

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

% *Order delivered on: December 09, 2013*

+ **RC.REV. 420/2012**

BK PRADHAN ..... Petitioner  
Through Mr.K.K.Sharma, Sr.Adv. with  
Mr.G.K.Sharma, Adv.

versus

AVTAR KAUR ..... Respondent  
Through Mr.D.R.Bhatia, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The petitioner/landlord has filed the present petition under Section 25-B(8) of Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) read with Section 151 CPC against the order dated 28<sup>th</sup> July, 2012 passed by the learned Additional Rent Controller (East), Karkardooma Court, Delhi, in eviction petition, being E-55/2011, filed by the petitioner under Section 14(1)(e) read with Section 25-B of the Act.

2. The brief facts of the case are that the property bearing No.383/2011, East Azad Nagar, Delhi-110051 (hereinafter referred to as “the suit property”) was originally purchased by the mother of the petitioner Smt.Gulab Devi by Sale Deed dated 21<sup>st</sup> April, 1972. The respondent was inducted as a tenant in a shop measuring 10’X10’ (hereinafter referred to as “the tenanted shop”) on 16<sup>th</sup> July, 1981 on a monthly rent of ₹150/- excluding electricity and other charges. In 1998 the mother of the petitioner

suffered a paralysis stroke on the right side portion of the body. The case of the petitioner is that the respondent thereafter started harassing the petitioner on one reason or the other. The petitioner filed an eviction petition under Section 14(1)(b) of the Act which is pending disposal. Since the respondent failed to tender the complete rent to the petitioner despite of issuing notice, the petitioner also filed an eviction petition under Section 14(1)(a) of the Act and is also pending against the respondent. The mother of the petitioner died on 6<sup>th</sup> November, 2009 and by virtue of the Will dated 10<sup>th</sup> February, 2006 the petitioner became the owner of the property as the remaining legal heirs, being two brothers and two sisters, had relinquished their rights in favour of the petitioner by virtue of Relinquishment Deed dated 10<sup>th</sup> November, 2010. The brothers of the petitioner have got other property bearing No.E-3/5, Krishna Nagar, Delhi-110051.

3. The family of the petitioner consists of his old aged wife about 60 years, one married son and two married daughters. The son of the petitioner is about 37 years old and he is working as Financial Advisor/Consultant, LIC, Mutual Funds and General Insurance Agent. He has one son aged about four years and the son of the petitioner does not have any office space to manage his work, to meet his customers/clients, to keep his records/files and computer/fax etc. The petitioner needs office space for the insurance and financial advisor business for his son. Thus, on this ground the petitioner filed the an eviction petition under Section 14(1)(e) of the Act against the respondent.

4. It is stated by the petitioner that earlier one shop, adjacent to the tenanted shop, was under the tenancy of one Shiv Kumar. He left the shop in 2002 and the same is being used by the petitioner as main entrance to the

house of the petitioner and for the parking of car and two wheeler. The site plan has been filed by the petitioner in support of his contention. The suit property is a two-sided open property and where the tenanted shop of the respondent opens, the road is about 120 ft. wide including one service lane and on the back side gali is only 15 ft. wide.

5. The petitioner has retired as Senior Accounts Officer from the Government of NCT of Delhi in November 2008 and after his retirement, he seeks to help his son Sh.Rakesh Pradhan in the business of financial consultancy by opening one office in the disputed shop which is in possession of the respondent. The petitioner had been operated for Cancer in the vocal cord on 31<sup>st</sup> May, 2010 and is unable to speak and can do only writing and office work. The documentary evidence in this regard is placed on record.

6. The petitioner has two married daughters who are residing in the same vicinity with their family and keep on visiting the petitioner's house on and off with their children. The son of the petitioner and daughter-in-law with one child are residing on the first floor and the petitioner and his wife are in occupation of one bedroom on the ground floor, one drawing room, one store, one kitchen and one WC and the son shares the drawing room on the ground floor and pooja room on the first floor with the petitioner.

