

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

Date of Decision: 01.08.2014

+ RC.REV. 44/2014, CM APPL.1313-14/2014
& Caveat No. 69/2014

RAMESH KUMAR & ORS. Petitioner

Through: Mr. I.P. Singh, Adv.

versus

SMT NEELAM DAWAR & ORS. Respondent

Through: Mr. Kirti Uppal, Sr. Adv. along
with Mr. Pradeep Kumar, Mr.
Rishi Lakhanpal and Mr. Aman
Bhalla, Advs.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

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1. The present petition impugns an order dated 01.11.2013 which dismissed the petitioner's (tenant's) application for leave to contest the eviction petition filed by the respondent under Sections 14 (1) (e) and 25B of the Delhi Rent Control Act (hereinafter referred to as the "Act"). The Trial Court found that the application did not disclose any triable issue for granting the leave. Accordingly an eviction order was passed in respect of tenanted premises being Shop No. 325, Punjabi Bazar, Kotla Mubarkapur, New Delhi-3.

2. The eviction-petitioner had sought the tenant's eviction from the shop/tenanted premises for *bona fide* need on the following grounds: i.e., that he was due for retirement and needed to settle his married son for earning a livelihood for himself, his wife and his children; that the second and third petitioners too needed their own respective places for

their own separate business; the second petitioner's employment yielded an income which was too meagre for his family of four: i.e., a wife and two children; the third petitioner who too was in a leased accommodation did not have a steady source of income for his family comprising of his wife and two children, besides being constantly under a palpable uncertainty and threat of being evicted by his landlord at any point of time. The eviction-petitioners claimed that that they had no other reasonably suitable commercial accommodation anywhere else in Delhi and needed the suit premises bonafidely for themselves and the dependent members of their families.

3. In reply, the present petitioner/tenant denied the eviction-petitioners' ownership of or their status as landlords apropos the suit premises. He contended that he was a tenant of Shri Amarnath s/o Late Sh. Jeewan Dass since 1977 and had paid rent @ Rs.46/- per month against receipts. That an earlier attempt by Sh. Amarnath and his family to dispossess the respondent was enjoined by a decree dated 29.11.1999 in suit no. 1077 of 1993. Another petition seeking his eviction under Section 14(1)(a) of the Act was dismissed on 27.11.1996. Subsequently, Smt. Kaushlaya Devi w/o Shri Amarnath sought his eviction under Section 14(1) (a), (f) (g) and (j) of the Act. This petition too was dismissed on 9.10.2003. Despite that, the petitioner continued to pay rent to Smt. Kaushlaya Devi by Money Orders up to 31.10.2010 and after her death to her LR's till 31.10.2011. The ownership of the tenanted premises by the eviction-petitioner was denied. It was contended by the tenant that mere grant of Letters of

Administration do not confer ownership rights apropos the estate of the deceased. It was then contended that since the first petitioner was still in employment and earning a handsome salary and enjoying perks too; therefore he had no need for additional premises. Additionally, it was contended that the eviction-petitioners owned shop No. K-33 in the same locality, as well as two other shops in Karol Bagh, New Delhi. Therefore, their claim for *bona fide* need was a falsity. Finally, it was argued that the respondent (present-petitioner) was 85 years old and had been earning his livelihood/running his business from the tenanted premises since the inception of the tenancy but, now his four sons were looking after the business.

4. After considering the pleadings and arguments, the Trial Court found that the respondent had sought leave to contest essentially on the following three grounds: (i) that the eviction petitioners were neither the owners nor landlords of the premises, thus, there was no relationship of landlord and tenant between them and the *Will* through which they claimed title was a document of fraud; (ii) there was no bonafide need of the premises and (iii) in any case, they had suitable alternate accommodation.

5. The Trial Court concluded that the eviction-petitioners were not complete strangers to the respondent (present petitioners) because they had been enjoined and restrained from creating any third party rights in the suit premises and thus were well aware of the status of the eviction-petitioners in that suit (respondent herein). The present petitioners/tenants were also made aware of the order dated

28.11.2006 in Probate Proceedings where the respondent was asked by the Court of Sh. V.K. Gupta, ADJ, Delhi to pay rent to the plaintiff/eviction- petitioner. The Court relied upon a judgment of the Delhi High Court in ***Dr. Jain Clinic Pvt.Ltd. v. Sudesh Kumr Jais in RCR 136 of 2012*** which held that imperfection of title as well as the law of estoppel would not be any defence to contest the suit by a person inducted in the premises as the tenant. It is settled that (i) in the context of rent control law all that has to be shown is that the owner is something more than the tenant and (ii) for maintaining a petition under section 14(1)(e) of the Act proof of absolute ownership would not be necessary. Indeed, it would be sufficient if the landlord were to show that he collected the rent for himself only. It would not be available for a tenant, who has been paying rent to the landlord, to raise a plea of imperfectness in title to the suit property or that the title did not vest in the landlord at all.

6. This case, however, would not be applicable in view of the fact that the eviction-petitioner had a better title to the tenanted premises and it stood already established by way of the order of the probate court granting Letters of Administration to the LRs of late Shri Amar Nath, as discussed here below.

