

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

% *Date of Judgment: 16.04.2012*

+ RC.REV. 145/2010 and CM No. 11650/2010, 11651/2010,
11653/2010, 11654/2010, 12112/2010 & 18303/2010

KHALIL KHAN Petitioner
Through Mr. Rajat Aneja and Mr. Vaibhav
Jairaj, Adv.

versus

AMIRUDDIN Respondent
Through Mr. K.S. Singh, Mr. Rahul Singh
and Ms. Madhu Sharma, Adv.

+ RC.REV. 146/2010 and CM Nos. 11656-57/2010, 11659-
60/2010

NASIR ALI Petitioner
Through Mr. Rajat Aneja and Mr. Vaibhav
Jairaj, Adv.

versus

AMIRUDDIN Respondent
Through Mr. K.S. Singh, Mr. Rahul Singh
and Ms. Madhu Sharma, Adv.

+ RC.REV. 147/2010 and CM Nos. 12113/2010, 11663-
11664/2010, 11666-67/2010 & 18257/2010

NABI AHMED Petitioner
Through Mr. Rajat Aneja and
Mr. Vaibhav Jairaj, Adv.

versus

AMIRUDDIN

..... Respondent
Through Mr. K.S. Singh, Mr. Rahul Singh
and Ms. Madhu Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. These three petitions had been disposed of by a common order dated 14.01.2010. The applications filed by the three tenants i.e. Khalil Khan, Nasir Ali and Nabi Ahmed seeking leave to defend had been declined; the eviction petition filed by the landlord Amiruddin seeking relief of possession qua the suit premises had been decreed.

2. Record shows that Amiruddin is the owner and the landlord of three portions of three premises which had been tenanted out to Khalil Khan, Nasir Ali and Nabi Ahmed. Nabi Ahmed had been tenanted out a portion of property bearing No. E-29, House No. 144/10, Khureji Khas, Delhi -51; Nabi Ali was a tenant in a portion of property bearing No. E-30 and Khalil Khan was a tenant in a portion of property bearing No. E-31 of the aforementioned suit property. Each portion comprised of one room, kitchen, latrine and open space on the ground floor of the premises bearing Nos. 144/10, 144/13 and 144/15, Khureji Khas, Delhi-51. The

rate of rent was Rs. 1,000/-, Rs. 1,200/- and Rs. 850/- respectively which was exclusive of water and electricity charges.

3. There is no dispute to the fact that the premises of Khalil Khan and Nabi Ahmed have since got vacated; the landlord has taken vacant and peaceful possession of the suit premises from Khalil Khan and Nabi Ahmed in the course of the execution proceedings. The learned counsel for the petitioners/tenants points out that an application under Section 144 of the Code of Civil Procedure (hereinafter referred to as 'the Code') has been filed seeking restitution of the aforementioned premises. The portion let out to Nasir Ali is still in his possession.

4. Before this court, alongwith the present petitions an application under Order 41 Rule 27 of the Code as also other applications under Section 151 of the Code has been filed; contention being that certain informations have now been obtained by the tenants under the Right to Information Act which information would be relevant in deciding the controversy in question; these documents are to the effect that in the year 2008 the present petitioners/landlord had executed irrevocable powers of attorney in favour of third parties for valuable consideration.

Contention being that the bonafide need of the petitioners/landlords is in

fact malafide; they have set up a false case; in October 2008, they have executed irrevocable powers of attorney selling their portion of land to other persons for money; this was during the course of the eviction petition which has been filed in February, 2007; attention has been drawn to the aforementioned irrevocable powers of attorney dated 08.10.2008, 20.10.2008 and 22.10.2008; contention being that these documents are authentic and cannot be challenged and would throw light upon the controversy in question and as such may be permitted to be taken on record.

5. Arguments have been refuted on this point. It is submitted that in view of the judgment of Prithipal Singh vs. Stapal Singh reported in (2010) 2 SCC 15, the provisions of the Code are inapplicable to the summary procedure as contained in Section 25B of the DRCA and Rule 23 of the DRCA being inapplicable, the present applications filed under the provisions of the Code cannot be permitted to be taken on record; further submission being that even otherwise these documents are not authentic and would in no manner throw light upon the controversy in question.

6. The Apex Court in the judgment of Prithipal Singh(supra) has
RCR Nos.145-147/2010

inter alia noted as follows:-

“16. From a careful perusal of sub-section (4) of Section 25B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. This Section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceeding shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition..At this stage, we may also note that in sub-section (4) of Section 25B of the Rent Act read with Third Schedule, it has been made clear by the Legislature that if the summons of the proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceeding within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.

.....

20. The scope of Chapter IIIA of the Rent Act has been elaborately discussed in the case of [Ravi Dutt Sharma v. Ratan Lal Bhargava, \(AIR 1984 SC 967\)](#), in which this Court duly discussed the object of the Rent Act and also the insertion of Chapter IIIA of the same in the following manner :-

“7. The dominant object of the act is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(e) and 14A 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 if 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. It 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 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 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.”

