

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

+ **RC.REV.No.462/2011**

% **12th November, 2014**

PRABHA GOEL

.....Petitioner

Through: Ms. Beenashaw N. Soni, Advocate.

VERSUS

NIRMAL KUMARI JAIN AND ORS.

..... Respondents

Through: Ms. Shobha, Advocate with Mr.
Akanksha Kaushik, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M.(M) No.20967/2011

1. This is an application for filing additional evidence/documents. This application has to be dismissed for the simple reason that Supreme Court in the judgment in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs. (2010) 2 SCC 15* has held that whatever a tenant has to state and file for seeking leave to defend is to be done within the 15 days statutory period and after the 15 days statutory period, condonation of delay of

even one day is not possible. Effectively, therefore the Supreme Court holds that the statutory period of 15 days is sacrosanct and within which period a tenant must file all the pleadings and documents on the basis of which he seeks leave to defend, and thereafter no further additional documents can be seen.

C.M. is accordingly dismissed.

+ RC. REV. No.462/2011 and C.M. No.20966/2011 (stay)

2. This rent control revision petition is filed 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 2.6.2011 by which the Additional Rent Controller has dismissed the leave to defend application filed by the petitioner herein (respondent no.2 in the eviction petition) and has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act with respect to one hall measuring 10'6"X 13'.0", one adjoining store measuring 4'3"X 5'2" and one Kotha measuring 4'.0"X 3'9" on the ground floor and basement of the property bearing municipal no.5859, Jogi Wara, Nai Sarak, Delhi-110006.

3. The *bonafide* necessity eviction petition was filed by the respondents herein, and who are the legal heirs of one Sh. Daulat Singh Jain.

The respondents herein pleaded that they are residing in the first floor and second floor of the property. Family of the respondent no.3 herein/petitioner no.3 in the eviction petition consists of himself, his wife and two daughters aged about 18 years and 16 years both of whom are studying in school in 12th and 11th classes respectively. Family of respondent no.2 herein/petitioner no.2 in the eviction petition comprises of himself, his wife and two children of which one is a daughter aged about 8 years and another son aged about 5 years; both of them being school going. Respondent no.2 herein was residing in a tenanted house in Laxmi Nagar, Delhi on account of paucity of accommodation. The respondents pleaded that they only had one room, one kitchen and one bathroom on the first floor, one room on the second floor and a Barsati room and kothri on third floor, and which accommodation was insufficient for the families of the respondent nos.2 and 3 herein as described herein above, and hence the *bonafide* necessity eviction petition.

4. Petitioner is one legal heir of the original tenant. She was sued as respondent no.2 in the eviction petition. Respondent no.1 in the eviction petition was another legal heir who did not file any leave to defend application. The other respondent nos.3 to 7 in the eviction petition were

proforma parties as they were co-owners and legal heirs of Sh. Dalpat Singh Jain, the brother of the father of the respondents herein i.e Sh. Daulat Singh Jain and Sh. Dalpat Singh Jain were brothers.

5. By the impugned judgment dated 2.6.2011 , the Additional Rent Controller has dismissed the leave to defend application by making the following observations:-

“A. The first ground taken is that the petitioners are not the owners/landlords as the alleged partition decree was never executed and the same is no decree in the eyes of Law. Now, Law is settled and no tenant can challenge the partition arrived at between the parties and in this regard reliance may be placed upon the judgment reported in (2001) 9 SCC 263 and, thus, objection raised pertaining to partition being sham and without having any force in the eyes of Law, thus, appears to have been taken for the sake of defence without having any substance.

B. So far as relationship of landlord and tenant is concerned, it is admitted case of the respondents themselves that property was let out jointly by the previous owners Mr. Dalpat singh and Mr. Daulat Singh and admittedly, the present respondents and proforma respondents nos. 3 to 7 are the legal heirs and, thus, the present petitioners being legal heirs have every right to maintain the present petition even being the co-owners.

C. The next ground taken is that the tenancy was one and composite tenancy and now it can not be sub-divided by the legal heirs of the original landlord and otherwise also, portion has not been demarcated, therefore, the present petition is not maintainable. The Law is well settled and Hon'ble Supreme Court has held in judgment reported in 1995 RLR (SC) 586 that there can be split of tenancy in case of partition and so far as demarcation is concerned, in present case, the property falling to the share of petitioners are clearly demarcated as is

shown in site plan and clearly identifiable and, therefore, judgment reported in 2006 RLR SC Vol. 36 pg. 1, it appears that the said ground has been taken for the sake of defence without having any substance.

