

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

% *Date of Judgment: 15.3.2012*

+ CM(M) 1326/2010 & CM No.18872/2010

VEENA SETHI & ORS

..... Petitioners

Through: Mr.Sudhansu Batra, Sr. Adv. with
Mr.Bhuvan Gugnani, Adv.

versus

INDER KUMAR LAMBA

..... Respondent

Through: Mr.Ajay Malhotra, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

For orders see CM(M) No.1325.

INDERMEET KAUR, J

MARCH 15, 2012

nandan

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment: 15.3.2012

CM(M) 1325/2010 & CM No.18870/2010

ANIL KUMAR

Petitioner

Through: Mr.Sudhansu Batra, Sr. Adv. with
Mr.Bhuvan Gugnani, Adv.

versus

INDER KUMAR LAMBA

..... Respondent

Through: Mr.Ajay Malhotra, Adv.

AND

CM(M) 1326/2010

VEENA SETHI & ORS

..... Petitioners

Through: Mr.Sudhansu Batra, Sr. Adv. with
Mr.Bhuvan Gugnani, Adv.

versus

INDER KUMAR LAMBA

..... Respondent

Through: Mr.Ajay Malhotra, Adv.

CORAM:

CM(M) Nos.1325/2010 &1326/2010

Page 1 of 7

13

INDERMEET KAUR, J. (Oral)

1. Impugned order is dated 12.8.2010; the application filed by the petitioner/tenant under Order VI Rule 17 of the Code of Civil Procedure (hereinafter referred to as the Code) seeking amendment in his application for leave to defend had been dis-allowed.

2. Record shows that an eviction petition had been filed by the landlord Inder Kumar Lamba against his tenant Anil Kumar under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA). After service of summons leave to defend was filed by the tenant on 20.10.2009. Present application under order VI Rule 17 of the Code had been filed six months later i.e. on 22.4.2010. The averments made in the application are that after the filing of the leave to defend the tenant has come to know about certain properties which are owned by the landlord from where he and his son are carrying on business and as such he wishes to incorporate those details therein. The details of these properties are:

- i. the business of the landlord being carried out from S-53, Greater Kailash, Part-I, New Delhi;

- ii. Business premises at 703-704, New Rajinder Nagar, New Delhi from where he is doing business of auto parts;
- iii. B-12, First Floor, Jhilmil Colony Industrial Area from where the son of the landlord Ajay Lamba is working;
- iv. 238/12 Punja Sarif, Kashmere Gate, Delhi, another property owned by the son of the landlord;
- v. 238/2, Punja Sarif, Kashmere Gate, Delhi another business house of the son of the landlord Ashish Lamba.
- vi. Premises bearing No.DB-11/34A, Vikaspuri, Delhi, business house of Ashish Lamba
- vii. Ashish Lamba is also owning flat at Gandhi Ashram Cooperative Housing Society, Plot-9, Sector-10, Dwarka, New Delhi.

3. Contention in the application is that these amendments are necessary and should be incorporated and brought on record.

4. Needless to state that the reply filed to the said application has opposed this prayer.

5. Impugned order had declined the prayer made in the application; court had noted it is only an oral submission made by the petitioner that these facts had come to the knowledge of the tenant only after the defence filed by another tenant in a connected eviction petition had been inspected by him; court had noted that the details of property No. S-53,

CM(M) Nos.1325/2010 &1326/2010

Page 3 of 7

Greater Kailash, Part-I and No.DB-11/34A, Vikaspuri, Delhi, do not match with the averments made in that application (E-64/2009); even otherwise the court was of the view that no plausible reason has been given to allow the amendments.

6. The summary procedure for dealing with the special class of the landlord as is the present case (under Section 14(1)(e) of the DRCA) is contained in Chapter- III of the DRCA; Section 25B is in fact a complete Code in itself. It specifically postulates that after summons have been served upon a tenant leave to defend has to be filed within 15 days. Admittedly leave to defend had been filed within the stipulated period of 15 days. Thereafter the present application has been filed after more than six months; how and from where the tenant learnt about these facts which he now proposes to bring on record have not been detailed in this application under Order VI Rule 17 of the Code; for what purpose the amendment is necessary has also not been disclosed; further an application for leave to defend has to be filed on an affidavit which is the specific procedure contained in Section 25B of the DRCA; the amendments now sought to be incorporated are admittedly not on affidavit.

CM(M) Nos.1325/2010 &1326/2010

Page 4 of 7

17 8 04

16

7. That apart these events which are now sought to be brought on record are not subsequent events i.e. falling in those category of events which have happened during the pendency of the petition. A Bench of this Court in a judgment reported in 2009 10AD (Delhi) 284 Ved Prakash & Anr Vs. Om Prakash had noted that while dealing with an application under Order VI Rule 17 of the Code in pending proceedings under Section 14(1)(e) of the DRCA; a distinction has to be drawn between those events which are prior in time to the filing of the eviction petition and those which take place subsequently i.e. during the pendency of the eviction petition. These facts which are now sought to be brought on record are admittedly facts relating to the alleged ownership of certain properties by the landlord which properties were admittedly purchased by him prior in time to the filing of the eviction petition; they do not qualify as subsequent events. These were all pre-existing i.e. existing at the time when the application for leave to defend was filed. In fact if such kind of amendments are permitted the whole purpose and intent of Section 25 B(4) would be defeated as the specifically postulated period for filing an application for leave to defend within 15 days; would be given a go-by and by permitting the

CM(M) Nos.1325/2010 &1326/2010

17

amendment there would be an absolute extension of time for filing the application for leave to defend. This could not and was not the intent of the statute.

8. The Supreme Court in (1984) 2 SCC 75 Ravi Dutt Sharma Vs. Ratan Lal Bhargava inter alia reads as follows:

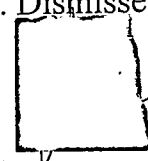
"7. The dominant object of amending act is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Section 14(1)(e) and 14-A and for avoiding unusual dilatory process provided otherwise by the Rent Act. It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In many cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and it there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief which the legislature intended to avoid by incorporating the new procedure in Chapter III-A. The legislature in its wisdom thought that in cases where the landlords required their own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14-A and should be allowed to reap the fruits of decrees for eviction within the quickest possible time. In cannot, therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the amending

8 74

18

Act and the purposes which it seeks to subserve. Tenants cannot complain of any discrimination because the Rent Act merely gave certain protection to them in public interest and if the protection or a part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of Property Act was still preserved, no genuine grievance could be made."

9. Impugned order in this background declining the amendment suffers from no infirmity. Petition is without any merit. Dismissed.



INDERMEET KAUR, J

MARCH 15, 2012
nandan