7. The Trial Court dealt with the numerous judgements cited by the petitioner in support of her contentions:

i. ***Surinder Singh v. Jasbir Singh, 172 (2010) DLT 611*** to the effect that eviction of premises for extension of business by landlord

and for his son who is dependent upon him for purposes of business is genuine and bonafide.

ii. ***M/s. International Building & Furnishing Co. Pvt. Ltd. & Anr. v. J.S. Rikhy & Ors.***, AIR 1985 Delhi 338 to the effect that the respondent/tenant cannot dispute Will executed by landlord's father.

iii. ***Ashok Kumar Mehra v. Kuldeep Kumar Mehra***, 172 (2010) DLT 274 to the effect that the respondent/landlord living in rented accommodation has all the right to shift to his own property.

iv. ***Kharati Ram Khanna & Sons v. Krishna Luthra***, 172 (2010) DLT 551 to the effect that where respondent want to establish his sons separately and independently in his property and in the same trade then by no stretch of imagination, it could be said that the requirement is neither bonafide nor genuine.

v. ***Labhu Lal v. Sandhaya***, 173 (2010) DLT 318 wherein it was held that the requirement of respondent's son and daughter-in-law for expanding the clinic currently run in premises in question is most bonafide and genuine.

vi. ***Adarsh Electronics and Ors. v. Dinesh Dayal***, 173 (2010) DLT 518 wherein the requirement of a retired government servant for opening an office of Advocate in the premises also by him was found to be genuine and not a mere desire.

vii. ***Darshan Singh v. Gurinder Singh***, 173 (2010) DLT 279 wherein it was found that need of the landlord for space on the ground

that he could not support his family due to paucity of space was found to be genuine.

viii. ***Viran Wali v. K.L. Kochhar, 174 (2010) DLT 328*** to the effect that the tenant cannot dictate as to how and in what manner landlord uses his own property.

ix. ***Darshan Singh v. Kuldeep Singh, AIR 1979 P&H 250*** wherein it was held that Letters of Administration successfully prove execution of Will and the matter could not be reconsidered in the Civil Court.

x. ***Chandra Prabha v. Sali Chan Sharma & Ors.*** which is a judgement of the Hon'ble Delhi High Court dated 12.8.2011 passed in First Appeal Order (OS) No.359-361/2010 wherein it has been held that decision of a probate court is *judgement-in-rem* binding on the parties to probate proceedings but also on the whole world.

xi. ***Phiraya Lal v. Giya Ram & Anr.*** which is a judgement dated 10.2.1972 passed by the Hon'ble Delhi High Court in RFA No.88(d) of 1968. The said judgement is also on the aspect of Will.

xii. ***Mohd. Ahmed v. Surinder Singh, 1973 RLR (Note) 45*** to the effect that a person who is granted Letters of Administration of property by a competent Court becomes fully entitled to manage the property and can give complete discharge to the daughters or tenant and his authority to do so cannot be challenged by such persons, whether in main proceeds or a collateral proceedings.

xiii. ***S.S. Gupta v. Himat Singh & Ors.* 2010 (115) DRJ 612** to the effect that where there is no executor appointed by the testator, a Letters of Administration is granted by the Court declaring genuineness of the Will.

xiv. ***Crystal Developers v. Asha Lata Ghosh*, AIR 2004 SC 4980** to the effect that Section 273 of the Succession Act, 1925 refers to conclusiveness of the probate as to the representative title. It establishes the factum of the Will and the legal character of the executor. Under Section 41 of the Evidence Act, the grant operates as *judgement-in-rem* and can be set aside on the ground of fraud and collusion provided it is proved by the party. It is also held that grant of probate establishes the genuineness of the Will and the person in whose favour the probate is granted is entitled to convey the title arising out of the Will approached by the Court.

xv. ***Satnam Anand & Anr. v. Gurbachan Singh*, 2011 II AD (Delhi) 681** to the effect that lacuna and defect in grant of probate would never permit tenant to rake up issues to question title of landlord in eviction petition on the aspect of probated Will.

On the same issue, the petitioners also relied on **AIR 1979 SC 1345; 88 (2000) DLT 173 (FB)**.

On the aspect of estoppel under Section 116 of the Evidence Act, 1872, the petitioners relied on ***Ramesh Chand v. Uganti Devi*, 157 (2009) DLT 450**.

8. On the aspect that the landlord is not supposed to prove the absolute ownership as required under the Transfer of Property Act and he is only required to show that he is more than tenant, the petitioners have relied on *Rajinder Kumar Sharma & Ors. v. Leelawati & Ors.* **155 (2008) DLT 383.**

9. The Trial Court then considered the judgement of this Court in *Dr. Jain Clinic Pvt. Ltd. v. Sudesh Kumar Jassal* in RCR No.136/2012, which held that – “it is settled law that in the context of Delhi Rent Control 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.”

10. The Trial Court was of the view that the tenants had refused to acknowledge a copy of the judgement of the probate court and further refused to acknowledge/attorn the petitioners as landlord/landlady. In any case, her position as landlady has remained uncontroverted; that the deposit of rent under Section 27 of the DRC Act was on account of conflicting claims of the LRs of late Shri Amar Nath and the present

petitioners, therefore, the judgement cited above would not be applicable in this case.

