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

% *Date of Judgment: 25.4.2012*

+ RC.REV. 53/2010 & C.M. 4467/2010

MADHUSUDAN JAGOTA & ANR Petitioner
Through: Mr.K.K.Aggarwal and Mr. Rajiv
K.Garg, Advs.

versus

SURENDER KUMAR MAKKAR & ANR ... Respondents
Through: Mr.R.S.Kela, Adv.

+ RC.REV. 120/2010

SUBHASH JAGOTA Petitioner
Through: Mr.K.K.Aggarwal and Mr. Rajiv
K.Garg, Advs.

versus

SURENDER KUMAR MAKKAR & ORS Respondents
Through: Mr.R.K.Kela, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned is the order dated 14.01.2010. Eviction petition
filed by the landlord under Section 14(1)(e) of the Delhi Rent Control

Act (hereinafter referred to as the DRCA) stood decreed; application filed by the tenant seeking leave to defend had been declined.

2 Disputed premises have been declined as a portion of first floor of property bearing No.B-7, Model Town-II, Delhi. Record shows that the present eviction petition has been filed by the landlord on the ground of bonafide requirement. Surender Kumar Makkar and his wife Priti Makkar are stated to be the owners and landlords of the suit premises. Contention being that the premises have been let out to the tenant for a commercial purpose; the original tenant has since died and the premises are now in occupation of his legal representatives. The tenants had demolished the intervening wall and converted the premises into a hall. Property in question was originally owned by Jaswant Kaur the mother of the petitioner no.1. By virtue of a registered gift deed dated 08.9.2004 these premises had been gifted to the two aforementioned petitioners. Except the portion depicted in blue colour in the site plan (ground floor) the other portion of the ground floor had been sold by Jaswant Kaur. The only portion available to the petitioner on the ground floor is a stair case for access to the upper floors; this is in the front portion; on the rear side there is a covered courtyard and a staircase

which is also depicted in the blue colour in the site plan. Petitioners are the owners of the first floor and the terrace floor; the portion in occupation of the tenant is depicted in red colour; the portion shown in the yellow colour is in the tenancy of Krishna Kumari whereas the portion shown in green colour on the second floor is with another tenant namely Sarla Mahendru. The petitioners and their sons are in occupation of the remaining portion on the terrace floor. The petitioner no.1 is himself engaged in the sale/business of water purifiers. The premises are required bonafide for the use of their son Amit as he is a law graduate and registered as an advocate; he requires the aforementioned premises for the purpose of doing practice as an advocate and for running his office. They have no other reasonably suitable accommodation to accommodate this requirement of their son who is dependent upon them for his accommodation. Accordingly eviction petition had been filed.

3 Leave to defend application had been filed and the averments contained therein have been perused. Contention is that the other legal representatives of the original tenant namely D.D.Jogota have not been joined; this petition is bad for non-joinder of the necessary parties; the

petition has been filed malafide only to usurp the premises and except higher rent from the tenant. Material facts have been concealed. Contention is that other accommodation is available with the landlord and his submission that no other reasonably suitable accommodation is incorrect. Attention has been drawn to the site plan. It is contended that the petitioner has four bed rooms with a drawing and dining room along with a kitchen and study room on the second floor and also an equal accommodation on the third floor; accommodation is also available with them on the ground floor as also on the first floor. Their contention that the premises are required for the need of their son has not been substantiated. Further contention being that the portion shown in yellow colour in the site plan which had been tenanted out to Krishna Kumari has since been vacated; further contention being that the accommodation with Sarla Mahendru on the second floor has also renewed; had it been a case of bonafide requirement of the petitioners they would have not renewed the tenancy of Sarla Mahendru; eviction petition has been filed malafide only to harass the present petitioner.