7. The grounds taken in the application for leave to defend are as under:

- a) There is no relationship as of landlord and tenant between the parties. The respondent never attorned the petitioner as his landlord. Even otherwise, the petitioner himself has stated before the Court that petitioner is neither the owner nor landlord qua the respondent. Hence, there is no relationship between the parties.

- b) Even otherwise the alleged relinquishment deed dated 10<sup>th</sup> November, 2010 is nothing but a waste paper. The petitioner never served any notice of attornment upon the respondent after execution of the alleged relinquishment deed is not enforceable against the respondent as the petitioner failed to file the copy of the Will as alleged in the relinquishment deed.
- c) The petitioner has concealed material facts from this Court with regard to the other properties left by Smt. Gulab Devi. Smt. Gulab Devi was the owner and in possession of property No.E-3/5, Krishna Nagar, Delhi measuring 200 sq. yards consist of ground floor and first floor, second floor which consist of about 14 rooms, kitchen, store, bathroom, W.C. on every floor of the said property. The property at E-3/5, Krishna Nagar, Delhi is more spacious, comfortable and better than the property in dispute from the point of health atmosphere. The petitioner has deliberately concealed the factum of other accommodation at No.E-3/5, Krishna Nagar, Delhi.
- d) The petitioner has deliberately and intentionally want to create scarcity of accommodation by placing a door in place of wooden doors and showing that this accommodation is already being used as parking on the shop which has been got vacated in 2002. It is submitted that petitioner has placed the iron doors on the said shop on 12<sup>th</sup> February, 2011 to create scarcity showing that the same accommodation is being used as parking. No parking was made since the vacation of the said shop and the vehicles were being parked in the gali on the backside of the property. It is denied that the shop of the respondent open on the road of about 120 feet apart from service lane

of 15 feet. It is denied that the shop got vacated in 2002 from the previous tenant is being used as main entrance as well as parking for the vehicles of family members.

- e) As the petitioner stated in the petition that the petitioner has been operated for the Cancer in Vocal Cord and is unable to speak, the petitioner has not stated at whose instance the petition has been drafted.
- f) The petitioner is barred to file the present petition as the alleged relinquishment deed has only been executed in 2010. The petitioner cannot claim or file the eviction petition on the ground of bonafide requirement and the petition is pre-mature.
- g) The entire accommodation except the premises in dispute is in power and possession of the petitioner and the petitioner has also ample alternate accommodation at E-3/5, Krishna Nagar, Delhi, which is situated at highly commercial area of Krishna Nagar, Delhi.
- h) The petitioner filed a petition under Section 14(1)(b) in 2006 bearing Suit No.562/2006 against the respondent wherein the petitioner also filed a site plan showing the shop No.2 adjoining to the premises in dispute which falsify the allegations in the present petition.
- i) None of the family members alongwith petitioner has been residing in the property in dispute and are living at E-3/5, Krishna Nagar, Delhi and are living more comfortably in the said property.

8. The petitioner in reply to the leave to defend application stated that the respondent herself has admitted that the accommodation available with the petitioner is not sufficient for the petitioner and his family members and

therefore the respondent has given suggestions in her leave to defend application to use the space above the tenanted shop, however that is a partly open shed/store and is not usable for office purposes for the son of the petitioner.

9. It was also stated that the petitioner is the landlord of the tenanted premises, which is clear from the certified copies of the rent receipts filed on record, these rent receipts were filed by the tenant in her petition filed under Section 44 of the Act. It is further submitted that the suit property was owned by the mother of the petitioner and the petitioner had been receiving the rent from the respondent and issuing the rent receipt to the respondent and some times to the son of the respondent since 1998 to November, 2005 and thereafter the respondent neither paid nor tendered the actual outstanding rent to the petitioner or to the mother of the petitioner. The mother of the petitioner expired on 6<sup>th</sup> November, 2009 and the mother of the petitioner bequeathed the suit property in the name of the petitioner by virtue of a Will, however the brothers and sisters of the petitioner just for the sake of formality executed a relinquishment deed in favour of the petitioner, the petitioner has become the owner of the suit property by way of succession and the same was formally informed to the respondent.

