

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

+ RC.Rev. No. 416/2012 & CM Nos. 14285/12 (U/o 6 Rule 17
CPC) & CM No. 14286/12 (stay)

% **26th September , 2014**

M/S NEERAJ KIRANA STORE Petitioner
Through: Mr. Kirti Uppal, Sr. Adv. with Mr.
Manu Nayyar, Adv. and Mr. Aman
Bhalla, Advocates.

VERSUS

SH. DINESH CHANDRA GUPTA Respondent
Through: Mr. Gyan Prakash, Advocate.

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 25-B(8) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') impugns the judgment of the Additional Rent Controller dated 12.3.2012 by which the Additional Rent Controller has dismissed the leave to defend application filed by the petitioner/tenant and has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the DRC Act with respect to the tenanted premises being two shops without partition admeasuring 7' ½ ft. X 9' ft. situated on the ground

floor of the property bearing no. 176/2, South Anarkali, Delhi-51 as shown in red colour in the site plan annexed alongwith the eviction petition.

2. In a case for *bonafide* necessity under Section 14(1)(e) of the DRC Act, three aspects are required to be shown. Firstly, that the petitioner in the eviction petition is the owner/landlord of the suit property. Secondly, it is required to be shown that the landlord requires the premises for his *bonafide* need or for the need of his family members. Thirdly, it is required to be shown that the landlord has no other alternative suitable premises.

3. A reading of the eviction petition shows that the respondent/landlord states that he requires the suit/tenanted premises comprising of two shops for the need of his son Sh. Saurabh Gupta who has completed his MBA and wants to open his office of consultancy in the field of business process outsourcing industry and finance.

4. In the leave to defend application, and as noted by the Additional Rent Controller, it is not denied by the petitioner/tenant that son of the respondent/landlord Mr. Saurabh Gupta is an MBA. The issue therefore which only arises is whether there is a *bonafide* need for the son Mr. Saurabh Gupta and whether the respondent/landlord has an alternative suitable premises. Additionally, it is very strenuously urged and argued

before this Court that respondent is not the owner/landlord of the suit premises.

5(i) I will first take the aspect as to whether respondent is or is not the owner/landlord of the premises, however, at this stage, let me take note of an argument urged on behalf of the petitioner that eviction petition is barred under Section 14(6) of the DRC Act as it has been filed before expiry of five years of the respondent/landlord having been purchased the property. This argument I reject *in limine* in view of the ratio of the judgment of the Supreme Court in the case of ***Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*** which states that only those grounds which are mentioned within 15 days statutory period specified for filing of the leave to defend application can be considered and that there cannot be condonation of delay of even one day in filing of the leave to defend application. In effect what the Supreme Court holds is that no additional affidavit or document which is filed after the statutory period of 15 days can be considered by the Court for grant of leave to defend application. Relying on the judgment of ***Prithipal Singh (supra)*** a learned Single Judge of this Court in the case of ***Madhu Gupta Vs. Gardenia Estates (P) Ltd. 184 (2011) DLT 103*** has held that there cannot be an amendment made to a

leave to defend application after the expiry of the statutory period of 15 days because that will defeat the ratio of *Prithipal Singh's case (supra)* which states that nothing which is stated after the statutory period of 15 days can be considered for allowing of the leave to defend application. Therefore, the argument urged on behalf of the petitioner that the eviction petition is barred by Section 14(6) of the DRC Act having not been taken in the leave to defend application is rejected.

(ii) The argument is also liable to be rejected in view of the ratio of the judgment of the Supreme Court in the case of *Martin & Harris Ltd. Vs. VII Additional District Judge, AIR 1998 SC 492* and which holds that if a defence as per a provision of law made for the benefit of the tenant is not taken by him, then, that right is to be taken as waived by the tenant.

(iii) At the time of rejecting this argument, I would also like to note that in the eviction petition respondent/landlord has specifically stated in para 14 that the present petitioner is the tenant of the respondent/landlord since 22.3.1993 and the petitioner /tenant has deposited rent in the landlord's account till the month of April, 2008. These two specific aspects that the present petitioner became a tenant of the respondent/landlord since

22.3.1993 and rent has been deposited in the bank account of the landlord till April 2008 is not specifically disputed in the leave to defend application.

6(i) Now coming on to the issue as to whether respondent/landlord is the owner/landlord of the suit premises. A reference to the leave to defend application filed by the petitioner/tenant shows that the petitioner/tenant has not disputed that the respondent is the owner of the suit/tenanted premises because there is no purchase document, and it is only pleaded that the purchase document is a sham document. Learned senior counsel for the petitioner places reliance upon the judgment of the Supreme Court in the case of *Devi Das Vs. Mohan Lal AIR 1982 SC 1213* to argue that courts if they do not give finding on the issue of sham transaction, then the judgments have to be set aside and since the Additional Rent Controller has not adverted to this issue of sham transaction the impugned judgment has to be set aside.

