

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

+ **R.C. Rev No. 470/2012**

Date of Decision: 04.10.2012

SATISH BANSAL

.....Petitioner

Through: Mr.L.S.Rana, Advocate.

Versus

NEELAM GUPTA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This revision petition u/S 25 B (8) of the Delhi Rent Control Act (for short "the Act"), impugns the order dated 14.03.2012 passed by the Ld. ACJ-cum- RC (central/Delhi) whereby leave to defend application filed by the petitioner, in the eviction petition, was dismissed.

2. The eviction petition was filed by the respondent in respect of two rooms/office measuring 10.0' x 11.3' and 12.6' x 8' and open court yard on the first floor and one room of 14' x 11.3' on the second floor with open terrace, along with staircase leading from ground floor to the upper floor, latrine bathroom on the first floor, forming part of the property bearing No. 3667, Ward VI, Chawri Bazar, Delhi-110006 (hereinafter referred to as the "suit premises"). In this petition it was

stated that the suit premises was first acquired by late Sh. Shree Ram vide a registered sale deed. On his death, his wife, Smt. Premwati became the owner of the said property and executed a will during her lifetime in favour of her daughter-in-law, Smt. Sandhaya Gupta (mother-in-law of the respondent). Smt. Sandhaya Gupta thereafter executed a will in favour of the respondent and another daughter-in-law namely Vandana Gupta. After her death, Vandana Gupta and the respondent became the absolute owners of the property. On 21.10.2010, Vandana Gupta executed a relinquishment deed which was registered before the Sub-Registrar and through this deed, she relinquished all her rights, title and interest in respect of the suit premises, as a result of which, the respondent became the absolute owner. The petitioner's father, Om Prakash was the original tenant in respect of the suit premises. The mother-in-law of the respondent, Smt. Sandhaya Gupta filed a petition u/S 14(1) (c), (d), (e), (h) and (j) of the Act against the father of the petitioner and after his demise in 1996, the petitioner along with other legal heirs of the deceased Om Prakash were substituted as respondents in the eviction petition, however only the petitioner appeared and contested the said petition. The petitioner came in possession of the suit premises after the death of his father in 1996. It is an admitted fact that it is the petitioner alone who is running the business run by Om Prakash, is the tenant in respect of the suit premises.

3. The respondent filed an eviction petition on 23.12.2011 on the ground that the suit premises are required for the bonafide need of her

and the members of her family. The family of the respondent consists of her husband and two sons namely Aditya Gupta and Anubhav Gupta. The elder son, Aditya Gupta completed his M.B.A and the second son has also completed his B.B.A. The elder son has recently got married. Both the sons wish to start their own businesses, but due to paucity of space, they have no choice but to assist their father in running of the business on the ground floor of the suit premises. The wife of the elder son who is a qualified lady also wishes to start her own business. The shop in possession of the respondent on the ground floor of the suit premises is very small for four members of the family to run their independent businesses. It is stated that the husband of the respondent has five employees at present and they are made to sit on the road due to shortage of space. Even display of items could not be done in the premises and the same had to be done on the road, which led to public inconvenience and on more occasions than one, the police had issued challans against the respondent. The respondent also stated the suit premises to be required for setting up a proper office, where she and other members of the family could sit and maintain the business/office. Lastly, the respondents stated that essential facilities like pantry, latrine, and toilet are available only on the upper floors.

4. In leave to defend application, the petitioner set up a number of grounds. The petitioner contends that the respondent has not come to the court with clean hands and that material facts have been suppressed. His case is that the respondent is not the sole owner of the suit premises. According to him, Smt. Premwati had no right to

execute a will in favour of Smt. Sandhya Gupta (mother-in-law of the respondent) as the property on the death of Smt. Premwati's husband, Sh. Shree Ram, did not devolve solely to his wife, but also to their children. The petitioner in his application asserted that the will of Smt. Premwati and the release deed executed by her heirs has been manipulated by the respondent to show her to be the absolute owner of the property. The petitioner also contended that the respondent has other accommodations available with her. In the leave to defend application, he lists around 10 additional properties owned by the respondent. The petitioner submitted that the area of Chawri Bazar has been declared a prohibited area for running commercial activities, the said area being densely populated. Hence the property is not suitable for running commercial activities. In addition, the petitioner stated that the suit premises, being located in the slum area, permission is required to be taken from the competent authority u/S 19 of the Slum Areas (Improvement and Clearance) Act. The petitioner contended that the respondent has not impleaded all the legal heirs of the deceased tenant late Om Prakash, and so the petition is bad for non-joinder of parties. The petitioner claimed that the intention of the respondent/landlady was to evict him and then let out the suit premises at a higher rent. He also contended that the respondent is not clear as to the use and occupation of the suit premises, as in the previous petition filed u/S 14(1) (c), (d), (e), (h) and (j) of the Act, it was contended that the suit premises was being used for residential purposes, but in the present

petition, she avers the same suit premises being used for running of business.

5. In reply to the leave to defend application, the respondent/landlady has denied every ground brought up by the tenant. She specifically denied being in possession of around ten additional accommodations as submitted by the petitioner, giving details of the current status of each and every property mentioned.

6. The Ld. RC has dismissed the leave to defend application vide order dated 14.03.2012. This order is under challenge in the present petition.

7. I have heard learned senior counsel for the petitioner as also the respondents and perused the record, including the impugned order.

8. It is to be kept in mind that the revisional powers of this court u/S 25 B (8) is limited unlike that of appellate powers, and in light of this aspect, I have looked into the eviction petition, leave to defend application and the impugned order and examined the same having regard to the submissions made before me.

