

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

+ **C.M.(M) No.1354/2011 & C.M.No.20995/2011 (Stay)**

% **01 September, 2014**

M/S. PUNJAB STAINLESS STEEL HOUSE & ANR. Petitioners

Through: Mr.Vinay Kumar Garg, Sr.Advocate
wit Mr.Imran Ahmed, Advocates.

VERSUS

SMT. SANGEETA KEDIA Respondent

Through: Mr.Sonal Sinha, 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 petition under Article 227 of the Constitution of India impugns the order of the Additional Rent Controller dated 07.9.2011 by which the Additional Rent Controller has dismissed an application filed by the petitioner/tenant to amend the leave to defend application.

2. At the outset, I would like to observe that the Supreme Court in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15* has held that the statutory period of 15 days for filing of the leave to defend application is inflexible and condonation of even one day is not possible for filing of the leave to defend application. Effectively, therefore

the Supreme Court has observed that whatever has to be stated in the leave to defend application with respect to the facts and events which has happened prior to the 15 days period must be stated in the leave to defend application and not by subsequent affidavits and documents.

3. A learned Single Judge of this Court in the case of ***Madhu Gupta vs. Gardenia Estates (P) Ltd. 184 (2011) DLT 103*** has placed reliance upon the ratio of the judgment in the case of ***Prithipal Singh (supra)*** and held that no amendment should be granted to the leave to defend application because if amendment is allowed to a leave to defend application then the sanctity of the 15 days period will get destroyed. A reading of the judgment in the case of ***Madhu Gupta (supra)***, however, shows that what were sought to be added by the amendment were the facts and events which existed prior to the expiry of 15 days period and not which had come into existence subsequent to the expiry of the 15 days period.

4 (i). It is trite that what happens after the statutory period fixed for filing of the leave to defend application could surely not be stated in the leave to defend application within 15 days because a tenant does not have a prediction machine by which he could know all facts and events in advance

prior to the happening of the incidents/events which takes place after the 15 days period, and include them in advance in the leave to defend application.

(ii). Of course, I at this stage itself hasten to clarify that not each and every application for amendment to include events and facts happened after 15 days period can be entertained, but only those applications which are *bonafide* and which result in totally wiping out the cause of action for filing of the *bonafide* necessity petition can be included.

5 (i). The Supreme Court in the judgment in the case of ***Gaya Prasad vs. Pradeep Shrivastava AIR 2001 SC 803*** has referred to its various earlier judgments and held that no doubt subsequent events can be considered in a *bonafide* necessity petition, but, those subsequent events need ‘cautious cognizance’ and also that only such subsequent events which wholly satisfy the *bonafide* necessity should be allowed to be pleaded as subsequent events.

(ii). In ***Gaya Prasad’s case (supra)***, the Supreme Court declined the prayer for taking on record the subsequent events because neither the landlord nor his son for whom the need was claimed were expected to sit idle for about 23 years of filing of the eviction petition and merely because the son had taken up a job at another place would not destroy the claim for

bonafide necessity. This is so stated in para 17 of the judgment and which reads as under:-

“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.”

(iii). In *Gaya Prasad's case (supra)*, the Supreme Court however has said that in certain cases, subsequent events should be allowed which wholly satisfy the *bonafide* requirement, and in this regard the relevant paragraphs in *Gaya Prasad's case (supra)* read as under:-

“10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petitioner period is to be taken into account for judging the bona fides of he requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in out litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building. Neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. I it is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise

would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an application just on the eve of his reaching the final. After passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendent lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

11. We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of petition. In *Ramesh Kumar v. Kesho Ram*, 1992 Suppl (2) SCC 623: (1992 AIR SCW 336: AIR 1992 SC 700) a two-Judge bench of this Court (M.N. Venkatachalia, J., as he then was, and N. M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the Court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events and an impact on those rights and obligations. What the learned Chief Justice observed therein is this (Para 4):

“The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a ‘cautious cognizance’ of the subsequent changes of fact and law to mould the relief.”

12. This Court reiterated the same principle in Kamleshwar Prasad v. Pradumanju Agarwal, (1997) 4 SCC 413 : (1997 AIR SCW 2310 : AIR 1997 SC 2399 : 1997 all LJ 1369) that the crucial date normally is the date of filing the petition. In that case, a two-Judge bench (K. Ramaswamy and G.B. Pattanaik, JJ) has held that even the subsequent event of death of the landlord who wanted to start a business in the tenanted premises is not sufficient to dislodge the bona fide need established by him earlier. This is what Pattanaik J. has observed for the Bench (Para 3) :

“That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son.”

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 Pusupuleti Venkateswarlu v. Motor and General Traders, (1975) 1 SCC 770 : (AIR 1975 SC 1409) which pointed to the need for re-moulding 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 (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 development subsequent to the institution of the proceedings provided the rules of fairness to both sides are scrupulously obeyed.”

14. The next three-Judge Bench of this Court, which approved and followed the above decision, in *Hasmat Rai v. Raghunath Prasad*, (1981) 3 SCC 103 : (AIR 1981 SC 1711) has taken care to emphasise that the subsequent events should have “holly satisfied” the requirement of the party who petitioned for eviction on the ground of personal requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below (Para 14):

“Therefore, it is now incontrovertible the where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlord’s requirement is **wholly satisfied** then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events.”

