

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

+ **RC REV No. 488/2011**

% **24th July, 2014**

SHRI MIRAJUDDIN Petitioner
Through: Mr. L.D. Adlakha, Advocate.

VERSUS

MOHAMMAD HABIB AND ORS. Respondents
Through: Mrs. Inderjeet Saroop, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this revision petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') the petitioner/tenant impugns the judgment of the Additional Rent Controller dated 2.6.2011 by which the Additional Rent Controller has dismissed the application for leave to defend and has granted an eviction order with respect to the tenanted premises bearing no.652, Chandni Mahal, Darya Ganj, Delhi comprising of a room and an open courtyard on the first floor of the property.

2. The respondents/landlords plead *bonafide* necessity for the

requirement of the respondent no.1, and who was the petitioner no.1 in the eviction petition. Respondent no.1/Mohammad Habib is the son of late Mohd. Bundoo who purchased the property by a registered sale deed dated 26.3.1969 from the erstwhile owner Sh. Abdul Gafoor. The need of the respondent no.1 is stated to arise because in the present premises in which the respondents are staying being R-29-A, Brahm Puri, New Seelam Pur, Delhi there are just nine rooms in which 23 persons are living with great difficulty. Whereas the respondent no.4 is occupying three rooms rests of the six rooms are used by the 17 members of the family. Respondent no.1 claims that he needs the tenanted premises not only because the accommodation at the existing premises at Brahm Puri is insufficient, but also because below the tenanted premises the respondent no.1 has a shop and he has to travel about 24 kms daily to commute to his shop, which in his advanced age, is not feasible for him and therefore the respondent no.1 wants to stay in the suit premises which is above the shop in which he is carrying on his business.

3. Leave to defend was prayed for by the petitioner on following grounds which also have been urged before this Court:-

(i) The respondents are not owners/landlords of the suit premises because the sale deed which is stated to be executed by the earlier owner Mr.

Abdul Gafoor (who inducted the predecessor-in-interest of the petitioner as tenant) is a fabricated document. It is stated that Mr. Abdul Gafoor had migrated to Pakistan and property in fact vests with the Government under the Custodian of Enemy Property Act, 1968.

(ii) An earlier eviction petition was filed which was dismissed in default in the year 1999, and this aspect has been concealed in the present petition. It is also concealed in the present eviction petition that in the earlier petition, the respondents were stated to be residing in house no.700, ward no.10, Chandni Mahal, Delhi-6 and which premises is thus an alternative premises.

(iii) The premises at Brahm Puri in which the respondents are presently staying are stated to be alternative suitable accommodation.

(iv) The respondents are said to own and possess various other properties being premises no.28 and 24, Gali no.21, and premises no.25 and 29 in Gali no.22, Brahampuri, Delhi-53. The respondents are also stated to own various properties in Seelam Pur, Delhi.

(v) Subsequent events are argued to exist now and which though not stated in the application for leave to defend, are stated should be taken into consideration by this Court for holding that no *bonafide* need exists.

4. So far as the first aspect is concerned, as to whether the
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respondents/landlords are not the owners because the registered sale deed of Mr. Abdul Gafoor dated 26.3.1969 is allegedly fabricated because Sh. Abdul Gafoor had migrated to Pakistan and property vests in the Government under the Custodian of Enemy Property Act, this argument is wholly frivolous and misconceived. Firstly, it is noted that neither Sh. Abdul Gafoor/the seller nor any of his legal heirs if he has expired, nor any other person claims to be the owner of the suit property except the respondents who have purchased the same under a registered sale deed. The self-serving averment that Sh. Abdul Gafoor was not in India on the date of execution of the sale deed cannot make any difference and it cannot be urged that the property becomes an enemy property and vests in the Government. Self-serving averments, without any basis, more so when made by tenants so as to dispute the *bonafide* necessity are only bald averments and do not raise triable issues. Once neither Sh. Abdul Gafoor nor anybody else is disputing the sale deed, and there is no proof on record filed by the present petitioner that Sh. Abdul Gafoor was not in India when the sale deed dated 26.3.1969 was executed, clearly the argument of respondents not being owners is wholly unsustainable and is accordingly rejected.

