

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

% *Date of Judgment: 20.10.2011*

+ **RCR No. 413/2011**

M/S. KISHORI LAL KRISHAN KUMAR petitioner
Through: Mr. R.K. Kapoor, Ms. Anita
Sharma and Ms. Ritu Sharma,
Advocates.

Versus

SHRI ANKIT RASTOGI Respondent
Through: None.

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)

CM No. 19377/2011(exemption) in RCR NO. 413/2011

Exemption is allowed subject to just exceptions.

RCR No. 413/2011 and CM No. 19376/2011 (stay)

1. This petition has impugned the order dated 04.07.2011 whereby the petition under Section 14(1)(e) read with 25(B) of the Delhi Rent Control Act (DRCA) had been dismissed.

2. Record shows that the present eviction petition had been filed by the landlord-Ankit Rasogi under Section 14(1)(e) of the DRCA. He claimed himself the owner and landlord of premises forming a part of property bearing No. 4479-80, Dau Bazar, Cloth Market, Delhi comprising of ground floor, first floor and a second floor. The ground floor was in occupation of the present tenant. Petitioner is stated to be 34 years of age; he has experience in the business of sale and purchase of sarees and other textiles and handicraft as he was a partner of M/s. Ankit Saree; thereafter he had started his individual commission business in textile since 1997. Petitioner has no immovable property in Delhi; he intends to start his own business and for his own bona fide requirement he wants eviction of the suit premises.

3. The defendant/tenant had filed his application for leave to defend. The first contention raised is that the petitioner is not the landlord/owner of the suit premises. This has been disputed by the petitioner. It is not in dispute that the premises were originally owned by Smt. Bhagwati Devi; petitioner in his affidavit has stated that Bhagwati Devi was his grandmother and in terms of her Will dated 14.07.1982, the suit premises had been bequeathed to him; the same has also been mutated in the municipal records. The

application for leave to defend shows that the tenant has in fact not challenged the fact that Ankit Rastogi is not his landlord; in fact in his application, he has stated that the petitioner had stopped receiving rent from the respondent, in these circumstances, the rent was being rendered by the tenant by way of a money order to the petitioner. Thus, the relationship of landlord and tenant stands admitted between the parties. For a petition under Section 14(1)(e) of the DRCA, the relationship of landlord and tenant is a crucial factor and this relationship having been admitted this objection is clearly without merit.

4. The second contention raised by the tenant is that the defendant /tenant has been arrayed in the eviction petition as M/s Kishori Lal Krishna Kumar; the other partners of the firm have not been joined as a party and the petition is thus bad for non-joinder of the parties; in para 15 of the application for leave to defend, it has so been stated; contention being that all partners of the respondent/tenant have not been made a party. In reply affidavit of the petitioner, the explanation furnished by the petitioner is that the name of the partners were not known to the petitioner and that is why, the respondent has been arrayed in the manner as depicted in the eviction petition. These circumstances had

correctly been noted in the impugned judgment; that this was only a bald objection raised by the petitioner and not being a triable issue, this objection had not been paid heed to.

5. The last objection raised by the petitioner is that the Trial Court has not appreciated the facts in the correct perspective and the bona fide requirement of the landlord was not really bona fide and to substantiate this submission, he has drawn attention of this court to the averments made in his application for leave to defend; contention of the tenant is that the respondent/landlord is a owner of one shop No. 969, Bhojpura, Maliwara, Chandni Chowk, Delhi under the name and style of M/s. P.S. Creation and is carrying on his business from there; he also has another building i.e. bearing No. 1186, Kucha Mahajani, Chandni Chowk, Delhi which comprises of 30 shops; in this view of the matter, the present eviction petition has not been filed for bona fide requirement as there is a sufficient accommodation available with the landlord. In the reply affidavit, the contention of the landlord was specifically to the effect that he is not the owner of either of the two premises; contention being that by Smt. Bhagwati Devi in terms of her Will date 14.07.1982 had bequeathed the disputed property i.e. Shop No. 4479-80, Dau Bazar, Cloth Market, Delhi to

the respondent; he has no other immovable property; this is his only immovable property; further contention being that property bearing No. 969, Bhojpura, Maliwara, Chandni Chowk, Delhi is owned by his father; the property i.e. building No. 1186, Kucha Mahajani, Chandni Chowk, Delhi has been bequeathed by his grandfather in the name of his brother; even otherwise, this property under the occupation of old tenants; rent receipts to substantiate this submission have also been placed on record. The assertion of the landlord that he is bona fide requiring this premises for his commission business which he has started in the year 1997 has also been substantiated by documentary evidence. Income tax returns in respect of his commission business have been placed on record. In these circumstances, the court had rightly noted that no triable issue having arisen between the parties, the application for leave to defend was rightly dismissed.

6. In 2010 IV AD (Delhi) 250 Sarwan Dass Bange vs. Ram Prakash, a bench of this court has noted that it is for the tenant to disclose facts which would show that this desire of the landlord was fanciful and not bona fide. In Prativa Devi vs. T.V. Krishnan 1996 (5) SCC 353, the Apex Court had 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 manner he should live; there is no law which can deprive the landlord of the beneficial enjoyment of his property. The Apex Court in (1999) 6 SCC 222 Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta has laid down the scope of a revision petition to this Court holding that the 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.

7. Applying the said test and on the basis of records it cannot be said that the impugned order passed by the Controller in the present case is not in accordance with law.

Petition is accordingly dismissed.

OCTOBER 20, 2011
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INDERMEET KAUR, J.