

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

+ **RC. REV. 274/2013 & CM No. 11657/2013 (stay)**

% **13<sup>th</sup> August, 2014**

M/S. GULATI TRADING COMPANY .....Petitioner  
Through: Mr. Pawan Kumar Singh, Advocate

**VERSUS**

SHRI MAN MOHAN VERMA & ANR. .... Respondents  
Through: Mr. Ajay Kumar Gupta, Ms. Surbhi  
Gupta, Advocates

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

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This rent control revision petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') against the judgment of the Additional Rent Controller dated 31.1.2013 by which the leave to defend application filed by the petitioner has been dismissed and the *bona fide* necessity eviction petition under Section 14(1)(e) of the Act has been decreed with respect to the tenanted premises comprising of one shop situated at the ground floor in the property bearing no. 3468-3470, Gali

Bajrang Bali, Chawri Bazar, Delhi – 110006 as shown in red colour in the site plan annexed along with the eviction petition.

2. The case of the respondents/landlords was that the original tenant Sh. Hansraj Gulati carrying on the business under the name and style of M/s. Gulati Trading was let out the suit premises by Sh. Bhagwan Dass, the grandfather of the respondents/landlords. The grandfather, Sh. Bhagwan Dass executed a Will in favour of his son Sh. Shibbo Mal on 13.12.1974. On the death of Sh. Bhagwan Dass i.e on 30.12.1974, the Will became operative whereby Sh. Shibbo Mal became the owner and during his life time Sh. Shibbo Mal partitioned the property amongst his four sons and two daughters. The daughters of Sh. Shibbo Mal relinquished their shares in favour of the brothers vide a registered relinquishment deed and the property was partitioned between the four brothers by way of a registered partition deed on 17.6.1998. The respondents/landlords by virtue of the partition deed became the owners of the suit premises. The suit premises is pleaded to be required for the needs of both the respondents inasmuch as the respondent no. 1 was doing a business of brokerage of iron goods and respondent no. 2 was doing a business of a property dealer, but as they were having no premises from where to do their business i.e on account of lack of a commercial property for doing business, they had to entertain their clients

on the first floor of their residential property which caused disturbance to their family life. The suit premises were also required for the son of the respondent no. 1 who is a hardware engineer of computer and works on contract basis and who wants to start his own business of computer hardware.

3. The petitioner filed his leave to defend application raising the main contention that the respondents were not the owners/landlords of the suit property. It is only this issue which was mainly argued before this Court. Besides the aspect of ownership, *bonafide* need was challenged on the ground that respondents owned about 20-24 shops in a property no. 3441, Chawri Bazar, Delhi 110006 and these shops were sold and which if not sold would have been an alternative suitable accommodation. The eviction petition was also said to be barred by limitation in terms of Article 67 of the Limitation Act, 1963.

4. So far as the aspect of whether the respondents are owner/landlords of the property, the Additional Rent Controller in the impugned judgment notes that the suit property is mutated in the house tax records of the Municipal Corporation of Delhi in the name of the respondents/landlords who were also paying the house tax of the property. The Additional Rent Controller thereafter rightly notes that the petitioner/tenant from time to time tendered

rent not only to the grandfather of the respondents but also to the father of the respondent. To the father of the respondents, the rent was tendered by way of money orders, copies of which were also filed. Qua the grandfather, the rent was deposited in the court of an Additional Rent Controller and of which copy of the challan was filed. Petitioner/tenant had also paid the rent by a cheque of Rs.5190/- in favour of the father of the respondents. In view of the aforesaid aspects, the Additional Rent Controller has rightly held that the respondents are the owners/landlords of the property. I may note that once the father of the respondents and the grandfather of the respondents were accepted as landlords, then, by virtue of Section 116 of the Evidence Act, 1872 petitioner is estopped from challenging the ownership of the grandfather, the father and now the respondents.

5 (i) Learned counsel for the petitioner argued that respondents were not the owners of the suit property but the suit property belonged to one Smt. Aanchal Verma and it was stated that Smt. Aanchal Verma has received the property from Sh. Gopi Nath who was the son of one Smt. Pastho Dukhtar. Smt. Pasto Dukhtar became the owner through her father Sh. Lakhmi Chand who was said to be the actual owner of the property.

(ii) Learned counsel for the petitioner in support of this argument also places reliance upon an interim order dated 7.6.2010 passed by a court

hearing a probate petition filed by Smt. Aanchal Verma in which the present respondents are respondents, and as per which interim order, the respondents have been restrained from selling or disposing of the suit property.

(iii) This argument urged on behalf of the petitioner is misconceived because the order which is relied upon by the petitioner is only an interim order passed in a probate petition and the interim order cannot establish that the probate petition has achieved finality in favour of Smt. Aanchal Verma. Also title of a property is not decided in a probate petition. Also, it is noted that the petitioner had tendered rent to both, the father and the grandfather of the respondents, and therefore, since father and the grandfather of the respondents were landlords, petitioner is estopped from questioning the title of the respondents as also of their father and grandfather. Even if we look at the position in a worst case scenario, the only effect of any probate proceedings against the respondents succeeding would mean that Smt. Aanchal Verma will be entitled to get possession of the suit property from the respondents who will obtain the same pursuant to the eviction decree passed in the present eviction petition, however, for a future event of any judicial proceedings being decided in favour of Smt. Aanchal Verma, and that also when we do not know, it cannot for the present be held that the respondents are not entitled to file the eviction petition.

This argument of the petitioner that the respondents are not the owners/landlords of the suit property is therefore rejected.

6. The second argument which was urged on behalf of the petitioner/tenant was that respondents/landlords owned about 20-24 shops in a property no. 3441, Chawri Bazar, Delhi 110006 and which premises should be taken as an alternative suitable accommodation, however, the Additional Rent Controller has rightly rejected this argument noting that respondents/landlords have stated that they have no concern with this property no. 3441, Chawri Bazar, Delhi 11000, and that the petitioner/tenant has not filed any document to *prima facie* support the plea that the property no. 3441, Chawri Bazar, Delhi 110006 had belonged to the respondents/landlords at any point of time. Therefore, mere bald assertions, made without any basis, cannot create a triable issue. The second argument urged on behalf of the petitioner/tenant is also therefore rejected.

7. The third and final argument urged on behalf of the petitioner/tenant was that the *bonafide* necessity petition is barred by limitation. I have really failed to understand this argument because there is no limitation period with respect to filing of a *bonafide* necessity petition as per the catena of judgments passed not only by this Court but also by the Supreme Court.

*Bonafide* necessity is a continuous cause of action. This third argument is therefore without any substance and is hence rejected.

8. I may note that counsel for the petitioner/tenant sought to raise certain arguments of which there was no mention at all in the leave to defend application, and hence this Court has not allowed such arguments to be raised on pleas which have not been taken in the leave to defend application inasmuch as the Supreme Court in the case of ***Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15***, has held that a leave to defend application can only be filed within 15 days and there cannot be a condonation of delay of even for one day in filing of the leave to defend application i.e only the period of 15 days is permitted to raise all grounds with supporting documents in the leave to defend application and courts cannot consider arguments and documents which are not mentioned in the leave to defend application. Once the issues and documents which are now sought to be raised are not those happening after the 15 days period prescribed to file leave to defend application, and the facts, events, documents and circumstances are those of prior to the expiry of the 15 days period of filing of the leave to defend application, the same cannot be considered. Accordingly, arguments beyond pleadings are not permissible and are rejected accordingly.

9. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

**AUGUST 13, 2014**  
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**VALMIKI J. MEHTA, J**