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

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Date of Judgment: 30.04.2012

+ RC.REV. 186/2012 & CM Nos.7766-67/2012

RATAN SINGH (DECEASED) TH: HIS LEGAL
REPRESENTATIVES Petitioner

Through: Mr.Shamsad Ali, Adv.

versus

SHANTI DEVI Respondent

Through: Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR (oral)

1 Impugned order is the order dated 20.7.2011; eviction petition filed by the landlord Shanti Devi seeking eviction of her tenant Rattan Singh had been decreed; application seeking leave to defend filed by the tenant had been declined.

2 Record shows that the present eviction petition has been filed on the ground of bonafide requirement. Contention is that the petitioner is

the owner and landlord of the disputed premises which comprised of two rooms, kitchen, bath, latrine room with open courtyard (as depicted in the red colour in the site plan) forming a part of the property bearing No.8437, Arya Nagar, Pahar Ganj, New Delhi; petitioner is stated to be the owner of the suit premises having purchased it for a consideration from the earlier owner Chet Ram; the respondent is a tenant @ Rs.17/- per month; premises are required by the petitioner for her residence as also for the residence of her family members who are dependant upon her for their accommodation; the accommodation presently available with the petitioner and her family members is insufficient; it comprises of one big room and one small room; the small room is used as a store room while the big room is being used for residence by the husband of the petitioner; as such because of the paucity of accommodation the petitioner has taken on rent a flat bearing No.389, Sector-6, Rohini, Delhi built up on an area of 26 sq. yards for used of his son at the monthly rent of Rs.4000/-. The family of the petitioner comprises herself, her husband, three daughters, a married son and daughter-in-law and two grandchildren aged 6 years and 7 months; because of the aforementioned size of the family the accommodation available with the

petitioner cannot accommodate the family of the petitioner; the tenant is aware of the fact that the son of the petitioner is residing in a tenanted house who is dependent upon her for his accommodation. Present eviction petition has accordingly been filed.

3 The site plan depicting the size of the property which is in occupation of the tenant present has been placed on record.

4 Application for leave to defend had been filed. The main ground urged by the tenant is that the petitioner is neither the owner or the landlady of the suit premises; contention is that Phool Chand was the original owner who had let out the property to the tenant @ Rs.17/- per month; after his death his son Chet Ram had become the owner; it was denied that Chet Ram had sold this property in favour of the present petitioner; tenant had attorned in favour of the present landlord; contention is that documents filed by the petitioner are forged ; premises are in dilapidated condition; present petition was filed malafide.

5 The corresponding paras of the reply to the application seeking leave to defend have been perused. The averments made in the application seeking leave to defend have been vehemently denied.

6 The main bone of contention is the status of the landlord as

owner/landlord. There is dispute to the factum that the original owner of the suit property was Phool Chand; after his death Chet Ram his son had become the owner of the suit property. Rent receipts issued by the present petitioner/tenant namely Rattan Singh in favour of Chet Ram have been placed on record; it is not in dispute that Rattan Singh had attorned in favour of Chet Ram. The petitioner has claimed ownership qua the suit property; the tenant had denied it. It is the case of the tenant that the documents relied upon by the present petitioner claiming purchase of this property from Chet Ram are forged documents. The documentary evidence placed on record substantiating the stand of Shanti that she is the owner of the suit premises are all dated 15.10.1985; they are an agreement to sell, receipt and a registered will dated 20.5.1987. It is also not in dispute that inter se litigation are pending between the parties; a suit for permanent injunction had been filed by the present landlord Shanti against Rattan Singh in which judgment dated 19.3.1996 was delivered. This judgment is an admitted document; although the certified copy of the said judgment could not be placed on record as the record had purportedly been destroyed yet this judgment (as noted supra) has an admitted finding arrived at by the Civil

Judge against which no appeal had been filed by either party; that judgment has since attained a finality. This judgment clearly states that Chet Ram had come into the witness box and he had himself deposed on oath that he had sold this suit property to the present landlord Shanti and as such the objection now raised by the tenant that Shanti is not the owner/landlady of the aforementioned suit property is an objection clearly with any merit; it raises no triable issue.

7 Time and again the Apex Court has had an opportunity to discuss the concept of ownership in pending proceedings under Section 14(1)(e) of the DRCA. 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."

8 In 1995 RLR 162 Jiwan Lal Vs. Gurdial Kaur & Ors. a Bench of this Court while dealing with the concept of ownership in a pending eviction petition under Section 14(1)(e) of the DRCA had noted as follows:

"There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises."

9 The bonafide requirement of the landlord has also been proved. The site plan shows that there are only two small room which are presently available with the petitioner; the size of the family of the petitioner is also not in dispute; she has her husband, three daughters, one son, a daughter-in-law and two grand children. The tenant has not disputed the size of the family of the petitioner. It is also not in dispute

that the married son of the petitioner is dependent upon her for his accommodation; he has taken a flat on rent to accommodate his family; the family of the petitioner comprising of nine members cannot thus fit into the aforementioned two room which is the only accommodation available with them and they have no another reasonably suitable accommodation.

10 It is not for the tenant to dictate the terms to the landlord; this is also not the business of the court. The landlord is the best judge of his requirement.

11 Record also show that the contention of the tenant that Flat No.177-178 , Janta Flat, Sector-6, Rohini is owned by the petitioner has been vehemently denied. Flat no.177 is owned by Nathhi Lal, Flat No.178 had been sold by petitioner in the year 1998 to which fact there is no dispute; the documents to substantiate this submission i.e. GPA, agreement to sell, affidavit and receipt dated 18.3.1998 had also been filed on record to substantiate the submission that Flat No.178 had been sold to Bhupender Singh in 1998. This submission also raises no triable issue.

12 Petitioner has been able to satisfy the court that her need for the

aforenoted premises is bonafide; no triable issue has arisen on any count; leave to defend cannot be granted in a routine or in a mechanical manner. This has been reiterated by the Apex Court time and again. The Supreme Court 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.”

13 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.

14 Unless and until a triable issue has arisen leave to defend cannot be granted; if this is done the very purpose and import of the Section 25-B of the DRCA will be given a go by; which was not the intent of the

legislature.

15 In this background impugned order decreeing the petition and dismissing the leave to defend application filed by the tenant suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

APRIL 30, 2012
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