

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

% Judgment pronounced on: January 06, 2014

+ **RC. Rev. No.411/2013 & C.M. No.17687/2013**

MRS URMIL KAPUR & ORS Petitioners
Through Mr.N.P.Singh, Adv.

versus

ANAND SWARUP MEHTA & ANR Respondents
Through Mr.Harish Malhotra, Sr.Adv. with
Ms.Divvya Kesaar & Mr.Mannmohit
K.Puri, Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present revision petition has been filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) to set aside the eviction order (hereinafter referred to as the “impugned order”) dated 6th May, 2013 and against the dismissal of the application for the review of eviction order dated 6th May, 2013 under Section 25B(9) of the Act vide order dated 15th October, 2013.
2. The brief facts are that late Sh.P.P. Kapur was inducted as tenant on 9th February, 1976 by the erstwhile owner of the property Smt.Chander Kanta Jawa on lease.
3. On 15th February, 1995, the respondents purchased the demised premises in a public auction from the Appropriate Authority, Income Tax Department, New Delhi.
4. In the year 2004, the respondents filed the suit against the petitioners

for permanent and mandatory injunction from carrying out any construction, addition or alteration in the demised premises. The said suit was dismissed in default on 1st July, 2009.

5. Subsequently, the respondents on 18th October, 2012 filed an eviction petition under Section 14(1)(e) read with Section 25-B of the Act on the following grounds:

- i) Respondent No.1 originally hailing from Delhi, is an ailing old man, aged about 68 years and has been suffering from Lung Cancer since 2011 and undergoing treatment for Lung Cancer from the Doctors in United States. After the surgery being performed, the doctors have advised him, keeping in mind that respondent No.1 wishes to spend remaining years of his life in Delhi, the place where he was born, studied and grew up and has all his relatives, that the Post surgery surveillance of the respondent No.1's for Lung Cancer can be easily monitored and looked after by the Doctors of Rajiv Gandhi Cancer Institute & Research Centre, New Delhi which is a specialist Hospital as regards Cancer treatment.
- ii) It is the wish of the respondent No.1 knowing his old and deteriorating medical condition, to come back to India and settle down in New Delhi alongwith his Wife so as to spend the remaining years of his life in the city of his birth.
- iii) Infact the respondent No.1, even before he was diagnosed with lung cancer in the year 2011, wanted to settle down in India, in Delhi being the city of his birth and keeping the same in mind the respondent jointly purchased in auction the demised premises.
- iv) In fact the respondent No.1, with the intention to settle down in India, Delhi, the city of his Birth, during the hay years of his life, retired from active business life in the year 2008 by selling of his entire business and old of his business/company Pure Helium, which he was running in Middle East since 1998.
- v) The respondent state that neither them nor their family members have any suitable or even reasonable alternate

accommodation available with them for their residence in Delhi, except the tenanted premises under the use and occupation of the respondent as LR's of single tenant, Late Dr. P.P. Kapoor.

- vi) The Petitioners have Relatives and Friends in Delhi. The real Sister of respondent No.1, resides in New Rajender Nagar. Lots of other relatives and their Children are living and studying in Delhi including his first Cousins.
- vii) The respondent urgently require the demised premises for their personal use and hence eviction is sought under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act, 1958. The respondent are seeking eviction of the respondent/Tenants on this ground of bonafide requirement.
- viii) Respondent No.2 is the son of respondent No.1 and is also a co-owner of the subject property.
- ix) It's been more than 5 years since respondent have purchased the subject matter.

6. The eviction order was passed on 6th May, 2013 against the petitioners in respect of the tenanted premises bearing No.B-39, South Extension-I, New Delhi comprising one drawing cum dining room, two bed rooms, kitchen, store, WC, two verandas and rear court yard on the ground floor and barsati room on the first floor as shown in the site plan.

7. The finding of the learned Trial Court was that all the petitioners after service through registered post instead of filing leave to defend application moved a joint application for supply of complete set of documents. In the said application, it was disclosed by the petitioners that they were served by way of registered post on 8th February, 2013. On scrutiny they found that pages number 8, 9 and 21 and documents at pages number 45 to 64 were not there in the envelope which was necessary for drafting the leave to defend application. Thus, the respondent be asked to supply the deficient documents

and thereafter the petitioner be allowed to file leave to defend application within 15 days after supply of said documents. The application was strongly opposed by the respondents who stated before the learned Trial Court that the application was not maintainable as it tantamounted to extending the statutory period of 15 days which is not permissible. As per respondents, the petitioners were served on 6th February, 2013 in view of report submitted by respondents received from the Postal Department. The respondents denied that the petitioners were served on 8th February, 2013. It was also alleged by the respondents that the complete set of documents was sent by registered post. Even, internet printout of proof of delivery taken from the website of the post office would show that they were served on 6th February, 2013.

