

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

+ RC.REV. No. 79/2014

% **28th August , 2014**

M/S KALI CHARAN & SONS (JEWELLERS) Petitioner
Through: Mr. J.C.Mahendroo, Adv.

VERSUS

RAKESH JINDAL Respondent
Through: Mr. Girish Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller dated 24.8.2013 by which the Additional Rent Controller has dismissed the leave to defend application filed by the petitioner/tenant and has decreed the eviction petition with respect to the tenanted premises comprising of ground floor shop with mezzanine floor in the property bearing no. 1898-1901A, Chandni Chowk, Delhi-6.

2. The case of the respondent was that the petitioner was inducted as a tenant in the suit property which was purchased by the father of the respondent vide sale deed dated 6.7.1963. The father, before he expired on 7.10.2008 executed his Will dated 28.1.2008 whereby he bequeathed his 50% undivided share in the suit property in equal proportions to his two sons i.e the respondent herein and other son Mr. Ajay Gupta. It was pleaded that the respondent/landlord was carrying on his business of decorative items, artificial jewellery items and packaging materials etc used in marriages and religious functions from a rented shop at 2181, Kinari Bazar, Delhi-6 and which premises were a small premises of only 7'X 18' besides the fact that there was no need for the respondent/landlord to carry on business from a tenanted premises once he owned the suit premises.

3. Petitioner filed the leave to defend application and raised various grounds which are stated in para 5 of the impugned order but before this Court only the following arguments are urged for setting aside of the impugned order:-

(i) Respondent is not the owner/landlord of the suit property and therefore, the eviction petition did not lie.

(ii) The petition for *bonafide* necessity was not *bonafide* because actually the respondent had recently inducted six new tenants in the suit property and thus showing that the need was not *bonafide*.

4. So far as the aspect of relationship of landlord and tenant is concerned, the petitioner does not dispute that rent was paid by him to the father of the respondent. In fact, petitioner had deposited rent in proceedings under Section 31 of the Punjab Relief of Indebtedness Act, 1934, Act wherein the petitioner admitted the father of the respondent to be the co-owner and landlord of the suit premises. Therefore, once the father of the respondent/landlord is admitted to be the co-owner and landlord of the suit premises, and the respondent is admittedly the son, respondent would become co-owner and landlord of the suit premises. It is not open to the tenant to question the ownership of the respondent/landlord and which will only be an issue between the legal heirs of the father ie if the other legal heirs succeed in their objection for setting aside of the Will of the father dated 28.1.2008, then the respondent who will receive possession pursuant to the impugned judgment and decree will hold possession for and on behalf of all the legal heirs of the father, but, that cannot mean that a tenant can object to the eviction petition filed for *bonafide* necessity on the

ground that there does not exist relationship of landlord and tenant between the parties.

5. Learned counsel for the petitioner sought to argue that one sister of the respondent/landlord in the year 2008 had given a notice not to pay rent to the respondent, however, on a query put to the counsel for the petitioner it is admitted that this ground is not urged in the leave to defend application. Once a ground is not urged in the leave to defend application, and since all grounds have to be urged supported by documents in the leave to defend application within 15 days of service, no further grounds which exist as regards facts which exist before the expiry of 15 days period for filing of the leave to defend application, can be looked into by filing of subsequent affidavits or documents and so on. Supreme Court in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*, held that there cannot be condonation of delay even of one day in filing of the leave to defend application, and therefore since there cannot be any condonation of delay beyond 15 days hence no grounds which are pleaded after a statutory period of 15 days of filing of the leave to defend application can be looked into by the Additional Rent Controller or by this Court. A learned Single

Judge of this Court in the case of *Ms. Madhu Gupta Vs. M/s Gardenia Estates (P) Ltd.* 184 (2011) DLT 103 has held while relying on the judgment in the case of *Prithipal Singh (supra)* that there cannot be amendment of a leave to defend application because allowing of amendment of leave to defend application will destroy the sanctity of the 15 days leave to defend period which is an inflexible period in terms of the ratio of the judgment in the case of *Prithipal Singh (supra)*. In any case, as already stated above, in case the sister of the respondent/landlord succeeds in the claim to set aside the Will dated 28.1.2008, and gets rights in the suit property, the respondent/landlord will be in accordance with law bound to handover the suit property to the sister, however, for a future uncertain event an eviction petition for *bonafide* necessity cannot be dismissed.

6. The second argument which is urged on behalf of the petitioner/tenant is that respondent/landlord has recently inducted six tenants, and this aspect is rightly dealt with in para 18 of the impugned judgment and which reads as under:

“18. The respondent has alleged that the need of the petitioner is not *bona fide*. It has been alleged that he has recently inducted 06 new tenants at the suit property which *prima facie* falsifies his claim of *bona fide* need. It has also specified that tenants namely Bank of Maharashtra and M/s Muthoot Financt Co. have been inducted recently.

The petitioner refuted these claims. He has consistently maintained that the tenants at the suit property namely Bank of Maharashtra, M/s Muthoot Finance Co., M/s Arun Dev Builders, M/s Alpha Radios, M/s B.R.Sahni & Co., and M/s S.N.Kohli & Sons are all old tenants. The Will dated 28.01.2008 of his father refers to all these tenants which means that all of them including Bank of Maharashtra and M/s Muthoot Finance Co. have been occupying their respective portions prior to execution of this Will.

Hence the aforesaid pleas of the respondent fails to hold any water.”

7. I do not find any illegality in the observations and conclusions in para 18 because a self serving statement of the petitioner/tenant could not have any meaning once all the six tenants referred to by the petitioner/tenant are found to be old tenants reference to whom have been made in the Will of the father dated 28.1.2008.

8. I may note that tenanted shop is lying closed for about 15 years as stated by the respondent/landlord. Respondent/landlord also contends that the very fact that there is no electricity connection in the tenanted premises shows that petitioner is unfairly and illegally holding on to the tenanted premises to get an illegal benefit from the respondent, however, counsel for the petitioner very vehemently contested this aspect. I however need not observe one way or the other with respect to the respective contentions in this petition for *bonafide* necessity.

9. During the course of hearing, counsel for the respondent offered to the petitioner who was present in person some reasonable time to vacate the premises but the petitioner asked for an unduly long period of four years, to vacate the suit premises and consequently no compromise could be arrived at for the petitioner to vacate the suit premises by consent.

10. In view of the above, this petition is without any merit, and is accordingly dismissed, leaving the parties to bear their own costs.

AUGUST 28, 2014
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VALMIKI J. MEHTA, J.