

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

% *Judgment pronounced on: September 09, 2013*

+ **CM(M) No.687/2012 & CM No.10410/2012**

MEENAKSHI GUPTA Petitioner

Through Ms.Aruna Mehta, Adv.

versus

KISHORI LAL SEHGAL DECD THR LRS & ORS.

Through Mr.C.P. Vig, Adv. Respondents

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present petition against the order dated 28th May, 2012 passed by the learned Additional Rent Controller, North West Rohini, Delhi, in Eviction No.43/12/92, dismissing the application under Order VI, Rule 17 CPC filed by the petitioner for adding the additional grounds of acquiring the alternative properties by the respondents under Section 14(1)(h) of Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') in the existing petition under Section 14(1)(e) of the Act which is ripe for hearing.

2. The facts of the case are that the petitioner filed a petition under Section 14(1)(e) of the Act against Sh. K.L. Sehgal on the premise that the Flat No.9, Apna Ghar Cooperative Group Housing Society (hereinafter referred to as 'the suit premises'), was let out to K.L. Sehgal at the rate of ₹1500/- per month excluding other charges for residential purposes.

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3. The defence was taken by the respondent Sh.K.L. Sehgal that he was not the tenant in the suit premises in question but his son Naresh Kumar Sehgal was the tenant @ ₹1000/- per month. The tenancy of K.L. Sehgal was terminated vide notice dated 18th April, 1992 by registered AD post and arrears of rent was sought with effect from December, 1989 onwards.
4. Since the rent was not paid for the period 1989 to 1992. A suit for recovery of rent was filed impleading both K.L. Sehgal and Naresh Kumar Sehgal. This Court in RSA No.195/2001 by order dated 29th November, 2010 held that K.L. Sehgal was the tenant @ ₹1500/- who was liable to pay the rent. Father of the respondents had expired, the respondents' family member claim that they were the occupier of the premises.
5. The matter was ready for final argument, in the meanwhile, the petitioner filed an application under Order VI Rule 17 CPC to add the additional grounds that the family members of the occupier have acquired the alternative properties. Therefore, the additional grounds under Section 14(1)(h) against the respondents are to be added.
6. Though the reply is not on record, learned counsel for the respondent has made his oral submissions. He stated that the application filed by the petitioner is not maintainable as the same was filed at the belated stage of the proceedings which is fixed for final disposal. He submitted that the said amendment should not be allowed as the alleged alternative property at Baljeet Nagar that is alleged to have been acquired by the respondents, is not being used by the respondents, thus, the additional grounds under Section 14(1)(h) are not available to the petitioner.
7. Learned counsel for the petitioner has referred to the cross-examination of RW-2 Rakesh Sehgal wherein he has admitted that his brother N.K. Sehgal was posted at Surat as Manager in Dena Bank and was

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residing with his family at Surat. He also admitted that children of N.K. Sehgal were studying in 10th Class and 8th Class and not residing in the tenanted premises. RW-2 had also admitted that Sh.Navdeep, his brother, also got married and was residing with his family at Tilak Nagar and similar was the position of Madhur Deep. Only Jai Deep was residing with RW-2.

8. In the cross-examination, RW-2 had also admitted that his father was having a gas connection in his name at Baljeet Nagar property at one point of time which was changed to the suit premises.

9. As far as the merit of case is concerned, it is settled law that while deciding the application for amendment merit of the case is not to be considered. The explanation given by the learned counsel for the petitioner for filing the application under Order VI Rule 17 CPC in the pending case is that most of the respondents are residing outside the jurisdiction of this Court and it is very difficult to serve them. Even the present matter is pending since the year 1992 and it was very difficult to serve the respondents. Thus, the present application for amendment had been filed which is permissible in law.

