

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

+ **RC.REV.No.608/2012**

% **01st October, 2014**

SH. RAJINDER KUMAR ARORA Petitioner
Through: Mr.Anil Sapra, Sr.Advocate with
Mr.Preet Pal Singh, Ms.Priyam Mehta
and Ms.Rupali Kapoor, Advocates.

VERSUS

SMT. RAJNI GUPTA Respondent
Through: Mr.P.K.Rawal, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') is filed challenging the impugned judgment of the Additional Rent Controller dated 08.11.2012 by which the Additional Rent Controller has dismissed the leave to defend application filed by the petitioner/tenant and has decreed the *bonafide* necessity eviction petition with respect to the suit/tenanted premises being one shop on the ground floor of property no.509, Teliwara, Shahdara, Delhi – 32.

2. In a petition under Section 14(1)(e) of the Act, there are three requirements which have to be seen. Firstly, it is to be shown that the petitioner who has filed the eviction petition is the owner/landlord of the premises, secondly, it has to be shown that the tenanted premises are required *bonafidely* for the need of the landlord and/or his family members, thirdly, it is to be seen whether the landlord has any other alternative suitable accommodation.

3. Before me in the present case the only issue which is argued, and therefore has to be considered by this Court, is that whether the respondent/landlady has alternative suitable premises from where the business as stated in the eviction petition can be carried out.

4. The eviction petition which has been filed by the respondent/landlady states that there are a total of three shops in the property, of which one shop is in tenancy with the present petitioner. Out of the two remaining shops, one was in the possession of the daughter of the respondent/landlady and who was running the business of a gift shop called M/s Janavi Gift World. In the other shop which belonged to the husband of the respondent/landlady, the husband was carrying on his business of spices in the name of M/s Subhash Masala Store. The *bonafide* necessity eviction petition was filed by

the respondent/landlady stating that her son Sh.Manish Gupta was helping his father (landlady's husband) in the *masala* business, but the son needed to open his own independent business because the son Sh.Manish Gupta was married and had children. The issue therefore which arose is that whether the respondent/landlady had alternative suitable premises from where the son Sh. Manish Gupta could carry on his business.

5 (i) The petitioner/tenant after filing the leave to defend application filed an additional affidavit stating that the respondent/landlady owned a property bearing no.336, Teliwara, Shahdara, Delhi – 32 and from which property, the son Sh.Manish Gupta can carry on his business.

(ii) Learned counsel for the respondent in response has argued that this plea not only cannot be legally looked into, but factually also this plea is absolutely without substance because the property no.336 is a residential property whereas the need of the son Sh.Manish Gupta is for opening of a shop for carrying on *masala* business.

(iii) Learned counsel for the respondent/landlady is right in arguing that the plea taken in the additional affidavit with respect to the respondent/landlady having the property no.336 at Teliwara, Shahdara, Delhi cannot be looked into because now it is settled law in view of the

judgment of the Supreme Court in the case of ***Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*** that there cannot be condonation of delay of even one day in filing of the leave to defend application i.e after a period of 15 days, no fresh affidavit or documents can be considered for granting leave to defend and leave to defend issue can only be considered with respect to the averments, documents etc which are made within the statutory period of 15 days prescribed for filing of the leave to defend application. As per the ratio of ***Prithipal Singh***'s case (*supra*), which holds that 15 days period is an inflexible and mandatory period, therefore, beyond the prescribed period of 15 days, no additional facts or affidavit can be considered for considering the issue of grant of leave to defend. It is on the basis of the ratio of the judgment of the Supreme Court in the case of ***Prithipal Singh (supra)*** that 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 an amendment cannot be allowed to a leave to defend application because if amendment is allowed, then grounds and facts pleaded after a period of 15 days will have to be considered, and which cannot be done considering the ratio of the judgment of the Supreme Court in the case of ***Prithipal Singh (supra)***. Therefore, even if the additional grounds are the

grounds which may be relevant to be considered by the court for entitlement of a tenant to leave to defend, however, since such grounds taken beyond 15 days cannot at all be looked into in law, nothing hence can turn upon the same as regards the issue of grant of leave to defend.

(iv) Even if otherwise we factually look at the issue on merits, it is made clear in the response filed by the landlady to the additional affidavit of the petitioner/tenant, that the property no.336 was not a commercial property and it is stated by the landlady that the property no.336 was a residential property situated in a residential area. The petitioner/tenant did not file any rejoinder to dispute this factual position and nor did the petitioner file anything to *prima facie* show that the property no.336, as per the local area plan, situated in a commercial area or that commercial user is permissible with respect to this property. In law, any and every fact which is urged does not raise a triable issue because bald averments if are allowed to raise triable issues, then courts will be forced to grant leave to defend in almost each and every case because almost in every case most of the aspects stated in the eviction petition are disputed. That is not however the position in law because courts have to consider the *bonafides* in the pleas on the basis of which triable issues are said to arise and self-serving bald averments cannot

lead to raise *bonafide* triable issues. As already stated above, on the facts of the present case, the argument that property no.336 is an alternative suitable accommodation has to be rejected because the need which is projected of the respondent/landlady is for the commercial purpose/requirement of the son of the respondent/landlady and the requirement is not for residential purpose.

