

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

**RC. REV. No.35/2009**

%

**Date of decision: 29<sup>th</sup> January, 2010**

**SARWAN DASS BANGE**

**..... Petitioner**

Through: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Anshu Mahajan & Mr. Vikash Aggarwal, Advocates.

Versus

**RAM PRAKASH**

**..... Respondent**

Through: Mr. S.P. Aggarwal, Advocate.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

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

**RAJIV SAHAI ENDLAW, J.**

1. This Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 has been preferred by the landlord against the order dated 27<sup>th</sup> April, 2009 of the Additional Rent Controller granting to the respondent/tenant leave to defend the petition for eviction under Section 14(1)(e) read with Section 25B of the Act.

2. The petition for eviction has been filed with respect to the portion of House No.60, Vinobha Puri, Lajpat Nagar, New Delhi in occupation of the respondent/tenant. Besides the respondent/tenant, there were two other tenants also in the remaining portion of the house. It was the case of the petitioner/landlord before the Additional Rent Controller that

he had filed the petitions for eviction not only against the respondent/tenant but also against the other two tenants in the house, with a view to have the entire house vacated for his own use. During the course of hearing before this Court, the senior counsel for the petitioner has informed that the applications of the other two tenants for leave to defend had been dismissed by the Additional Rent Controllers; that RC Revision No.68/2008 preferred by one of the other two tenants was dismissed by this Court vide order dated 11<sup>th</sup> November, 2008 and RC Revision No.21/2009 preferred by the other tenant was also dismissed by this Court vide order dated 1<sup>st</sup> May, 2009, save that time up to 31<sup>st</sup> March, 2010 has been granted to the other tenant to vacate the premises.

3. The petitioner, in the petition for eviction claiming to be the owner/landlord of the house has stated that he though born in India, migrated to UK in the year 1966 and was employed as a Senior Conductor in the Department of British Railways and retired therefrom on 5<sup>th</sup> April, 1997; that at the time of filing of the petition, he was 74 years of age and his wife was 66 years of age. It is the case of the petitioner/landlord that his family comprises of four sons and one daughter; that now in his old age he wants to permanently settle in India; that the house aforesaid is the only residential accommodation owned by him; that he is thus forced to take shelter in his relative's house at Jalandhar, Punjab; that he needs the entire house for occupation of himself and his family members.

4. The respondent/tenant applied for leave to defend denying that the petitioner is the owner and landlord and also averring that the premises had been let out to him for residential-cum-commercial purposes and hence the ground of eviction under Section 14 (1)(e) of the Act is not available to the petitioner/landlord; that the requirement of the petitioner/landlord is not bona fide – neither the petitioner nor any of his dependents have any intention to reside in India.

5. The Additional Rent Controller has in the order impugned in this petition dealt with the matter in a very cursory manner. After reproducing the pleadings, arguments and passage from the judgment of the Supreme Court in ***Precision Steel and Engineering Works Ltd. Vs. Prem Deva Niranjana Deva Tayal*** AIR 1982 SC 1518, it has merely been

observed that the respondent/tenant has disputed each and every ingredients of Section 14(1)(e) of the Act and thus disputed question of fact arise making the respondent/tenant entitled to leave to defend. Though the judgments cited by the petitioner are recorded in the order but there is no reasoning as to why the law laid down therein is not to be applied. Aggrieved there-from the present revision petition has been preferred.

6. The Supreme Court inter alia in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 has laid down the scope of the revision petition to this Court. This court is to interfere in revision only when the order of the Controller is found to be not in accordance with law or when the same is perverse and based on a conclusion which no reasonable person could have reached. Applying the said basis and on the basis of records of the controller copies of which have been filed before this court, I find the order of the Controller in the present case to be not in accordance with law.

7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition. However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.

8. I will now proceed to examine the pleas of the respondent/tenant in the application for leave to defend vis-à-vis the ingredients of Section 14(1)(e) i.e. of the petitioner being required to be (i) owner (ii) landlord (iii) having requirement of the premises and (iv) having no other reasonable/suitable alternate accommodation available to him.