5. The second argument which is urged is that the respondents concealed the factum of an earlier eviction petition for *bonafide* necessity

and including the fact that in that earlier petition it was stated that respondents were residing at property bearing no.700, Ward No.10, Chandni Mahal, Delhi-6. This argument is also misconceived because *bonafide* necessity changes from time to time and depends upon the number of members of the family of the landlords and their ages. The position which prevailed in the year 2008 when the eviction petition was filed with respect to family members of the respondents is surely different than the situation in the year 1999 when the earlier eviction petition was dismissed in default. Therefore, once there is change in the number of family members including their ages, subsequent events and facts arise to bring about a fresh cause of action for filing of a petition for *bonafide* necessity. This aspect has rightly been decided by the Additional Rent Controller in para 12 of the impugned judgment and which reads as under:-

“Alternative Accommodation & Bonafide Requirement

12. The respondents contended that eviction petition filed earlier by the father of the petitioners on the ground of bonafide requirement in the year 1989 and leave to defend was granted to the respondents by the then Ld. ARC, however the said eviction petition was dismissed in default in the year 1999 and the petitioners have not taken any steps to get restore the said eviction petition. It is further contended that the petitioners have suppressed the filing of said eviction petition and its dismissal, therefore, the present petition is not maintainable and liable to be dismissed. It is further contended that the petitioners have estopped from filing fresh eviction petition to reagitate the same points which were

involved in earlier eviction petition. The petitioners admitted that earlier eviction petition was dismissed in the year 1999 but since then the bonafide need of the petitioners have increased over the years with addition in the family members and the respondents have also taken a false plea in the said eviction petition that the premises in question was let out for residential cum commercial purposes. It is well settled law that bonafide requirement is a recurring cause of action. It was held in Ram Sewak and Ors. Vs. Dr. Chakresh Kumar, 2003 (1) RCR 214 that “bonafide requirement is recurring cause of action. Suit dismissed. Second suit not bar by res-judicata”. The earlier eviction petition was filed in the year 1989 almost 20 years prior to the filing of the petition. Period of 20 years is a very big period and a lot of changes have taken place. There is no estoppel on filing a new eviction petition on the ground of bonafide requirements. The contention of the respondents is without merit.”

6. So far as the aspect of concealment of not having stated in this petition of the earlier petition is concerned, I do not think that this can at all be an issue to dismiss the *bonafide* necessity as on the date of filing of the present petition stands proved.

7. So far as the alleged concealment of property being no.700, Ward no.10, Chandni Mahal, Delhi-6 is concerned, respondents have already stated that these premises were tenanted premises and were vacated by them way back in the year 1999. Therefore the premises no.700, Ward no.10, Chandni Mahal, Delhi-6 cannot be said to have been an alternative suitable accommodation. The very fact that the petitioner admits that the

respondents are presently living in the property at Brahm Puri is destructive

of the case of the petitioner that respondents have the residential house at no.700, Ward no.10, Chandni Mahal, Delhi-6.

8. The next argument which was urged is that the respondents have an alternative suitable accommodation in Brahm Puri and where they are living, but, the argument is misconceived and rightly rejected by the court below because the respondents have 23 family members besides three married sisters having 3-4 children each for whose requirement a guest room is required, and there are only nine rooms in the property at Brahm Puri. The respondent no.1 has further/admittedly stated that he in fact requires the tenanted premises because they are above the premises/shop where the respondent no.1 is carrying on the business and he has to travel every day 24 kms to come to his shop and which is not feasible in his advanced age. Therefore, on both counts of lack of number of rooms in the property at Brahm Puri and the fact that respondent no.1 himself wants to shift to the tenanted premises which is above the shop premises, *bonafide* necessity stands proved.

9. Learned counsel for the petitioner wanted to argue orally before this Court by placing reliance upon certain documents by stating that facts have now come to notice which entitle grant of leave to defend, however, this is not permitted in law in view of the judgment of the Supreme Court in *RC REV No.488/2011*

the case of *Prithipal Singh Vs. Satpal Singh (dead) through LR*s (2010) 2 *SCC 15* and which holds that whatever has to be stated for grant of leave to defend has to be necessarily and only stated within 15 days in the leave to defend application and the statutory period of 15 days is sacrosanct. Supreme Court has held in the case of *Prithipal Singh (supra)* that there cannot be condonation of delay of even one day in filing of an application for leave to defend because neither the provision of Section 5 of the Limitation Act, 1963 nor the provisions of CPC, 1908 apply to the exhaustive procedure for *bonafide* necessity under Section 25 B of the Act. Once the period of 15 days is sacrosanct, it is not permissible to a tenant after the period of 15 days to keep on filing affidavits or documents to urge grounds for seeking leave to defend, and which if permitted to be done, will be violative of the ratio of the judgment of the Supreme Court in the case of *Prithipal Singh (supra)* that 15 days period for filing of leave to defend application is non-flexible and a fixed period, and every aspect for seeking leave to defend has to be stated within 15 days only and not thereafter. Therefore, the so called subsequent events which are sought to be urged cannot be urged on behalf of the petitioner.

10. In view of the above, it is clear that in the present case the petitioner is obdurately holding on to the tenanted premises although

respondent no.1 *bonafidely* needs the suit premises, as stated above. The petition is accordingly dismissed with costs of Rs.30,000/- and which costs shall be paid within four weeks from today.

JULY 24, 2014
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VALMIKI J. MEHTA, J.