10. In the case of *Pasupuleti Venkateswarlu vs. The Motor and General Traders*, 1975 Rent Control Reporter 486, it was observed:

“We think it unfair to drive parties to a new litigation of unknown duration but direct, in the special circumstances of the case (which are peculiar) that : (a) the revision before the High Court shall stand dismissed; (b) the Rent Controller will take note of the subsequent development disabling the landlord from seeking eviction on which there is already an adverse finding by the High Court; (c) the landlord be allowed to amend his petition if he has a case for eviction on any other legally permissible ground; and (d) the parties be given fair and full opportunity to file additional pleadings and lead evidence thereon. But

(11)

we make it clear that the subsequent event that the petitioner had come by a non-residential accommodation of his own in the same town having been found by the High Court, cannot be canvassed over again.”

The above said judgment was reconsidered in the case of **Om Prakash Gupta vs. Ranbir B. Goyal**, 2002(1) Rent Control Reporter 150, by the Supreme Court and it was observed:

“11. The ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.”

11. Learned counsel for the petitioner has argued that learned Additional Rent Controller has totally ignored the law laid down by the Courts allowing amendment in similar situations. The following judgments are referred to :

- (i) In the case of **Smt. Abnash Kaur vs. Dr. Avinash Nayyar and others**, Air 1975 Delhi 46, the Full Bench of this Court has laid down the proposition that during the pendency of the petition for eviction another ground for acquiring of alternative property which has arisen subsequent to the filing of the petition should

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be permitted to be added as it will save the multiplicity of the proceeding and wastage of time.

- (ii) In ***Jagdish Pershad vs. Hardayal Singh***, 211(1982) DLT 310, this Court had allowed the adding up additional ground for eviction for acquiring of the alternative property when the evidence of both the parties were almost over.
- (iii) In ***Smt. Avinash Kaur vs. Dr. Avinash Nayyar***, 1974 RCR 350, it was held by the Full Bench that the new grounds under Section 14(1)(h) which had arisen subsequently should be allowed to be added in the pending suit for eviction which would save the multiplicity of the proceeding and wastage of the time in another round of litigation.
- (iv) In ***Interocean Shipping Co. vs. Ram Lubhaya and Ors.***, 30 (1986) DLT 326, this Court observed “During the pendency of the civil revision, the landlord has filed an application being C.M. No.3809/85, stating that the tenant has acquired two houses being No.C-25, Nizammuddin West, New Delhi, and No.67, Farm house, Sainik Farm, Khanpur, near Saket, New Delhi with vacant possession. It was, therefore, prayed that the decree for eviction should be passed on the ground of Section 14(1)(h) also. The acquisition of the said two houses has not been denied by the tenant. They are such that even the commercial business can be carried out from the said two houses. This fact is also not denied by the tenant. The Court can mould the relief appropriately considering the change in the facts during the course of the pendency of the litigation.”

- (v) In *Prem Chand & Another vs. Sher Singh Gupta*, 27 (1985) DLT 111, this Court observed: "The landlords filed an appeal in the Supreme Court challenging the judgment and order of this court. Before the Supreme Court it was discovered that the respondent-tenant had acquired a flat from Delhi Development Authority in the name of his wife and that flat was available to the respondent the Supreme Court allowed the appellants to amend their petition for eviction respondent that the respondent had acquired possession of a vacant residence within the meaning of Section 14(1)(h) of the Act. The respondent filed his reply to the amended petition for eviction. After considering the averments of the parties the Supreme Court held that the respondent had through his wife acquired vacant possession of a residence in Delhi the appellants petition for eviction of the respondent under Section 14(1)(h) of the Act was allowed and the judgment of this court was set aside."

12. It is evident that the learned Additional Rent Controller did not apply the principles laid down in the above said judgments in a positive manner. It is not in dispute that the petitioner is litigating with the legal heirs of the original occupier for the last more than 20 years. Even the issue to determine the relationship between the landlord and tenant was ultimately decided in favour of the petitioner in RSA No.195/2011.

13. In view of peculiar facts and circumstances of the present case, the order dated 28th May, 2012 passed by the learned Additional Rent Controller in Eviction no.43/12/92 is set aside. The amendment sought by the petitioner is allowed. The petitioner is permitted to add the ground of

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alternative properties acquired by the respondents under Section 14(1)(h) of the Act. The petition is disposed of.


(MANMOHAN SINGH)
JUDGE

SEPTEMBER 09, 2013