

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

+ RC.REV.No.248/2011 & CM.No.12260/2011 (stay)

% **JULY 16, 2014**

VEENA WIG Petitioner

Through: Mr.Rajan Sabharwal, Advocate.

VERSUS

SWATANTRA & ORS. Respondents

Through: Ms.Shreya Mukherjee with
Mr.Prashant Singh with respondent
No.1 in person.
Ms.Malti, Advocate for R-3.

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

To be referred to the Reporter or not? Yes

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 has been filed against the impugned judgment of the Additional Rent Controller dated 19.3.2011 by which the Additional Rent Controller has dismissed the application for leave to defend filed by the present petitioner/tenant. The tenanted premises are one shop and Mari (one room

over the shop) in the premises bearing no.2336, Fatak Habas Khan, Tilak Bazar, Khari Baoli, Delhi-06.

2. The original owner/landlord of this property was the father of the petitioners/respondent nos.1 & 2 herein, late Sh. Khilanda Ram Dua, who died on 01.9.1994. Late Sh. Khilanda Ram Dua is stated to have executed a Will dated 20.3.1993 whereby the entire subject property including the tenanted shop and Mari was bequeathed to the petitioners (daughters) in the court below (respondent nos. 1 & 2 herein). Late Sh. Khilanda Ram Dua also had a property at E-24, Bungalow Road, Kamla Nagar, Dehi and which was bequeathed by him as per the Will to his four sons.

3. The subject eviction petition was filed by Smt. Swatantra before the Additional Rent Controller, and who is arrayed as respondent no.1 in this petition. In the eviction petition, respondent no.1 stated that she was employed as a Secretary with DTC and she retired on 03.9.2008. Respondent no.1 stated that she wanted to start stationary business in the suit premises and there was therefore a *bonafide* requirement for the tenanted premises and that she had no alternative suitable accommodation. The Additional Rent Controller accepting her case has decreed the petition.

4. Before me, learned counsel for the petitioner/respondent no.1 and before the Additional Rent Controller, has urged the following grounds for setting aside the impugned judgment:-

(i) The respondent nos. 1 & 2 cannot be said to be the owners of the suit premises because the petitioner herein had challenged the Will of Late Sh.Khilanda Ram Dua dated 20.3.1993 on the ground that the signatures on the Will are different than the signatures which appeared on the rent receipts. Accordingly, it was argued that the respondents nos. 1 & 2 are not the owners/landlords of the suit premises, and consequently they cannot claim eviction.

(ii) Relatable to argument no.1, it was also urged that since there is no Will as propounded by Late Sh.Khilanda Ram Dua to respondent nos. 1 & 2, and since late Sh. Khilanda Ram died leaving behind, besides the daughters/ the respondent nos. 1 & 2, four sons, who are also the co-owners, and consequently in the absence of the brothers of the respondent nos. 1 & 2 as parties to the petition, the eviction petition was bad for non-joinder of necessary parties.

(iii) The eviction petition was filed against four respondents, present petitioner being respondent no.1 therein, who was served and filed a leave to

defend application, but, respondent nos. 2 to 4 in the eviction petition were not served in the eviction petition, and inspite of the same, the eviction petition has been decreed against all the respondents. It is argued that the respondent nos. 2 to 4 before the Additional Rent Controller i.e respondent nos. 3 to 5 herein were not served because these respondents were in fact not living in India. It is stated that admittedly from the order sheets, no notice has been served upon the respondent nos. 3 to 5 herein by the Additional Rent Controller, and hence the impugned judgment has to be set aside on this limited ground itself.

(iv) There was no *bonafide* need of the respondent no.1 herein, and there was only a desire, which desire cannot and ought not to be confused with a *bonafide* need, and therefore the eviction petition could not have been decreed by dismissing the leave to defend application. It is argued that besides the suit shop and Mari, there are two other shops with other tenants and no reasons have been given why the other tenants are not being evicted.

(v) The eviction petition is bad for non-joinder of necessary parties because the tenancy, no doubt was originally of the sole proprietorship firm M/S Kuber Trading Company with sole proprietor Kuber Nath Vig, and which tenancy came into existence in the year 1968, however, subsequently in the

year 1973, M/s Kuber Trading Company became a partnership firm and also therefore became a tenant, which is clear from the fact that the tenancy receipts are being issued in the name of M/s Kuber Trading Company. Reliance is sought to be placed upon the partnership deeds of 1973 onwards, which are stated to have been filed with the application for leave to defend including the latest partnership deed dated 01.4.1992. It is further argued that in the absence of the other partner Sh.Onkarnath Vig, the eviction petition was not maintainable.

5. I am unable to agree with any of the arguments which are urged on behalf of the petitioner. The petition is without any merits and liable to be dismissed. The reasons are given hereinafter.

6. So far as the challenge to the eviction petition filed by respondent nos. 1 & 2 herein on the ground that the Will of Late Sh.Khilanda Ram Dua is disputed by the present petitioner as the signatures on the Will do not tally with the signatures on the rent receipts is concerned, I may state that a tenant has no *locus standi* to challenge the Will which is executed by the original owner/landlord, once the other legal heirs i.e the sons have not in any manner opposed the eviction petition. There is nothing on record either before this Court or before the Additional Rent Controller that the brothers

of respondent nos. 1 & 2 herein were objecting to the Will, and therefore the rights of the respondent nos. 1 & 2 herein to the suit premises under the Will of Late Sh.Khilanda Ram Dua were being denied. Therefore, I reject the argument that the respondent nos. 1 & 2 herein are not the owners of the suit premises and eviction petition cannot be filed by them.

