

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

% **RC. REV. 17/2011**

+ **Date of Decision: 1st March, 2012**

ANURADHA MITHAL **....Petitioner**

! Through: Mr. S.K. Puri, Sr. Advocate with
Mr. Praveen Kumar, Advocate

Versus

\$ **ALOK KUMAR JAIN** **.....Respondent**

Through: Mr. Ashok Gurnani, Advocate

CORAM:

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

ORDER

P.K.BHASIN, J:

This petition under Section 25-B(8) of the Delhi Rent Control Act, 1958(hereinafter called 'the Rent Act') has been filed by the petitioner-landlady against the order dated 09.07.10 passed by the learned Additional Rent Controller whereby the application filed by the respondent-tenant seeking leave to defend the eviction petition filed against him by her under Section 14(1)(e) of the Rent Act for his eviction from Flat no. I-101, Friends Apartments Patparganj, Delhi(hereinafter referred to as 'the tenanted premises') was allowed and he has been permitted to contest the eviction petition.

2. The petitioner-landlady claiming herself to be the owner of the tenanted premises sought eviction of the respondent on the ground that she required the same to reside there with her daughters. It was pleaded in the eviction petition, which was filed in October, 2009, that she was residing in Meerut with her husband and one daughter. Her eldest daughter was employed in Delhi and her younger daughter was studying in Delhi. Both the daughters were staying with her grandparents in their house though the accommodation in their three rooms house was insufficient as their son, daughter-in-law and two grandchildren were also living with them. The petitioner also pleaded that her third daughter, who was the youngest, was also desirous of shifting to Delhi for studying and in these circumstances, she herself also wanted to shift to Delhi to be with her daughters.

3. The respondent-tenant filed an application seeking leave to defend the eviction petition on many grounds. It was claimed by him that the present eviction petition had been filed after the dismissal of an earlier ejectment suit by the Civil Court on 07-09-2009 and so it was a *mala fide* petition. Another plea raised was that the requirement of the accommodation under his tenancy by his landlady was not *bona fide* also for the reason that none of her daughters was living in Delhi and both the daughters were living in Meerut and the documents placed on record by the petitioner-landlady to show that they were staying in Delhi had been obtained after the dismissal of the earlier ejectment suit to create a ground for the eviction of the respondent. It was also claimed by the respondent-tenant that in any case the

accommodation for her daughters in her parents' house was sufficient petitioner's brother was staying in Ghaziabad and not with his parents in Delhi. It was further claimed by the respondent in his leave to defend application that the petitioner-landlady's requirement was not *bona fide* as she had no intentions to settle in Delhi since her husband was doing his business in Meerut for the last three decades.

4. The petitioner-landlady in her reply while maintaining that her two daughters were staying in Delhi admitted that she had filed this eviction petition after the dismissal of the earlier ejection suit which she had filed in the hope that she would succeed in that civil suit(In this petition it is being claimed now by her that earlier suit was filed since before the expiry of period of ten years from the date of the construction of the tenanted premises in question eviction petition under the Rent Act could not be filed).

5. The learned Additional Rent Controller after noticing the rival pleas allowed the application moved by the respondent-tenant seeking leave to defend the eviction petition by making the following observations in the impugned order:-

“On the basis of the material on record and in the light of the arguments addressed; it becomes clear that the leave application deserves to be allowed.

The following are the findings in this regard:

1) It is an admitted fact that one more H.I.G. flat (besides the flat in question) is there in the same society and is under the possession of the parents of the petitioner; and that the two daughters of the petitioner are residing there at present.

2) *The fact that the said two daughters of the petitioner are residing in Delhi in itself is a controverted fact. During the course of arguments it was very well pointed out by the counsel for respondent/applicant that neither the contents of the petition nor any documentary proof is there to show that the petitioner's daughter is a "regular" student". Moreover the averment to the effect that another daughter is "serving" in Delhi as an employee of a Pvt. Company is itself of such a nature which would require trial, more so in the light of the fact that the photocopy of the I. Card itself reveals that the same is/was valid for 13 weeks only (w.e.f. 18/8/09) and the validity thereof expired with the expiry of 13 weeks period.*

3) *The petitioner alongwith her husband and one daughter; is residing there at Meerut. The petitioner along with the third daughter; wants to shift therefrom. However a mere intention to shift to Delhi is not sufficient to dispose of the matter in summary mode more so in the given facts and circumstances. It has nowhere been revealed as to how it would be practically possible for her to shift therefrom thereby leaving behind her husband there at Meerut. The status of the third daughter (regarding her age, the class in which she is studying there at Meerut etc. has also nowhere been reflected in the petition so as to ascertain if it would be possible for her to shift there in Delhi alongwith her mother. Thus it is clear that the petition cannot be disposed off in summary mode."*

6. Feeling aggrieved by the grant of leave to contest to the respondent-tenant the petitioner-landlady filed the present revision petition.

