

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

% *Judgment delivered on: August 06, 2013*

+ **RC.REV. 520/2011 & C.M. No.22506/2011**

HARISH KUMAR Petitioner
Through Mr.Rahul Sharma, Adv.

versus

KRISHNA Respondent
Through Mr.B.Mohan, Adv. with
Ms.Shashi Saxena & Mr.Sudhir
Kr.Suneja, Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') the petitioner assails the eviction order dated 13th September, 2011 passed by the learned trial court whereby his application for leave to defend was dismissed.
2. The respondent had filed an eviction petition under Section 14 (1)(e) read with Section 25 of the Act against the petitioner in respect of the tenanted property i.e. one room and a kitchen at the ground floor of the property at C-4, Gali No.5, Majlis Park, Delhi which was let out to the petitioner by the husband of the respondent.
3. The respondent, a senior citizen alongwith her husband and two sons, is residing in the property at C-4, Gali no.5, Majlis Park, Delhi which is a two-storey building. The ground floor of the said property comprises of 3 rooms, a kitchen and a latrine-bathroom, of which 2 rooms are occupied by the respondent and one room is under the occupation of the petitioner as a

tenant. The first floor of the said property comprises of 4 rooms which are occupied by different tenants.

4. The eviction petition was filed by the respondent against the petitioner stating that she bonafidely required the tenanted property since she with her family required 6 rooms in total for their residence i.e. one for herself and her husband, one for the elder son (43 years old), one for the younger son (41 years old), one for her married daughter who visits her parents; one room for puja and one room for their servant. The respondent contended that since her husband and her elder son were suffering from ailments, they were unable to climb the stairs and the ground floor accommodation was suitable for them. It was also contended that since the present accommodation was insufficient and they had no other alternate accommodation for herself and her family, she had filed the said eviction petition. She further contended that the petitioner was a habitual defaulter of payment of rent.

5. The petitioner, in his leave to defend application contended that the summons were not served to him in the prescribed format and so he was not aware of filing the leave to defend application with 15 days. The petitioner contested the landlord-tenant relationship between the parties since the petitioner allegedly came into possession of the tenanted premises through the husband of the respondent and had been making payment in his name. It was further contended that the paucity of the accommodation was self created by the respondent since the property on the first floor was let out only a couple of months before filing of the eviction petition.

6. The respondent did not file a reply to the said application on the ground that the said application was not filed in time.

7. The learned trial court observed that though it is a well settled law that the Rent Controller had no power to condone the delay on filing of the

application for leave to defend, but due to inadvertence on part of the court officials (who sent the ordinary summons instead of summons on the prescribed performa under the Delhi Rent Control Act), the petitioner could not be made to suffer and the said application was considered as filed in time. On the issue of landlord-tenant relationship, it was observed that since the said property was gifted to the respondent by her husband by way of a gift deed, she became the landlady and the relationship of landlord-tenant existed between the parties. Also, there was no dispute regarding the ownership of the suit property. On the issue of bonafide requirement, it was observed that while the respondent was able to prove bonafide requirement, the petitioner could not show malafide in the averments made by the respondent and hence an eviction order against the petitioner was passed on 13th September, 2011.

8. Aggrieved by the same, the present petition has been filed challenging the impugned order on the grounds mainly that:

- (i) There is no landlord-tenant relationship between the parties. The renewed rent agreement was executed subsequent to the alleged gift-deed and there was no whisper of the fact of the ownership of the respondent.
- (ii) The respondent ought to have been directed to file a reply to the leave to defend application, which was material to reach a just conclusion, however a failure to do the same renders the impugned order as erroneous and hasty.
- (iii) The application under Section 340 Cr.P.C. filed by the petitioner against the respondent of which notice was issued, was not replied to and yet the eviction petition was proceeded with, without giving any finding to the application under section 340 Cr.P.C.

9. The first contention of the petitioner is totally false and frivolous as the petitioner has not denied the fact that the rent agreement was executed between the husband of the respondent and the petitioner. Since the property in question was gifted to the respondent by her husband, she is the landlady of the property and the existing tenants are her tenants also. It is not denied by the petitioner that the respondent's husband was the owner of the property in question. Thus it is clear in the absence of the evidence to the contrary there existed a relationship of landlord-tenant between the petitioner and the respondent. The tenant cannot challenge the ownership of the landlord till he vacates the tenanted property in view of the presumption under section 116 of the Indian Evidence Act without there being any subsequent change in the situation.

10. With regard to the bonafide requirement by the landlord, the Supreme Court in the case of **Joginder Pal v. Naval Kishore Behal (2002) SCC 397** laid down certain considerations to be considered by the Court while dealing with the contentions of "bonafide requirement":-

- (i) The words "for his own use" must receive a wide, liberal and useful meaning rather than a strict or narrow construction.
- (ii) The expression-landlord requires for "his own use", is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal "emanations" of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence-economic or otherwise, between the landlord and

such person. In the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

- (iii) The tests to be applied are : (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement; and, (ii) whether on the facts and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by the landlord as "his own" occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as "his own" and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward; and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.
- (iv) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life.

11. There is also no force in the submission of the petitioner that the respondent ought to have been directed to file a reply to the leave to defend application as it is a matter of fact that the respondent had put up her entire case on the grounds of eviction petition. Unless the tenant has prima facie established by clinching and cogent evidence that the claim of the landlord in the eviction petition is bogus, false and frivolous, the landlord cannot be compelled by the Court to file the reply to the application for leave to defend. It is also not necessary for the Court to decide the pending application when the main petition is ripe of argument. In case it is found

that while considering the application for leave to defend, since the trial court has considered the entire aspect of the matter within the provision of the Act, then no separate orders in the pending application filed by the tenant in order to delay the proceedings are required to be passed.

12. In view of the above said reasons and facts and circumstances of the present case, the present petition is liable to be dismissed. In the interest of justice, equity and fair play, the petitioner is granted six months time to vacate the suit property, i.e. one room and a kitchen at the ground floor at the property bearing No. C-4, Gali No.5, Majlis Park, Delhi from the date of passing of the present order. The petitioner shall hand over the vacant and peaceful possession to the respondent after the expiry of the said period. During this period, the petitioner shall not sublet or create any third party interest in the suit property and shall also pay rent, electricity and other charges.

13. The petition is disposed of. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

AUGUST 06, 2013