9. Though the respondent/tenant in the present case had disputed the purpose of letting also but the same has w.e.f. the pronouncement of the judgment by the Supreme Court in *Satyawati Sharma Vs. Union of India* AIR 2008 SC 3148 ceased to be a part of Section 14(1)(e). A landlord is now not required to establish that the premises were let out for residential purposes only to be entitled to an order of eviction under Section 14(1)(e) of the Act.

10. The conduct of the respondent/tenant in the present case shows that he has put the petitioner/landlord to proof of each and every averments. The respondent/tenant has disputed that the petitioner is the owner. However the petitioner/landlord has in the petition for eviction made elaborate pleadings in this regard and which have not been controverted specifically by the respondent/tenant. The effect of non traverse would be the admission by the respondent/tenant of the said pleas.

11. The petitioner has pleaded that the house in question comprise of land admeasuring 204 sq. yards and a single storied construction existing thereon; he has given particulars of the documents and their registration vide which he has acquired the said property. The originals of the said documents were also filed in Court and copies thereof were filed before the controller as well as before this Court. From the said documents, there is no manner of doubt that not only a perpetual deed of lease was executed by the President of India with respect to land underneath the house in favour of the petitioner but a conveyance deed of the superstructure was also executed and registered in favour of the petitioner/landlord.

12. The only plea of the respondent/tenant in the application for leave to defend qua ownership is that other persons claim to be the owner. However it is not as if the petitioner has not dealt with the said case in his petition for eviction. The averments in

that regard were also not controverted by the respondent/tenant in the application for leave to defend. It is the case of the petitioner/landlord that one Kishan had instituted a suit claiming to be the owner/landlord of the property against the respondent/tenant herein and the another tenant in the house. The said suit was decreed ex parte. Though the petitioner was not a party to the said suit but upon execution being filed by Kishan of the ex parte decree and the petitioner/landlord learning of the same filed objections under Order 21 Rule 58 of the CPC in the said execution, claiming himself to be the owner/landlord of the house. The respondent/tenant herein at that time, also applied to the same Court for setting aside of the order of ex parte decree against him. The petitioner has placed before this Court the order in the said execution and by which order it has been held that the petitioner/landlord is the owner/landlord of the house. The said order was made in the presence of the respondent/tenant. Thus, in the face of the said documents, the plea of the respondent in the application for leave to defend of persons other than the petitioner claiming to be the owner of the property cannot be said to be such which needs to be put to trial.

13. Besides the aforesaid Kishan, the respondent has also named Sh. Praksh Munshi also as a person who was collecting rent of the property. However, the petitioner has again in the petition for eviction itself contended that the said Sh. Prakash Munshi is none other than his brother-in-law who was collecting rent and dealing with the respondent on behalf of the petitioner and owing to the petitioner then being abroad. Even otherwise in the face of the documents of title of the house in favour of the petitioner and non traverse thereof and the findings in the execution filed by Kishan, the bald plea of Sh. Prakash Munshi being the owner and/or claiming rent from the respondent/tenant is not such which needs to be put to trial and the plea is found to be vexatious. It is not the case of the respondent/tenant that upon the petition for eviction being filed by the petitioner, the respondent/tenant approached Sh. Prakash Munshi or that Sh. Prakash Munshi has set up any title to the house adversely to the petitioner. Moreover the respondent has not denied the averment in the petition of having been inducted into the premises as a tenant by the

petitioner acting through his brother-in-law. I thus find that no ground for leave to defend qua the claim of the petitioner of being the owner is made out.

14. Once the petitioner/landlord is held to be the owner of the house under Section 2(L) of the Act, an owner is also the landlord. In any case, the rent is admittedly paid to Sh. Prakash Munshi and who as aforesaid was collecting the same on behalf of the petitioner. Thus, the relationship of landlord and tenant is also established.