21. Before we take up the question posed before us in detail, we may also refer to one provision of the Rules, namely, Rule 23 of the said Rules which runs as under :-

“Code of Civil Procedure to be generally followed - In deciding any question, relating to procedure not specifically provided by the Act and these rules the Controller and the Rent Control Tribunal shall, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908.”;

22. A challenge was thrown to Section 25B of the Rent Act in Kewal Singh Vs. Smt. Lajwanti [1980 (1) SCC 290], questioning the classification held to be not in consonance with the objective sought to be achieved and the aforesaid provision must be held to be unconstitutional wherein this Court held that the special provision namely, Section 25B of the Rent Act providing summary procedure for

eviction while the landlord pleading bona fide personal requirement, separate classification of such landlords were held to be justified as such classification must be held to be in consonance with the objective sought to be achieved and provision not unconstitutional. Accordingly, in the aforesaid decision, this Court held that Section 25B does not suffer from excessive delegation. Keeping in view the aforesaid observations of this Court in this case and considering the special provisions made in Section 25B of the Act, we conclude that Section 25B of the Act is a complete code by which the entire procedure to be adopted for eviction of a tenant on the ground of bona fide requirement filed by the landlord in respect of a premises, shall be followed.

23. *As noted herein earlier, Section 25B(1) clearly says that any application filed by a landlord for recovery of possession of any premises, inter alia, on the ground of Section 14(1)(e) of the Rent Act, shall be dealt with in accordance with the procedure specified in Section 25B of the Rent Act. Therefore, sub-section (1) of Section 25B makes it clear that if any application for eviction of a tenant is filed by the landlord, the special procedure indicated in Section 25B has to be followed and Section 25B(1) clearly stipulates that the application for eviction shall be strictly dealt with in accordance with the procedure specified in this Section. Apart from that, as we have noted herein earlier, Section 25B itself is a special code and therefore, Rent Controller, while dealing with an application for eviction of a tenant on the ground of bona fide requirement, has to follow strictly in compliance with Section 25B of the Act. Therefore, after insertion of Section 25B of the Act, any application for granting eviction for a special kind of landlord, shall be dealt with strictly in compliance with Section 25B and question of relying on Rule 23 of the Code, which also does not give full right to apply the provisions of the Code, could be applied.*

24. *That apart, Rule 23 does not specifically confer any power on the Controller to follow the provisions of the Code in special classes of landlords. It is a general rule, by which the Controller in deciding any question relating to procedure not specifically provided by the Act and these rules shall, as far as possible, be guided by the provisions contained in the Code.*

25. *In view of our discussions made hereinabove that Section 25B has been inserted by the Legislature for eviction of a tenant of a certain classes of landlords, in which the entire procedure has been given, it is difficult for us to hold that Rule 23 of the Rules can be applied in the present case in view of the specific provisions provided in Section 25B of the Rent Act. Accordingly, we are of the view that Rule 23 has no manner of application.*

26. *.That being the position, if Rule 23 cannot be applied in the present case because of applicability of Section 25B, which is a special code and specific procedure for eviction of a tenant by a landlord on the ground of bona fide requirement, we cannot agree with the courts below that in view of Rule 23 of the Rules, the provisions of the Code can be applied in the present case and, therefore, we are of the view that the High Court had acted illegally and with material irregularity in the exercise of its jurisdiction in setting aside the order of eviction and in allowing the affidavit filed by the tenant for the purpose of defending the proceedings for eviction.”*

7. From the above noted observations, it is clear that the Apex Court has reiterated that Section 25-B which relates to a special class of landlords (as is so in the present case) have to be treated as a class apart; provisions of Rule 23 of the DRCA is inapplicable; the applications filed by the petitioners/tenants even otherwise do not disclose the details as to when this information was obtained by the them; the authenticity of the aforementioned documents is also under challenge; if such like applications are permitted, the very purpose and import of the summary procedure would be defeated; the summary procedure specifically envisages that the application seeking leave to defend has be filed

within 15 days of service of summons upon the tenant; triable issues have to emanate from the pleadings made by the tenant in his application for leave to defend which does not contain the averments now sought to be incorporated which averments are seriously disputed by the learned counsel for the respondent/landlord. If the submission of the learned counsel for the petitioners/tenants is accepted and the applications are allowed the whole summary procedure of 25B of the DRCA would be given a go by which was not the intent of the legislature. These applications are clearly devoid of merits; they are dismissed.