9. The main contention of the petitioner is that the respondent has not approached the court with clean hands. He disputes the title held by the respondent/landlady stating that she is not the sole owner of the suit premises as stated by her in her eviction petition. The Ld. RC has dismissed this ground, and rightly so, stating that the tenant cannot challenge the ownership of the landlord. In the present case, the relationship of landlord/tenant is not in dispute. It is undisputed that the petitioner/tenant has been paying rent to the respondent since 1996 and

prior to him his father used to pay the rent. The principle of estoppel u/S 116 of the Indian Evidence Act applies against the tenant and he cannot deny the ownership of the landlord. The Supreme Court in **“Subhash Chandra v. Mohammad Sharif, AIR 1990 SC 636”** held that:-

“7. This section (Section 116 of Indian Evidence Act) does not permit the tenant during continuance of the tenancy, to deny that his landlord had at the beginning of the tenancy a title to the property”.

Further, the Ld. RC has pointed out that in the case of **“Ramesh Chand v. Uganti Devi, 157 (2009) DLT 450”**, this Court held that:-

“7. It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14(1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises.”

It is settled law that the tenant cannot question the title of the landlord. What is important is that the landlord should hold a better title than the tenant, however imperfect the landlord's title maybe. Thus the Ld. RC was right in deciding against the petitioner in this regard.

10. The second ground raised by the petitioner was that the respondent was in possession of a number of additional properties in Delhi. He submitted a long list of the properties held by the respondent. The Ld. ARC has dealt with each and every one of these properties, stating that the respondent/landlady has submitted that she is no longer in possession nor has anything to do with those properties. At this point it is important to refer to two of the said properties. It was the contention of the petitioner that the respondent and her husband had applied for commercial plots at Sanjay Gandhi Transport Nagar which they are likely to get. The respondent stated in the lower court that upto then, she had not got any plot. Another property was a factory plot situated at Vishwas Nagar. Regarding this, the respondent submitted that as per Master Plan 2021, action had been taken and vide notice dated 09.01.2010, the unit of the respondent's husband and her brother-in-law at Vishwas Nagar was closed down and shifted to Bawana Industrial Area and as per family settlement in 2006, the plot had fallen in the share of Sh. Ajay Gupta, brother-in-law of respondent who is running business from there and she has nothing to do with the property now. Further, since it is the petitioner who asserts that the respondent has additional accommodation, the burden of proof lied on him. The petitioner has just listed the names of the properties in the leave to defend application and nothing has been placed on record to show that these properties have not been sold or that the respondent has anything to do with the same.

11. The petitioner also contends that the other legal heirs of the original tenant i.e. Sh. Om Prakash have not been impleaded as party in the present suit. The respondent, in answer to this has stated that in the earlier petition filed by Smt. Sandhaya Gupta, mother-in-law of the respondent u/S 14(1) (c), (d), (e), (h) and (j) of the Act, the legal heirs were made party, but only the petitioner contested the case. Copies of the cross-examination have been submitted in the court of the Ld. RC. The relevant portion of the Ld. RC's order is like this:-

“To substantiate the said contention, certified copies of cross examination of respondent herein (Petitioner in the present petition) have been placed on record by the petitioner and contention of the petitioner is correct since during cross examination in the said proceedings respondent had admitted that “except him no one else has any concern with the tenanted premises and deposed that after the death of his father no one became the tenant as the matter was pending in the court and he only became the tenant.”

Thus, it is clear that the petitioner himself stated on record that he alone is the tenant in the suit premises. He now cannot take the plea that the other LRs of Sh. Om Prakash have not been made party. The Ld. RC rejected this ground and rightly so, citing the case of **Krishan Kumar Alag v. Jambu Prasad Jain (2009) 161 DLT 511 (Del)**, where this court has held that:-

“It is sufficient if the LR in occupation of the tenanted premises are made as a party and it is not necessary to bring on record each and every LR of deceased.”

12. The respondent's plea in her eviction petition is that the suit premises are needed for her two qualified sons and a daughter-in-law

to start their own business. The petitioner contends that the entire property bearing no. 3666 situated at Chawri Bazar is in possession of the respondent, whereas the respondent submitted that the said property has only one shop where her husband is running his business and the same is not enough for meeting the needs of the other members of her family. It has been held time and again by the Supreme Court and this Court that the landlord is the best judge of his needs and tenant or the court cannot dictate terms regarding the same. It is also settled principle of law that the landlord is entitled to seek eviction of tenanted premises not only for himself/herself, but for other dependant family members. There is no dispute that the parents are under a moral obligation to help establish their sons in business and can seek eviction of tenanted premises for them. Reference can be made to the case of **“Joginder Pal vs. Naval Kishore Behal,(2002) 5 SCC 397”**, where the Supreme Court held that:-

“The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use..... Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord.

Except for the mere denial of bonafide need, the petitioner has not been able to substantiate this as a triable issue.

13. Lastly, the Ld. RC rejected the claim of the petitioner that the respondent had a malafide intention to evict him on the ground of bonafide need and subsequently let out the suit premises at a higher rent. The law takes care of situations such as these u/S 19 of the Act which reads as under:-

*“19. Recovery of possession for occupation and re-entry:-
(2) Where a landlord recovers possession of any premises and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, to re-let to any person than the evicted tenant without obtaining the permission of the Controller such tenant can be put back to the premises or can be paid such compensation as the Controller thinks fit.”*

Thus the tenant can always apply for restitution under this section, but this can be done only after he vacates the premises. It is unreasonable for the tenant to assume that the property would be let-out at a higher rent on his eviction.

14. In light of the above discussion, it is clear that the petitioner/tenant has not been able to set up any triable issue with regard to the eviction petition. I see no infirmity or illegality in the impugned order. The petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 04, 2012

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