

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

% *Judgment delivered on: July 16, 2013*

+ **RC. Rev. No.151/2012**

SANTOSH DHANKAR Petitioner
Through Mr.S.C. Singhal, Adv.

versus

PRATIMA DEVI Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. No one is present on behalf of the respondent despite second call. I have heard learned counsel for the petitioner.
2. The petitioner has filed the present petition under Section 25B(8) of the Rent Control Act against the order dated 5th March, 2012 whereby the respondent's application under Section 25 B of the Delhi Rent Control Act for leave to contest the eviction petition was allowed.
3. The brief facts of the case are that the petitioner filed an eviction petition against the respondent pleading therein that the petitioner is owner of the property No.10/27-B, Yogmaya Mandir, Ward No.1, Mehrauli, New Delhi, and the respondent is a tenant in respect of one room shown in red colour in the site plan and a common WC and bath room.
4. The respondent was inducted as a tenant on 1st February, 2003 on a monthly rent of ₹2000/-.

5. The eviction petition was filed on the ground that the accommodation available with the respondent was not sufficient to meet her residential requirement. The husband of the petitioner retired from the CRPF in April, 2005. The family of the respondent consists of petitioner herself, husband of the petitioner, two sons of the petitioner namely Vijay and Sanjay, daughter in law namely Smt. Parmod and grandson Harsh.

6. The respondent had filed application for leave to defend. In the said application the respondent disputed the ownership of the petitioner qua the tenanted property. It was further stated that since the tenanted property was taken by the husband of the respondent, therefore, the eviction petition against the respondent was not maintainable. The main ground of the respondent in the application was that sometime in August-September 2004 the petitioner offered to sell the tenanted property to the respondent for Rs.3 lac. The respondent further stated that the price of the tenanted property was brought down by the petitioner to Rs.2,90,000/- and the petitioner also offered that the respondent could pay the said amount in installments. Therefore, at the instance of the petitioner the respondent decided to purchase the tenanted property. As per respondent, the petitioner showed her some papers duly stamped which appeared to be original. Thereafter respondent started paying the sale consideration and the respondent became the de facto owner from November 2004. Subsequently, the respondent discovered that petitioner had no ownership paper with her and she was not legally competent to transfer the tenanted property to the respondent. It was alleged that the petitioner cheated her to the tune of Rs.2,75,000/-. The respondent also referred to the criminal case which was filed against the husband of the respondent by the petitioner.

7. The following reasons were given by the trial court while allowing the leave to defend application:

“The relationship of landlord and tenant goes to the very root of the matter. Respondent has very candidly stated in the leave to defend application that she has paid the substantial amount of money to the petitioner for purchase of the tenanted property. This assertion of the respondent if proved during the trial will dis entitle the landlord from obtaining an order of eviction. Infact the petitioner has no where stated in the entire eviction petition that she is the owner of the tenanted property. The omission on the part of the petitioner to assert her ownership over the tenanted property in the eviction property lends credence to the contention of the respondent that petitioner is not the owner of the tenanted property. The respondent has placed on record the certified copy of cross-examination of the petitioner recorded in the criminal case wherein she has given her address as F-24, Madarsa Road, Maulana Azad Medical College, New Delhi. The respondent has therefore able to prima facie show that the petitioner is not residing in the property bearing no.10/27-B, Yogmaya Mandir, Ward No.1, Mehrauli, New Delhi. All these contentions are disputed questions of fact which can be decided only during the trial for which opportunity will have to be given to the parties for leading evidence. The another contention of the respondent that she has been staying in the tenanted property prior to February 2003 is also supported by the document placed by her on record viz Ration card. It is therefore, obvious that the affidavit filed by the respondent alongwith the leave to defend application discloses facts which would disentitle the landlord from obtaining an order of recovery of possession.”

8. After having heard the learned counsel for the petitioner and having perused the material placed on record, I am of the view that the impugned order dated 5th March, 2013 is liable to be set aside on the following reason:

- (i) The trial court has failed to appreciate that the respondent has not filed any document in support of the pleading that she agreed to purchase the property from the petitioner for a sum of Rs.2,90,000/- and paid Rs.2,75,000/-.
- (ii) The unnecessary weightage was given to the said pleading of the respondent by the learned trial court who while coming to the conclusion that the said transaction goes to the root of the matter
- (iii) It is undisputed fact that there is no document filed by the respondent for any such transaction. The finding of the trial court therefore is perverse and unsustainable in the absence of even prima facie evidence.
- (iv) The find of the trial court that the transaction of sale and purchase between the parties is required to be proved and if it is so proved, it would disentitle the petitioner to claim eviction, is not correct as in the present case the respondent merely made bald averment.
- (v) Even on second ground taken by the respondent that the petitioner is not owner of the tenanted premises, the trial court did not give the correct finding in the impugned order. If the petitioner is not the owner of the suit property, how respondent could enter into any transaction of purchase. The said plea of the respondent therefore is self-defeating plea in the eyes of law.
- (vi) The petitioner has specifically pleaded that she is the owner of the property who has also placed the document of ownership on record. It is settled law that the petitioner should not be

absolute owner who has the more right than the tenant. The respondent has not denied that the respondent is the tenant in the premises and has not claimed any other rights than tenancy rights. The finding of the trial court in this regard is also not correct.

- (vii) The other finding of the trial court that since the petitioner has given her address at F-24, Madarsa Road, Maulana Azad Medical College, New Delhi, in her cross-examination recorded in a criminal case, therefore, she is not residing in the suit property i.e. property No.10/27-B, Yogmaya Mandir, Ward No.1, Mehrauli, New Delhi, is also contrary to law as it is specifically mentioned in the eviction petition that her family consists of herself, her husband, two sons, daughter-in-law and grandson. The elder son has been allotted a flat in the hospital which is required to be vacated and the petitioner along with her family will shift to the house in question. The total accommodation available is two rooms, ten shed and kitchen and one room is being used by Dr.Sanjay and second room is being used by her and her husband and accommodation available at the moment is far short of the residential need and requirement of the petitioner and the members depending upon her for the purposes of residence. Therefore, there is no harm if a family having two residences can use such address which in no way shows that the premises is not required by the petitioner. Admittedly, F-24, Madarsa Road, Maulana Azad Medical College, New Delhi, is a government allotted accommodation and not owned by the petitioner or any of her

family members. Therefore, the question of coming to the finding that it is a triable issue is also incorrect.

9. Under these circumstances, the present petition is allowed. Consequently, the order dated 5th March, 2013 is set aside and application to leave to defend filed by the respondent is dismissed.

10. In view of the above, the eviction order is passed in favour of the petitioner and against the respondent in respect of tenanted property one room in House No.10/27-B, Yogmaya Mandir, Ward No.1, Mehrauli, New Delhi. The respondent is directed to vacate the premises within six months.

(MANMOHAN SINGH)
JUDGE

JULY 16, 2013