6. During the course of arguments, learned senior counsel for the petitioner has argued that after filing of the petition, a subsequent event has occurred, and which is the death of the husband of the respondent/landlady, who was carrying on business in one out of the three shops on the ground floor of the property, and therefore the need of the son of the respondent/landlady can be satisfied as the son of the respondent/landlady Sh.Manish Gupta can carry on his business from the premises belonging to the late husband of the respondent/landlady.

7. The issue therefore to be decided is whether the respondent's/landlady's son Sh. Manish Gupta has alternative suitable premises being the shop belonging to the husband of the respondent/landlady and from where the son Sh.Manish Gupta can carry on his business.

8. I may note that if an eviction petition had been filed for the *bonafide* need of a landlord, and there was death of that landlord during the pendency of his *bonafide* necessity eviction petition, then the law is that *bonafide* necessity eviction petition cannot be dismissed merely because the landlord has died, inasmuch as need has to be seen on the date of filing of the eviction petition as has been held by the Supreme Court in the judgment in the case of ***Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LRs. AIR 1997 SC 2399***. Reliance has been placed by the Supreme Court upon this judgment in ***Kamleshwar Prasad's case*** in the later judgment in the case of ***Gaya Prasad Vs. Pradeep Srivastava (2001) 2 SCC 604*** wherein the Supreme Court has said that courts must take “cautious cognizance” of subsequent events. The Supreme Court has clarified the expression “cautious cognizance” stating that only if there is a total eclipsing of the need of the landlord by the subsequent events, then, only the subsequent events can be considered, otherwise the subsequent events cannot be considered.

9(i). Keeping the ratio of the judgment of the Supreme Court in the case of ***Gaya Prasad (supra)***, and wherein various earlier judgments of the Supreme Court have been considered, this Court has to take cautious cognizance of

subsequent events i.e whether the shop in which the husband of the respondent/landlady was carrying on business can be stated to be a subsequent event so as to demolish the *bonafide* need of the son of the respondent/landlady.

(ii) In my opinion, this subsequent event cannot destroy the *bonafide* need claimed for the son of the respondent/landlady, inasmuch as the business which was being carried on in the shop by late husband of the respondent/landlady, Sh.Subhash Chand, as per the Will dated 03.2.2009 has been bequeathed to the respondent/landlady i.e his widow. The widow therefore can surely step in and take control of the business of the husband, and consequently the shop which was with the husband will now be with the respondent/landlady for her to continue the business which was being carried on by her late husband.

(iii) At this stage itself, I would like to note that there is an averment in the eviction petition whereby the respondent/landlady besides claiming the suit/tenanted shop for the purpose of carrying on the business by her son has also stated that she will also be carrying on business along with her son Sh.Manish Gupta, and for which purpose the *bonafide* necessity eviction petition was filed.

(iv) I would like to note that the Supreme Court in the case of ***Kamleshwar Prasad (supra)*** has specifically observed that if the landlord dies and a *bonafide* necessity eviction petition had been filed for starting of the business, then, the *bonafide* necessity eviction petition is not eclipsed because the business, after the death of the landlord who filed the petition, can be carried on by his widow. In the facts of the present case, therefore, the said ratio in the case of ***Kamleshwar Prasad (supra)*** will apply *mutatis mutandis* because the Will dated 03.2.2009 has been executed by late Sh.Subhash Chand in favour of the respondent/landlady whereby the business of her late husband in terms of the Will has fallen to the share of the respondent/landlady, and accordingly, at best availability of the shop where the husband of the landlady was carrying on business would satisfy the *bonafide* need as stated in the eviction petition of the respondent/landlady but definitely not her son Sh.Manish Gupta, and who would need a premises for carrying on his business and for which purpose the *bonafide* necessity eviction petition had also and essentially been filed.

10. Though the learned counsel for the petitioner argues that the respondent has alternative suitable properties, but this position was very strenuously disputed on behalf of the respondent by stating that one property

pleaded as available is only a residential property and other property belongs to the mother, and therefore would not be available to the respondent, however, these aspects are not relevant for decision to the present case and I need not therefore examine the same.

11. In view of the above, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

OCTOBER 01, 2014
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