8. The learned Trial Court disbelieved the stand of the petitioners and found that they were duly served on 6th February, 2013 by registered post. With regard to contentions of the petitioners that they have not received the complete set of paper book, the learned Trial Court drew an inference from the report of process-server filed on 27th February, 2013 which shows that the petitioners could not be served by ordinary service as the servant at the address stated that they were not at home. The unserved processes along with copies of petitions and documents returned back to the Court which were placed on file and from there, it was evident that none of the pages as alleged by the petitioners were missing. The learned Trial Court accepted the contention of the respondents that the complete set of documents was received by the petitioners. The learned Trial Court raised doubts as to why the petitioners after service waited till 20th February, 2013 when the petitioners were aware about the prescribed period of 15 days for filing the application for leave to defend. The learned Trial Court by relying upon the decision of the Supreme Court in the cases of *Prithipal Singh vs. Satpal*

Singh, 2010 (2) SCC 15 and *Shiv Gopal & Anr. vs. Shipra Singh & Ors.*, 186 (2012) DLT 194 wherein it was held that the Rent Controller has not been conferred with power to condone the delay even for one day and thus, dismissed the application of the petitioners.

9. The eviction orders were passed accordingly, as the petitioners failed to file the leave to defend application within statutory period of 15 days, it was held that the contents of the petition were deemed to be admitted. Even the learned trial Court has also dealt with the case of respondents on merit as per the material available on record. Relevant extract of the same are reproduced hereunder:

“As per both the petitioners, they are the owners/landlord of the suit premises having purchased the plot on which suit premises is situate at public auction on 15.02.1995 from the Income Tax department and respondent who are the LR's of late Dr.P.P. Kapur (the original tenant who was inducted vide lease deed dated 09.02.1976 by erstwhile owner Smt Chander Kanta Jawa) were already living in the suit premises and have been paying rent @ Rs 962.5/- per month and it was a residential tenancy. Petitioner further stated that petitioner No.1 aged about 68 years suffers from lung cancer since 2011, and undergoing treatment from doctors in US and petitioner wishes to spend remaining years of his life in Delhi where he was born and grew up and all his relatives are in Delhi and petitioner alongwith his wife want to settle in the suit premises and has no other suitable alternative accommodation in Delhi. I have also gone through the documents filed by petitioner.”

10. After passing of the eviction order, the petitioners filed a review application for recalling of order dated 6th May, 2013 almost on the same grounds, i.e. they did not receive the documents as alleged earlier and it was incorrectly recorded by the learned trial Court that they were served on 6th February, 2013. Rather the registered letters were delivered to them on

9th February, 2013.

11. The respondents filed the reply to the review application and they opposed the stand of the petitioners and reiterated that the petitioners were served properly on 6th February, 2013 and in their application filed on 20th February, 2013 the petitioners had admitted that they were served on 8th February, 2013. The respondents disputed the genuineness of the letter of the post master dated 31st May, 2013, which was filed along with the application for review to show that the petitioners were served on 9th February, 2013.

12. While dismissing the review application, the learned Trial Court in para 6 of the order held that there was no error apparent on the face of record or there was no sufficient reason for reviewing of the order dated 6th May, 2013. The review petition filed by the petitioners was also dismissed. The relevant para 6 of the order dated 15th October, 2013 extracted as under:

“6. As per order dated 06.05.2013, the issue of service of respondents was dealt with in detail on the basis of the record. Now the applicants have filed new documents i.e. certificates issued by Sub Post Master S.H.G.-I, Andrews Ganj Post Office, New Delhi, as per which the respondents were served on 09.02.2013. Perusal of the record shows that in their own application which was filed on 20.02.2013, the respondents/present applicants in para 2 had stated that they received the process through registered post on 08.02.2013 and did not file the leave as it was revealed that pages no.8, 9, 21 and 45 to 64 were not in the envelop. This issue was also dealt with vide order dated 06.05.2013 and reasoned order was passed. The only new thing which the applicants have brought, is the certificates of the postal authorities to claim that they were served on 09.02.2013. Even if these certificates are taken into account it goes contrary to applicants own application filed on 20.02.2013 wherein they themselves admitted that they were served through registered post on 08.02.2013.”

