

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

+ CM(M) 398/2014

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10th July , 2014

SHERI KHEM CHAND & ORS.

.....Petitioners

Through: Mr. Pradeep Dewan, Sr. Adv. with
Mr. A.K.Rohtagi, Adv.

VERSUS

SH. ARJUN JAIN

..... Respondent

Through: Mr. A.K.Tandon and Mr.
Chandrashekhar, 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 Article 227 of the Constitution of India is filed by the petitioners who are the respondents before the Additional Rent Controller, Delhi in a petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958. By the eviction petition the respondent herein seeks eviction of the tenant on the ground of bonafide necessity.

2. The present challenge is to the impugned order dated 6.3.2014 by which the Additional Rent Controller has dismissed the application filed by the petitioners herein under Section 10 CPC for stay of the proceedings in

the eviction petition under Section 14(1)(e) of the Act. The petition under Section 14(1)(e) for bonafide necessity is sought to be stayed on the ground that one of the issues in this matter is the same in an earlier eviction petition seeking eviction on the ground of subletting. The common issue is the aspect of existence of relationship of landlord and tenant between the parties.

3. By the impugned order, the application under Section 10 CPC has been dismissed.

4. Learned counsel for the petitioners, respondents/tenants in the court below argues that since one of the main issues in both the petitions, is identical hence the subject petition for bonafide necessity, which is a subsequent proceeding, should be stayed under Section 10 CPC. Reliance for this purpose is placed upon a judgment of a learned Single Judge of this Court in the case of *M/s. Mehta Gandhi and Associates Vs. Shree Pipes Ltd. AIR 1990 Delhi 139*.

5. At the outset, I would like to refer to the Explanation-I of Section 11 CPC. This Explanation-I read with main Section reads as under:-

“Section 11.

Explanation I.- The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.”

6. A reading of Explanation-I makes it more than abundantly clear that two suits can simultaneously be heard/proceeded with, even if one or more issues are common. In fact, if a latter suit filed is decided earlier than the earlier filed suit, the decision in the later suit will operate as res judicata for the common issues of the earlier filed suit. In view of the language of Explanation I of Section 11 CPC, merely because some issues in the two suits are common, it is not necessary that the subsequent suit should be stayed and in fact the decision in the subsequent suit will operate as res judicata between the parties.

7. It is now well known that tenants make every effort to delay and drag eviction petitions which are filed by landlords in the city of Delhi as the prices of the immovable properties have shot through the roof. Of course, legal expertise does help the tenants in different ways in this regard. This appeal is one such misuse of the legal process.

8. The law is well settled that powers under Section 10 CPC are not only discretionary, but also the object thereof is not to cause prejudice or delay in disposal of the validly instituted proceedings unless most of the issues are more or less identical or the single most issue is identical. Section 10 is applied when common questions of law and fact when decided will have the

effect of more or less deciding the reliefs prayed in a subsequent suit, on the decision being passed in the earlier suit.

9. In a petition for bonafide necessity there are three ingredients i.e (i) existence of relationship of landlord and tenant; (ii) landlord requires the tenanted premises for his necessity or that of his family, and, (iii) the landlord has no other reasonably suitable accommodation available.

10. In a petition for eviction on the ground of subletting, besides the existence of relationship of landlord and tenant, it is further required by the landlord to be proved is that the tenant has sublet, assigned or otherwise parted with possession of the tenanted premises, and which major issue is not an issue in a petition for bonafide necessity. In fact, in a petition for bonafide necessity, once the owner files a petition, then the owner is automatically a landlord by virtue of the definition of landlord in Section 2(e) of the Act, because whereas all owners are automatically landlords, but, all landlords are not automatically owners. In subletting cases, the requirement is to only prove existence of relationship of landlord and tenant and ownership is not required to be proved, though if the same is proved, it would also mean proof of existence of relationship of landlord and tenant. In a bonafide necessity petition there are issues which are not issues in a petition for eviction on the ground of subletting. Hence many questions of

law and facts being different in the eviction petitions on the ground of subletting and bonafide necessity, Section 10 CPC cannot be applied.

11. The judgment relied upon by the petitioners in the case of *M/s Mehta Gandhi (supra)* would not apply because in the said case, and as argued by the petitioners, the two suits related to the same major issue ie the first suit was of a demand by the seller for monies for goods supplied and the second suit was the suit filed by the buyer to claim that the goods which were supplied were defective hence damages were prayed for. Therefore, the most important crucial issue in the two suits was common, and therefore, the application of 10 CPC was called for. Therefore, the cited judgment in the case of *M/s Mehta Gandhi (supra)* has no application to the facts of the present case.

12. In view of the above, the present petition is grossly misconceived. Petitioners have been successful in delaying the continuance of the eviction proceedings for bonafide necessity because the proceedings before the court below have remained stayed in view of the ex parte order of a learned Single Judge dated 28.4.2014.

12. The present petition is therefore dismissed with costs of Rs. 50,000/- which shall be paid within a period of six weeks inasmuch Supreme Court has observed in the case of *Ram Rameshwari Devi & Ors. Vs. Nirmala*

Devi & Ors. (2011) 8 SCC 249 that it is high time that in certain litigations appropriate actual costs must be imposed. I am also empowered to impose actual costs in exercise of powers under *Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*. Payment of costs shall be a condition precedent for the petitioners to pursue the defence in the subject eviction petition in the court below.

JULY 10, 2014
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VALMIKI J. MEHTA, J.