

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

+ **RC.REV. 253/2014 & CM No.12175/2014 (stay)**

% Reserved on: 9th January, 2015

Decided on: 19th January, 2015

SHRI SACHIN KUMAR Petitioner
Through: Mr. Saroj Kumar Thakur, Advocate.

versus

SMT. VISHWAKARMA DEVI Respondent
Through: Mr. Shahid Ali with Mr. S.A. Khan,
Advocates.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The Petitioner is aggrieved by the order dated 7th March, 2014 whereby his application for leave to defend in an eviction petition filed by the Respondent under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short the 'the DRC Act') was dismissed.

2. The Respondent filed eviction petition for eviction of the tenanted premises being a shop situated on the ground floor in the premises 1/3246A, Ram Nagar Extension, Mandoli Road, Shahdara, Delhi-32 from the Petitioner. In the eviction petition it was stated that the Respondent was the owner of the said premises which consisted of four shops on the ground floor, two rooms and a kitchen on the first floor and a barsati on the second floor. Out of the four shops on the ground floor, one shop was in possession of the Petitioner which was situated on the main road and the other two

shops were in possession of the other tenants. The fourth shop was in possession of the Respondent which was being used for the residential purpose as the husband of the Respondent was 75 years old and was suffering from eye problem, various other diseases and was unable to climb the stairs. The family of the Respondent comprises of the Respondent, her husband, her three married sons (Rajesh, Rakesh and Ashok) and one married daughter. The elder son Rajesh was a government servant and was residing separately in Bhopal. The other two sons were residing with the Respondent on the first floor of the aforesaid property. Thus there was scarcity of the accommodation and the Respondent was forced to reside in the shop with her husband on the ground floor and the grandson of the Respondent namely Himanshu was residing in the Barsati on the second floor. The two sons of the Respondent residing with her were doing the business of fabrication of iron tanks from the tenanted shop situated at Khasra No. 61/1, Saboli Gaddha, Saboli Village, Delhi-93 and the said landlord was asking her sons to vacate the said tenanted premises. Thus the Respondent required the shop in question so that her sons could run their business. It is also pleaded that the elder son and the married daughter occasionally visited the Respondent with their families and at that time more space was required.

3. In the leave to defend application, the Petitioner pleaded that the father of the Petitioner was owner of the shop in question by way of adverse possession since the year 1976. It is further claimed that the Respondent has no right and title in her favour in the property as she is claiming ownership of the property on the basis of General Power of Attorney, Agreement to Sell, Will and other documents which do not create any right or title in her

favour. It is further stated that the site plan filed by the Respondent is not correct and the Respondent and her family have no bona fide requirement of the tenanted premises.

4. As regards the relationship of landlord and tenant between the parties the learned ARC noted that the Petitioner claims adverse possession since 1976 through his father however, the Petitioner has not placed on record any document to show that his father was in possession in the tenanted property since 1976. It was also noted that for proceedings under the DRC Act absolute ownership is not required to be decided and the tenant cannot be allowed to raise the plea of imperfect title of the landlady. The Respondent had placed on record rent receipts which bear the signature of the Petitioner and thus the same was sufficient to acknowledge the status of the Respondent as landlady and the stand of the Petitioner regarding adverse possession in question cannot be accepted in the absence of documentary evidence. Thus this plea of the petitioner was rejected.

5. It is further held that from the eviction petition and the leave to defend application the shop in question was duly identifiable and the Petitioner has not placed on record any site plan as such the identification of the property in question is not doubted. Further the Petitioner has not disclosed that the Respondent or her sons owned any other alternative property. The learned ARC also noted the importance of the shop on the ground floor in comparison of the space available on the first floor and the barsati floor and hence declined to grant leave to defend.

6. The three issues urged by the Petitioner before this Court are that the Respondent has sought eviction of the Petitioner from the shop admeasuring 13 ft. x 6 ft, that is, about 78 sq. ft. Though the documents relied upon by

the Respondent in eviction petition show that she purchased only 30 sq. yards i.e. 270 sq.ft. of the property however a perusal of the site plan filed by the Respondent would show that the property is admeasuring 10 ft. x 36 ft. i.e. 360 sq.ft. Further though the eviction is sought with respect to 13 ft. x 6 ft. area of the property situated in the premises 1/3246A however, the title documents are with respect to property No.3246/A and not 1/3246A. The third plea is that the suit shop does not form part of the property being claimed by the respondent.

7. The second plea that the eviction petition was filed in respect of shop admeasuring 13 ft. x 6 ft. situated at 1/3246A however, the title documents were in respect of property No.3246/A cannot agitated before this Court as this plea was not taken in the leave to defend application. It is trite law that whatever pleas in defence are to be taken, the tenant should take the same in the leave to defend application which should be filed within 15 days and no amendment thereto is permissible having the effect of extension of time in filing the leave to defend application. See Madhu Gupta Vs. Gardenia Estates 184 (2011) DLT 103.

8. As regards the first and the third pleas regarding difference in plot size and that the suit shop does not form part of the property as claimed by the Respondent, though mere difference in the total difference in the total area of the plot size in General Power of Attorney/the Agreement to Sell and the site plan would not disentitle the Respondent from eviction, however the plea that the suit shop does not form part of the property being claimed by the petitioner merit consideration and raises a triable issue. In view of this contention the difference in the size of the plot as per the agreement to sell and the site plan assumes importance.

9. Thus triable issue of the suit property being part of suit property or not, being made out by the petitioner, I am of the considered opinion that leave to defend ought to have been granted by the learned ARC. In fact the learned ARC totally overlooked this averment in the leave to defend and returned no finding on this aspect.

10. It is trite law that this Court in exercise of its supervisory jurisdiction under proviso to sub-section (8) of Section 25B of the DRC Act would confine itself to the limited sphere that the order of the Rent Controller is “according to law”. In Sarla Ahuja Vs. United India Insurance Company Ltd. (1998) 8 SCC 119 it was held:

“The provision to sub-section (8) of Section 25B of the DRC Act indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passed the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

11. Consequently the impugned order is set aside. Written statement be filed in 4 weeks and replication in 4 weeks thereafter. List the matter before the learned ARC on 23rd March, 2015.

12. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 19, 2015
‘vn’