7. Mr. Ashok Gurnani, learned counsel for the respondent-tenant, had at the outset raised an objection that this revision petition is not maintainable in view of the proviso to Section 25-B(8) of the Rent Act which proviso makes it clear that a revision petition would lie only at the instance of a tenant if an order for eviction is passed by the Rent Controller in an eviction petition which has been dealt with in

accordance with the special procedure prescribed under Section 25-B. In support of this objection Mr. Gurnani had placed reliance on a decision of the Supreme Court in “***Major D.N. Sood v. Shanti Devi*** 1997(10) SCC 428. On merits, learned counsel fully supported the decision of the learned Additional Rent Controller and submitted that the trial Court has rightly come to the conclusion that the respondent-tenant had raised triable issues and so he should be given a chance to establish the same during trial.

8. Learned counsel for the petitioner-landlady had argued that this petition is very much maintainable in view of the decision of a Division Bench of this Court in the case of “**R.S.Bakshi vs H.K.Malhari & anr.**”, 2002(62) DRJ 272 wherein it had been held by the Division Bench, even after noticing the decision of the Apex Court in Maj. Sood’s case(supra), strongly relied upon by the counsel for the respondent, that a revision petition at the instance of a landlord, who is aggrieved by the grant of leave to defend the eviction petition to the tenant, is also maintainable. That decision of the Division Bench was followed by a Single Judge Bench of this Court in the case of “**Sanjay Mehra v. Sunil Malhotra**”; 2010, DRJ (117) 654 and has been held that such a revision petition is maintainable.

9. Learned counsel for the respondent, while responding to the submissions made by the learned counsel for the petitioner regarding the maintainability of this petition in view of the Division Bench decision of this Court in R.S.Bakshi’s case(supra), had submitted that though the Division Bench has held the Supreme Court’s decision in

Maj. Sood's case (supra) to be *per incuriam* because of the fact that earlier three Judges Bench judgment of the Supreme Court in "***Vinod Kumar Chaudhary vs. Smt. Narain Devi***":AIR 1980 Supreme Court 2012, wherein it was held that such a revision petition even at the instance of an unsuccessful Landlord is maintainable, was not brought to the notice of the two Judges Bench which had given the judgment in Major Sood's case, but that could not be said by the Division Bench of the High Court in respect of a judgment of the Apex Court. In support of this argument the learned counsel placed reliance on two judgments reported in ***144(2007) DLT 81*** and ***2006 (II) Apex Decisions (Delhi) 89***. Learned counsel also submitted that in any case the decision of the Supreme Court in Vinod Kumar Chawdhary's case(supra) was a case where the revision petition had been filed by the landlord who had lost the battle after regular trial and in that situation it was held by the Apex Court that if a tenant could maintain a revision petition then landlord could also avail of that remedy while in the present case as also in Maj. Sood's case(supra) the revision petition is against an interlocutory order of the learned Additional Rent Controller and so Vinod Kumar Chawdhary's judgment is not applicable here.

10. After having heard learned counsel for the parties I am of the view that as far as the objection raised on behalf of the respondent – tenant that revision petition at the instance of the landlady is not maintainable is concerned, the same is liable to be rejected since after taking note of the two judgments of the Hon'ble Supreme Court on