D. In the light of aforesaid discussion, this Court is of the opinion that contesting respondents have failed to raise any plausible defence which, if allowed to be proved would disentitle the petitioners from obtaining an eviction order and on the other hand, petitioners have proved the ownership qua suit property in respect of respondent nos. 1 & 2, their bonafide requirements as the same has not been challenged in the entire leave to defend application and there is no allegation that he is having any other alternative reasonable suitable accommodation and, therefore, leave to defend application being without any merits is hereby dismissed.” (underlining added)

6. In my opinion, no fault whatsoever can be found with the abovesaid reasoning and conclusions of the Additional Rent Controller because neither the family members of the respondents are disputed and nor is the accommodation which is available with them as stated in the eviction petition is disputed. Further, after the judgment of the Supreme Court in the case of *Satyawati Sharma (dead) by LRs Vs. Union of India and Anr. (2008) 5 SCC 287* the purpose of letting is immaterial and therefore even if the premises are let out for a commercial purpose, even then for the requirement of a residential purpose, the *bonafide* necessity eviction petition can be filed for seeking the tenanted premises let out for commercial purpose, for residential purpose.

7. Before me, counsel for the petitioner has raised the following grounds to argue that leave to defend should be granted:-

(i) The eviction petition which has been decreed is with respect to a portion which is only a part of the tenanted premises let out, inasmuch as, the predecessor-in-interest of the petitioner was let out besides the portion which has been decreed in terms of the eviction petition, an additional area adjacent in the ground floor of the property and since the tenancy cannot be split up, hence the eviction petition could not have been filed for a part of the tenanted premises and hence leave to defend ought to have been granted.

(ii) Petitioner has disputed the *bonafides* of the respondents in filing the eviction petition and the Additional Rent Controller has wrongly held that the petitioner has not disputed the *bonafide* necessity case as pleaded by the respondents.

(iii) The respondents have become owners on account of a partition pleaded to have been affected between the two brothers namely Sh. Dalpat Singh Jain and Sh. Daulat Singh Jain whose legal heirs are the respondents herein and since the eviction petition is filed after the partition, the position which emerges is that post partition occupation by the respondents of different portions of the property cannot be looked into because the portions

which were with the respondents prior to the partition was the relevant position to be considered as available accommodation with the respondents.

8. In my opinion, all the grounds urged on behalf of the petitioner are totally frivolous to say the least. The present petition is therefore dismissed for reasons given hereinafter.

9(i) The first argument is that the tenancy in question could not have been split up and for which purpose counsel for the petitioner places reliance upon two Supreme Court judgments in the case of *Habibunnisa Begum and Ors. Vs. G. Doraikannu Chettiar (dead) by LRs. and Ors. (2000) 1 SCC 74* and *Nilesh Nandkumari Shah Vs. Sikandar Aziz Patel (2002) 6 SCC 678*. Learned counsel for the respondents/landlords to counter the argument of the petitioner relied upon the judgments of the Supreme Court in the case of *Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa Amabadas Bukate AIR 1997 SC 998* and *Kartaram Rameshwardas Vs. Ram Bilas 2006 RLR 1 (SC)* which follows the judgment in the case of *Sk. Sattar Sk. Mohd. Choudhari (supra)*.

(ii) In my opinion, the judgments which are relied upon by the petitioner have no application to the facts of the case because no doubt ordinarily a landlord cannot split up the tenancy and eviction cannot be

claimed only for a part of the tenanted premises, however, the position in law is different when there are more than one landlords who partition the tenanted premises. After partitioning of the tenanted premises, if part of the tenanted premises fall to the share of one landlord the position is squarely decided in the judgment in the case of ***Kartaram Rameshwardas (supra)*** which follows the earlier judgment in the case of ***Sk. Sattar Sk. Mohd. Choudhari (supra)*** which holds that when on partition one landlord receives part of the tenanted premises, he can file eviction petition with respect to that portion of the tenanted premises which falls to his share. Supreme Court in the case of ***Sk. Sattar Sk. Mohd. Choudhari (supra)*** has dealt with in detail that this is permissible in view of the different provisions of the Transfer of Property Act, 1882 which recognizes splitting up of the tenanted premises after partitioning of the tenanted premises between different co-owners. Hence, the first argument urged on behalf of the petitioner is rejected.

