

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

+ R.C. REV 505/2012

Date of Decision: 08.10.2012

SHAFIUDDIN

..... Petitioner

Through: Mr.J.H.Jafri, Adv.

Versus

MOHD. IBRAHIM

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This is a revision petition u/S 25B (8) of the Delhi Rent Control Act, 1958 (for short “the Act”), assailing the order dated 13.04.2012 passed by the Ld. Additional Rent Controller, whereby the leave to defend application filed by the petitioner/tenant was dismissed and consequentially an eviction order was passed.

2. The respondent filed an eviction petition u/S 14(1)(e) of the Act with respect to ground floor of the property bearing no.282, Gali Garhaiya, Matia Mahal, Jama Masjid, Delhi (hereinafter referred to as “the tenanted premises”) wherein the petitioner is the tenant. The respondent in his eviction petition stated that the tenanted premises is required by him for residential purposes as he has a large family of

four daughters, three unmarried sons and three married sons along with their families. The petitioner raised the ground that the landlord had alternative accommodation. He submitted in his leave to defend application and also in this petition that the respondent's sons are owners of built up three storey property bearing no. 240 Gali Jain Mandir, Shahdara, Delhi, which has four shops on the ground floor and eight rooms on the above floors where they are residing comfortably. It is also submitted that the petitioner along with his brother Mohd. Idris owns property No. 1526, Gali No. 1, Shahdara. In reply to all this, the respondent stated that no property bearing no. 240 Gali Jain Mandir, Shahdara is owned by his sons, and neither does he know of the existence of such a property. As regards the property bearing no 1526, Gali No. 1, Shahdara, the respondent submitted that the said property was exclusively owned by his brother Mohd. Idris and that he has no concern in the said property. The Ld. ARC dismissed the leave to defend application and this order is under challenge in this revision petition.

3. Before advertng to the submissions made by the learned counsels for the parties, I must reiterate that the power of this Court under Section 25–B (8) Act are not as wide as those of Appellate Court, and in case it is found that the impugned order is according to law and does not suffer from any jurisdictional error, this Court must refrain from interfering with the same. The power under this provision is limited and supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion

which was not possible, based on the material produced, should this Court interfere in the orders passed by the Rent Controller.

4. In light of the above principle of law, I have heard the counsels for the parties and examined the records.

5. The case set up by the petitioner was that the respondent had alternate accommodations available to him. He lists out two alternative accommodations allegedly owned by the respondent. Though the petitioner has stated that these alternative accommodations available were with the respondent, he was not able to submit any document supporting his submissions. As regards the property bearing no. 1526, Gali no. 1, Shahdara, the petitioner submitted that there was a relinquishment deed entered into by the petitioner and his siblings by which all the rights and interest in the tenanted premises were relinquished in favour of the respondent. The petitioner urged that in the relinquishment deed, there was reference to the said property bearing no.1526, it could be seen that it was jointly owned by the respondent and his brother Mohd. Idris. But when asked in court to point out this relevant fact in the relinquishment deed, the counsel for the petitioner could not do so and conceded that the relinquishment deed did not contain any such fact as relied upon by him. The petitioner further contended that three sons of the respondent were owners of property No. 240, Gali Jain Mandir, Shahdara, but to substantiate the same, he did not place on record any sort of document. On the other hand, the respondent has categorically denied this ownership and has gone further to state that he has never heard of the

existence of such a property. The petitioner has not put on record anything that proves the ownership of the respondent's sons in the said property. It is settled law that mere assertions cannot be made by the tenant. The issues raised by the tenant should be substantiated with some material placed on record. Bald assertions will not be entertained by the court. As held by this court in **“Rajender Kumar Sharma & Ors. vs. Leelawati & Ors, 155 (2008)DLT 383”**:-

“11.....Mere assertions made by a tenant in respect of landlord's ownership of other buildings and in respect of alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed, the whole purpose of Section 25-B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence defeating the very purpose of the statute. The Rent Controller is thus not precluded from considering the material placed before it by the landlord in response to leave to defend to show that the tenant's assertions and averments were totally false.”

It is important for the tenant in any leave to defend application to submit relevant documents on record to support any triable issue raised by him. In absence of any material, the ARC cannot come to a conclusion as to the weight of the issue raised by the tenant, thus impairing his power to decide whether an issue raised is triable or not. In the case of **“Krishan Kumar Gupta v. Swadesh Bhushan Gupta, (2008) 152 DLT 556”**, this court has held that:-

“12.....Unless, the learned ARC scrutinizes each of the objections raised by the tenant with the help of documents and the material placed on record, the entire purpose of providing summary proceedings in respect of the eviction

proceedings fails. Thus, it is incumbent upon the ARC to scrutinize all objections carefully in the light of law laid down and in the light of the material placed on record. It cannot be argued that the learned ARC was not required to go into the details of the objections and come to a conclusion on the basis of affidavits and once objections are raised leave to defend must be granted. Leave to defend can be granted only in those cases where the tenant is able to show by material on record that the petition was filed by the landlord mala fide.”

6. In light of the above discussion, it is evident that the petitioner/tenant has not been able to raise any triable issues. I do not see any need to interfere with the impugned order of the Ld. ARC as it was passed according to law and suffers from no infirmity. The petition is hereby dismissed

M.L. MEHTA, J.

OCTOBER 08, 2012

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