

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

% RC.REV. NO. 273/2010

+ Date of Decision: 19th October, 2011

MOHD. HANIF ...Petitioner

! Through: Mr. Ram Kishan Saini, Advocate

Versus

\$ SHAMSUN NISA(DECD.) THR LRS ...Respondents

Through: Mr. Vijay Tandon, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

- 1. Whether Reporters of local papers may be allowed to see the judgment? (No)**
- 2. To be referred to the Reporter or not? (No)**
- 3. Whether the judgment should be reported in the digest? (No)**

ORDER

P.K BHASIN,J:

This revision petition is under Section 25-B(8) of the Delhi Rent Control Act, 1958(in short 'the Act') and has been filed by the petitioner-tenant against the order dated 7th August, 2010 passed by the Additional Rent Controller whereby his application for leave to contest the eviction petition filed by his landlady, late Shamsun Nisa, under Section 14(1)(e) of the Act to have the possession from him of the premises bearing no. 2466-68, Second Floor, Gali Kuenwali, Haveli Mahawat Khan, Bazar Chitie Qabar, Jama Masjid, Delhi-

110006(hereinafter to be referred as ‘the tenanted premises’) has been dismissed and an eviction order has been passed .

2. The facts entitling the deceased landlady, who died during the pendency of the eviction petition and thereafter was being represented by her legal representatives, to secure the eviction order against the petitioner were pleaded in detail in para no. 18 of the eviction petition and the averments which alone are relevant for the disposal of the revision petition are re-produced below:

- (i)*The tenanted portion comprising of one room, kitchen, attached latrine and bathroom alongwith open space situated on the second floor, was let out to the respondent.....*
.....
- (ii) *That the petitioner is presently residing in a portion of property No. 2466 -68, Second Floor, Gali Kuenwali, haveli Mahawat Khan, Bazar Chitli Qabar, Jama Masjid, Delhi-110006 comprising of two rooms, kitchen, toilet. The portion in possession of the petitioner is shown in Green Colour in Annexure-A. the same is also situated on the Second Floor. In the said portion, besides the petitioner, her daughter-in-law Mst. Amreen Beg, her unmarried grand-daughters namely Miss Farzana and Mst. Jareena age 28 years & 26 years respectively are also residing. Besides them, her two grandsons Mohd. Arfeen is residing with his family consisting of his wife and a child of 8 months. The other grandson Mhd. Imran is also residing in this very property and these persons are dependent upon the petitioner for residential accommodation and the accommodation already available with the petitioner is only the Green portion in Annexure-A. this Green portion shown in Annexure-A is highly insufficient for*

residence of number of people. It is however added that Mohd. Arfeen who is the owner of another house No. 1521, Bazar Chitli Qabar, Delhi has filed another eviction petition for his use and occupation which is also pending in the Court of The Rent Controller, Delhi but till date the said petition has not yet been allowed and as such he is dependent upon the petitioner for his residence.

- (iii) *That if the said grandson Mhd. Arfeen shift with his sister to his house, even then the tenancy premises is required by the petitioner for her bona fide need and for the bona fide need of her family members i.e. daughter in law and son Imran. It is pertinent to mention that Imran is highly educated and has already cleared B.Com and presently he is pursuing Chartered Accountant Course. He is also of a marriage age and require the premises in his favour. The petitioner requires the premises bona fide and the alternative accommodation available with her is not reasonably suitable taking into consideration her need and the need of her family members. It is further stated that the petitioner have got married her granddaughters who have been visiting the house of petitioner with their families quite often and reside there with their families and as such the residential accommodation available is highly insufficient. The married grand-daughters are namely Mst. Khurshida Begum W/o Mohd.Munir, Mast. Feroza Beg W/o Mohd. Akhlaq, Mst. Nasreen W/o Mohd. Naeem & Mst. Shehnaaz W/o. Mohd. Shakeel.”*

3. The petitioner-tenant had sought leave to contest the eviction petition on various pleas which have been noticed, dealt with and rejected by the learned Additional Rent Controller in the impugned order. The relevant parts from that impugned order where the pleas,

which only were urged before this Court, have been dealt with also re-produced below:-

