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

\+ **RC.REV. 272/2013 and CM No.11615/2013 (Stay)**

% Reserved on: 20th March, 2015
Decided on: 8th April, 2015

DR JITENDRA MOHAN GULATI ..... Petitioner
Through: Mr.Sanjeev Sindhwani, Sr. Advocate with Mr. Sanjay Dua, Advocate.

versus

HIRA LAL SINGH ..... Respondent
Through: Mr.Satish Sahai and Mr. Ankur Aggarwal, Advocates with Respondent in person.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 4th May, 2014 whereby leave to defend application of Dr. Jitendra Mohan Gulati in an eviction petition filed by Hira Lal Singh under Section 14(1)(e) of Delhi Rent Control Act, 1958 (in short the DRC Act) was dismissed, Dr. Gulati prefers the present petition.

2. In the eviction petition Hira Lal stated that the tenanted premises a room admeasuring 14 ft. x 11 ft. approximately on ground floor facing main road in Cottage No. 29, Ground Floor, West Patel Nagar was let out to the petitioner for running a Doctor's clinic vide agreement dated 13th January, 1972. Hira Lal is the owner and landlord of the premises and required the tenanted premises bonafidely for himself and his family members dependent

upon him. It was stated that Hira Lal had retired as Executive Engineer in the year 2003 from Delhi Administration and the shop was required by Hira Lal to start business of motor parts and accessories. Hira Lal had no other work or vocation and the shop in question was within the building where Hira Lal and his family were residing on the rear side. Ramandeep Singh son of Hira Lal is BE in electronics and was doing the business of sale of tyres and tubes and their fitment from one of the rooms in the suit property. One room at the back of the tenanted premises was being used by his son for storage of tyres and tubes and rest of the portion on the ground floor and one room on the first floor i.e. a total of three rooms were at the disposal of Hira Lal and his family consisting of himself, his wife (a retired school teacher), his son Ramandeep Singh, son's wife and two school going children i.e. grand-son aged 15 years and grand-daughter aged 8 years. Hira Lal also has a daughter who is married and lives in Ajay Enclave, New Delhi with her husband. The said daughter also has two children and she along with her husband and children frequently visits her parents. Further Ramandeep Singh was having difficulty in doing business because he cannot use the main Road and he has to bring the customer's car to do the needful right up to the front courtyard where he has installed the wheel tyre changing machine. Thus, Ramandeep also needs the tenanted premises for the purposes of installation of said wheel balancing and tyre fitment machine. Thus the tenanted premises was required bonafidely both by Hira Lal and his son Ramandeep Singh and that they have no other suitable accommodation available.

3. It was further stated that the premises in question was owned by father of Hira Lal and to create a rental income for his wife, Sardar Bhag Singh, the owner allowed his wife Smt. Basant Kaur to let out the premises in question to Dr. Gulati and to take rent from him. Sardar Bhag Singh died on 19th February, 1985 and Smt. Basant Kaur on 22nd January, 1999. During the life time of Smt. Basant Kaur, Hira Lal was collecting rent from Dr. Gulati and after the death of Smt. Basant Kaur, Hira Lal started collecting rent as landlord of the tenanted premises and issued rent receipts to Dr. Gulati. Since the death of Smt. Basant Kaur, Dr. Gulati has accepted Hira Lal as the owner/landlord of the premises in question and started attorning him as landlord. It is further stated that Dr. Gulati has at his disposal premises No.C-117, West patel Nagar, New Delhi which is just opposite the tenanted premises, across the road and the area is three times more than the area of the tenanted shop. However Dr. Gulati has kept the said shop locked and the same is not in use for the last more than 7-8 years.

4. In the leave to defend application Dr. Gulati took the plea that the eviction petition was not maintainable as the same was bad for non-joinder of necessary parties. The tenancy was created by the mother/predecessor in interest of Hira Lal and after her death the interest in the property devolved upon all her legal heirs. Father of Hira Lal passed away in the year 1985 and his brother around 10 years ago. Thus the property in question was inherited by Hira Lal, his sisters namely Smt. Serena K. Sial and Ms. Simran Kaur Sial and the wife and son of the deceased brother namely Ms. Ravinder Kaur Sial and Shri Umarpaul Singh. Thus all those persons were necessary parties and have not been impleaded. Hira Lal is not the owner of the disputed shop