13. Both the orders have been challenged by the petitioners in the present revision petition. Learned counsel for the petitioners has addressed the submissions almost on the same points raised before the learned trial Court.

14. Mr. Harish Malhotra, learned Senior counsel appearing on behalf of the respondents has argued that it is not of much relevance as to whether the petitioners were served on 6th February, 2013 or 8th February, 2013, though it was admitted by the petitioners that they were served on 8th February, 2013. The fact of the matter remains that no application for leave to defend was filed by the petitioners within the statutory period of 15 days after the date of service as on 8th February, 2013 admittedly by the petitioners themselves. He further states that the excuse made by the petitioners is beyond truth as the petitioners were aware on 8th February, 2013 that the period for filing the application for leave to defend was 15 days then why did they wait till 20th February, 2013 when the application for supplying the documents was filed. He further stated that the petitioners could have approached the respondents or his counsel to supply the documents or inspect the file although as per the record they received all papers, i.e. complete set of paper book at the time of service by registered post. He argued that these are all excuses made by them which are after-thought and in fact, the petitioners wanted to delay the proceedings. They have now created panic, when the eviction order was passed, actually they never expected that the trial Court would pass the eviction order strictly as per the law in the summary procedure.

15. Mr. Malhotra has referred to the following decisions in support of his submissions with regard to the summary proceedings where the other side had adopted the similar tactics:

1. *M/s. Delhi Book Store vs. K.S. Subramaniam*, AIR 2006 Delhi 206.

“10. Another submission vehemently made on behalf of the defendant is with regard to the service of the summons upon the defendant in accordance with the provisions of Order 37 of the CPC. It is contended that the documents were not given to the defendant along with the plaint and the service of the summons was not proper. The copy of the summonses which were served upon the defendant indicates that they were duly received by the defendant and nothing was recorded on the said summonses that the documents annexed to the plaint have not been served upon the defendant. Even after the summonses were received and prior to filing the application for leave to defend, there is nothing on record which could indicate that the defendant had written to the plaintiff or placed any document on the Court file at the time of putting in appearance that the requisite documents were not supplied to the defendant. This again appears to be an afterthought on the part of the defendant.”

2. *Rena Verma vs. Veena Gupta*, CM(M) 178/2012, dated 6th August, 2012, (Date of decision : 6th August, 2012).

“The contention of the petitioner before this court is that the copy of the eviction petition was illegible and hence rendered her unable to file the application for leave to defend. The same contention was urged by the petitioner before the Id. ARC, but the perusal of record shows that after service of summons, the petitioner took no step to obtain the copy of petition or to bring the matter before the trial Court immediately, but instead waited till last day, i.e., 01.02.2011 to file an application for direction to the petitioner to supply legible copy of petition. The only reason put forward by the petitioner was that no steps could be taken by him due to his marriage. Even the application filed under Order 37 Rule 4 of CPC on 30.09.2011 for review of order dated 27.04.2011, was time barred and was not accompanied with the application for condonation of delay. The whole chain of events displays chronic apathy on

the part of the petitioner, and I am unable to find the presence of any special circumstances existed which could merit the condonation of delay in filing the application for leave to defend.”

16. During the pendency of the present petition, the petitioners have also filed an additional affidavit of Smt.Urmil Kapur dated 11th November, 2013 wherein they have disputed the postal stamp affixed on the registered AD covers which was not raised in the application filed by them at the earlier stage. Counsel for the respondents has pointed out that postal stamp was affixed on the registered AD covers in respect of the complete set of paper book and this is another flimsy ground raised by the petitioners.

17. The petitioners have also in the additional affidavit raised grounds to be sought by them in the application for leave to contest by discussing the matter on merit to the effect that the respondent No.1 has two more properties other than the tenanted premises i.e. F-533, New Rajinder Nagar, New Delhi and 27, Bazar Lane, Bengali Market, New Delhi, consisting of a single storey house which they had purchased in auction by the Income Tax Department along with the demised premises.

18. Reply to the additional affidavit of Mr.Anand Swarup Mehta has been filed. In his affidavit, he has denied that he has property No.F-533, New Rajinder Nagar, New Delhi. As far as telephone connection No.28743528 as mentioned in the additional affidavit filed by the petitioners is concerned, it is stated that the same is in the name of respondent No.2's namesake, who is son of Mr.Jaysukh Lal Mehta and is resident of property bearing No.269, Double Storey Flat, New Rajinder Nagar, New Delhi, which is evident from the extract of current Electoral Roll, 2013 of Assembly Constituency, 39, Rajinder Nagar, (Gen) NCT of Delhi.