4 Reply has been filed by the respondent to the corresponding paras of the application seeking leave to defend. Contention is that the

accommodation described by the petitioner as depicted in the site plan is correct; in fact the averments made in the application seeking leave to defend have not challenged the correctness of the site plan as also depiction of the property as given by the landlord in the said site plan. This site plan has shown that the only portion which is available with the landlord on the ground floor is a narrow passage on the front portion which is a stair case allowing access of the landlord to the upper floor from this side; there is an open court yard in the rear portion having a staircase that allows access of the landlord to the upper floor from this portion. This position is undisputed. On the first floor the portion shown in blue colour is with the landlord which has a store having PVC sheet covering. The yellow portion is admittedly with the tenant Krishna Kumari. The red portion is with the present petitioner. The portion shown in green colour in the second floor is with another tenant Sarla Mahendru; contention of the petitioner that the tenancy of Sarla Mahendru has been renewed destroying the bonafide need of the petitioner as had the petitioners required the accommodation for their son they would have not renewed the tenancy of Sarla Mahendru is an argument without force. This factum has been disputed in the

corresponding para of the reply; even otherwise no document has been placed on record by the tenant to substantiate this submission which appears to be only a bald submission; so also is the contention of the tenant qua the yellow portion. Contention of the tenant is that Krishna Kumari has since vacated the premises; submission being that these premises have been vacated on 30.11.2009 and the eviction petition has been filed on 07.10.2009 which is just one month prior to the date of the filing of the eviction petition and this was for a malafide reason as the landlord did not wish to disclose that the premises would automatically be vacated in November 2009 as the two years lease with Krishna Kumari would then come to a close. This oral submission which has been submitted before this Court finds no mention in the averments made in the application for leave to defend where the only contention is that as per the knowledge of the tenant the premises shown in the yellow portion on the first floor has been vacated. The landlord has vehemently denied the submission that this yellow portion had been vacated in November 2009.

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 the schedule of his business accommodation either for himself or for his family members who are dependent upon him for other accommodation.

6 It is not in dispute that the son of the petitioner is a law graduate having qualified in the year 2007 and now wishes to set up practice of his own. Pleadings of the parties show that there is no other reasonably suitable accommodation available with the petitioner to settle his son for office space; the tenanted portion (as depicted in red colour in the site plan) on the first floor would be a suitable accommodation which space is required for the son of the landlord for his office; i.e. not only for placing table, chair but as also to house a stenographer and may be a junior assistant or a clerk.

7 The Supreme in Prativa Devi (Smt.) Vs. [T.V. Krishnan](#) (1996)

5SCC 353 had held in this context inter alia noted as:-

“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”

8 Unless and until a triable issue arises leave to defend should not and cannot be granted in a mechanical and a routine manner. No triable issue has arisen.

9 A last ditch effort has been made by the petitioner to contest the petition on the ground of ownership; contention being that the gift deed is not a valid bequeath by the mother in favour of the son. This argument is also bereft of force; besides the fact that this argument does not find mention in the written pleadings (application for leave to defend) even otherwise the question of ownership does not in any manner raise a triable issue. It is not the case of the tenant that the original landlord was not the owner of the suit premises; admittedly the present tenant has also attorned to the petitioner and was earlier paying rent to their mother and has all along recognized her as the owner and his landlady. The registered gift deed in favour of the petitioner has bequeathed the property upon them. The status of an owner and landlord as is contemplated under Section 14(1)(e) of the DRCA has been the subject matter of discussion by the Apex Court on numerous occasions. 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.”

10 The registered gift deed in favour of the landlord also cannot be the subject matter of challenge. A Bench of this Court in AIRCJ 1971 2 Arjan Dass Vs. Madan Lal, has in fact held, as follows:

“a tenant has no locus standi to challenge the validity of the Will made by the landlord as he is not an heir of the landlord.”

11 Arguments of the petitioner that there has been a non-joinder of the other legal representatives of the original tenant is also an arguments without merit. The law is well settled; the legal representatives of the

deceased tenant succeed as joint tenants and a petition against one legal representative alone is by itself maintainable. This has been upheld by a Bench of this Court reported in 2008 (8) AD 328 Inder Pal Khanna vs. Commander Bhupinder Singh Rekhi. This argument also does not raise any triable issue.

12 No notice is also required prior to the filing of eviction petition under Section 14(1)(e) of the DRCA and arguments on this score is also without any force. No triable issue having arisen the impugned judgment decreeing the eviction petition and dismissing the application seeking leave to defend suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

APRIL 25, 2012
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