

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

+ **RCR No.32/2008**

Judgment reserved on: 8th December, 2008

% Judgment decided on : 2nd March, 2009

Sh. Surendra Trikha Petitioner
Through : Mr. T.N. Saxena, Adv. with Mr. Vimal R.
Verma, Adv.

Versus

Smt. Monika Gupta & Ors. Respondents
Through : Mr. Kuljeet Rawal, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. This Rent Control Revision has been filed against the impugned order passed by Additional Rent Controller on 10th January, 2008 whereby the petition of the respondent No.1 under Section 14 (1)(e) r/w Section 25-B of Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') was allowed and leave to defend application of the petitioner under Section 25-B (4) & (5) was dismissed.

2. The case of the respondent is that the back portion of first floor of property No.G-19, Mansarovar Garden, New Delhi comprising of two rooms, one kitchen, one toilet with facility of common passage, were let out to the petitioner vide lease deed dated 26.09.1990. Smt.

Kanta Gupta was the original owner of the property. The lease agreement dated 26.09.1990 was executed by respondent No.2, Smt. Rita Gupta who is the daughter of late Smt. Kanta Gupta as her attorney. Smt. Kanta Gupta also filed Eviction Petition being No. E-3/96 under Section 14-D of the Act against petitioner wherein leave to defend was granted to the respondent.

3. Respondent No.1 is the granddaughter of Smt. Kanta Gupta and is daughter of respondent No.2 who is a proforma respondent in this petition. It is alleged that Smt. Kanta Gupta has left behind registered Will dated 29.03.1994 in her favour by virtue of which the respondent No.1 became owner of the property. She is married in 1992 and has two children aged about 13 years and 9 years respectively.

4. It is further alleged by the respondents that there are two rooms with two bathrooms, one drawing-cum-dining on the ground floor and two rooms, one lobby, one drawing-cum-dining with facilities of kitchen and toilets on the first floor of the property in dispute in possession of the respondent No.1. However, the entire ground floor of the property in question is stated to be under use and enjoyment of respondent no. 2 Smt. Rita Gupta and her husband who are admittedly parents of respondent No.1.

5. It is stated that Smt. Kanta Gupta in her will dated 29.3.1994 provided for continued possession of Smt. Rita Gupta and her husband Shri Ramesh Gupta during her lifetime and, thereafter, the beneficiary of the will namely the respondent No.1 shall take over the possession and become owner of the ground floor of the property. Therefore,

Respondent No.1 is in occupation of two bed rooms with one bath cum toilet and kitchen along with common passage for the purpose of residence for herself and her family members. She has pleaded that she has two grown up children. Her husband Shri Sanjay Kumar Singh is a medical practitioner presently having his private clinic at Uttam Nagar. It is stated that he also attends to emergency cases of his patients specially during night hours and, therefore, requires one room for examining them in emergency at his house. Respondent No.1, thus, specified that her minimum requirement considering the quality and standard of her life is as follows:-

- a) One bedroom for herself and her husband;
- b) Two rooms for children;
- c) One room for guests to be used as a guest room;
- d) Drawing room;
- e) Kitchen and two bathrooms;
- f) One room for use as clinic by the husband of the petitioner;
and
- g) One pooja room.

6. The petitioner has averred that the respondent No.1 is in occupation of three rooms, one kitchen, bathroom and a big lawn on the ground floor and besides this two rooms on the first floor and as such, she is in occupation of five rooms which is more than sufficient for her. It is stated that only four rooms are required by the respondent No.1 for herself and her family members. It is further stated that there is no need of the respondent No.1 to have a separate pooja room and guest room.

7. It is submitted by the petitioner that Smt. Kanta Gupta was not the owner of the suit property, no document has been filed by the

respondent No.1 to establish her title, therefore, she had no right to execute the Will in favour of the respondent No.1 and it does not confer any title upon her. It is pleaded that the alleged Will is forged and fabricated document and no petition seeking probate of the same has been filed till date.

8. In the present case, the petitioner has raised an objection challenging the ownership of the respondent No.1 with regard to the premises in dispute. He also challenged the Will produced by the respondent No.1 by virtue of which the title is conferred on her. On the other hand, the respondent No.1 alleged that the will is duly registered and confers proprietary rights in respect of the suit property upon her.

9. To counter the abovesaid argument of the petitioner, the respondent stated that in eviction petition filed by Smt. Kanta Gupta, petitioner did not raise any objection regarding the ownership of Smt. Kanta Gupta qua the suit premises. It is further stated that provisions of Section 14-D of the Act do not make it mandatory for the respondent No.1 to be owner of the suit premises and what is required is that the premises in question should have been let out earlier by the widow petitioner or her deceased husband.