(emphasis added)

6. In the present case, a reference to the eviction petition shows that the following facts has been urged for decreeing the *bonafide* necessity eviction petition:-

18(a)	The ground on which the eviction of the tenant is sought.	That the petitioner is the owner and landlady of the premises in suit. The premises in suit is required by the petitioner for herself and her family members bonafide for occupation for
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		carrying on the business of ladies suits, garments and clothes etc. The petitioner is doing said business in her own name for the last 8 years. The petitioner is an income tax assessee. The petitioner has no other reasonable, suitable commercial accommodation for carrying on the said business. The premises in suit is situated in the commercial area and is suitable for the said business of the petitioner. The petitioner has no other property in her name. The premises where the petitioner is residing is in residential area.
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7. In the leave to defend application, the petitioner has already mentioned the facts with respect to filing of the eviction petition against the adjacent tenant M/s Budh Singh & Sons in the premises at 1855, Chandni Chowk, Delhi. The tenanted premises are bearing no. 1854, Chandni Chowk, Delhi. In para 6 of the leave to defend application, the petitioner/tenant has also stated that the averments in para 18 of the eviction petition that the suit premises are required by the petitioner for herself and for her family members are vague because no details have been given of the family members.

8. It is in the aforesaid position in the facts of this case, and because of the particular averments made in the eviction petition in this case, read with the application for leave to defend, that the amendments pertaining to subsequent events which are now sought to be incorporated have to be considered.

9. Though many facts are sought to be introduced by seeking amendment of the leave to defend application, before me today only two grounds which are subsequent events happening after the 15 days period of filing of the leave to defend application, are sought to be brought in, and which grounds show that not one but seven shops have become available to the respondent/landlady as eviction orders have been passed in various eviction petitions and consequently the *bonafide* need is wholly satisfied. The relevant averments which are sought to be added in the leave to defend application read as under:-

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5. That the present petition is not maintainable as the petitioner had also filed a petition No.E-53/10 on 8.9.2010 against M/s Budh Singh & Sons and an eviction order dated 19.7.2011 has been passed in favour of the petitioner with respect to property bearing no. 1855, Chandni Chowk, Delhi as such the petitioner is not having any bonafide need for any other shop or premises.

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11. That the petitioner has also got the eviction orders for the first, second and third floor of premises no.1854, Chandni Chowk, Delhi and premises no.1855, Chandni Chowk, Delhi vide Civil suit No.556/2007 dt: 26.09.2007 vide judgment dt: 1.8.2011 as passed by S.Rakesh Kumar-III, ACJ, West Delhi as such the petitioner is having SEVEN commercial premises with her and mere desire to have the present premises is not the genuine bonafide need as per Manu/SC/1588/1998 Maqboolunnisa Vs. Mohd. Saleha Quaraishi.”

10. I may state that I am not at all observing one way or the other on the merits of the facts sought to be introduced with respect to the leave to defend application as to whether leave to defend should or should not be granted and whether on the facts as existing in the leave to defend or the two new paras which are now sought to be added, leave should or should not be granted, however, when we see the eviction petition in the present case being of the need of the respondent/landlady for requiring the tenanted shop for opening of the business of ladies suits, garments, cloths etc., in such a scenario, the *bonafide* necessity will be wholly satisfied in terms of the observations in *Gaya Prasad's case (supra)* by the facts which are now sought to be introduced, and therefore averments with respect to the respondent/landlady having after the period of 15 days of prescribed period

of filing of the leave to defend application obtained as many as 7 commercial properties would be relevant facts. Of course, the merits of these aspects are not being commented by this Court i.e the Court is not commenting as to whether the shops have in fact become available and are not in possession of the respondent/landlady, but if the seven commercial premises against which eviction orders have been passed do and have become available to the respondent/landlady, then this would be a relevant aspect for the Court to consider at the time of deciding of the leave to defend application.

11. In view of the above, since the subsequent events pertain to facts which have occurred after the statutory period of 15 days for filing of the leave to defend application, and such facts will wholly satisfy the *bonafide* need in the facts of this particular case which have been stated in para 18(a) of the eviction petition as reproduced above, in my opinion, a leave to defend should be allowed to be amended for adding paras as stated in para nos. 5 and 11 as reproduced above. However, in order to avoid any delay in disposal of the leave to defend application, the petitioner will simply file an additional affidavit with respect to aforesaid para nos. 5 and 11 as reproduced above, within a period of 15 days from today, and the

respondent/landlady will file reply to the additional affidavit in accordance with the directions which will be passed by the Additional Rent Controller. The Additional Rent Controller is however requested to expedite the disposal of the leave to defend application.

12. The petition is allowed and disposed of in terms of the aforesaid observations.

13. Parties to appear before the court of the concerned Additional Rent Controller on 11th September, 2014, and the Additional Rent Controller will in terms of the directions passed in this judgment thereafter take up the application for leave to defend and dispose of the same in accordance with law.

VALMIKI J. MEHTA, J

SEPTEMBER 01, 2014
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