

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

% *Judgment Reserved on: August 30, 2013*
Judgment Pronounced on: September 09, 2013

+ **CM(M) No.30/2013 & C.M. No.484/2013**

INDER KUMAR LAMBA Petitioner
Through Mr.Ajay Malhotra, Adv. with
Ms.Hema Arora, Adv.

versus

ABHISHEK PAHWA & ORS Respondents
Through Mr.P.K. Rawal, Adv. with Mr.Ajay
Bahl, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition under Article 227 of the Constitution of India has been filed by the petitioner/landlord for setting-aside the order dated 13th December, 2012 passed by the Addl. Rent Controller, wherein the additional affidavit filed by the respondents/tenants after completion of the pleadings in the application for leave to defend was taken on record.
2. Brief facts of the case are that the petitioner filed the eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 against the respondents in the year 2009, for bonafide requirement of his son who is dependent upon the petitioner. The petitioner is around 75 years old.
3. Upon service, the respondents filed an application for leave to defend on 20th October, 2009. The pleadings were completed on 24th April, 2010.

The matter was being adjourned from time to time for one reason or the other.

4. In the year 2012, the respondents filed an application under Order VII, Rule 11 CPC. The same was dismissed. Another application was filed by the respondents for bringing on record certain additional facts. The same was also rejected by coming to the conclusion that the additional facts cannot be considered after the expiry of 15 days of filing the application for leave to defend.

5. The matter was put up for hearing of the application for leave to defend in the first week of July, 2012. After some arguments, an adjournment was sought by the respondents on the ground of non-availability of the counsel. The matter was again adjourned in the month of October, 2012 on the same ground. It appears that the respondents challenged the order before this Court with regard to the dismissal of the application under Order VII, Rule 11 CPC.

6. The respondents also filed an affidavit for bringing on record the additional facts before the Court. When the matter was again taken up in the month of December, 2012 in the application for leave to defend, another affidavit for bringing the additional facts was filed and the matter was adjourned to 10th December, 2012 for consideration on the point whether the additional affidavit can be taken on record after filing the leave to defend application.

7. By the impugned order dated 13th December, 2012, the additional affidavit filed by the respondents/tenants dated 5th December, 2012 was taken on record by the learned trial Court which is almost after a period of three years from filing of the application for leave to defend by the respondents.

8. The Supreme Court in the case of *Ravi Dutt Sharma vs. Ratan Lal Bhargava*, (1984) 2 SCC 75, has held as under:-

“7. The dominant object of the Amending Act was, therefore, to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by ss. 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 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 s. 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.”

9. The learned trial Court while allowing the application of the respondents/tenants and by taking the additional affidavit on record has given the sole reason that no new ground has been sought in the affidavit. It is mentioned in the impugned order that the details already taken in the application for leave to defend have been given in the present additional affidavit.

10. Mr.P.K.Rawal, learned counsel for the respondents has also stated that no new ground has been taken in the said affidavit and in fact, the tenants have only elaborated the statements in support of the application for leave to defend which was filed in the year 2009. Along with the affidavit, the respondents in support of their pleas have also filed some documents as well as given the details about the son of the petitioner/landlord in order to demonstrate that the statement made in the eviction petition as well as reply to the application for leave to defend was not correct. The said plea was admittedly taken in the application for leave to defend.

11. There is no dispute that the court ought to have permitted the party to file affidavit by allowing application to be filed by taking same pleas which he had taken in his leave to defend application but in the present case, earlier applications of similar nature had already been rejected.

12. Section 25B as contained in Chapter III A is in fact a complete Code in itself. It provides that after summons have been served upon a tenant, the application for leave to defend has to be filed within 15 days. Admittedly leave to defend application had been filed within the stipulated period of 15 days. Thereafter, the present application was filed after the expiry of three years.

13. The Delhi Rent Control Act, 1958 is a special Act. The provisions of Section 25B read with Section 14(1)(e) are statutory provisions which

cannot be allowed to be misused by any party, otherwise the entire purpose of the summary proceedings would be defeated.

14. In the impugned order, the Court itself has come to the conclusion in para-6 that no new ground has been sought in the affidavit; only the grounds are alleged in the affidavit, and the same are already taken in the application for leave to defend. Taking the new affidavit on record on the same plea would definitely delay the disposal further as the landlord then has to be given a chance to rebut the same. The respondents can make their submissions on the grounds already stated in the application for leave to defend.

15. In case, the respondents have any material by way of cogent and clear evidence which is in the nature of unrebuttable evidence in support of plea already taken in the application for leave to defend, the same can be examined by the Court in order to strike a balance between the parties during the course of hearing of application for leave to defend. In the present case, as far as impugned order is concerned, the same is not sustainable in law. The additional affidavit filed by the respondents be not taken on record except the documents which are cogent in nature and the application for leave to defend be decided at an early date.

16. The present petition and pending applications are accordingly disposed of. No costs.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 09, 2013/ka