

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RC.REV. No. 18/2010**

Judgment reserved on : 18.02.2010
Date of decision : 05.04.2010

IN THE MATTER OF :
BHAGWATI

..... Petitioner

Through: Mr. S.P. Singh Chaudhary, Advocate

versus

VIJAY RANI

..... Respondent

Through: Mr. S.K.Bhaduri, Advocate

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.

1. The present petition is directed against a judgment dated 30.10.2009 passed by the learned Additional Rent Controller, dismissing the leave to defend application of the petitioner/ tenant in an eviction petition filed by the respondent/landlady under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act, 1958, in respect of one room with *verandah* in front of the said room situated on the ground floor of property bearing No.10258, Gali Ambale Wali, Manakpura, Karol Bagh, New Delhi.

2. The respondent filed an eviction petition in respect of the tenanted premises in occupation of the petitioner on the ground of *bona fide* requirement. She submitted that her grandmother, Smt. Javitri Devi (mother of her deceased father) was the owner of the entire property and during her lifetime, had executed a Will dated 5.9.1972 bequeathing the suit property in her favour. Smt. Javitri Devi expired on 12.9.1972 and upon her demise, the respondent became the sole and absolute owner of the suit property. It was further stated that earlier, the father of the respondent had been looking after the said property on her behalf.

3. The respondent averred in the eviction petition that in the year 1969, Smt. Javitri Devi had let out the tenanted premises to Sh. Murari Lal. Sh. Murari Lal was staying in the tenanted premises with his two brothers, namely, Sh. Jalim Singh and Sh. Yad Ram. The son of Sh. Jalim Singh shifted to another accommodation during the life of his father whereas Sh. Yad Ram, his son and daughter-in-law, Smt. Bhagwati (petitioner herein) remained with Sh. Murari Lal in the tenanted premises. Sh. Murari Lal is stated to have died issueless and upon his demise, at the request of the petitioner, the father of the respondent accepted her as a tenant in place of Sh. Murari Lal, in respect of the tenanted premises and the rent @ Rs.60/- is stated to have been paid by the petitioner.

4. The respondent stated that she required the tenanted premises for her residence as also for her family members and that she had no other reasonably suitable residential accommodation available with her. It was further stated that the respondent's family consists of herself, her husband and her two sons aged 17 years and 9 years respectively. While the first floor and second floor of the suit premises is occupied by the brothers and the mother of the respondent, she expressed her desire to shift to the ground floor occupied by the petitioner so as to live close to her near and dear ones. She stated that she needs one bedroom for herself and her husband and two rooms for her two sons, apart from one drawing room, one guest room and a pooja room.

5. In the leave to defend application, the petitioner raised various grounds to oppose the eviction petition. She disputed the relationship of landlord and tenant between the parties. She also disputed the ownership of the respondent, in respect of the tenanted premises. She claimed that as the respondent not only requires the suit premises for her residential purposes, but also for residential-cum-commercial purpose, the eviction petition was liable to be dismissed as not maintainable. The purpose of letting and the *bona fide* need of the respondent were also disputed by the petitioner.

6. The learned Additional Rent Controller considered the pleadings and the documents filed by both the parties and arrived at

the conclusion that the respondent/landlady was the owner of the suit premises, and there existed a relationship of landlord and tenant between the parties. It was observed that the purpose of letting was no longer in dispute, in view of the judgment of the Supreme Court in the case of Satyawati Sharma & Anr. Vs. UOI reported as **148(2008) DLT 705(SC)**. The claim of the petitioner that the respondent had her own property at Vishnu Garden was turned down on the ground that the petitioner failed to substantiate the said contention. The *bona fide* need of the respondent was examined and found to be genuine. As a result, the impugned judgment was passed holding *inter alia* that the petitioner had not been able to show the existence of any triable issue. The leave to contest application of the petitioner was consequently declined and an eviction order was passed against the petitioner, in respect of the tenanted premises, executable after a period of six months from the date of passing of the impugned judgment.