10. The learned Additional Rent Controller while allowing the respondent's application for leave to defend has dealt with the two grounds only namely that another tenant had vacated the tenanted shop way back in the year 2002 and that the petitioner has used the tenanted shop as car parking and in the year 2011 the petitioner placed an iron door therein. Thus it is a case of additional accommodation and it is one of the grounds raising a triable issue and after partition of the properties left by Smt.Sulab Devi

between the petitioner and other legal heirs, the ownership claimed by the petitioner becomes doubtful.

11. Let me now test as to whether the present case warrants interference of this court on the touchstone of the principle governing scope of the enquiry of revisionary court and see whether there exists any illegality in the impugned order which makes the impugned order not in accordance with law or suffers from perversity or finding which no reasonable person could have arrived at by evaluating the contentions of the petitioner.

12. As already mentioned earlier, the learned Trial Court has granted the leave to defend in the present case mainly on two issues raised by the respondent in his application for leave to defend.

13. It is settled law that in the context of the Act what appears to be the meaning of the term “owner” is that vis-a-vis the tenant the owner should be something more than the tenant. The position in law is that the “ownership” of the landlord for the purpose of maintaining a petition under Section 14(1)(e) of the Act is not required to be an absolute ownership of the property, and that it is sufficient if the landlord is a person who is collecting the rent on his own behalf. The imperfectness of the title of the premises can neither stand in the way of an eviction petition under Section 14(1)(e) of the Act, nor can the tenant be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying the rent to the landlord. The tenant inducted by landlord is estopped and cannot dispute the title of his landlord in view of the provisions of Section 116 of the Indian Evidence Act without there being any subsequent change in the situation. This aspect has been discussed in the following judgments:

i. ***Shanti Sharma Vs. Smt. Ved Prabha***, AIR 1987 SC 2028

- ii. ***Zahid Hussain thr. LRS Vs. Aenul Haq Qureshi thr. LRS***, 2005 (1) RCR 323
- iii. ***Ram Chander Vs. Ram Pyari***, 109 (2004) DLT 388
- iv. ***Mukesh Kumar Vs. Rishi Prakash***, 174 (2010) DLT 64
- v. ***Rajender Kumar Sharma & Ors. Vs. Smt. Leela Wati & Ors.***, 155 (2008) DLT 383
- vi. ***Meenakshi Vs. Ramesh Khanna & Anr.***, 60 (1995) DLT 524
- vii. ***Tej Pal Gupta Vs. Rattan Singh***, 160 (2009) DLT 726
- viii. ***Kamla Rani & Ors. Vs. Texmaco Ltd.***, 139 (2007) DLT 61
- ix. ***Keshar Lal H. Pardeshi Vs. Vithal S. Patole***, (2005) 10 SCC 249
- x. ***Ramesh Chand Vs. Uganti Devi***, 157 (2009) DLT 450
- xi. ***M.M. Quasim Vs. Manohar Lal Sharma***, (1981) 3 SCC 36
- xii. ***B.R. Anand Vs. Prem Sagar***, 2002 (1) RCR (Rent) 234
- xiii. ***D. Rani Puri Vs. Chanan Lal***, 65 (1997) DLT 313
- xiv. ***Shree Ram Sharma Vs. Mohd. Sabr***, 178 (2011) DLT 1
- xv. ***Bharat Bhushan Vij Vs. Arti Teckchandani***, 153 (2008) DLT 247
- xvi. ***Jiwan Lal Vs. Gurdial Kaur & Ors.***, 57 (1995) DLT 262

14. In view of the settled law, it is evident that for the purpose of Section 14(1)(e) of the Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is only required to show that he is more than a tenant.

