

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

% *Date of Judgment: 26.4.2012*

+ **RC.REV. 42/2012 & CM Nos.1643-44/2012**

MAN SINGH @ MANNU Petitioner
Through: Mr.D.K.Bhatia, Advocate.

versus

MOHD IBRAHIM & ANR Respondents
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned is the order dated 15.10.2011 vide which the leave to defend application in a pending eviction petition under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) had been dismissed and the eviction petition had been decreed in favour of the landlord.

2. Record shows that the present eviction petition has been filed by the petitioner/landlord Mohd. Ibrahim and Mohd. Yasir against the RCR No.42/2012

tenants; the disputed premises is a shop bearing No.S-65, Street 23, Main road Brahampuri opposite Arora Building Material Store, Delhi measuring 8.4 x 11.3 sq. feet from where the tenant is running a dabha. Further contention in the eviction petition is that the premises had been sublet by the tenant to the respondent no.2 who has also caused damage to the said premises. Contention is that the property in dispute was owned by the grandfather of the petitioner namely Mohd. Ismail; he had purchased this property in terms of a registered sale deed dated 30.7.1966; he dies on 28.10.199 and left behind four sons and his widow; the aforementioned portion is now co-owned by petitioners no.1 and 2 which includes the disputed premises. After the death of the father of the petitioners no.1 and 2 which was in the year 1995 and 2007 the petitioners being the only male surviving members of the family had become co-owners; petitioner no.1 is aged 20 years and petitioner no.2 is aged 18 years. Petitioners are carrying on work of embroidery, sewing and stitching ; they have sewing and embroidery machines but they have no room to accommodate these machines; the premises under the occupation of the respondent are required by them for the purpose of carrying out their work of sewing and embroidery. Eviction petition RCR No.42/2012

was accordingly filed.

3. Leave to defend has been filed. Alleged triable issues have been highlighted. It is pointed out that material facts have been concealed from the court. Petitioners are occupying and using the adjoining shop which has been (depicted in the site plan) measuring 17.6 x10 sq. feet from where they are carrying out the job of manufacturing of embroidery machines in the name of NAVICO; this is very old business of his family which they are carrying out from the aforementioned premises. There is also non-joinder of necessary parties as all the co-owners have not been impleaded; petition has been filed malafide with an ulterior motive. These are by and large issues mentioned in the application seeking leave to defend.

4. Reply filed to the said application and the corresponding paras have been perused. There has a vehement denial. It has been denied that the petitioners are using the adjoining shop from where they are carrying out business of embroidery under the name of NAVICO. The averments made in the eviction petition have been reiterated; contention being that the need of the present disputed shop is for the two petitioners; in the eviction petition it has been disclosed that there are

RCR No.42/2012

two shops in the disputed premises one of which has been tenanted out to the present petitioner and the other shop is also under tenancy for which a separate eviction petition has been filed which factum is not disputed. Both the petitioners want to run their independent shops; they have no commercial space to do so. The landlord has in fact himself disclosed that there are two shops and the site plan has also depicted them. The portion shown in red colour is with the present tenant; the need is to accommodate their sewing and embroidery machines to run a business. The other shop is also under a tenancy; it is not the case of the tenant that the landlords have not disclosed about the other shop. No triable issue has arisen on this count.

5. The landlord is the best judge of his requirement and this has been reiterated by the courts time and again that it is not for the court or the tenant to describe the manner in which the landlord wishes to chalk out his life style or carry out his business.

6. A bald contention has also been raised about the non-joinder of the necessary parties; contention being that even presuming that the petitioners are co-owners; the name of the other co-owners has not been disclosed. It is well settled position at law that a co-owner can maintain

RCR No.42/2012 Page 4 of 9

eviction petition.

7. In 2004 3 SCC 178 India Umbrella Manufacturing Co. Vs. Bhagbandei Agarwalla the Apex Court had held as follows:

“One of the co-owners can file a suit for eviction of a tenant. This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the petition was filed in spite of their disagreement.”

8. This submission also raises no triable issue.

9. It has lastly been contended that the petitioner is not the owners of the suit premises. The averments as disclosed in the eviction petition and as detailed aforementioned have made a bald submission that the petitioners are not the owner/landlord and this by itself would not take away this status of the petitioners. Admittedly the tenant had already been paying rent to the said landlords; Section 116 of the Indian Evidence Act also get attracted. However, the earlier argument on non-joinder of the other co-owner is an argument which is contrary to the stand now sought to be adopted; the earlier submission being that the co-owners have not been joined; status of the petitioners as owner/landlord

RCR No.42/2012 Page 5 of 9

in fact is deemed admitted

10. Be it may the concept of ownership has been discussed in the numerous judgments; the Apex Court had an occasion to discuss this point in a judgment reported in (1987) 4 SCC 193 Smt. Shanti Sharma & Ors. Vs. Ved Prabha & Ors the Apex Court had held as follows:

“The word 'owner' has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be is that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Govt. or the authorities constituted by the State and in this view of the matter it could not be thought of that the Legislature when it used the term 'owner' in the provision of Section [14\(1\)\(e\)](#) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term 'owner' has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act.”

11. No triable issue has arisen on this count either

12. Learned counsel for the petitioner has lastly submitted that in the connected eviction petition which has been filed in respect of the RCR No.42/2012

adjoining shops leave to defend had been granted and when the matter was almost ripe for conclusion, the landlord has chosen to withdraw this eviction petition; attention has been drawn to the order dated 17.10.2011 passed in Eviction Petition No.112/2011; attention has also been drawn to the order dated 16.9.2009 passed in Eviction Petition No.118/2009; contention being that this was the connected eviction petition which had been filed by the landlord qua the other disputed shop and leave to defend had been granted; thereafter the landlord had chosen to withdraw the petition for the reasons best known to him; this, in fact, destroys the bonafide need of the landlord. This argument has vehemently been urged by the learned counsel for the petitioner. At this stage it is relevant to point out that the order passed on 16.9.2009 is passed in Eviction Petition No.118/2008 and order dated 17.10.2011 was passed in Eviction Petition No.112/2011; the eviction petition numbers do not match and this has been specifically pointed out to the learned counsel for the petitioner for which he has no answer. That apart this argument now urged admittedly does not form a part of the pleadings of the tenant in his application for leave to defend.

13. Triable issues have to emanate from the averments made in the RCR No.42/2012

application for leave to defend; that is why the legislature has mandated that leave to defend has to be filed within a stipulated period of 15 days. Issues sought to be raised after the stipulated period cannot be gone into as otherwise the very purpose and import of the summary procedure as contained in Section 25 B of the DRCA would be given a go by. This was not the intent of the legislature.

14. Leave to defend cannot be granted in a routine manner.

15. In (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal the Apex Court had noted that the prayer for leave to contest should be granted to the tenant only where a prima-facie case has been disclosed by him. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend.

16. On no count does the impugned order suffer from any infirmity. Since no triable issue has arisen eviction petition had rightly been decreed in favour of the landlord and the application seeking leave to defend filed by the defendant had been dismissed.

17. Petition is without any merit; dismissed.

APRIL 26, 2012
nandan

INDERMEET KAUR, J