8. Record shows that an eviction petition had been filed by the landlord on the ground of bona fide requirement; there were three petitioners before the court; they are the legal heirs of Sirajuddin namely, Amiruddin, Mohd. Parvej and Mohd. Chand. The petitioners claimed to be the owners of the aforementioned suit property; contention being that the premises had been let out to the respondents/tenants for a for a residential purpose; the family of the petitioners/landlords has enlarged over a period of time and the accommodation presently available with them is insufficient; they require at least 16 rooms for the

residence for themselves and for their family members and the present accommodation available with them comprises only four rooms, one kitchen and one latrine and one bathroom is not sufficient to accommodate the need of their families; the details of the members of the family of the three petitioners have been disclosed; Amiruddin's family comprises of himself, his wife, one son and two daughters of whom two children are school going; contention being that his family require four bed rooms along with one study room, one dining room and one drawing room i.e. seven rooms in total.

9. The family of Mohd. Parvez comprises of himself, his wife and one daughter; they require two bed room, one drawing room and one dinning room i.e. four rooms in total. The family of Mohd. Chand comprises of himself and his wife; they require one bed room, one drawing room and one dinning room i.e. three rooms accommodation. The need of the three petitioners is of 14 rooms in total; the present accommodation available with them comprises of only four rooms which is inconvenient and causes harassment to themselves and their families; present eviction petition was accordingly filed on the ground of bonafide requirement.

10. Applications seeking leave to defend were filed by the tenants; the foremost contention raised was that all the owners have not joined as landlords; otherwise there was no dispute to the factum that the present petitioners are the co-owners/landlords of the premises.

11. At this juncture, learned counsel for the petitioners herein states that he is not contesting this petition on this ground and no objection has been raised by him qua the proposition that only some of the co-owners have filed the eviction petition and not all of them. In fact, this objection deserves no merit. The Apex Court in AIR 2004 SC 1321 M/s India Umbrella Manufacturing Co. & Ors. vs. Bhagabandei Agarwalla (dead) by L.Rs. & Ors. has even otherwise held that one of the co-owners can file a suit for eviction of a tenant in the property owned by co-owners; this principle is based on the doctrine of agency; one co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and on behalf of the other co-owner.

12. The only ground of challenge which has been laid by the petitioners/tenants by the impugned order is that the bonafide requirement of the landlord has not been disclosed. Attention has been drawn to the averment made in para 3(i) of the application seeking leave

to defend wherein it has been contended that the landlord has 33 rooms which have been let out by him to different persons and his accommodation also comprises of five rooms on the ground floor and two rooms on the first floor which have not been disclosed by him; this is the only triable issue which has been raised by the tenants.

13. The reply to the corresponding para of the application seeking leave to defend has also been perused. This submission of the tenants has been vehemently denied; it has been denied that the landlord is in possession of more than four rooms; the averments made in the eviction petition have been reiterated submitting that the accommodation available with the three petitioners/landlords is only four room and one common kitchen, latrine and bathroom. There is no dispute about the family members of the three petitioners. The details of their family's requirement have in fact been noted supra; all the three petitioners have independent units; the family of Amiruddin comprises of himself, his wife and three children of whom two are school going children; the need of Mohd. Parvez as rightly noted is of four rooms i.e. two bed rooms i.e. one for himself and other for his daughter; one drawing and one dinning room which is also an additional requirement; the requirement

of Mohd. Chand is of three rooms. The families of three petitioners are independent units; they want to live independently which need can be met only if they have not only bed rooms for sleeping but also a dinning and a drawing room and a kitchen area; their need for 16 rooms has been fairly substantiated.

14. The submission of the tenants that there are 33 rooms available with the landlord is neither here nor there. Apart from the fact that this submission has been vehemently denied by the landlord, no further details of this 33 room accommodation has been given by the tenants; no counter site plan has been filed by them; that apart no details of the aforementioned accommodation have also been given as to where these accommodations are located.

15. The landlord is the best judge of his requirement. It is not for the tenant or even for the court to dictate to the landlord the manner in which he should set up his residence to satisfy the need of his family. The family members of the three petitioners/landlords not being in dispute as also the fact that the accommodation presently available with the three petitioners is only comprised of four rooms, their need for an additional accommodation to set up their separate housing units has

been well founded and established. The bald submission of the tenants that there other accommodation is available with the landlord is neither here nor there; tenants have not been able to substantiate their bald submission.

16. The Supreme 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.”

17. No triable issue has arisen. The procedure contemplated under Section 25 B of the Delhi Rent Control Act (DRCA) which has to be read with Section 14(1)(e) of the DRCA is a summary procedure which had been engrafted by the legislature to provide a summary trial for eviction of tenants; unless and until a triable issue arises, leave to defend cannot be granted in a routine or in a mechanical manner; no triable issue has arisen in this case.

18. Impugned order suffers from no infirmity. No triable issue having been raised by the tenants, the applications seeking leave to

defend were rightly declined; the averments made in the eviction petition had made out a clear case of bonafide requirement of the landlords; their bonafide need stood substantiated. No other argument has been urged; the impugned judgment calls for no interference.

19. Petitions are without any merit; dismissed.

INDERMEET KAUR, J

APRIL 16, 2012

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