15. In ***Sudesh Kumari Soni & Anr. Vs. Prabha Khanna & Anr.***, 153 (2008) DLT 652, this court observed that *the suitability of the premises has to be seen from the convenience of the landlord and in Mahender Trivedi Vs. Jai Prakash Verma*, 157 (2009) DLT 690, it was observed that *in judging his special needs and convenience, the landlord would have a*

*choice. In this regard, this Court in **Kharati Ram Khanna & Sons. Vs. Krishna Luthra, 2010 (172) DLT 551**, observed that the requirement of the landlord to settle down her two sons separately and independently was found to be genuine and bonafide. In **Labu Lal Vs. Sandhya Gupta, 2010 (173) DLT 318** it was observed that the landlord's son and daughter in law are dependent for accommodation on respondent the requirement of the landlord's son and daughter in law for expanding clinic being run in premises in question is genuine.*

16. It is not denied by the respondent that she was paying the rent to the mother of the petitioner who was earlier owner of the suit property. The petitioner has placed on record the copies of relinquishment deeds by the other legal heirs of deceased mother i.e. two brothers and sisters of the petitioner. None of the legal representatives has come forward to dispute the ownership of the petitioner. No objection of any nature was produced by the respondent before the trial court. It is also settled law that even the eviction petition on behalf of co-owner is maintainable. The respondent has not disputed the fact that the petitioner is one of the legal representatives of deceased mother. In other proceedings, being E No.55/2011, one of the brothers of petitioner i.e. Sh.Chander Prakash Pradhan has admitted the averment made by the petitioner about his ownership. Thus, the findings of the learned trial court are totally contrary to law and material placed on record. The learned Trial Court has failed to appreciate that at least the petitioner is landlord of the tenanted shop and one of the legal representatives of deceased mother. The said factual position establishes that the question of any doubt does not arise. The findings of the learned trial Court are contrary to the fact and law and are, thus, not sustainable. It

was not a triable issue in view of reasons given above. The impugned order is legally defective.

17. With regard to the second ground, the findings of the learned Additional Rent Controller are perverse and against the law as it is the admitted position that after the vacation of shop by other tenant in the year 2002, the petitioner has placed the iron gate and using the said site for parking. It is not the case of the respondent that it is being used by the petitioner for shop/office in any manner at all. It is settled law that the landlord is entitled to live in his property in comfortable manner, the tenant cannot question his need if the same genuine and reasonable as per his requirement. The suitability of the premises has to be seen from the convenience of the landlord and his genuine need. The finding of the learned Trial Court in this regard is illegal and contrary to law as he erred in believing whatever has been asserted by the respondent as a gospel truth even in the absence of any *prima facie* case of triable issues.

18. The other issues raised by the respondent are also moonshine issues and are not sustainable in law.

19. From the facts of the present case, I am of the opinion that there has been a gross illegality and irregularity which is committed by the Addl. Rent Controller while granting the leave to defend and he has acted in excess of his jurisdiction vested with him.

20. The present case was a fit case in which the application for leave to defend was ought to have been rejected.

21. Thus, the impugned order is set-aside by allowing the present petition.

22. In the case of *Mohd. Ayub vs. Mukesh Chand*, (2012) 2 SCC 155 it was observed that *the hardship Appellants would suffer by not occupying their own premises would be far greater than the hardship the Respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the Respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement.*

23. In view of the above and in the interest of justice, equity and fair play, the petitioner is granted twelve months time to vacate the suit property as special case due to the fact that the suit property is a commercial property and the petitioner is an old tenant therein, the longer time is granted. During this period, the petitioner shall not sublet or create any third party interest in the suit property.

24. No costs.

**(MANMOHAN SINGH)**  
**JUDGE**

**DECEMBER 09, 2013**