

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

% *Date of Judgment: 24.10.2011*

+ **RC.REV.No. 422/2011 & CM Nos.19482-83/2011**

SHRI BISHAN DASS & ORS. Petitioners
Through: Mr. Varinder Kumar Sharma,
Advocate.

Versus

SHRI MAJHAR ALI SHAH & ANR. Respondents
Through: Nemo

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1 The order impugned before this Court is the order dated 07.06.2011 vide which the application for leave to defend filed by the tenant Bishan Dass in an eviction petition under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed.

2 Record shows that the present eviction petition has been filed under Section 14 (1)(e) of the DRCA. The landlord claimed himself to be the owner of the shop bearing No. 6400-6401, Katra

Baryan, Fatehpuri, Delhi; premises have been let out to the respondents for non-residential purpose i.e. for selling milk; the petitioner are permanent residents of Aligarh (Uttar Pradesh); they have a residential accommodation on the first floor of the disputed property and they require the said shop which is on the ground floor bonafidely as they have intention to shift their business from Aligarh to Delhi and to carry on their business from Delhi. Further contention is that the petitioner is aged 64 years; the son of the petitioner is unemployed; from their agricultural produce, they have a meager income; they intend to shift Delhi to carry on business in Delhi; the premises are accordingly required bonafidely for the said purpose.

3 In the application for leave to defend, the contentions raised by the tenant were that (i) the petitioner is not the owner/landlord of the premises; petition is not maintainable. To support this proposition, learned counsel for the petitioners has placed reliance upon the judgments reported in (1987) 4 SCC 193 Smt.Shanti Sharma & Others Vs. Smt. Ved Prabha & Others and AIR 1992 SC 1590 Swadesh Ranjan Sinha Vs. Haradeb Banerjee; contention being that until and unless the landlord has established his ownership in the suit premises, an eviction petition under Section 14 (1)(e) of the DRCA is not maintainable. (ii) All the legal

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heirs of the tenant have not joined; premises had been let to Asha Ram who had left behind six sons and four daughters; all should have been co-joined; the petition is bad for non-joinder of the parties. (iii) the landlords are permanent residents of Aligarh; premises could not have been required bonafidely by them in such an eventuality. All these contentions are dealt with in depth and detail by the ARC. In fact before this Court on the last date i.e..21.10.2011 it had been noted that the only argument urged before this Court is that for an eviction petition under Section 14 (1)(e) of the DRCA, the landlord must necessarily be the owner and for this proposition, judgments as noted supra i.e. judgments of Smt.Shanti Sharma and Swadesh Ranjan Sinha (Supra) have been relied upon. In this context, the Apex Court in the case of Shanti Swaroop (Supra) had an occasion to examine the concept of 'owner' as envisaged under Section 14 (1)(e) of the DRCA. The Apex Court has noted that the word 'owner' has not been defined anywhere in the DRCA; the following extract of the judgment of the Apex Court is relevant:-

"The word 'owner' is not used in Section 14 (1) proviso (e) of Delhi Rent Control Act in the sense of absolute owner; where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction, the only thing necessary for him to prove being bona fide requirement and

he is the owner thereof. In this context the meaning of 'owner' is vis-à-vis the tenant i.e. the owner should be something more than the tenant. In most of the modern townships in India the properties stand on plots of land leased out either by the Government or the Development Authorities and therefore it was not contemplated that for all such properties the landlord or the owner of all such properties the landlord or the owner of the property used in common parlance will not be entitled to eviction on the ground of bonafide requirement and it is in this context that we have to examine this contention. It could not be doubted that the term 'owner' has to be understood in the modern context and background of the scheme of the Act."

4 In T.C. Rekhi Vs. Usha Gujral 1971 RCJ 322, a Bench of this Court had noted that the word 'owner' appearing in Section 14 (1)(e) of the DRCA seems to have been inspired by the word 'landlord' as contained in Section 2 (e) of the Act which is wide enough to include a person receiving or entitling to receive the rent of the premises on account of or on behalf of or for the benefit of any other person.

5 It is thus clear that what the petitioner has to establish is some kind of a title to the suit property; the word 'owner' has to be construed in the background for the purpose and object of enactment. In the instant case, it is not in dispute that the tenant has attorned to the landlord and has been paying rent to him; the tenant has in fact admitted that that this property had been

negotiated with him for sale meaning thereby that by necessary implication ownership had in fact been admitted; this has been noted in the impugned order and this factum has not been contested; there has also never been any denial of landlord and tenant relationship between the parties. In this view of matter, this objection taken by the petitioner has no merit.

6 As noted supra, no other ground has been urged; the only objection raised by the petitioner is discussed supra. The impugned order dismissing the application of the tenant for leave to defend suffers from no infirmity; the ARC had correctly noted that the defence raised by the tenant is sham and moonshine not entitling him for leave to defend the eviction petition. This petition is without any merit.

7 Dismissed.

INDERMEET KAUR, J

OCTOBER 24, 2011

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