11. *First of all, the respondent has not disputed the relationship of landlord and tenant between the parties. The respondent has also not disputed the ownership of the petitioner over the premises in question. Although, in the application u/s 151 CPC and additional affidavit which has been filed by the respondent after filing the leave to defend application the respondent has alleged that this court has no jurisdiction to entertain the present eviction petition as relationship of landlord and tenant ceased to exist by virtue of agreement to sell dated 09.09.1991 by which the respondent has agreed to purchase the premises in question for a sum of Rs. 70000/- out of which Rs. 50000/- was paid to Mst. Shamsun Nisha, the owner of the premises in dispute and balance of Rs. 20000/- was to be paid at the time of execution of the sale deed. The respondent further submits that his possession is protected u/s 53A of the Transfer of Property Act. The petitioners have disputed the alleged agreement to sell as false and fabricated which has been prepared by the respondent after change of the counsel in order to delay the proceeding of the case.*

12. *A perusal of the record reveals that the present petition was filed on 19.07.2008 and the respondent was duly served with the summons in compliance of schedule III of DRC Act and filed the leave to defend application on 03.09.2008. A perusal of the leave to defend application filed by the respondent reveals that no such plea was raised by the respondent about the alleged agreement to sell executed between the petitioner and the respondent dated 09.09.1991. There is no single whisper that the petitioner has agreed to sell the premises in question for a sum of Rs. 70000/- vide agreement to sell dated 09.09.1991. It is for the first time that this plea has been taken by the respondent in the application u/s 151 CPC and additional affidavit filed by the respondent on 11.05.2010 which has been filed after lapse of more than one year and 9 months of filing the leave to defend application. Therefore, plea of the respondent about the alleged agreement to sell dated 09.09.1991 appears to be an after thought. Had there been any agreement to sell it would have found mentioned in the leave to defend application which has been filed more than 1 ½ year ago as it was such a vital document and it cannot be believed that the counsel for the*

respondent had omitted to file the same though told by the respondent as alleged in the application filed by the respondent seeking to place on record the additional affidavit. Even otherwise also if the agreement to sell is considered photocopy of which has been placed by the respondent by way of additional affidavit and application u/s 151 CPC, still it would not be of any help to the respondent to claim protection u/s 53A of the Transfer of Property Act that he is in possession of the premises in question in the part performance of the agreement.

13. The photocopy of agreement to sell dated 09.09.1991 categorically reveals that relationship of landlord and tenant did not cease to exist between the parties or that the possession of the suit premises has been given by the petitioner to the respondent in terms of the agreement to sell towards part performance. It has not been mentioned in the agreement to sell that relationship of landlord and tenant ceased to exist. Rather it has been categorically mentioned that 'the second party will pay rent of the above property under stalle till the time of payment of balance sale consideration to the first party'. Again in the concluding para, it has been mentioned that 'the first party has delivered the physical possession of the above property under the sale to the second party. The second party agreed to pay rent to the first party till the payment of balance sale consideration and registration of sale deed'. If these recitals made in the agreement to sell are looked into, it is crystal clear that relationship of landlord and tenant did not cease to exist and what had been agreed upon by the parties is that the rentals shall be paid by the respondent till the payment of balance sale consideration and registration of sale deed. Therefore, the respondent cannot claim that he is in possession of suit premises by virtue of agreement to sell and that his right is protected u/s 53A of the Transfer of Property Act.

14. Other interesting aspect is that although the respondent has given explanation that the fact of the execution of agreement to sell was not mentioned in the leave to defend application as sale transaction had not been completed and it was completed when the respondent paid the balance amount to Mst. Shamsun Nisha on 25.12.2007 and this fact has been confirmed by Smt. Shakeela Begum in writing on 19.11.2009, one of the LR of deceased petitioner. It has also been contended that it is admitted fact that the respondent stopped payment of rent after 2007 and despite making payment of balance amount to Mst. Shamsun Nisha on 25.12.2007 she could not execute the sale deed due to pressure exerted by her LR no. 1 and 2 and

transaction became complete only when Smt. Shakeela Begum one of daughter of the deceased petitioner on 19.11.2009 gave in writing in presence of witnesses that her mother has received the balance consideration on 25.12.2007.

