

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

+ **CM(M) 82/2013**

% Decided on: 24th February, 2015

MAYA DEVI Petitioner

Through Mr. Sonal Sinha, Adv.

versus

RAFEEQA KHATOON Respondent

Through Mr. Kunwar A.K. Singh, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The petitioner impugnes the order dated 5th July, 2011 whereby the appeal of the petitioner against the order dated 14th February, 2011 not granting the benefit under Section 14(2) of the Delhi Rent Control Act (in short the DRC Act) and directing the petitioner to evict the tenanted premises was dismissed. In execution of the impugned order dated 5th July, 2011 passed by the learned ARC the possession of the premises has been taken over by the respondent/ landlord in May 2012 and the present petition was preferred only in January 2013.

2. The respondent filed an eviction petition under Section 15(1)(a) of the DRC Act stating that the petitioner was a tenant of the late husband of the respondent in respect of one room, one temporary shed and open space forming part of property No. D-45, New Seelampur, Delhi-53. After the

death of her husband the respondent claims herself to be the owner of the premises. It is stated that despite service of legal demand notice dated 23rd July, 2008 the petitioner failed to pay the rent with effect from April 1984 till date @ ₹210/- per month. In the written statement filed by the petitioner it was stated that the petitioner filed a civil suit against the husband of the respondent titled as CS No.292/1984 wherein it was held that the petitioner herein was a tenant of one Shri Bhagwati Prasad @ ₹40/- per month since 1963-64. The appeal filed by the respondent against the said judgment dated 12th August, 1998 was dismissed and thus the claim of the respondent that she was the landlady/owner of the premises was unfounded. During the course of trial, the respondent examined herself as PW-1 and exhibited the notice, site plan. PW-2 Shri Vijay Kumar Rawal, from O/o Sub-Registrar-IV of Seelampur appeared and proved the receipts Ex.PW-2/1 and Will Ex.PW-2/2 duly registered with the office of Sub-Registrar. The petitioner examined herself as RW-1 and exhibited the copy of the judgment dated 12th August, 1998 vide Ex.RW-1/1, affidavit of the advocate Ex.RW-1/2 and the examination and cross-examination of Shri Ashraf Master as Ex.RW-1/3.

3. The learned ARC came to the conclusion that earlier civil suit bearing No. 292/84 (New No. 384/97) was a suit for permanent injunction filed by the petitioner seeking restrain on the husband of the respondent and earlier landlord Bhagwati Prasad from dispossessing her forcefully from the tenanted premises. Further there was a finding that the previous landlord was Shri Bhagwati Prasad, which fact was also not disputed by the petitioner. The respondent had placed on record the GPA, receipt and Will executed by Shri Bhagwati Prasad in favour of the husband of the respondent

and the petitioner has failed to show how these documents were forged and fabricated. The respondent has been able to prove that house No.D-45 which was earlier owned by Shri Bhagwati Prasad was purchased on 6th April, 1984. The respondent was also able to prove landlord tenant relationship in view of the legal demand notice Ex.PW-1/2 and the non-payment of rent within the statutory period of two months from the service of legal notice. The learned ARC passed an order on 8th February, 2011 under Section 15(1) of the DRC Act directing the petitioner to deposit the rent @ ₹40/- per month with effect from November 2005 till the date of the order and subsequent rent by the 15th day of each calendar month.

4. Matter was listed for arguments on application under 14(2) DRC Act. Vide the order dated 14th February, 2011 the learned ARC noted that from the report of the Nazir it is evident that the directions in order dated 8th February, 2011 had not been complied with. Arrears of rent were required to be deposited by 14th January, 2010 in terms of the order dated 15.12.2009. Further the petitioner has avoided to deposit month by month rent as required under Section 15(1) read with Section 15(4) of the DRC Act. Rent for the month of February, 2010 was deposited on 19th March, 2010 and for the months of April, May and June 2010 was deposited on 2nd August, 2010. Similarly rent for the month of September, 2010 was deposited on 10th November, 2010. Thus the petitioner was not entitled to the benefit under Section 14(2) and an eviction order was passed on 14th February, 2011. In the appeal filed by the petitioner, the order of the learned ARC was upheld vide order dated 15th July, 2011 which is the order impugned in the present petition.

