

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RC.REV.No.49/2010 & CMs No.4265-66/2010**

Decided on: 19.3.2010

IN THE MATTER OF :

SHRI VED PRAKASH AHUJA

..... Petitioner

Through: Mr. S.M.F. Warsi, Advocate

versus

RAJ RANI CHHATWAL & ORS.

..... Respondents

Through: None.

**CORAM**

\* **HON'BLE MS.JUSTICE HIMA KOHLI**

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

**HIMA KOHLI, J. (ORAL)**

1. The present petition is directed against the order dated 21<sup>st</sup> January, 2010 passed by the Addl. Rent Controller(West), Delhi dismissing the leave to defend application of the petitioner/tenant for contesting an eviction petition filed by the respondents under section 14(1)(e) read with section 14 D and section 25-B of the Delhi Rent Control Act, 1958(hereinafter referred to as the 'Act').

2. Briefly stated, the facts of the case are that the tenanted residential premises situated on the ground floor of property bearing

No. B-4/3 Rajouri Garden, New Delhi was let out to the petitioner by the deceased husband of the respondent No.1, Shri Suraj Prakash Chhatwal. He expired in the year 1989. The respondent No. 1 averred in the petition that she is an old ailing lady and there is no other person to look after her except for her son, respondent No. 2, who is also residing with his family members in the remaining portion of the suit premises. It was submitted that the accommodation available with the respondents was insufficient for them as also the members of their family and that the respondent No. 1, who is presently residing at Lucknow, wanted to shift to her own property in Delhi, i.e., the aforesaid suit property. It was further averred that the family of the respondent No. 1 consists of herself, her son, i.e., respondent No. 2, his wife, and a college going daughter, apart from her three daughters. After the death of her husband, respondent No. 1 along with respondents 2 to 6 had inherited the ownership and landlordship of the property in question and sought eviction of the petitioner therefrom, for the purposes of shifting therein along with her son and his family.

3. Summons were issued in the aforesaid petition under the Third Schedule of the Act and were duly served upon the petitioner who filed the application for seeking leave to defend within the statutory period. In the said application, respondent No. 1 did not dispute the relationship of landlord and tenant between the parties and sought to contest the eviction petition on the ground that the

respondent No. 1 was a resident of Lucknow and was residing there with her unmarried daughter in her own house; that her son was already in possession of a part of the suit premises which was sufficient for the requirement of the respondent No. 1; that the husband of the respondent No. 1 had entered into an agreement to sell with the petitioner in the year 1978, in respect of the suit property against which the petitioner had paid a sum of Rs. 5,000/- as earnest money; that the husband of the respondent No. 1 had also filed a similar eviction petition against another tenant in the year 1983, but did not shift to Delhi for the purposes of residence. It was further stated by the petitioner that the eldest daughter of the respondent No. 1 was married and residing at Sector 3, Rohini, Delhi, the third daughter had permanently shifted to USA and respondents No. 6 and 7 (sons of the deceased daughter of respondent No. 1) were residing with their father. The unmarried daughter of respondent No. 1, Ms. Banita, respondent no. 3 herein, was working and residing at Lucknow.

4. Reply to the aforesaid leave to defend application was filed by the respondents, who reiterated the submissions made in the eviction petition and further stated that respondent No. 1 is not the owner of the house at Lucknow and rather, her daughter, Ms. Banita, respondent No. 3, was the owner thereof. It was stated that respondent No.1 was 83 years old and at the fag end of her life, wanted to reside in her own property in the complete care of her only son and his family. In so far as the purported agreement to sell

referred to by the petitioner is concerned, the respondents stated that that the petitioner had failed to buy the property till the year 1993 and finally it was decided not to sell the property and rather shift to the same. It is also stated that a suit for specific performance of the agreement to sell in respect of the suit premises was filed by the petitioner against the respondents, but was dismissed by the High Court. Pertinently, the petitioner chose not to file a rejoinder to the aforesaid reply filed by the respondents.

5. The learned ARC examined the issues raised by the petitioner and arrived at a conclusion that he had failed to point out any triable issues which entitled him for being granted leave to defend. Consequently, the leave to defend application was dismissed and the eviction order was passed against the petitioner.

6. Counsel for the petitioner has made two fold submissions to assail the impugned order. Firstly, he submits that the court below failed to appreciate the fact that the agreement to sell had been entered into by his client in respect of the tenanted premises, which itself was sufficient ground for being granted leave to contest the eviction petition. In this context, it is relevant to note that the petitioner had filed a suit for specific performance of agreement to sell in respect of the tenanted premises wherein he contended that out of the total sale consideration of Rs. 1,10,000/-, he had paid an amount of Rs. 5,000/- to the deceased husband of respondent No.1, on 30<sup>th</sup> October, 1978. Vide judgment and decree dated 11<sup>th</sup> April, 1986, the

aforesaid suit for specific performance filed by the petitioner was dismissed with costs by a Single Judge of this Court. Aggrieved by the aforesaid judgment and decree, the petitioner preferred an intra court appeal, registered as **RFA (OS) No. 29 of 1986** entitled "Shri Ved Prakash Ahuja vs. Major Suraj Prakash Chhatwal". The aforesaid appeal also came to be dismissed with costs vide judgment dated 21<sup>st</sup> January, 2009.

7. The contention of the petitioner that the present eviction petition filed by the respondent No. 1 is a counter blast to his suit, is completely fallacious and untenable in view of the fact that the suit instituted by the petitioner in respect of the tenanted premises attained a quietus in the year 2009 after a prolonged litigation extending over a decade and a half. The petitioner herein failed to get any relief in the suit instituted by him in spite of the purported agreement to sell referred to and relied upon by him. The appeal preferred by him was also dismissed with costs. Rather, the Division Bench made telling remarks against the petitioner by observing that he did not have sufficient means or resources to arrange the payment of the balance amount of Rs.1,05,000/- within a reasonable period of time after the execution of the agreement and kept on prolonging the matter on one pretext or the other and that it was only when the eviction proceedings succeeded against the other tenant that the petitioner started reasserting his rights. Hence, the plea of the petitioner that the issue of agreement to sell with respect to the

tenanted premises raised by him in his leave to defend application was a triable issue, is devoid of merits and rejected.

8. The second argument sought to be urged by the counsel for the petitioner is that the court below failed to appreciate the fact that the respondent No.1. is already having a house at Lucknow where she is residing with her daughter. The aforesaid plea was duly considered by the learned ARC who took note of the fact that the respondent No. 1 had stated that she was not the owner of the house at Lucknow, which fact was not disputed by the petitioner by filing any rejoinder and further, the petitioner did not place on record any material to support his assertion regarding the ownership of the respondent No. 1 in respect of the house at Lucknow. The court below was therefore justified in concluding that the petitioner chose to accept the submission of the respondent No. 1 that the house in question did not belong to her and is owned by her daughter Banita, respondent No. 3. Further, the learned ARC observed that if the respondent No. 1 at the fag end of her life wants to shift to her own house, then there is nothing malafide in it. This Court concurs with the observations made in the impugned order that the desire of respondent No. 1 to live with her own son and his family members for passing the remaining days of her life cannot be termed as malafide.

9. Having perused the impugned order and the findings returned by the learned Additional Rent Controller, this Court is of the opinion that the impugned order is in accordance with law and does

not reflect any illegality, perversity or arbitrariness, which deserves interference. For the reasons stated above, the present petition is dismissed along with the pending applications.

(HIMA KOHLI)  
JUDGE

MARCH 19, 2010  
RS