15. *Again, story set up by the respondent does not appear to be appealing. First of all, it is not an admitted fact that the respondent has stopped paying rent to the petitioner after 2007 as the petitioner has nowhere admitted this fact in the petition or in the reply to the leave to defend application that she has received rent upto September, 2007. Rather the case of the petitioner is that the respondent is the tenant at the rate of Rs. 40/p.m. later on same was enhanced to Rs. 50/p. m. and lastly the rent was paid by the respondent five years ago and thereafter the respondent has not paid any rent to the petitioner. The petition has been filed in the year 2008 and as such, as per the petitioner, the respondent has paid rent lastly in the year 2003. While the respondent has alleged that it is admitted fact that the petitioner has received the rent up to September, 2007 which is not the pleading of the petitioner and it is beyond imagination that how the respondent is claiming it to be an admitted fact. Moreover, in the petition, the petitioner has alleged that the respondent has not paid rentals since the year 2003. The respondent has not disputed the said fact in the leave to defend application. Had the respondent paid the rentals till September, 2007 he would have definitely taken the said plea in the leave to defend application. Therefore, the plea of the respondent that since the petitioner has received balance consideration amount of Rs. 20000/- on 25.12.2007, she stopped receiving the rent is without any merit. Moreover, even own version of the respondent does not appear to be logical that he did not file the agreement to sell as transaction was not completed because even after making payment of balance consideration amount of Rs. 20000/-, the sale deed was not executed as there was no confirmation and it was only confirmed when Smt. Shakeela Begum on 19.11.2009 gave in writing in presence of witnesses that her mother has received the balance consideration on 25.12.2007. I fail to understand that how completion of transaction was dependent upon confirmation to be made by the daughter of the petitioner Smt. Shakeela Begum. If the respondent alleged that he has paid Rs. 20000/- as balance sale consideration to the petitioner on 25.12.2007, he would not have kept silent till date as when he had already fulfilled his part of obligation by making the payment of remaining sale consideration of Rs. 20000/-, despite*

this fact he kept waiting and he did not file any suit for specific performance of contract. This conduct of the respondent shows that the plea set up by the respondent is false and frivolous without any substance. Hence, there is no merit in the aforesaid contention of the respondent that by virtue of agreement to sell dated 09.09.1991, the respondent is in possession of the suit premises and his possession is protected u/s 53A of the Transfer of Property Act and therefore, this court has no jurisdiction to entertain the present petition.

16. *In the leave to defend application the respondent has alleged that the site plan filed by the petitioner is incorrect and stated that the petitioner is the owner of basement, one room at third floor, two rooms at fourth floor and two rooms at fifth floor of the property no. 2468. The petitioner has denied that fourth and fifth floor ever exist. First of all, so far as the basement is concerned, as per municipal by laws basement cannot be used for residential purposes. Moreover, said basement is not available to the petitioner as one Mohd. Munir is doing his business activities from the same. So far as availability of one room on third floor, two rooms at fourth floor and two rooms at fifth floor of the property no. 2468 is concerned, the petitioner has stated same to be incorrect. The petitioner has categorically stated that on the third there was tenant namely Late Mohd. Hanif and now his LRs are tenants who have illegally raised two tin shed over their tenanted portion which are in their possession and theses premises are not available to the petitioner for residence nor are suitable for the petitioner or her dependents for residence. Although in the rejoinder affidavit the respondent has stated that the petitioner has got one room on the second floor and two rooms on the third floor and two rooms on the fourth floor but inadvertently in the application for leave to defend instead of second, third and fourth floor it was mentioned as third, fourth and fifth floor. As such, the respondent himself is not sure about the extent of accommodation in the property no. 246668. Though, the respondent has alleged that there are two rooms on third floor and two rooms on fourth floor but the respondent has not filed any site plan to show the extent of accommodation available with the petitioner on the aforesaid floors as alleged by the respondent. In the absence of any site plan filed by the respondent, it cannot be said that the site plan filed by the petitioner is incorrect and not according to the site. The respondent has only raised a bald plea which is not substantiated by any material on record.*

17. Another contention of the respondent that the petitioner is having property no. 1521 in the name of her grandson Mohd. Arfin is concerned, the petitioner has stated that said property belongs to her grandson Mohd. Arfin and he will shift there for which he has already filed an eviction petition. Although, the respondent in the rejoinder has stated that Mohd. Arfin has got an eviction order in his favour in respect of three rooms, one barasti etc. and after receiving the possession of the said premises, the alleged need will be fulfilled. First of all even as per the respondent also only eviction order has been passed and grandson Mohd. Arfin has not received the possession of the aforesaid premises. Further, after getting the possession of the aforesaid premises the grandson of the petitioner namely Mohd. Arfin will shift to the premises no. 1521 and therefore, obtaining of eviction order in respect of premises no. 1521 is of no avail to the petitioner as that property belongs to Mohd. Arfin and not to the petitioner. Apart from this, family of the petitioner consists of her daughter in law Mst. Amreen, her unmarried granddaughters namely Miss Farzana and Mst. Jareena aged about 28 years and 26 years respectively, and another grandson namely Mohd. Imran who are also residing in this very property apart from Mohd. Arfin, his wife and a child. As such, the petitioner requires one room for herself, one room for daughter-in-law Amreen, one room each for her unmarried granddaughters, one room for grandson Imran and one drawing room, one dining room, one guest room, totalling to eight rooms even if the requirement of family of Mohd. Arfin is not considered. The petitioner is in possession of two rooms, kitchen and toilet which is highly insufficient keeping in view the size of the family of the petitioner. Further, the suit property is more suitable to the petitioner which is adjacent to the property already in possession of the petitioner on the second floor.