7. Counsel for the petitioner submitted that the learned Additional Rent Controller failed to take into consideration that triable issues had been raised by the petitioner in the leave to contest application and she was entitled to contest the eviction petition by filing a written statement. He contended that in the leave to contest application, the petitioner had stated that the respondent was not the owner of the tenanted premises, which fact was completely ignored by the learned Additional Rent Controller. He further stated that the

relationship of landlord and tenant between the parties was disputed by the petitioner who had stated that the rent receipts placed on the record by the respondent were forged and fabricated and this ground itself was sufficient to grant her leave to defend. In support of his submission, he relied on a judgment of the Supreme Court in the case of Precision Steel & Engineering Works and Anr. Vs. Prem Deva Niranjan Deva Tayal reported as **(1982) 3 SCC 270**.

8. *Per contra*, counsel for the respondent drew the attention of this Court to a number of documents filed before the court below, in support of his submission that the learned Additional Rent Controller rightly concluded that the respondent was the lawful owner of the tenanted premises and that the petitioner was a tenant under her.

9. Counsels for the parties have been heard at length. This Court has carefully examined the impugned judgment in the light of the pleadings in the leave to defend application and the documents filed by the respective parties, in the court below.

10. It may be stated at the outset that the principle that in revision the High Court cannot interfere with the findings of fact arrived at by the Controller on re-appreciation of evidence, has been reiterated in numerous cases. The scope of interference in exercise of revisional powers of this Court is very limited. It is settled law that while exercising powers under Section 25-B (8), this Court does not sit in appeal and can re-appreciate the evidence only for the purpose of

assuring itself that the order of the learned ARC is in accordance with the evidence and does not suffer from any jurisdictional error or material irregularity. In "J.K.Saxena vs. Shri Madan Lal Khurana" reported as **75 (1998) DLT 903**, a Single Judge of this Court discussed the scope of interference in the exercise of revisional powers and observed that "there is limited scope of interference in exercise of revisional powers of this Court and the High Court is merely to examine the records in order to satisfy itself that the decision of the Controller is 'according to law'. The High Court, however, will not re-appreciate the evidence and sit in judgment over findings of fact arrived at by the Controller. The High Court cannot also interfere merely because on the same evidence, it is likely that it may come to a different conclusion. In other words, the High Court will not be justified in interference with the plain finding of fact."

11. In "Sumitra Devi Vs. Raj Rani Sehdev", reported as **98(2002) DLT 355**, a Single Judge of this Court again observed that while exercising powers under Section 25-B(8) of the Act, the High Court has to test the orders of the Rent Controller on the touch-stone of "whether it is according to law" or not. The High Court must not substitute its own opinion in place of the view taken by the Controller unless the view taken by him betrays lack of reason or objectivity or appears to be so unreasonable that no prudent man could have taken that view.

12. The same opinion has been reiterated in a recent judgment in the case of "Akhtari Begum & Ors. vs. Abdul Qadir" (**R.C.R. No.60/2008**) decided on 21.08.2008, where a Single Judge of this Court while deciding an application under Section 25-B of the DRC Act, observed as under:

"7. It is settled law that this Court, while sitting in revision, cannot substitute its own judgment in place of the judgment of the learned ARC. The Court can set aside the order of the ARC only if there was some manifest error either of facts or of law on the face of the judgment. The error must be so glaring that it vitiates the judgment itself. The proviso to Section 25-B(8) of the DRC Act indicates that power of High Court is supervisory in nature and it is intended to ensure that the Rent Controller confirm to law when he passes the order. The satisfaction of the High Court must be confined to the limited sphere that the order of the Rent Controller is "according to the law".

13. In "Atma S. Berar Vs. Mukhtiar Singh" reported as **(2003) 2 SCC 3**, the Supreme Court has observed that in the case of "Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta" reported as **(1999) 6 SCC 222**, the Court had made a comparative study of the provisions contained in Section 115 CPC in juxtaposition with Section 25-B(8) of Delhi Act and held that the High Court cannot appreciate or re-appreciate the evidence dictated by its mere inclination to take a different view of the facts as if it were a court of facts. A conclusion arrived at which is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available, ignoring the weight of evidence, proceeding on a wrong

premise of law or deriving such conclusions from the established facts as betray a lack of reason and/or objectivity, would render the finding 'not according to law', calling for an interference under Section 25-B(8) proviso by the High court.

