issue in his application and affidavit seeking leave to

defend.

10. While it is true that at the time of consideration of the tenants application seeking leave to defend an eviction petition under Section 14(1)(e) of the Act, all that is required to be considered by the Rent Controller is whether any triable issues have been raised by the defendant tenant or not, it is equally well settled that leave to defend should not be granted where the defense does not raise any triable issues and the defense is found to be vague or frivolous, and is raised merely to delay the disposal of the eviction petition. Leave to defend cannot be granted to a tenant merely for the asking. When the Controller examines the defenses raised by the tenant in his application seeking leave to defend, it cannot be said that he conducts a pre-trial. Obviously, the Controller is required to evaluate the defenses disclosed by the tenant at the time of consideration of the tenants application. Without such examination he possibly cannot arrive at a conclusion whether the defense disclosed raise a triable issue, or whether the defense is frivolous. The test to determine whether the tenant has raised a triable issue is to examine whether the landlord would fail in his attempt to evict the tenant, if the defense of the tenant, as disclosed, is established. This test has been applied in the present case as well.

11. I find no force in the submission of the petitioner that on

account of the petitioner allegedly not being served with the documents filed along with the eviction petition, a triable issue arises, entitling the petitioner to the grant of leave to defend the eviction petition. Though the eviction petition was filed in the year 2005, and the application seeking leave to defend was preferred in August 2005, the petitioner admittedly did not take any steps to obtain copies of the documents either from the respondent or from the court till the time that the application of the petitioner came to be decided in April 2007. This in itself shows that the submission of the petitioner that he did not have copies of the documents cannot be accepted. In any event, and assuming that the petitioner in fact was not served with copies of the documents, nothing prevented him from either approaching the respondent or the court to obtain copies and, if he felt that any further triable issues could be raised after a perusal of the said documents, he could have filed an application to raise further grounds or to amend the existing application and file an additional affidavit. None of this was done. Even before me it is not pointed out what further triable issues the petitioner was prevented from raising on account of the alleged non supply of the documents. He is admittedly possessed of the documents now. I see force in the submission of the respondent that after demanding the documents of title from the respondent vide his reply dated 15th June, 2005, the petitioner had in fact attorned to the respondent upon being satisfied about the ownership of the

property in question in the hands of the respondent. It is also interesting and pertinent to note that the petitioner did not attribute the ownership of the other half of the barsati floor to the respondent. The reason for this appears to be fact that as per the partition deed executed between the respondent and her mother, that area did not fall to the share of the respondent. This also is a pointer to the fact that the petitioner was in fact having complete knowledge about the documents filed by the respondent along with the eviction petition. I find no infirmity, much less perversity with the reasoning of the learned ARC on this aspect. Even if it were to be believed that the petitioner was not served with the documents filed with the eviction petition, what has to be seen is, whether any real prejudice was suffered by the petitioner tenant. The petitioner has not been able to establish that he has suffered any prejudice or disadvantage on account of the alleged non supply of the documents. The decision cited by the petitioner in the case of **M/s Nahar Enterprises** (supra) is of no avail in the facts of this case. No doubt, it is obligatory that along with the plaint, copies of documents filed by the plaintiff are required to be served on the defendant. However in the present case, the facts as noted herein above are entirely different from the facts in the aforesaid case. In that case the court had passed an ex parte decree against the defendant, and had also dismissed the application of the defendant to set aside the ex parte decree. In that background of

facts, the court held that the ex parte decree could not be passed against the defendant who had not been duly served with the plaint and the documents. I also find no force in the submission of the petitioner that merely because the respondent had not earlier filed an eviction petition against the petitioner, even though the tenanted premises fell to her share in January 2001, is a factor which raises triable issues or casts doubts on the bona fide need of the respondent and her family members. The landlord may file an eviction petition on the grounds of bona fide need as and when the said need arises subject, of course, to the limitation that such a petition cannot be filed within the first five years of the purchase of the tenanted premises by the landlord. The delayed filing of the eviction petition possibly shows that the landlord did not rush to file a petition at the earliest possible opportunity, and filed the same only when her need for accommodation for her residence and the residence of her family members genuinely and bona fide arose. This aspect does not raise a triable issue as claimed.

12. There is no requirement in law that prior to filing of an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, the landlord should serve a notice on the tenant disclosing his bona fide requirement. Consequently, merely because the respondent in her notice dated 19th April, 2005 did not spell out her bona fide need, it does not follow that the need is not bona fide or genuine, or that a

triable issue arises.

13. Coming to the next submission of the petitioner, which is the mainstay of his arguments, that the respondent had concealed the accommodation available on the barsati floor consisting of one room, latrine and toilet, and that by itself is a reason good enough for grant of leave to defend the eviction petition, I once again do not find any force in this submission of the petitioner. The respondent has explained that the barsati floor room is not fit for use and occupation by the respondent and her family members and is in fact usable as a servant's quarter. It is for this reason that the respondent, while describing the extent of accommodation available to her in the property in question, did not mention the barsati room, the latrine and toilet. It has been held by the Supreme Court that merely because the landlord fails to disclose any part of the accommodation available with him, it does not disentitle him from obtaining an eviction order. Reference in this regard may be made to **H.L.Prabhakar V. Rajiv Singal** (2001) 2 SCC 355 and **Ram Narain Arora V. Asha Rani**, (1991) 1 SCC 141. I have recently dealt with this issue in Smt. Narmada Joshi Vs. Sh. Laxmi Narayan Gupta RCR No.31/2007, decided on 26.2.2008. The learned ARC has rightly placed reliance on **Om Prakash versus Dev Raj Kohli** 679 (1997) DLT 721 wherein it has been held that if the landlord while submitting the site plan of the premises omitted to furnish the plan of the second floor in his

possession, as the same was not used for his residence, the landlord commits no illegality and is not disentitled from seeking an order of eviction if the need is bona fide. Therefore I am of the view that no triable issue arises on the basis of the aforesaid argument of the petitioner.

14. I also find force in the submission of the respondent that the room on the barsati floor cannot be put to use by the family of the respondent or by herself. The latrine and bathroom, apart from being small, are separated from the room by some distance and there is no roof in the passage from the room to the latrine and bathroom. This means that the occupant of the barsati room is exposed to the vagaries of the weather while accessing the latrine and bathroom from the room on the barsati floor. Even according to the petitioner, the respondent's husband is a senior officer with the Power Finance Corporation. Looking to the background and status from which the respondent and her family hails, it is unreasonable to expect that the respondent or her family members should be expected to occupy the barsati room in these circumstances. Moreover, even if the barsati room is taken into consideration as a room available to the respondent and her family members, even then, as opposed to the requirement of four bed rooms, the availability with the respondent would be, at best, of three rooms. The respondent requires one room for herself and her husband and one room each for grown-up children apart from a guest

room to accommodate the father, married sisters and brothers and the family of the respondent's husband. Merely because the respondent's daughter is stated to be occupying hostel accommodation it does not mean that she does not need a room of her own at her home. She would need to visit and live with the family during her holidays or otherwise. No triable issue arises even on this aspect.

For the aforesaid reasons I find no merit in this petition and dismiss the same.

February 27, 2008
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VIPIN SANGHI
JUDGE