19. So far as the contention of the respondent that two granddaughters of the petitioner are of marriageable age and as and when their marriages are solemnized, the alleged need of the petitioner shall automatically be finished is concerned, it is a settled law that the landlord is the best judge of his requirement and neither the tenant nor the Court can suggest him. It has been held in *R.C. Gupta Vs. Brahma Nand* 1992 (1) RCR 66 that landlord is the best judge of his residential requirement. Owner can very well plan how his family want to lead comfortable life in his own house. It is not the function of Rent Controller to suggest to landlord how he should make use of space available him'. Similarly, in the present case also, it is

not the business of the respondent to dictate that after marriage of the aforesaid two grand daughters the requirement of the petitioner will come to an end as the petitioner has categorically stated that there is no marriage alliance of the aforesaid two granddaughters presently going on.”

4. Feeling aggrieved, the petitioner has invoked the revisional jurisdiction of this Court under Section 25(8) of the Act.

5. It was contended by the learned counsel for the petitioner that the learned Additional Rent Controller has exceeded to a great extent the limited jurisdiction vested in him under Section 25-B(5) of the Act whereunder all that the Controller is required to consider at the stage of consideration of an application for leave to contest of a tenant is whether the tenant has raised any triable issue(s) which would disentitle the landlord from getting an eviction order if those pleas are established after evidence. Counsel further contended that in the present case the petitioner had raised very serious triable issues which have been brushed aside by detailed discussion and reasoning by the trial Court as if the same was being done after full trial and appreciation of evidence without even affording any opportunity to the petitioner to establish his pleas.

6. On the other hand, learned counsel for the respondents fully supported each of the reasons given by the trial Court for declining leave to the petitioner to contest the eviction petition and contended that there is no scope whatsoever for any interference by this Court in exercise of its revisional jurisdiction which has a very limited scope.

7. After having given my thoughtful consideration to the rival submissions and going through the impugned order I find that there is no merit in this revision petition and the same is liable to be dismissed. The main plea raised before the learned Additional Rent Controller as well as before this Court was that there was an agreement between the deceased landlady and the petitioner for sale of the premises in question to him and, therefore, the landlord-tenant relationship between the parties had ceased to exist and his possession was protected under Section 53-A of the Transfer of Property Act even if no formal sale deed was executed. However, in my view this plea could not be entertained and has been rightly rejected for the reason that when leave to contest application was filed within the stipulated prescribed period of 15 days no such plea was taken at that time by the petitioner in his affidavit. Under Section 25-B(4) of the Act a tenant seeking leave to

contest the eviction petition is supposed to file an affidavit disclosing such facts which would disentitle the landlord from obtaining the order of eviction in case those pleas are established. This provision of law does not contemplate that additional pleas can also be raised by way of additional affidavit after the expiry of original period of 15 days. The Rent Controller is expected to decide leave to contest application based on the pleas raised in the affidavit of the tenant filed within the prescribed period of 15 days. In case the contention of the learned counsel for the petitioner – tenant is accepted that an additional affidavit can be filed after filing of the first affidavit within the prescribed period of 15 days then that would be an unending process and that would defeat the very purpose of enacting a provision like 25-B(4). I, therefore, do not find any illegality committed by the learned Additional Rent Controller for not granting leave to contest to the petitioner – tenant on the ground that there was an Agreement to Sell in respect of the premises in question between the petitioner – tenant and the deceased landlady. However, I am also of the view that the learned Controller should not have given any findings in respect of the alleged agreement to sell being relied upon by the petitioner. So, if at all the petitioner decides to have recourse to some legal remedy for the

enforcement of the sale agreement the observations made in respect thereof shall not come in his way.

8. As far as the *bona fide* requirement of the tenanted premises is concerned, the learned counsel for the respondents did not seriously dispute the observations of the learned Additional Rent Controller in the impugned order that the respondents were in possession of two rooms only and that much accommodation was highly insufficient for them in view of the size of their families even after excluding the requirement of the grandson of the deceased landlady who himself also had sot an eviction order against his tenant in respect of his own elsewhere and that fact that deceased landlady had also expired. I am even otherwise also satisfied with the decision of the learned Additional Rent Controller to the said effect and do not find any infirmity therein justifying any interference by this Court.

9. This revision petition is dismissed.

P.K. Bhasin, J

October 19, 2011/sh