(ii) No doubt, courts have to consider the aspect which is urged, and it is also correct for the petitioner to argue that the Additional Rent Controller has not considered this aspect, however, in my opinion, I can consider this aspect by using the spirit of provision of Order XLI Rule 24 CPC. As per Order XLI Rule 24 CPC appellate court on basis of the

existing record, can always decide an issue without remanding the matter if the record is sufficient for the court to decide the issue. Therefore, let us examine the issue as to whether the ground urged by the petitioner/tenant that the document of purchase of the property by the respondent/landlord is a sham document raises or does not raise a triable issue.

7. In my opinion, this issue of a sham transaction does not raise a triable issue for two reasons. Firstly, as already stated above, landlord made a categorical averment in the eviction petition that since 1993 the petitioner herein has accepted the respondent herein as a landlord and rent has been deposited in the landlord's account till April, 2008. Since this aspect is not challenged by disputing the same in the leave to defend application, this aspect stands admitted and consequently, the respondent herein is the landlord of the suit premises. Secondly, on the issue as to whether the respondent is the owner of the suit premises, and whether the document of purchase is a sham document, this argument in the facts of the present case does not raise a triable issue because a catena of judgments of Supreme Court hold that who is the tenant to raise the issue of a sham transaction when the person who has sold the property in nowhere is shown (on the record of this Court or of the Additional Rent Controller) to have disputed

the title of the respondent/landlord. If the person who sells the property to the respondent/landlord does not dispute this particular fact, and no rights are claimed in the suit property by the earlier alleged owner, then merely taking up a bald plea that the purchase document is a sham document and ownership rights have not been flown to the respondent/landlord cannot in my opinion create a triable issue. A tenant has no locus to challenge title when between the original owner and the present owner being the landlord in this case, there are no disputes as to the sale/transfer of the suit property. Hence, this argument on behalf of the petitioner/tenant that the respondent is not the owner of the suit property, in the facts of the present case, has no merit and is rejected.

8. Now let us examine as to whether the respondent/landlord has shown *bonafide* need to exist for eviction of the petitioner. I have already stated above the fact that the son of the respondent Sh. Saurabh Gupta is an MBA and that is not disputed and as so noted in the impugned order. On behalf of the petitioner, it is very strenuously canvassed that petitioner has contested the stand of the respondent/landlord by pleading that respondent/landlord is well settled in U.P, and therefore, this raises a triable issue, however in my opinion this argument urged on behalf of the petitioner

does not raise a triable issue because the issue is not whether the respondent/landlord is settled in U.P and does not want to shift in Delhi but the issue is that whether the son of the respondent/landlord wants to carry on business from the suit/tenanted premises. In the entire leave to defend application, it is nowhere stated that the son of the respondent/landlord does not intend to carry out any business from the tenanted premises and that Sh. Saurabh Gupta wants to continue to stay in U.P. No doubt, it is pleaded on behalf of the petitioner that the son Sh. Saurabh Gupta is well employed and is earning handsomely but merely because a person is employed cannot mean that such a person should not leave his job and start his own business in a premises which is owned by his own father. Therefore, in my opinion, the respondent/landlord has established a *bonafide* need with respect to the tenanted premises for carrying on business by his son Sh. Saurabh Gupta.

9. The third aspect as to the existence of an alternative suitable premises is not an issue in the present case because it is not the case of the petitioner/tenant that any alternative premises in Delhi is available to the son of the respondent/landlord Sh. Saurabh Gupta from which Sh. Saurabh Gupta can carry on any business.

10. I must also at this stage note one other argument urged on behalf of the petitioner by placing reliance upon a judgment of the Supreme Court in the case of *A.Shanmugam Vs. Ariya Kshatriay Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam AIR 2012 SC 2010* and it is accordingly argued that a person who does not come to the court with clean hands is not entitled to any relief. I have really failed to understand as to why this judgment is even cited because the judgment which is cited in the case of *A.Shanmugam (supra)* deals with the issue that while granting a discretionary relief of injunction courts have to see the conduct of the party and a person who does not come to the court with clean hands may not be held to the discretionary relief of injunction. In the present case, there is no issue of clean hands or injunction or discretionary relief or otherwise and what has to be seen is whether the need of the respondent/landlord is *bonafide* as per the facts of the present case, and which facts have been examined above, and these facts show that the respondent has *bonafide* need of the suit/tenanted premises for the purpose of carrying on of business by his son who is an MBA.

11. 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. No costs.

SEPTEMBER 26, 2014
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VALMIKI J. MEHTA, J.