

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

+ RC Rev. No. 47/2014 & C.M.Nos.1401-1402, 11248-11249/2014

% **28th July, 2014**

ISHWAR DAYAL KANSAL Petitioner

Through: Mr.Sudhanshu Batra, Sr. Advocate
with Mr.Arvind Kumar Gupta,
Mr.Abhishek Goyal and Mr.Jasmeet
Arora, Advocates.

VERSUS

A. K. JAIN Respondent

Through: Ms.Richa Kapoor with Ms.Saahila
Lamba, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 is filed by the petitioner/tenant impugning the judgment of the Additional Rent Controller dated 18.8.2011 by which the Additional Rent Controller has dismissed the application for leave to defend filed by the petitioner and decreed the eviction petition with respect to the tenanted

premises being property no.4499-4500, 7/35, Ansari Road, Daryaganj, New Delhi-2 (shown in red colour in the site plan exhibit 'X').

2. The case of the respondent/landlord is that he needs the suit/tenanted premises for the office use of himself and his wife. The tenanted premises are adjacent to the premises where the respondent/landlord is living at 4498, 7/35, Ansari Road, Darya Ganj, Delhi. The tenanted premises are required because the respondent and his wife are running their firms at the premises at 44-45, New Okhla Industrial Complex, DSIDC Phase-I, New Delhi and which premises are very far off from the residence of the respondent/landlord, and hence the respondent and his wife have to travel at least about 40-50 kms daily up and down, causing them great inconvenience in their old age. It was also pleaded that the DSIDC premises have to be vacated because already eviction notices have been served upon the respondent under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Need was also prayed for the daughter of the respondent Ms. Snigdha Jain who was pursuing Masters in Architecture in London. The

petition also prayed for eviction for the need of the son of the respondent Dr. Semant Jain who was planning to come from US.

3. At the outset, I would like to note that at the request of the counsel for the respondent/landlord, I am treating the eviction petition only for the *bonafide* need of the respondent and his wife and not for the daughter and the son.

4. The only alternative premises which are said to be available to the respondent/landlord was the premises at 44-45, New Okhla Industrial Complex, DSIDC Phase-I, New Delhi, for which the respondent had to travel 40-50 kms daily up and down, and therefore in their old age the respondent and his wife were surely entitled to carry on their business which they were carrying on at the Okhla Industrial Complex from a premises which is immediately adjacent to the premises where the respondent and his wife are living, however I need not dwell on this aspect, inasmuch as, one of the aspects which is noted in the impugned order is that the Estate Officer had issued eviction notices against the respondent under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for eviction of the

respondent from the premises at DSIDC Okhla Industrial Complex (and therefore under the threat of eviction, respondent/landlord wanted to ensure with him the possession of the tenanted premises once he had to vacate the premises at Okhla Industrial Complex) and now the respondent has already been evicted from the DSIDC premises. Therefore, the act of the respondent in not first wanting to come on the road by stopping his business after being evicted from the premises at Okhla Industrial Complex, by shifting to the tenanted premises, was hence not a baseless stand, and which in any case is proved to be correct because the respondent/landlord has been evicted from the Okhla Complex premises as stated in the reply to this revision petition. Therefore, looking at it from any angle whether with respect to the distance of the DSIDC Okhla Complex premises and hence the respondent and his wife being of old age and wanting to shift their Okhla Industrial Complex office work to the tenanted premises which is adjacent to the premises where the respondent is living with his wife on the first floor, and now the aspect that the premises at Okhla Industrial Complex has been vacated, in my opinion shows that no leave to defend can be granted on this ground.

5. I must also at this stage refer to one aspect which the learned senior counsel for the petitioner has argued before this Court that the petitioner/tenant in the leave to defend application stated that the Okhla Industrial premises were used as a factory, and therefore the tenanted premises which is just one hall cannot be used as a factory is a misconceived argument because the respondent/landlord in the reply to the leave to defend application specifically stated that the premises at Okhla Industrial Complex were being used for office purposes by the respondent and his wife for running of offices of two firms therein in the name of M/s Konark Udyog and M/s Kontech Intelligent Systems. Also, as stated above, the premises at Okhla Industrial Complex is no longer available to the respondent/landlord.

