

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

+ **RC.REV.No.266/2013 & C.M.No.11369/2013 (Stay)**

% **26th November, 2014**

SH. MUKUND KRISHNA BARMAN Petitioner

Through: Mr.Vibhor Goela, Advocate.

VERSUS

SH. SURENDER KUMAR MALHOTRA (DECEASED) THROUGH HIS
LEGAL HEIRS Respondents

Through: Mr.Abhishek Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes.

VALMIKI J. MEHTA, J (ORAL)

1. This rent control revision petition filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns the judgment of the Additional Rent Controller (ARC) dated 26.4.2013 by which the ARC has dismissed the leave to defend application and has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act with respect to a portion of the ground floor of house no.E-5/33, Krishna Nagar, Delhi-51 as shown in red colour in the site plan filed with the eviction petition.

2. I may note that the eviction petition was originally filed by the erstwhile respondent/landlord Sh.Surender Kumar Malhotra, who was 83 years of age and who needed the ground floor portion because at his advance age and suffering from various ailments, it was not possible for him to climb to the first floor, and therefore the need was projected for the original landlord Sh.Surender Kumar Malhtora with respect to the suit/tenanted premises which is situated on the ground floor.

3. In the eviction petition, besides the projected need of the original landlord, the need was also projected for the sons and daughter who were to visit the erstwhile landlord Sh.Surender Kumar Malhotra. Since the original respondent/landlord Sh.Surender Kumar Malhotra has now expired, therefore, the eviction petition so far as his need is concerned would no longer survive, however, the issue and the question is that whether any other need has been projected by the erstwhile respondent/landlord for the requirement of any members of his family, and for whose needs therefore the eviction petition will survive.

4. At this stage, I would like to refer to the judgment of the Supreme Court in the case of *Gaya Prasad Vs. Sh. Pradeep Srivastava (2001) 2 SCC 604* wherein the Supreme Court after reviewing its various earlier judgments

on the requirement to consider subsequent events in a *bonafide* necessity eviction petition has held that the courts must only take ‘cautious cognizance’ of subsequent events and unless and until subsequent events totally extinguish and demolish the *bonafide* necessity, the *bonafide* necessity eviction petition will survive. The relevant paragraphs of the judgment of the Supreme Court in the case of ***Gaya Prasad (supra)*** are paras 13, 15 and 17, and which read as under:-

“13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three-Judge Bench of this Court in *Pasupuleti Venkateswarlu v. Motor and General Traders : (1975) 1 SCC 770* which pointed to the need for remoulding the reliefs on the strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then: (SCC pp. 772-73, para 4)

“We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.”

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15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such

subsequent events on account of the malady of the system it shatters the confidence of the litigants, despite the impairment already caused.

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17. Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact-finding courts.” (underlining added)

5. Applying the ratio of the judgment of the Supreme Court in the case of ***Gaya Prasad (supra)***, let us examine the facts of the present case whether the eviction petition will survive even on the death of the original landlord Sh.Surender Kumar Malhotra. Before turning to the relevant averments made in this regard in the eviction petition, it has to be stated that in the eviction petition the erstwhile landlord has stated that he had been requesting the petitioner/tenant for a long time to vacate the suit/tenanted premises on account of the illness of his wife, and the wife died in the meanwhile but still the petitioner/tenant did not vacate the suit/tenanted premises and ultimately in the year 2012, the subject eviction petition had to be filed. Unfortunately, now during the pendency of the present proceedings, even the original respondent/landlord Sh.Surender Kumar Malhotra has died, and with which aspect of delay the Supreme Court in ***Gaya Prasad’s*** case (*supra*) has expressed its angst.

6. If we read the relevant para 18(a) of the eviction petition, it is made clear in the same that the *bonafide* need which was projected therein was not only of the original landlord/respondent but also was with respect to his son Sh.Vinod Malhotra, who is suffering from heart ailment and therefore he has difficulty to climb to the first floor portion where he is residing with his family and his father (the original respondent/landlord). The relevant portion of paragraph 18(a) of the eviction petition reads as under:-

“Even the petitioner’s son SH.VINOD MALHOTRA, who is aged about 53 years of age wants to live and has been advised to live on ground floor alongwith his family members with the petitioner as he has a cardiac problem and has been a heart patient. He has undergone Angiography in the year, 2009 in ALL INDIA INSTITUTE OF MEDICAL SCIENCES. SH. VINOD MALHOTRA has been having his pathological and diagnosis centre in the front portion on the ground floor and at the back of three tenanted shops, which is shown green in the site plan filed herewith. It is also becoming very difficult for him to go up and down from the first floor.”

7 In the leave to defend application, the aforesaid portion of paragraph 18(a) of the eviction petition was not denied by the petitioner/tenant, and therefore, there is no dispute that the son of the erstwhile landlord/respondent Sh.Vinod Malhotra is having a heart problem, and therefore the requirement of the ground floor was rightly projected by the erstwhile respondent/landlord besides for himself also for his son Sh.Vinod Malhotra. Therefore, even if the erstwhile respondent/landlord has expired,

that event will not completely eclipse the *bonafide* need of the erstwhile respondent/landlord in view of the observations of the Supreme Court in para 13 in *Gaya Prasad's* case (*supra*).

8. It is therefore quite clear that the petitioner/tenant is contumaciously insisting on continuing to stay in the suit/tenanted premises, whereas there was a genuine need firstly of the wife of the original landlord/respondent who died, and thereafter even the original landlord/respondent kept on asking the petitioner/tenant to vacate the suit/tenanted premises and who has died, but, the petitioner/tenant still does not want to vacate the suit/tenanted premises.

9. I may note that at the conclusion of the hearing, counsel for the respondent agreed that some reasonable time can be taken by the petitioner to vacate the suit/tenanted premises if the petitioner is not pressing the petition, but, counsel for the petitioner on instructions from the petitioner states that the case be decided on merits and a judgment be passed on merits.

10. In view of the above, this petition is a gross abuse of the process of the law and there exist no merits for seeking to challenge the impugned order of the ARC dated 26.4.2013. The present petition is therefore dismissed with costs of Rs.30,000/-. Costs shall be paid by the petitioner to

the respondent within a period of four weeks from today. While dismissing the petition, the interim order dated 08.5.2014 for payment of user charges is confirmed, and in case the petitioner fails to comply with the same, the respondent can execute this order to recover the user charges and the costs.

VALMIKI J. MEHTA, J

NOVEMBER 26, 2014
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