

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

+ **RC.REV. 173/2015**

% Decided on: 16th April, 2015

VIJAY KUMAR & ORS Petitioner
Through Mr. S.N. Gupta, Ms. Nishtha Garg,
Advts.
versus

PRADYUMAN KUMAR & ANR Respondent
Through Ms. Sunita Arora, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM 6812/2015

Exemption allowed subject to just exceptions.

CM 6813/2015

For the reasons stated in the application the delay of 30 days in refilling the petition is condoned.

RC.REV. 173/2015 & CM 6811/2015 (stay)

1. Aggrieved by the order dated 16th December, 2014 wherein the leave to defend application filed by the petitioners was dismissed in an eviction petition filed by the respondent under Section 14(1)(e) DRC Act, the petitioners prefer the present petition.

2. In the eviction petition, the respondent No.1 stated that the tenanted premises i.e. a shop on the ground floor in premises bearing No. 5208, Kolhapur Road, Sabzi Mandi was let out in the year 1960-61 by late Shri

Ganga Prashad, father of the respondent No.1 in the name of Ram Kumar & Kishan Kumar who were running a Pan shop. Kishan Kumar died as a bachelor on 16th June, 1979 and Ram Kumar died on 14th November, 1972 leaving his LRs who became tenants under Ganga Prashad. Ganga Prashad died on 27th December, 1976 and thus LRs of Ram Kumar have become the tenants of LRs of late Shri Ganga Prashad. It was stated that the petitioners were habitual offenders in payment of rent and had not tendered the rent with effect from 1st October, 1978 for which separate action will be taken. The tenanted premises was required by the respondent No.1 bonafidely as he has been doing his business under the name and style of M/s. Steel Sales (India) from a rented shop bearing Y-211, Loha Mandi, Naraina wherein the landlord has sent a legal notice dated 5th April, 2003 seeking vacation of the tenanted premises. The respondent No.1 had no other reasonably suitable accommodation except the tenanted shop. The respondent No.1 has five more shops bearing Nos. 5203, 5204, 5205 (under stairs having area of 21 sq.ft.), 5206 and 5207 but all are under the possession of various tenants, whose names are mentioned in the site plan. Further shops No. 5206A and 5209 are owned and possessed by Shri Hardeep Singh Gulati and Smt. Kanta Kohli. Since the respondent wants to shift his place of business from Naraina to his own shop at Kohlapur, the tenanted shop was required bonafidely. In the eviction petition it was also stated that the property originally belonged to Shri Rampat Mal, grand-father of respondent No.1. On a civil suit No. 132/67 being filed for partition of immovable properties, the matter was referred to arbitration. The sole arbitrator decided the claims of the parties and shops No. 5203 to 5209 situated on Chandrawal Road, Sabzi Mandi, staircase and courtyard behind the shops with four rooms,

three kitchens, one bathroom and one latrine came to the share of Ganga Prashad, the father of respondent No.1.

3. In the leave to defend application, the petitioners and husband of respondent No.2 took the plea that as per the documents the tenancy was in the name of firm M/s. Kishan Kumar Ram Kumar (HUF). Thus on the death of Ram Kumar and Kishan Kumar all the sons and daughters i.e. the LRs of Ram Kumar were co-tenants in their own right. Further these LRs were also the LRs of Kishan Kumar who died as a bachelor. Since all the co-tenants were not impleaded the tenanted premises could not be got vacated and the petitioners herein were entitled to grant of leave to defend. Further the tenancy was in the name of the firm and hence without impleading the firm the eviction petition was not maintainable. Reference were made to the earlier litigation between the parties and the findings of the Trial Court, Appellate Court and this Court in RSA No. 47/1999. It is further stated that the respondent No.1 in order to create scarcity of accommodation sold out the adjacent shop bearing No. 5209 to Smt. Kanta Kohli. It was also stated that the respondent No.1 was in possession of entire ground floor with entrance from front comprising of staircase, courtyard, four rooms, one bathroom and one latrine and his family comprises of his wife, two daughters and one son and thus there was no bonafide requirement. The license of the respondent No.1 from the MCD for running the business of Steel at Loha Mandi, Delhi was not renewed since 2010 and no petition was filed in the year 2010 when the need arose. The respondent No.1 has failed to show how he would start the business of garments when he was suffering from chronic disease like diabetes, hypertension etc. Further the respondent No.1 was still in possession of shop No. Y-211, Loha Mandi Delhi.