6. One argument which has been urged before this Court on behalf of the petitioner is that the respondent is not the owner of the suit premises because sisters of the respondent were co-owners, and in whose absence the eviction petition could not be decided. In this regard, I may note that it is not disputed either in the application for leave to defend or before this court that it was the respondent who inducted the petitioner as a tenant, and once there

is a relationship of landlord and tenant and on account of the respondent having let out the tenanted premises to the petitioner, then as per Section 116 of the Evidence Act, the petitioner/tenant is estopped from questioning the title of the respondent/landlord with respect to the tenanted premises. Also, it has now been consistently held by the Supreme Court that every co-owner is entitled to file and peruse the eviction petition for *bonafide* necessity and the courts cannot refuse to decree such a *bonafide* necessity petition unless on the record it is shown that the other co-owners have come forward and are objecting to the eviction petition, and which is not so in the facts of the present case. Therefore, the argument that the eviction petition is not maintainable because the respondent is not the owner/landlord of the tenanted premises is a totally baseless and frivolous argument and is accordingly rejected.

7(i) The last argument which was urged on behalf of the petitioner/tenant was that the respondent/landlord was carrying on his business in the premises where he is staying presently on the first floor at 4498, 7/35, Ansari Road, Darya Ganj, Delhi, but when asked to show, even a

single document in this regard which was filed along with the application for leave to defend or so stated in the application for leave to defend, this aspect could not be controverted. I may also note that the Supreme Court in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15* has held that the fifteen days statutory period for filing of the leave to defend application is inflexible and sacrosanct and the same cannot be extended by resorting to either the provision of Section 5 of the Limitation Act, 1963 or the provisions of Code of Civil Procedure, 1908 (CPC). The ratio of the judgment of the Supreme Court in the case of *Prithipal Singh (supra)*, therefore is that whatever has to be stated for seeking leave to defend has necessarily to be stated and accompanied by necessary documents within a period of 15 days, and after 15 days period there cannot be one or more additional affidavits and one or more additional documents to seek leave to defend and that it is not permissible to raise any fresh grounds which are not found in the leave to defend application. Accordingly, the effort of the learned senior counsel for the petitioner to refer to me the documents filed in the rejoinder to the leave to defend application is declined, and which rejoinder obviously has been filed beyond

the period of 15 days statutory period. A rejoinder affidavit can only be filed to clarify and support the facts and documents already pleaded and not for fresh facts and documents.

(ii) For the sake of abundant caution, I have still considered the so-called document which according to the petitioner shows that business is being carried on in the premises where the respondent/landlord is presently staying (adjacent to the tenanted premises) and when we refer to this document, it is seen that this 'weighty' document is just a phone bill which no doubt shows that the present residential address of the respondent, however, all that is required to be stated is that, it has been held in a catena of judgments of this Court that merely giving address of a premises for opening of a registered office for/or any other purposes will not mean that automatically the premises would be taken to have been used for commercial purposes. This Court also takes judicial note of the fact that it is not unknown that for simply giving an address of a registered office, persons do give the address of their residential premises as the office address, but that would not simply make the address into actual user of the premises for a commercial purpose. Accordingly, in my opinion such pleas cannot create triable issues.

8. No other issue or argument except as dealt with above have been urged before this Court.

9. In view of the above, it is clear that the petitioner/tenant is unnecessarily harassing the respondent/landlord, although the respondent/landlord has been forced during the pendency of the eviction proceedings to vacate the premises at Okhla Industrial Premises. Also, unnecessary frivolous grounds with respect to lack of relationship of landlord and tenant between the parties and the respondent not being the owner of the premises have been raised, although *ex facie* such pleas are barred by law.

10(i) I note that a learned Single Judge of this Court vide order dated 15.4.2014 had stayed the impugned order subject to the petitioner/tenant paying Rs.25,000/- per month as user charges, but this order till date is not complied with. An application for modification being CM.No.7965/2014 was filed by the petitioner/tenant but that was also dismissed. Today once again, another application is filed for varying the order dated 15.4.2014, and which is quite clearly a sheer abuse of process of law and which application

also stands dismissed as earlier similar application filed by the petitioner/tenant already stands dismissed by a learned Single Judge of this Court on 06.5.2014.

(ii) Therefore, while dismissing this revision petition with costs of Rs.2 lacs, it is also observed that the interim orders of user charges dated 15.4.2014 has become final and can be executed by the respondent/landlord in accordance with law. I may note that the Supreme Court in the judgment in the case of ***Ramrameshwari Devi & Ors. Vs Nirmala Devi & Ors. (2011) 8 SCC 249*** has held that actual costs and appropriate costs must now be imposed so that message is sent with respect to frivolous litigations, and accordingly costs have been imposed applying the ratio of ***Ramrameshwari Devi (supra)***. I am also empowered to impose costs in terms of ***Volume V*** of the ***Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15.***

VALMIKI J. MEHTA, J.

JULY 28, 2014
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