10. It is pleaded by respondent No.1 that the name of Smt. Kanta Gupta has been duly recorded in the house tax department of MCD as owner/landlady of the premises in question and she has also been paying property tax in respect of the same. Electricity and water bills paid by Smt. Kanta Gupta to the concerned department are also placed on record. It is further pleaded that a tenant cannot be permitted to

challenge the will said to have been executed in favour of the landlord.

11. Petitioner has pleaded in eviction petition that he has not been paying rent of the suit premises to Smt. Kanta Gupta as his landlord. It is stated that the rent was deposited in the joint bank account of Smt. Kanta Gupta and her daughter Smt. Rita Gupta, respondent no 2.

12. The petitioner has filed the present revision petition on the grounds that the present litigation is the second attempt to evict out a tenant. On 22.12.1995 Smt. Kanta Gupta filed two eviction petitions against the petitioner, one bearing No.1/1996 under Section 14 (1)(a) read with Section 25-B of the Act and another bearing No.3/1996 under Section 14-D read with Section 25-B of the Act. In eviction petition No. 3/1996, the Additional Rent Controller granted leave to defend to the petitioner finding triable issues in the application for leave to defend. On 31.12.2000 Smt. Kanta Gupta expired and the eviction petition No.3/1996 was abated, no substitution application was moved by the respondents and other eviction petition No.1/1996 was withdrawn. On 7.2.2005 the present eviction petition was filed by the respondent No.1 for her additional requirement of accommodation i.e. complete ground floor and first floor claiming herself to be the owner of the premises by the alleged Will dated 29.3.1994.

13. On 5.3.2005, the petitioner filed application for leave to defend raising, inter alia, the following issues :

1. Initially the maternal grand mother of present respondent No.1 i.e. Smt. Kanta Gupta filed a petition under Section 14-D read with Section

25-B of DRC Act for eviction of present petition immediately but the Ld. ADDL. RENT CONTROLLER vide its judgment dated 14.10.1999 granted leave to defend, the present attempt is malafide second attempt to evict the tenant.

2. The alleged will dated 29.3.1994 is a forged document as suddenly it surfaced after four years of death of testator just to use as an instrument to evict a legally protected tenant.
3. The accommodation described in the present petition is not same as it was in the petition filed by her maternal grand-mother, in previous one it was said to have in occupation of two bed room on first floor but in present one it is stated only one bed room, although no alteration is done in the premises.
4. The ration card filed in trial court reveals the petitioners in trial court are one single family, the respondent Nos.1 and 2 herein.
5. The accommodation already in possession of respondent No.1 is sufficient for her family need and no additional accommodation is required, the need showed is exaggerated and malafide just with an intent to evict out tenant.
6. The respondent No.1 is not owner landlord qua the present petitioner.

14. In the affidavit and leave to contest application filed on behalf of the petitioner, it is categorically submitted that the present eviction petition is only an attempt to increase the rent from Rs.1300/- to 3000/- per month. It is submitted that the petitioner/respondent herein is in occupation of three rooms, one kitchen, bath room and a big lawn on the ground floor and beside this two rooms accommodation on the first floor and as such the petitioner/respondent herein is in occupation of five rooms accommodation in this very house which is

more than sufficient for the petitioner. After the death of Smt. Kanta Gutpa the room in her occupation also came in possession of the respondent, therefore, there are five rooms available with the respondents for their accommodation. He also disputed ownership of the respondent and alleged the Will to be a forged and fabricated document. He also urged that the respondent has concealed the fact that she is in possession of two rooms and not one room on first floor. It is also submitted that there is a suit for recovery of arrears of rent filed by Smt. Kanta Gupta against the petitioner pending in civil court and no application under Order 22 Rule 3 CPC was filed by the respondent to be substituted as respondent in the civil suit and said civil suit was withdrawn on the instructions of Smt. Rita Gupta. If there has been any genuine Will, the respondent must have applied for substitution in place of Smt. Kanta Gupta on the basis of alleged Will and suit could not have been withdrawn. Similarly no substitution was applied in the eviction petition filed by Smt. Kanta Gupta under Section 14(1)(a) of the Act.

15. It is also alleged that the property in dispute is a huge property and only a part of property has been shown in the site plan whereas portion of this property on the eastern side has been shown as other property No.G-19(part) and this fact has been intentionally concealed with a view to create a false ground for eviction.