5. The main contention of the learned counsel for the petitioner before this Court is again that the respondent is not the owner of the premises, though the respondent relied upon four documents but only Will and receipts were produced, Bhagwati Prasad was not examined as a witness nor the Will was proved by examining the attesting witness and the benefit under Section 14(2) DRC was wrongly denied to the petitioner. Learned counsel for the respondent on the other hand contends that while seeking the benefit under Section 14(2) DRC Act no application seeking condonation of Delay was filed by the petitioner. Further the order dated 8th February, 2011 whereby the learned ARC upheld the relationship between the landlady and tenant between the parties has not been challenged and thus to the said extent the finding has become final.

6. The main reliance of the petitioner is to the civil suit No. 292/84 (re-numbered as 384/97). One of the issues framed was “(vi) whether the plaintiff was a tenant in portion ABCD in plot No.45 under defendant No.2 as alleged? OPP). It was thus the case of the petitioner/plaintiff herself that she was the tenant of defendant No.2 therein i.e. Bhagwati Prasad. Believing the testimony of the petitioner the issue was decided in her favour and it was held that the petitioner was a tenant of Bhagwati Prasad. In the said suit Bhagwati Prasad was proceeded ex-parte and the same was contested by the husband of respondent herein. No issue was framed with regard to ownership of the property having devolved on the husband of the respondent and thus the same was not decided. The finding on issue No.6 is as under:

“The onus is on the plaintiff to show that the plaintiff was a tenant in a portion ABCD of plot No. D-45, under defendant No.2. In ex. PW-1/1 it is admitted by the defendant No.1 that

he has purchased the property from defendant No.2, Bhagwati Prasad under whom the husband of the plaintiff was a tenant. P.W. Maya Devi has also deposed that her deceased husband had taken the property on rent from defendant No.2, Bhagwati Prasad at the rate of ₹40/- per month. The defendant No.1 has not disputed the report or the Local Commissioner who gave a finding that the plaintiff was in possession of portion ABCD of plot No.D-45. The case of the plaintiff is that she has been a tenant under defendant No.2, Bhagwati Prasad since 1963-64. Since the defendant No.2 has been proceeded ex-parte, there is nothing on record which could controvert the averments of the plaintiff regarding the tenancy of her late husband in the suit premises. Therefore the testimony of PW-1 in this regard has to be believed which goes un rebutted. Issue No.6 is accordingly decided in favour of the plaintiff and against the defendant.”

7. Since in the suit the petitioner had sought permanent and mandatory injunction on the claim of being a tenant of Bhagwati Prasad, the Court upheld that the late husband of the petitioner was a tenant in the suit premises. In the eviction petition filed by the respondent, the respondent has exhibited the registered Will and receipt issued by Bhagwati Prasad in favour of her late husband which has gone un rebutted. Merely because other documents have not been exhibited, it cannot be said that the respondent has failed to prove the ownership in the plot.

8. The findings of the learned ARC and the learned Rent Controller with regard to non-compliance of the order under 15(1) wherein rents were not deposited as per directions have not been challenged before this Court except stating that the benefit under Section 14(2) ought to have been granted.

9. Reliance of the petitioner on the decision of the Supreme Court in Janki Narayan Bhoir Vs. Narayan Namdeo Kadam (2003) 2 SCC 91 and

Yumnam Ongbi Tampha Ibema Devi Vs. Yumnam Joykumar Singh & Ors.
(2009) 4 SCC 780 is misconceived as for a proceeding under the Rent Act the landlord is not required to prove the absolute ownership by examining the Will and the attesting witness. It is sufficient if the landlord is able to establish that he has a claim better than the tenant and admittedly the claim of the petitioner is of a tenant.

10. Hence, the present petition is dismissed being devoid of any merit.

(MUKTA GUPTA)
JUDGE

FEBRUARY 24, 2015
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