14. Coming to the case in hand, a perusal of the leave to defend application filed by the petitioner shows that except for making a bald averment disputing the ownership of the petitioner in respect of the tenanted premises, she failed to state that if not the respondent, who was the owner thereof. On the other hand, the respondent proved her ownership by placing on record a Will dated 5.9.1972, executed in her favour by the earlier owner, Smt. Javitri Devi, who was her grandmother, a mutation letter and house tax receipts issued in her favour by the civic authorities and counterfoil of rent receipts signed by Sh. Murari Lal, the predecessor-in-interest of the petitioner and those signed by the petitioner.

15. Counsel for the respondent has also drawn attention of this Court to a judgment dated 24.10.1998 passed by a Single Judge of this Court in the RCR No.44/2008 entitled” Madan Lal Vs. Vijay Rani & Ors. In the aforesaid petition, the petitioner therein challenged an order dated 24.1.2008, passed by the learned Additional Rent Controller, dismissing his leave to defend application in respect of a tenanted premises, which is part of the same property, subject matter of the present petition. The respondent therein is also the respondent

in the present case. In the aforesaid judgment, the very same Will executed by Smt. Javitri Devi in favour of the respondent/landlady was considered by the court below and the Single Judge, apart from the mutation letter and the house tax receipts, which were found to be sufficient to prove that she was the owner of the tenanted premises.

16. In the present case also, there is no reason for this Court to differ from the conclusion arrived at by the learned Additional Rent Controller. As against sufficient material placed on record by the respondent to establish the fact that she is the owner of the property in question, a mere bald assertion was made by the petitioner that the Will produced by the respondent was unregistered, in the absence of any specific assertion as to who was the owner of the suit premises, can hardly advance her case further. This Court is fortified in its opinion by the judgment in the case of "Zahid Hussain Thr. LRs. vs. Aenul Haq Qureshi Thr. LRs" reported as **(2005) 1 RCR 323**, where it was observed that a bald denial of ownership by the tenant or a frivolous plea cannot be a ground for granting leave to defend in his favour.

17. Similarly, in the case of "Rajender Kumar Sharma & Ors. vs. Smt. Leelawati & Ors." reported as **155 (2008) DLT 383**, a Single Judge this Court held that "it is settled law that for the purpose of Section 14(1)(e) of Delhi Rent Control Act, a landlord is not supposed

to prove absolute ownership as required under Transfer of Property Act. He is required to show only that he is more than a tenant. "

18. In "Tahira Begum vs. Sumitar Kaur & Anr." reported as **166 (2010) DLT 443**, while relying on the decision of the Supreme Court in the case of "Shanti Sharma vs. Ved Prabha" reported as **AIR 1987 SC 2028**, it was observed that "for the purpose of Section 14(1)(e) of the Act, ownership is not to be understood as absolute ownership, but only as a title better than the tenant. So what has to be seen is whether on the basis of aforesaid facts it can be said that the petitioner has any title to the property, a title better than the respondents."

19. In "Meenakshi vs. Ramesh Khanna & Anr." reported as **60 (1995) DLT 524**, it was held that mere denial of ownership of the landlord by the tenant does not mean that the matter has to be sent for trial. The following observations are apposite :-