10. The second argument urged on behalf of the petitioner is equally meritless because whether or not *bonafide* need exists has to be seen with respect to the number of family members of the landlords and the accommodation as available. Once when the accommodation available to

the landlords is found to be insufficient as compared to the number of family members of the landlords, *bonafide* need is the consequence and it is not a mere mantra for the tenant to allege that there exists no '*bonafides*' although the need of the landlord is established. In the present case, petitioner has not disputed the family members of the respondent nos.2 and 3 herein and also the accommodation which is available to the respondent nos.2 and 3 herein, and which facts were also stated by the Additional Rent Controller in para 3 of the impugned judgment and which reads as under:-

“3. It is further alleged that the petitioners are residing on the first floor and on the second floor and family of the petitioner no. 3 consists of himself, his wife, two daughters aged about 18 years and 16 years both are studying in the school in 12th and 11th class respectively. The family of the petitioner no. 2 consists of himself, his wife, two children, one is daughter aged about 08 years and another is son aged about 05 years and both are school going and petitioner no. 2 is residing in the tenanted house in Laxmi Nagar, Delhi due to paucity of accommodation. The petitioners are at present in occupation of one room, one kitchen, bathroom on the first floor, one room on the second floor and a Barsati room and kothri on third floor and the petitioners are Income Tax Assessee.”

11. Therefore, once on comparison of the actual needs of the family members of the respondents herein and who would need one bedroom for respondent no.3 and his wife, one bedroom each for two adult daughters of the respondent no.3, one dining-cum-drawing room for the

family of the respondent no.3, one room for the respondent no.2 and his wife, one bedroom each for the children of the respondent no.2, one dining-cum-drawing room for the family of the respondent no.2, two stores for the families of the respondent nos.2 and 3 i.e a total of 10 rooms, and the families of the respondents at best only have one room, kitchen and bathroom on the first floor, one room on second floor and a Barsati room and kothri on the third floor, hence *bonafide* need exists. Surely, the family of the respondents therefore cannot be expected to put up in a cramped accommodation. It is also to be noted that the family of the respondent no.3 herein lives in a tenanted accommodation and therefore respondent no.3 herein is surely entitled to vacate the tenanted premises so as to come and live in his own premises. A tenant such as the petitioner cannot force a landlord to continue to live in a tenanted premises. The second argument is also therefore rejected.

12(i). The third argument which is raised on behalf of the petitioner is an argument which very frankly I fail to understand and which surprises me. Whatever is the need of the landlord has to be seen qua the family members and the accommodation available at the time when the eviction petition is filed post the partition which takes place between the family

members and what was the accommodation available to the respondents prior to the partition becomes immaterial once certain portions after the partition go to the other branch of the family. The argument therefore urged on behalf of the petitioner that the accommodation available to the respondents prior to the partition should be considered is a totally frivolous argument.

(ii) At this stage, counsel for the petitioner concedes that the accommodation available to the respondents should be considered after the partition, and that being so, once the available existing accommodation is seen, the same being grossly insufficient for needs of the families of the respondents, of which respondents respondent no.3 is living in a tenanted accommodation, there cannot be shallow arguments to deny the landlords the accommodation they need.

13. Learned counsel for the respondents very vehemently argues before this Court that the petitioner is deliberately harassing the respondents because the tenanted premises are now lying locked for as many as the last 15 years and with respect to which photographs are filed to show the condition of the tenanted premises. Learned counsel for the petitioner however seriously disputes this position. To a pointed query of the court,

the counsel for the petitioner/tenant concedes that the petitioner is an old widow lady and therefore for the present she is not carrying on any business from the tenanted premises. Counsel for the respondents also points out that in the pleadings in the leave to defend application where it is conceded by the petitioner that at present no work is being carried out from the tenanted premises by the petitioner albeit temporarily. It is therefore clear that the petitioner intends to harass the respondents and armtwist them to take money for vacating the respondents' premises which is lying unused.

14. The present petition being a total abuse of the process of the law is dismissed with costs of Rs.50,000/-. Costs shall be paid within four weeks from today. Learned counsel for the petitioner states that costs be not imposed, however, I fail to understand this argument that even if there is dishonesty of the petitioner and there is *bonafide* need on the part of the respondents, why should legal process merely because it exists, be unnecessarily pursued and landlords be harassed and they be not compensated for legal expenses incurred. Respondents are also at liberty to file execution with respect to claim of mesne profits charges till the petitioner hands over the possession of the tenanted premises in view of the ratio of the judgment of the Supreme Court in the case of *Atma Ram*

Properties Pvt. Ltd. Vs. Federal Motors (P) Ltd (2005) 1 SCC 705, because

I note that eviction order in this case was passed in the year 2011 and today in the year 2014 petitioner continues to stay post the passing of the eviction order in the tenanted premises only because of an interim order dated 21.11.2011 passed by a learned Single Judge of this Court.

VALMIKI J. MEHTA, J

NOVEMBER 12, 2014

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