15. There is no plea in the application for leave to defend of any other alternate accommodation being available to the petitioner in the city of Delhi. Thus the outcome hinges on whether the respondent has in the application for leave to defend raised any plea which if established by evidence would lead to a conclusion that the petitioner has no requirement for the premises.

16. The respondent/tenant has denied that the petitioner/landlord has requirement and / or that his requirement is bona fide and besides the same has merely stated that the petitioner has been living abroad, has never lived in India and has no intention to live in Delhi. However, the respondent/tenant has not controverted the averments in the petition for eviction of the petitioner/landlord having been employed with British Railways and having retired in the year 1997 (the petition for eviction was filed in 2006). The respondent/tenant has also not pleaded any interest/vocation/business of the petitioner/landlord which would keep him in UK and / or which requires him to be in UK only. In this regard, it is significant that the respondent/tenant was inducted as a tenant in the premises more than 15 years prior to the institution of the petition for eviction. It is not anybody's case that during the said period of 15 years, the petitioner ever got the rent increased from the respondent or threatened the respondent with eviction at any point of time. The conduct of the petitioner/landlord shows that the petitioner/landlord sought to evict not only the respondent/tenant but also the other tenants in the house only after he had retired from his employment in UK. The petitioner has pleaded that he and his wife would settle down in the house in their old age and desire to come back to their own country in the last stage of their life. Except for a bald denial, there is no contravention of

the said plea also. There is no plea that any action or conduct of the petitioner shows otherwise.

17. The senior counsel for the petitioner/landlord has in this regard drawn attention to the judgment of the Supreme Court in *Baldev Singh Bajwa Vs. Monish Saini* (2005) 12 SCC 778. Though that judgment was on the provisions of the East Punjab Rent Restriction Act, 1949 relating to NRI's but the law laid down therein is of general application. The Supreme Court took up for adjudication, the contentious issue relating to the standard of proof required by the NRI landlord to prove his requirement of the accommodation from which ejectment is asked for and the factors to be considered at the stage of granting leave to defend. It was held that the legislative intent is of expeditious disposal of the application for ejectment of tenant filed on the ground of requirement by the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only. It was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the Court for ejectment of tenant unless his need is bona fide - no unscrupulous landlord in all probability, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him. It was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the court his requirement shall be presumed to be genuine and bona fide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine.

The tenant is required to give all the necessary facts and particulars supported by documentary evidence if available to prove his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord; a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.

18. The senior counsel for the petitioner/landlord has also drawn attention to the judgment of this Court in **Saroj Khemka Vs. Indu Sharma** 79 (1999) DLT 120; in that case also the landlord had been a resident abroad and had filed the eviction petition pleading requirement for the reason of intent to shift to India. This Court while affirming the order of the Controller rejecting the application of the tenant for leave to defend, held that no Court can compel a person to stay in a house of his relative or in a hotel and because the said person is staying abroad, he has no right to stay in his own premises. It was held that if a person is residing abroad and owns a house/flat in Delhi and wants to spend a few weeks or a few months in Delhi, then he/she must be allowed to stay in his/her own house. Similarly in **T.D. Dhingra Vs. Pritam Rai Khanna** 48 (1992) DLT 208 it was held that there is no provision of law whereby an Indian who had acquired foreign citizenship is disentitled to enjoy residence in his own property in India when he chooses to return to India. Also, in **S.P. Kapoor Vs. Kamal Mahavir Prasad Murarka** 97 (2002) DLT 997 this Court held that if a landlord/owner is permanently settled outside Delhi but his visits to Delhi are frequent, his need, even for temporary stay in his own premises, has to be viewed as a bonafide need.

