

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 313/2014 & C.M.Nos.15566/2014 (Stay), 15567/2014
(Exemption), 15568/2014 (for permission)

19th September, 2014

MS.REKHA RANI @ REKHA

..... Petitioner

Through Mr.M.S.Mukherjee with Ms.Shreya
Mukherjee and Mr.Prashant Singh,
Advocates.

Versus

SH.ADITYA SARAF

..... Respondent

Through Mr.T.R.Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller dated 13.1.2014 by which the leave to defend application filed by the petitioner/tenant has been dismissed and the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act has been decreed with respect to the suit/tenanted premises being northern portion admeasuring 140 sq. yds. of the property no. 17, East Punjabi Bagh, New Delhi.

2. The *bonafide* necessity eviction petition was filed by the respondent/landlord essentially stating that his family comprises besides himself of his wife and a minor son, and that they are living presently with the parents of the respondent but the respondent wants to shift to his independent accommodation and does not want to stay with his parents.

3. In a *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act, three aspects are required to be shown by the landlord in order to succeed. Firstly that the eviction petition is filed by the owner/landlord of the property, secondly the petition must be filed for the *bonafide* need of the landlord and/or his family members, and thirdly the landlord must not have any other alternative suitable premises.

4. In the present case so far as the second and third aspects are concerned, the same have to be held in favour of the respondent/landlord because it is settled law that any person cannot be forced to continue to stay in a premises which is not owned by him even if the premises where he is staying belongs to his own father. Every person is entitled to set up his independent residence in a property which he owns and a tenant cannot dictate that the landlord should continue to live in a house which is not owned by him. Therefore, the *bonafide* need is clearly established in the

facts of the present case, and I note that is not the case of the petitioner/tenant that the respondent/landlord owns any other alternative suitable accommodation.

5. Two main arguments have been urged before this Court on behalf of the petitioner/tenant. Firstly it is pleaded that the respondent is not the owner/landlord of the premises. Secondly, it is urged that the petitioner/tenant is the owner of the property because there exists in favour of the father of the petitioner/tenant, the original tenant Dr.H.R.Kanwal before the Additional Rent Controller below, a registered Will dated 25.5.1995 executed by Sh.Hira Lal, and therefore the eviction petition had to be dismissed.

6. Both the arguments urged on behalf of the petitioner/tenant are totally frivolous and without any substance. The trial court in the impugned judgment dated 13.1.2014 in terms of the following observations has rightly held the respondent to be the owner/landlord of the suit/tenanted premises:-

“ 13.3 The petitioner has filed on record the copy of the entire chain of the titled documents as regards the tenanted premises including the last sae deed dated 24.11.2004 vide which the property in question has been purchased by the petitioner for total sale consideration of Rs. 5 Lakhs.

13.4 Moreover, the respondent has filed to disclose as to who is the owner o the property if the petitioner is not. It may be noted that

though in the application under consideration the respondent has not claimed to be the owner of the tenanted property, in the subsequent application under section 151 of Code of Civil Procedure, 1908 the petitioner through Hira Lal on the basis of a will purportedly executed by Sh. Hira Lal in favour of the respondent.

13.5 The respondent in the application under consideration has admitted the fact that the respondent is a tenant under the landlordship of the petitioner in para 9 and 11 of the affidavit accompanying the application under consideration in following words.

“9. That the petitioner has concealed the accommodation available with him. The need of the petitioner is malafide and he wants to get the eviction order of the premises with a view to relief the same at higher rate as the rent prevailing in the locality is increasing day by day.....”

“11. That the petition is liable to be dismissed on the sole account that by way of present petition the petitioner is forcing the respondent to increase the rate of rent per month on refusal the petitioner has filed the present petition.”

The respondent has admitted that the respondent used to pay rent to the petitioner and has alleged that the petitioner had demanded increase in the rate of rent and as the rent was not increased by the respondent therefore the present petition was filed by the petitioner. The said allegation is itself an admission of the fact that the respondent is a tenant in the tenanted premises and that he pays rent to the petitioner thus, the relationship of landlord and tenant is undoubtedly admitted in the present case.”

7. I completely agree with the aforesaid observations inasmuch as once the complete chain of title deeds are filed, the petitioner/tenant cannot contend that the respondent is not the owner/landlord of the suit/tenanted premises. Also, it is an admitted fact on record that the father of the petitioner or

Dr. H.R.Kanwal was inducted as a tenant in the property. There is no judgment of any civil court declaring the father of the petitioner as the owner on the basis of the Will dated 25.5.1995 and that the predecessors of the respondent are not and had ceased to be the owners of the suit property. Also, this argument of placing reliance upon the Will dated 25.5.1995 in favour of Dr.H.R.Kanwal cannot be looked into by this Court because this defence was not raised in the leave to defend application within the 15 days statutory period fixed for filing of the leave to defend application. The Supreme Court in the case of ***Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*** has held that there cannot be condonation of even one day in filing of the leave to defend application i.e effectively the Supreme Court has held that no additional affidavit or document etc can be taken on record after the expiry of the statutory period of 15 days prescribed for filing of the leave to defend application for consideration of the leave to defend application of a tenant. Relying on the ratio of ***Prithihpal 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 after the period of 15 days prescribed for filing of the leave to defend application, there cannot be entertained an application for amendment of the leave to

defend application because that would destroy the sanctity of the 15 days statutory period which has been held to be a mandatory and inflexible period by the Supreme Court in the case of *Prithihpal Singh (supra)*. Therefore, for this reason also the reliance placed by the petitioner/tenant upon the alleged Will dated 25.5.1995 is of no effect.

8. In view of the above, the present petition is wholly misconceived, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

SEPTEMBER 19, 2014
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