

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

% *Date of Judgment:08.5.2012*

+ **RC.REV. 212/2012, CM No.8452/2012 & CAVEAT No.478/2012**

RAMESH CHAND JAIN Petitioner
Through: Mr.S.K.Chaudhary, Adv.

versus

SURESH KUMAR KOHLI Respondent
Through: Mr.S.N.Kumar, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned judgment is dated 30.11.2011; vide which the eviction petition filed by the landlord Suresh Kumar Kohli seeking eviction of his tenant Ramesh Chand Jain from the disputed premises i.e. a shop bearing municipal No.2656, Ajmal Khan Road, Karol Bagh, Delhi had been decreed and application seeking leave to defend had been declined.

2 Record shows that the present eviction petition had been filed by the landlord on the ground of bonafide requirement; the grounds for

eviction are contained in para 18; petitioner alleged that he is the owner of the suit property; his father Bhagat Raj Kohli and his father-in-law Sardar Chand Narang were the joint owners of the property bearing No.2656; they had let out the shop to the aforementioned tenant vide a lease deed dated 15.11.1975; the original tenant was Ishwar Chand Jain and after his death the respondent namely Ramesh Chand Jain had become the tenant by survivorship. Father-in-law of the petitioner had filed a suit for partition of the aforementioned property and pursuant thereto on a joint application a consent decree of partition was passed inter se between the parties on 27.3.2001; pursuant to which the aforementioned suit shop has fallen to the share of the petitioner; since then rent was earlier being paid to Bhagat Raj Kohli, (the father of the petitioner) and after his death the petitioner has become the owner of the suit premises. Rent is also being paid by the tenant to the petitioner. This position qua the ownership of the present petitioner is not in dispute. A bald submission has been made by the learned counsel for the tenant that the compromised arrangement between the father of the petitioner namely Bhagat Raj Kohli and his father-in-law is a document which has not been proved in accordance with law and to that extent only a

preliminary question had been raised about the title of the landlord; however, this contention is no longer disputed. Record shows that the consent decree passed on 27.3.2001 in Suit No.2969/2001 between Bhagat Raj Kohli (father of the petitioner) and his father-in-law Sardar Chand Narang had been acted upon and thereafter the suit property having fallen to the share of Bhagat Raj Kohli and the tenant started recognizing Bhagat Raj Kohli as his landlord; after Bhagat Raj Kohli the present petitioner is his landlord; there is no quarrel on this proposition of ownership.

3 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.”

4 Further contention of the petitioner is by and large to the effect that need of the landlord is not bonafide and he has other reasonably suitable accommodation. The grounds of eviction as noted in the eviction petition is the need of the landlord for this shop to enable his elder son Sahil Kohli as also his younger son Sidhant Kohli (who are dependent upon him for their accommodation) to carry on the business of gemology as they have no other reasonably suitable accommodation where the two sons can settle or run their independent business.

5 Leave to defend was filed; contention is that the landlord Suresh Kumar Kohli is himself running flourishing jewellery business and he has a huge showroom; his sons Sahil Kohli and Sidhant Kohli are in fact engaged in this business with their father; the need of the petitioner is not bonafide. This contention raised by the tenant in the leave to defend application finds mention in para 6 of the application.

6 This submission has been vehemently denied in the corresponding

para of the reply to the leave to defend. The landlord has specifically stated that the premise are required to enable his two sons Sahil Kohli and Sidhant Kohli to carry on their business of gold and diamond jewellery; it has not been disputed that the father namely Suresh Kumar Kohli has a business which he is running from shop No.2656, Bank Street, Karol Bagh, New Delhi which is a tenanted premises for which he is paying Rs.21,000/- as rent; the present premises are required for the need of his sons.

7 There is no dispute to the factum that Suresh Kumar Kohli has two sons who are capable of doing business; the elder son Sahil Kohli has qualified with a diploma of gemology; the petitioner himself is carrying on the business of jewellery in premises No.2656, Bank Street, Karol Bagh; thus it is evident that the family of the petitioner is engaged into this business of jewellery trading of both diamonds and gold. The fact that Sahil Kohli needs the premises to carry on his own business cannot be disputed; even assuming that he is assisting his father in the jewellery business run by the father; it does not take away the right of the son to start his separate business in view of the fact that he is a duly qualified in gemologist and this fact has not been disputed by the tenant.

8 Today a submission has been made that the lease of the first floor of property No.2656, Bank Street, Karol Bagh from where Suresh Kumar Kohli is carrying on his business is a false document and has been created during the pendency of the eviction petition; this submission does not hold merit and cannot be gone into as his submission is admittedly not a part of pleadings in the trial court below; it does not find mention in the application for leave to defend.

9 Settled position at law is that triable issues have to be emanate from the pleadings of the parties; unless and until a triable issue is pleaded, the court cannot in the absence of such a plea examine the same.

10 It is also a settled position at law that leave to defend cannot be granted in a routine or a mechanical manner. If this was permitted the whole intent and purpose of the provisions of Section 25-B of the Delhi Rent Control Act which contains a summary procedure would be given a go-by and this was not the intent of the legislature.

11 In (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal the Apex Court has held 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.

12 In this background impugned judgment having decreed the eviction petition and having dismissed the leave to defend application suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MAY 08, 2012
nandan