this aspect, one of which was rendered by a three Judges Bench in ***“Vinod Kumar Chowdhary vs. Narain Devi Taneja”*, 1980 SC 2012** and the other one was rendered in the year 1997 by a two Judges Bench in ***“Major D.N. Sood v. Shanti Devi”*; 1997 (10) SCC 428**, a Division Bench of this Court in ***“R.S.Bakshi vs H.K.Malhari & anr.”*, 2002(62) DRJ 272** has concluded that the judgment of the Hon'ble Supreme Court in Maj. D.N. Sood's case was *per incuriam* since the earlier three Judges Bench judgment of the Hon'ble Supreme Court in Vinod Kumar Choudhary's case (supra) had not been brought to the notice of the two Judges Bench which had heard Maj. D.N.Sood's case. That decision of the Division Bench was, as noticed already, later on has been followed by a Single Judge Bench of this Court in the case of ***“Sanjay Mehra & Ors. Vs. Sunil Malhotra & Anr.”*, 2010 (117) DRJ 654**. Learned counsel for the respondent had submitted that the Division Bench of this Court could not have held the judgment of the Hon'ble Supreme Court in Major D.N.Sood's case(supra) to be *per incuriam* in view of the judgments of this Court reported as ***“Indian Council of Agricultural Research & Anr. Vs. Bidesh Singh & Ors.”*, 144 (2007) DLT 81**; ***“Colgate Palmolive Co. Limited & Anr. Vs. Mr. Patel & Another”*, 2006 II AD (Delhi) 89** and ***“Common Cause (A Regd. Society) vs. Union of India and others”*, AIR 2001 Delhi 93**, in which some judgments of the Supreme Court were also relied upon by different Benches of this Court. But in my view, I need not go into this proposition in view of the fact that a Division Bench of this Court, as noticed already, has already considered this very controversy regarding the maintainability

of revision petition against an order of the Controller giving leave to defend to a tenant and has also taken note of the two conflicting judgments of the Supreme Court and has come to the conclusion that a revision petition at the instance of an unsuccessful landlord is also maintainable under Section 25-B(8) of the Rent Act. Judicial discipline requires this Single Judge Bench to follow that decision of the Division Bench. So, I reject this preliminary objection of the respondent-tenant.

11. Coming now to the merits of the case, I find from the averments made in the revision petition that, the eldest daughter of the petitioner-landlady who was allegedly employed in Delhi earlier but now she has shifted to Chandigarh after getting married. The question which still arises is whether the respondent, who admittedly is a very old tenant in the premises in question, had raised any triable issue which would have disentitled the petitioner from securing an order of eviction against him in the event of his being able to establish his pleas which he had raised in his affidavit filed alongwith the application for leave to contest. Learned counsel for the respondent-tenant contended that if he succeeds in proving after trial that in fact at the time when this eviction petition was filed none of the daughters of the petitioner-landlady was living, working or studying in Delhi and the documents filed with the eviction petition to show that they were actually living in Delhi were forged documents, the petitioner-landlady would certainly not get any relief from Court since it is now well settled that anybody who approaches a Court of law with some claim which is

founded on fraud etc. has to be non-suited on that ground alone. Counsel further contended that he cannot establish the pleas of forgery etc. raised by him unless he is given an opportunity to prove the same by adducing necessary evidence and, therefore, the learned Controller was fully justified in granting him leave to contest the eviction petition filed his landlady on the ground that she required the tenanted premises so that his daughters could stay there and she herself also could live with them so that they do not stay alone in this big city and feel lonely.

12. I am, however, of the view, that the learned Additional Rent Controller had not considered the matter properly when it was observed by him that it will not be practically possible for the landlady to shift to Delhi when her husband was well settled in his business in Meerut. A judicial notice can be taken of the fact that Delhi is not very far away from Meerut and so if the petitioner-landlady would start living in Delhi with her daughters in her own house it cannot be said that she cannot go to Meerut frequently to be with her husband also. It can also be accepted that educational prospects in Delhi are much better than Meerut and so the desire of the daughters of the petitioner to study in Delhi cannot be malafide or too far fetched. If that be so, the requirement of the tenanted premises for the petitioner for her daughters to stay along with her becomes bona fide. When the petitioner has her own house for her children then why should the children stay with their maternal grandparents. It is none of the business of the tenant to tell them to stay with their grandparents when

they have their own house in Delhi. And just because one daughter has got married the requirement of the petitioner for her house in Delhi does not cease to be bona fide as she still has two unmarried daughters to pursue their studies in Delhi.

13. The plea taken by the respondent that the petitioner had forged documents to show that her daughters were staying in Delhi is too improbable to be attached any significance and this plea also does not entitle him to set leave to contest the eviction petition. The mere fact that the respondent is an old tenant and was never asked to vacate the tenanted premises by his landlady when her daughters were of young age also shows that the respondent is now being asked to vacate when the children have grown up and need higher education in a better and advanced city for bona fide reason only.

14. I am, therefore, of the view that the view taken by the learned Additional Rent Controller that the respondent-tenant had raised triable issue is totally unsustainable. Therefore, the impugned order is set aside and an eviction order is passed in favour of the petitioner-landlady. However, he is granted six months time to vacate the tenanted premises.

P.K. BHASIN,J

March 01, 2012