4. The learned ARC vide the impugned order held that in view of the arbitration award dated 25th March, 1971 the property devolved on Ganga Prashad whose death is not disputed and thus the tenanted premises further devolved on the LRs of Ganga Prashad which included the respondent No.1. The other LRs have executed a general power of attorney in favour of the respondent No.1 and thus there was no merit in the plea that the respondent No.1 as co-owner simplicitor could not file the eviction petition. With regard to relationship of landlord tenant it was held that the concept of HUF is entirely different from partnership firm. A partnership firm comes into effect by virtue of a contract between the intending partners. Its constitution can only be increased or decreased by a contract. The LRs or the sons and daughters of the partners do not become partners of partnership firm as a matter of right, whereas in the HUF the position is different. The petitioners have failed to mention who is the Karta of said HUF and in absence of identification of Karta by the petitioners themselves impleadment of some of the co-parceners met the sufficient requirement of law. Further vide judgment dated 9th August, 1996 in Suit No. 919/1993 the petitioners have been held to have inherited the tenancy rights and thus they were tenants in respect of the tenanted premises. Regarding the bonafide need it was held that even as per the petitioners respondent No.1 was carrying on the business of steel from a tenanted shop bearing No. Y-211 Loha Mandi. The respondent No.1 has placed on record income-tax returns showing annual turn-over to be more than ₹1 crore. Further the NDMC vide letter dated 12th September, 2012 has rejected the application of the respondent No.1 for grant of license to run the business of steel trading. The legal notice dated 5th April, 2013 served by the landlord of the respondent No.1 in respect of

Naraina shop has also been placed on record. Hence the need is bonafide. As regards availability of alternate accommodation is concerned, in view of the averments and explanation with regard to other shops it was held that there was no alternative accommodation available.

5. Before this Court the only ground urged by learned counsel for the petitioner is that since all the LRs of Ram Kumar deceased tenants had not been impleaded, thus leave to defend ought to have been granted to decide whether the eviction petition was bad for non-joinder of necessary parties. As noted above in the leave to defend application the petitioner has taken the plea that the tenancy was in the name of firm M/s. Kishan Kumar Ram Kumar (HUF). The issue with regard to status of the petitioners in respect to the tenanted premises has already been set at rest by previous litigation. In a Suit No. 919/93 filed by Ganga Prashad against Brij Mohan, Vijay Kumar, Anil Kumar, Vinod Kumar and Rakesh Kumar all sons of late Ram Kumar the petitioners herein and respondent No.2 who is the widow of late Shri Vinod Kumar one of the brothers of the petitioners, the learned Civil Judge settled the following issue “*whether the tenancy of the shop in question was in the name of HUF and the defendants are tenants in respect of it in their own right ?(OPD)*”. It is thus apparent that the claim of tenancy of the petitioners and late Vinod Kumar in the said suit was by way of HUF. It was held by the Trial Court that the petitioners and late Vinod Kumar have been able to prove that they have inherited the tenancy rights of their deceased predecessors in interest and they are therefore the tenants in respect of the disputed shop. This finding of the learned Civil Judge was upheld by the learned Additional District Judge in RCA No. 16/96 vide order dated 22nd

February, 1999. This Court in RSA No. 47/99 did not disturb the concurrent finding of the fact arrived at by two Courts below.

6. In the said suit there was no objection taken by the petitioners and late Vinod Kumar that besides the petitioners and Vinod Kumar their sisters also inherited the tenanted premises. The legal status between Ganga Prashad predecessor in interest of respondent No.1 and petitioners and their pre-deceased brother Vinod Kumar having been settled, the petitioners cannot now claim that the eviction petition was bad for non-joinder of all the legal heirs of deceased Ram Kumar. I find no merit in the present petition.

7. The petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 16, 2015
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