16. It is clear that the leave to defend ought to be granted depends on the facts and circumstances of each case. No hard and fast rule or straitjacket formula can be laid down in this regard for judging the question. A balance has to be maintained between the general object

of the statute which is to provide protection to the tenants against arbitrary action of the landlords for their eviction and the bonafide need of landlord where he seeks to recover possession of premises let out. It is evident from Section 25-B (4) and (5) of the Delhi Rent Act that the burden placed on a tenant is light and limited and if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in clause (e) of the proviso to Section 14(1) of the Act, leave should be granted.

17. The legislature has provided for leave to defend to the tenants in Section 25-B(5) of the Act in the following words :

“S-25B(5) - The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (e) of the proviso to subsection (1) of section 14, or under section 14A.”

18. From the provisions of Section 25B, it is manifest that in case the tenant's prayer for leave to contest is refused by the Controller, then he shall be deemed to have admitted the case of bona fide requirement pleaded by the landlord and on the basis of the deemed admission, an order of eviction will be passed by the Controller. The provision prescribed a drastic measure for eviction of tenants, particularly in a statute which is intended to provide protection to tenants against arbitrary and whimsical action of unscrupulous landlords for their eviction.

19. Strict interpretation of the abovestated provision is necessary. On a reasonable and purposeful interpretation of the statute, it is clear that if from a perusal of the petition for leave to contest and the affidavit filed with it, if the Controller finds that the tenant has pleaded a triable case then the tenant is entitled for leave to contest the case, otherwise the provision is liable to be misutilised by unscrupulous landlords to get their tenants evicted easily.

20. There are ample authorities on the law which lays down the test for deciding an application for leave to defend and it is whether the affidavit filed by the tenant discloses facts which would disentitle the landlord from obtaining eviction order. It was held in **Inderjeet Kaur vs. Nirpal Singh, (2001) 1 SCC 706** in para 13 as under :

“13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25-B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter III-A of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction.....”

21. It was observed in the case of **Liaq Ahmed v. Habeeb-Ur-**

Rehman AIR 2000 SC 2470 that if the tenant discloses the grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave to defend his case against the eviction sought by the landlord. The inquiry envisaged for the purpose is a summary inquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. If the tenant brings to the notice of the Controller, such facts as would disentitle the landlord from obtaining an order for recovery of possession, the Controller shall give him leave to contest. The law envisages the disclosure of facts and not the proof of the facts.

22. In the case of **Precision Steel & Engg. Works vs. Prem Deva Niranjana Deva Tayal, (1982) 3 SCC 270** it was held as under :

“The tenant’s affidavit alone at that stage is the relevant document and the Controller must confine himself to the averments in the affidavit while examining the question whether there was a proper case for granting the leave. If the tenant’s averments are controverted by the landlord that fact may be borne in mind but if the facts disclosed in the affidavit of the tenant are contested by way of proof or disproof or producing evidence in the form of other affidavits or documents that would not be permissible. It is a stage of judging the plausibility of the defence, the stage of proof is later. Mere disclosure of facts, not a substantial defence is the sine qua non.”

“The kind of facts the defendant-tenant can assert when an action is brought under Section 14(1) proviso (e) are that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of the law the landlord was bound to

provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement is with a view to shielding himself from the cross-examination prosecuting litigation through an agent called a constituted attorney, etc. Disclosure of such relevant but inexhaustible facts should ordinarily be deemed to be sufficient to grant leave.”

23. In the impugned order, the Additional Rent Controller held that in a petition under Section 14 (1)(e), owner need not be an absolute owner requiring the registered sale deed in his favour as contemplated by the general law in Section 54 of Transfer of Property Act. He observed that the ground raised by the petitioner that Will relied upon by the respondent, which has not been probated does not confer any proprietary rights in her favour is not a valid ground for reaching the conclusion that petitioner has been able to raise a triable issue in this regard. Discussing about the respondents’ need of each room, the Additional Rent Controller granted the eviction petition in favour of the respondent and against the petitioner and dismissed the leave to defend application of the petitioner.

24. On a perusal of the averments made in the application for leave to defend and its supporting affidavit, it is clear that the petitioner disputed that respondent No.1 has sufficient accommodation with him. She also pleaded increase of rent and disputed the alleged Will. In my view, Additional Rent Controller unfortunately failed to read the application for leave to defend and the affidavit correctly. It appears that the petitioner has raised substantial triable issues which were

overlooked by the trial court while deciding the application for leave to defend. The said error of overlooking the triable issues is the error apparent on the face of record. Therefore, I am of the view that the petition be allowed. The order of eviction passed by the Additional Rent Controller is unsustainable and is liable to be set aside. In view of above, the matter is remanded back to the Additional Rent Controller for further direction. The petitioner is granted leave to defend and file written statement within four weeks.

Petition allowed.

MANMOHAN SINGH, J

MARCH 2, 2009

sa