19. The counsel for the respondent/tenant has also contended that the petitioner/landlord has not filed his passport before the Court to show his visits or stay in Delhi and Jalandhar as pleaded. It is also urged that the petitioner/landlord who has been residing in UK for the last 40 years is highly unlikely to shift to Delhi. However, in view of the observations in **Baldev Singh Bajwa** (supra), the same do not constitute a ground for granting leave to contest to the respondent/tenant. The Supreme Court has held that if

the landlord does not occupy the premises, the tenant has been provided with a remedy in the Act itself, in the case of Delhi Rent Control Act, in Section 19 of repossession. As in the Punjab Act, Section 48 (3) of the Delhi Act also makes the action of the landlord of disposing of the premises after evicting the tenant on the ground of personal requirement, an offence.

20. Even otherwise, I find the conduct of the petitioner/landlord of instituting petitions for eviction against three different tenants, already having succeeded in two, of having filed objections to the execution of the decree obtained by Kishan (*supra*), of appearing in the witness box in the said proceeding do indicate that the petitioner/landlord is serious about his intent.

21. I have also wondered as to what further can the landlord do, even if compelled to appear in the witness box. The landlord can at best again depose of his intent to settle down or spend considerable time in Delhi in his old age. The tenant would at best in cross examination suggest otherwise to the landlord. The position would be no different than it is today. For this reason also I find no triable issue to be arising on this account either.

22. Though not urged, I have also considered the effect of the eviction order obtained by the petitioner/landlord against the other tenants in the property. However, on a perusal of the site plan of the house, I find the nature of construction therein to be such as to make it impossible for the petitioner/landlord to start using/occupying the house with the presence of the respondent/tenant in a portion thereof. The petitioner/landlord would have no privacy whatsoever of residence. Moreover, it is the admitted position that the construction is old and before the same can be used by the petitioner/landlord for any purpose, it is likely to require considerable works. The said works also cannot be carried out with the respondent continuing in possession of a portion thereof. Thus, viewed from any perspective, the requirement of the petitioner is made out and the application for leave to defend not found to be disclosing any triable issue whatsoever.

23. There is yet another aspect of the matter. It is not disputed that the petitioner has been in UK since 1966. Nevertheless, the petitioner thereafter i.e. in or about the year 1978 to 1982 acquired the house in question. It can safely be presumed that the petitioner/landlord while residing away from the country for the last over 10 years nevertheless invested in the house in a hope to finally return to the country of his birth and origin and to spend his old age here. The case of the petitioner/landlord is not found to be preposterous as to be unbelievable so as to be necessarily put to trial. The petitioner/landlord was residing abroad to earn his livelihood and after retiring and especially when he is now not shown to have any engagements there, has a right to live in his house in Delhi. Even otherwise with the easier and cheaper travel, the visits from UK to Delhi today are not fraught with the difficulties as they were earlier. The Full Bench of this Court in ***Mohan Lal Vs. Tirath Ram Chopra*** AIR 1982 Delhi 405 has also held that it is natural aspiration for a landlord in his old age to stay in his own house in the evening of his life and a desire to spend the last few years of the life in the own house cannot be regarded as fanciful. It was further held that it is for the tenants to disclose facts which would show that this desire or need was fanciful or not bonafide. As already observed, the facts disclosed by the respondent/tenant in the present case do not make out such a case. The Supreme Court in ***Prativa Devi Vs. T.V. Krishnan*** 1996 (5) SCC 353 reiterated that the landlord is the best judge of his residential requirement and has a complete freedom in the matter and it is no concern of the courts to dictate to the landlord how, and in what manners he should live. The Supreme Court deprecated the solicitous approach of the courts below and held that there is no law which deprives the landlord of the beneficial enjoyment of his property.

24. The petition therefore succeeds. The order of the Controller granting leave to defend the petition for eviction is set aside. The application of the respondent/tenant for leave to defend the petition for eviction is dismissed. An order of eviction is passed in favour of the petitioner/landlord and against the respondent/tenant with respect to the premises as described in paras 1,2, 8 and 20 of the petition for eviction and as shown in

the site plan filed there with; however, in accordance with the law, the same shall be unexecutable for a period of six months from today. No order as to costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**January 29<sup>th</sup>, 2010**  
gsr