11. The Trial Court relied upon *M/s. Indian Umbrella Manufacturing Co. & Ors. v. Bhagabandei Agarwalla (Dead) by LRs Smt. Savitri Agarwalla & Ors.*, AIR 2004 1321 to hold that the consent of other co-owners is assumed to be taken unless it is shown that the other co-owners were not agreeable to the ejection of the tenant and suit/petition for their eviction was filed despite their agreement. The Trial Court discussed the law regarding jurisdiction of a Rent Controller to decide the validity of a Will and the right of a tenant to challenge the validity of the Will as discussed in *Kanta Goel v. B.P. Pathak & Ors.* AIR 1977 SC 1599 and *Ishwar Dass Rajput v. Chaman Prakash Puri & Anr.*, 46 (1992) DLT 619. In *M/s. International Building and Furnishing Co. Pvt. Ltd. & Anr. v. J.S. Rikhy & Ors.* AIR 1985 Delhi 338, the Court concluded that the judgement of the probate court was a *judgement-in-rem* in respect of legality of the Will. Therefore the tenant's argument questioning the Will were misconstrued besides there was a sworn testimony of the eviction-petitioner (respondent herein) to the effect that despite being approached, the respondents refused to acknowledge the Will. The previous litigation between Shri Amar Nath and/or his legal heirs and the tenant would be inconsequential apropos his ownership of the tenanted premises.

12. The contention of the tenant that since the eviction-petitioner had retired from service and was a pensioner, hence at this age and stage he would not need the tenanted premises, was rightly rejected.

This Court has held that age cannot be a constraint upon a landlord for seeking the eviction of a tenant from such leased premises, in the eventuality of the landlord's *bona fide* need. The tenant's apprehension that upon eviction the tenanted premises would be let out at a higher rent was found to be baseless and premature since such contingency has been taken care of under Section 19 of the Act. The tenants had also failed to show how the petitioners and her family members were well off and did not require the tenanted premises. The Rent Control Act deals with rented accommodation and Section 14(1)(e) of the Act deals in particular with eviction of tenants from leased premises in case of *bona fide* need. Although the landlord may be financially well off but in the absence of him having suitable alternate accommodation for his *bona fide* need, his financial well-being cannot come in the way of denying him an eviction order, if otherwise the parameters of the Act are met. The Trial Court found that the tenant had not produced any documents to support his contention that the eviction-petitioner owned several properties. Therefore, these submissions were found to be bald pleas, bereft of any reasonable backing. It is settled law that bald assertions cannot be considered. In view of the landlord's denial of ownership the Trial Court held that shop bearing No.K-33, Punjabi Bazar, Kotla Mubarakpur or for that matter any other property in Karol Bagh, New Delhi or Ghaffar Market, New Delhi could not be said to be owned by the eviction-petitioners.

The Trial Court found that the application seeking leave to contest did not disclose any triable issue, hence the eviction order was passed.

13. This Court is conscious that the jurisdiction for review of a petition under the Rent Control Act is limited. This Court in the case of ***Ramesh Chand v. Uganti Devi*, 157 (2009) DLT 450**, has held that while exercising jurisdiction under the aforesaid provision, the Court does not act as a Court of Appeal. The Court has to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material available before it. Moreover, a Full Bench of this Court in ***Mohan Lal v. Ram Chopra and Anr.*, AIR 1982 Delhi 405**, exhaustively dealt with Section 25-B of the Act. On the scope of the proviso to Sub-section (8) of this Section, after examining the judgment of the Supreme Court in ***Hari Shanker and Ors. v. Rao Girdhari Lal Chowdhury*, AIR 1963 SC 698** and ***Bell and Co. Ltd. v. Waman Hemraj*, AIR 1938 Bom 223**, it was laid down as follows:

“In our opinion the jurisdiction of the High Court under proviso to Section 25B (8) has to be interpreted, keeping in view the legislative intent. The revision under Section 25B (8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not

be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act.”

Furthermore, the Hon’ble Supreme Court in another case tilted as ***Chaman Prakash Puri v. Ishwar Dass Rajput and Anr., 1995 Supp (4) SCC 445*** has held with regard to High Court’s power to interfere in revision against the finding as to bonafide requirement of landlord. It has been held that if the Rent Controller finds that landlord was in bonafide need of premises, the High Court in revision was not entitled to re-appreciate evidence and reverse the finding. The same Court in ***Ram Narain Arora v. Asha Rani & Ors., (1999) 1 SCC 141*** at para 12 *has held as follows:*

“It is no doubt that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters or record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter.”

14. In the context of the aforesaid jurisdictional parameters for review of an eviction order under the Delhi Rent Control Act, this Court notices that each of the arguments put forward by the petitioners have been duly dealt with by the Trial Court as per the facts on record and the views taken are plausible in law, which do not call for any interference by this Court.

15. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI
(JUDGE)

AUGUST 01, 2014/acm/*b'nesh*