"6. In these circumstances, I do not consider that this was a case for grant of leave to contest to the tenant. **Mere denial of ownership of the landlord does not mean that every case must be sent for trial involving years. The Controller has to assess the strength of the case of the tenant regarding denial of ownership of the petitioner. For this, guidelines have already been laid down in various decisions. Mere denial of ownership is no denial at all. It has to be something more. For this, first and foremost thing which has always been considered as a good guide is does the tenant say who else is the owner of the premises if not the petitioner ?** In the present case, the tenant does not say anything except denying petitioner's ownership. The tenant is completely silent on this aspect. Merely by saying that the petitioner is not the owner, the tenant is trying to

ensure that the case drags on for years for trial. If leave is granted on basis of such vague pleas, it will encourage the tenants to deny ownership of the petitioners in every case. The tenants are well aware that once leave to contest is granted, the cases go on for trial for years. Their purpose is achieved. Keeping this in mind, the Controllers should rather have positive approach in such matters so as to discourage such vague and frivolous pleas which are most of the time false to the knowledge of persons raising them.

(7) The object of the requirement contained in Clause (e) that the petitioner should be the owner of the premises is not to provide an additional ground to the tenant to delay the proceedings by simply denying ownership of the landlord of the premises and thereby putting him to proof by way of full fledged trial. The object seems to be to ensure that the provision is not misused by people having no legal right or interest in the premises. Unfortunately, the Controllers have started misreading the provision which results in converting the proceedings into suits as if they are meant to determine title to property. In proceedings under Section 14(1)(e) of the Act, the tenant is never a contender for title to the property. When the tenant does not even aver that there is any other person having a better title to the property, what is the worth of a plea of denial of ownership of the petitioner ? While dealing with the question of ownership in cases under Section 14(1)(e) of the Act, the Controllers should keep these aspects in mind while considering the application of the tenants for leave to contest.”

20. Further, the respondent had placed on record a copy of the complaint dated 15.6.2007 written by the petitioner to the Commissioner of Police wherein, she herself admitted being a tenant in the suit premises. In the teeth of the aforesaid documents, when read collectively, it has to be held that the plea of the counsel for the petitioner that the petitioner was entitled to grant of leave to defend the eviction petition on the ground that the respondent is not the

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owner of the suit property, was rightly turned down by the learned Additional Rent Controller.

21. The contention of the counsel for the petitioner that having disputed her signatures on the counterfoils of the rent receipts placed by the respondent on record, as forged, and her plea that she did not know how to sign, was itself a sufficient ground for taking the matter for trial is also found to be devoid of merits. The respondent had placed on record the following documents to contradict the aforesaid contention :-

(i) Certified copy of the application form dated 25.8.2005 submitted by the petitioner applying for a ration card bearing her signatures.

(ii) Certified copy of the application dated 6.7.2007 submitted by the petitioner under the Right to Information Act, duly signed by her.

(iii) Certified copy of the order dated 7.1.2005 passed by the Fast Track Court-II in STA NO.293/2004 , entitled " State Vs.Kashi Ram & Others.' where the petitioner appeared in person and signed the order sheet.

(iv) Certified copy of the ration card of the petitioner duly signed by her.

(v) Certified copy of the acknowledgement card duly signed by the petitioner, rent receipts duly signed by the petitioner and Sh.Murari Lal.

22. All these documents were duly considered by the learned Additional Rent Controller. After examining them, he disagreed with the plea of the petitioner that there existed no relationship of landlord

and tenant between the parties. In the light of all the above documents, this court does not agree with the contention of the counsel for the petitioner that the fact that his client disputed her signatures on the counterfoils of the rent receipts, was itself sufficient ground for grant of leave to defend. The aforesaid documents belie the submission of the petitioner. It is apparent that the petitioner is seeking to wriggle out of the aforesaid documents, which are found to be reliable as they are mostly emanating from official records maintained by the government authorities. There is no question of the respondent having tampered with them in any manner, nor can their veracity be held to be doubtful. The plea of the petitioner that she does not know how to sign, is falsified in the teeth of the aforesaid documents.

23. For all the aforesaid reasons, this Court is of the opinion that the impugned judgment dated 30.10.2009 is in accordance with law. The same does not suffer from any illegality, perversity or any jurisdictional error, which deserves interference by this Court. Therefore, while upholding the impugned judgment, the present petition is dismissed.

(HIMA KOHLI)
JUDGE

APRIL 05, 2010
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