7. (i) So far as the aspect that the brothers of respondent nos. 1 & 2 are also the co-owners, and therefore in their absence the eviction petition is bad for non-joinder of necessary parties is concerned, this argument will stand covered by the first argument which has been held against the petitioner. It may be noted that as per the Will of Late Sh.Khilanda Ram Dua whereas the subject property at Tilak Bazar, Khari Baoli, Delhi has been bequeathed to the daughters/respondent nos. 1 & 2, and the house at Kamla Nagar, Delhi has been bequeathed to the sons/brothers of the respondent nos. 1 & 2. The respondent nos. 1 & 2 have only a right of residence in the premises at Kamla Nagar. Once *inter se* the legal heirs of Late Sh.Khilanda Ram Dua, there are no disputes, and as per the Will, the property at Tilak Bazar belongs to the respondent nos. 1 & 2, the argument urged on behalf of the petitioner that in the absence of the brothers of respondent nos. 1 & 2, the respondent nos. 1 & 2 cannot file the eviction petition, is misconceived.

(ii) At this stage, I would like to reject the next argument which was urged by the counsel for the petitioner that the respondent nos. 1 & 2 are entitled to carry on their business in the shops at Kamla Nagar and which are alternative suitable accommodation, inasmuch as, by the Will of Late Sh.Khilanda Ram Dua, the respondent nos. 1 & 2 have no right to the Kamla Nagar property, and hence the shops in the Kamla Nagar property cannot become alternative suitable accommodation for respondent nos. 1 & 2 to claim eviction of the tenants therefrom for their *bonafide* need of business.

8. The next argument which was urged on behalf of the petitioner was that there is no *bonafide* need and there is only a desire because no reason has been given as to why the respondent nos. 1 & 2 are only seeking eviction of the premises with the present petitioner and not the tenants of the two other shops. The argument in this regard is completely misconceived because besides the fact that the counsel for respondent no.1 states that two eviction petitions have also been filed against the other two tenants (out of which one is decreed and challenged, being the very next item in this Court being RC.REV.No.132/2012), it is required to be noted that a tenant cannot dictate to the landlord as to which premises is most suitable for him/her to carry on the business. Also, the facts of the present case show that the need

is for all the shops including the shop/suit premises with the petitioner, and consequently, it cannot be said that there is no *bonafide* need of respondent no.1 who has retired from service and wants to carry on stationary business in the suit premises.

9 The next argument urged is that the eviction petition was bad for non-joinder of necessary parties because the tenant was a partnership firm and the other partner Sh.Onkarnath Vig was not made a party to the eviction petition. This argument is also misconceived for the reason that, admittedly the suit premises were taken on rent by the tenant Kuber Nath Vig in the year 1968 as a sole proprietor of M/s Kuber Trading Company. Merely because the tenant has subsequently created a partnership firm in the name of M/s Kuber Trading Company cannot mean that the partnership firm will become the tenant. Rent receipts have continued in the same name of M/s Kuber Trading Company, and unless it has been brought to the knowledge of the landlord that M/s. Kuber Trading Company is a partnership firm, and which partnership firm should be the tenant, therefore merely because a partnership firm has been constituted in the name of M/s. Kuber Trading Company will not make the partnership firm as the tenant. Admittedly, there is no partnership since the commencement of the tenancy in the year 1968 and the

partnership is stated to have commenced at the best in the year 1973. Therefore, this argument is rejected that the tenancy is of the partnership firm and not of the deceased Kuber Nath Vig whose legal heirs are the present petitioners.

10.(i) That takes us to the final argument that the eviction petition could not have been decreed against the respondent nos. 3 to 5 herein/respondent nos. 2 to 4 before the Additional Rent Controller without serving them. It is argued that once notices were issued but notices came back unserved on the ground that the respondents nos. 3 to 5 herein were not living at the tenanted premises and hence could not be served, eviction order could not be passed against respondent nos. 3 to 5. At the first blush, the argument urged on behalf of the petitioner seemed to have some merit but after looking into the substance, the argument is liable to be rejected. Firstly, the Supreme Court in the case of *Pushpa Rani & Ors. Vs. Bhagwanti Devi & Anr. 1994 Supp (3) SCC 76* has held that only those persons are tenants who after the death of the original tenant continue to take evince interest in the tenanted premises, continue to claim possession and would show interest towards continuing the tenancy including by payment of rent. The Supreme Court

has otherwise held that such persons have impliedly surrendered their tenancy rights.

(ii) In the present case, the respondent nos. 4 & 5 are stated, as per the petition before this Court, to be residing outside India. Therefore, once respondent nos. 3 to 5 do not evince or exercise the tenancy rights, such rights are deemed to have been waived and surrendered in view of the aforesaid judgment of the Supreme Court.

(iii) Also, this issue can be looked into from another point of view. If certain persons are not served and an eviction order is passed against them, only such persons will have the *locus standi* to oppose the eviction order including by filing an application to set aside the eviction order on the ground that eviction order has been passed against them without service. This argument, however, can be considered only when the respondent nos. 3 to 5 will pursue their case for setting aside of the eviction order on the ground that they are not served. So far as the present petitioner is concerned, she has no *locus standi* to challenge the eviction order on this ground, more so because the other legal heirs have not evinced any interest to exercise their tenancy rights in the suit property.

11. In view of the above, I do not find any merit in the petition, and the same is therefore dismissed along with interim application, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

JULY 16, 2014
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