With regard to other phone number, it is stated that the same is not in use. The respondent No.1 states that after completion of his graduation in the year 1966, he left for United Kingdom for Chartered Accountancy course and since then living abroad. It was also clarified by the respondent No.1 that property bearing No.R-533, New Rajinder Nagar, New Delhi, was owned by his father and after his demise the same was bequeathed in the name of his mother who passed away on November 2, 2005 leaving behind a Will dated January 26, 2003. As per the said Will, no part of the said property has been bequeathed in his name. Even as per said Will, the said property was to be sold and the proceeds were to be shared amongst the beneficiaries named in the Will.

19. As regard to another property as alleged by the petitioners bearing No.27, Bazar Lane, New Delhi, it was specifically deposed in the affidavit that the physical possession of the property vests with the Income Tax Department and not with the respondents. It was submitted by Mr.Malhotra that the said property was auctioned by the Income Tax Department in the year 1995. However, before the said property could be auctioned one person, namely, Mr.Raghubir Singh filed a writ petition, being W.P. (Civil) No.524/1995, before this Court challenging the said auction. This Court allowed the auction of the said property, subject to the orders of this Court regarding confirmation of the sale. The respondents were declared successful bidder. However, the sale was never confirmed in favour of the respondents and as a matter of fact vide letter dated 4th October, 2013, the Chief Commissioner of Income Tax, Delhi-II, has cancelled the bid of the respondents.

Even if the case of the petitioners is considered as face value on merit, there are no triable issues despite of raising averment about the two

additional properties owned by the respondent No.1 in the additional affidavit filed by the petitioners. In the reply-affidavit filed by respondent No.1, all the statements made therein along with documents to show that he does not have possession of the said properties or any other additional accommodation.

20. It is undisputed fact that the respondent No.1 is the owner of the property. His intention is to come back to India permanently along with his wife to reside in his own property. Being his city of birth, he wants to spend the remaining life in his property. The law in this respect is quite settled. It is not denied by the petitioners that he is suffering from lung cancer which was diagnosed in the year 2011.

21. In the case of ***Saroj Khemka vs. Indu Sharma***, reported in 1999 (49) DRJ 719, a Single Judge of this Court upheld an order of the Controller, rejecting leave to defend application, in case of a landlord/owner who was living abroad and wanted his premises at Delhi for stay in India for short durations. It was categorically observed that an owner cannot be compelled to stay at a Hotel or have an alternative accommodation.

22. Reliance is also placed upon the case titled as ***Sarla Ahuja vs. United India Insurance Co. Ltd.***, reported in AIR 1999 SC 100. The facts of this matter were that the petitioner who was a widow wanted to shift her residence from Calcutta to New Delhi to occupy her own building which was in the possession of her tenant M/s United India Insurance Company Limited. Though she got an order of eviction from the Rent Controller under Section 14(1)(e) of the Delhi Rent Control Act, 1958, a single Judge of this Court non-suited her by reversing the order which she challenged before the Supreme Court by way of Special Leave to Appeal. It was held by the Supreme Court that:-

“.....The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

23. In *S.P.Kapoor vs. Kamal Mahavir Prasad Murarka and Ors.*, 97 (2002) DLT 997, this Court had observed that even the requirement of the landlord to have his premises vacated for his frequent visits to Delhi and for temporary stay in his own premises has to be viewed as bonafide requirement.

24. The petitioners have not disputed the fact that the respondent No.1 is suffering from Lung Cancer and have also not placed on record any prima facie evidence that the respondent No.1 has got possession of any property i.e. alternative property in any part of Delhi. Therefore, even otherwise the petitioners have no merit in the case. But the fact of the matter is that the application for leave to defend was not filed within the prescribed time of 15 days. Thus, on both counts, the present petition fails. It is also pertinent to mention that once the petitioners have exercised their discretion by filing of review application under Section 25B(9) of the Act before the learned trial Court then the chances of interference in the revision petition filed under Section 25B(8) are much limited.

25. Considering the overall facts and circumstances of the case, I am of the considered view that the impugned orders do not suffer from any infirmity. Even on merit, the petitioners have no case.

26. Therefore, the present petition and pending application are dismissed.

27. However, in the interest of justice, equity and fair play, the petitioners are granted six months' time from today to vacate the tenanted premises. During this period, the petitioner shall not sublet or create any third party interest in the tenanted premises.

28. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 06, 2014