in question and he has already informed Dr. Gulati that the portion of the property where the shop in question is situated has fallen to the share of his sister-in-law and nephew. As per the family settlement, Hira Lal also showed him the attorney of his sister-in-law which contained authorization in the name of Hira Lal to collect the rent on her behalf. As a matter of fact Hira Lal has been collecting the rent on behalf of his sister-in-law as she is residing in U.S. That in the year 2008 Hira Lal had informed him that Hira Lal and his sister-in-law had applied for mutation of the property in the records of L&DO in the name of legal heirs of deceased Smt. Basant Kaur which fact has been concealed by Hira Lal with ulterior motives. Dr. Gulati has never accepted Hira Lal as owner and has paid rent to him under authority to collect rent on behalf of his sister-in-law, thus the eviction petition is not maintainable. Along with the leave to defend application Dr. Gulati placed on record the rent receipts from 2004 to 2010. The initial hand receipt would show that the signatures were only as H.L. Singh, however subsequently typed rent receipts were got prepared which mentioned the name H.L. Singh followed by owner/landlord. These typed written receipts were prepared in the year 2010 where after the petition was filed in 2011.

5. In the leave to defend the site plan filed by Hira Lal is also disputed. On the first floor Hira Lal has two rooms whereas as per the site plan only one room has been shown. Even as per the survey of L&DO there are two rooms on the first floor besides shed and bathroom. Hira Lal is not in need of the premises as he has surplus accommodation available. Hira Lal is aged 70 years and was leading a retired life. The son of Hira Lal is in the trade of sale of tyres besides wheel balancing etc., for the last over one decade. Hira

Lal retired in 2003 and in the past 8 years he has not engaged himself in any vocation. Thus he has no interest in any business. The eviction has been sought on frivolous, false and malafide grounds. The property is residential and the L&DO does not permit misuse of the same for any purpose other than residential. Thus the proposed use of the property for starting business of auto-parts or auto-workshop by Hira Lal is not permissible under the law. There is no paucity of space.

6. In the reply to the leave to defend application Hira Lal reiterated that besides being the landlord he was one of the co-owners of the property in question and that Dr. Gulati has been paying rent and receiving rent receipts from him as tenant and thus has clearly admitted that Hira Lal was the landlord and owner of the property in question. Hira Lal placed on record a certificate issued by his sister-in-law Ms. Ravinder Kaur Sial wherein she specifically authorized Hira Lal to file an eviction petition on the ground of bonafide requirement sworn at Canada on 22nd January, 2013. It was stated that there are 6 rooms on the ground floor, one kitchen, two bathroom, WC and a store and only one room on the first floor and that the bonafide requirement was not on account of shortage of residential accommodation. It was reiterated that Hira Lal retired in the year 2003 and all these years he helped his son in establishing his business and now since the same is established Hira Lal wants to start his own business as he is healthy and active enough to run the same. The pension of Hira Lal is not enough to meet the cost of present day living and as such he earnestly wants to do his own business. The other co-owners and legal heirs i.e. Smt. Serena K. Sial and Ms. Simran Kaur Sial are not necessary parties. Further, he denied that

the tenanted shop had fallen to the share of sister-in-law as alleged or that she alone was the owner of the property in question. Hira Lal stated that he had authority to receive the rent and file eviction petition. He placed on record the certificate dated 22nd January, 2013 sworn at Canada issued by his sister-in-law wherein she specifically authorized Hira Lal to file the eviction petition on the ground of bonafide requirement. Hira Lal reiterated that Dr. Gulati has at his disposal premises C-117, West Patel Nagar which is just opposite to the tenanted premises. It was stated that the shop in question can be used for commercial activity as the area had been declared as mixed land use area in the latest Master Plan. There is no difference in the two site plans and only one room on the top has been shown as two rooms. Hira Lal placed on record the MCD Trade License issued to his son permitting him to carry on trade of sale/storage of tyre and tubes at Cottage No.29, near Patel Road, West Patel Nagar in the name of 'Wheels World'.

7. The learned ARC dealing with the various submissions of Dr. Gulati held that in the rent control legislation the landlord can be said to be the owner if he is entitled in his own legal right as distinguished for and on behalf of someone else to evict the tenant and then to retain control, hold and use premises for himself. Relying upon the decisions in *M.M. Quasim Vs. Manohar Lal Sharma (1981) 3 SCC 36 and Smt. Shanti Sharma Vs. Smt. Ved Prabha AIR 1987 SC 2028* it was held that the landlord was not required to be an absolute owner and the meaning of the term owner is "viz-a-viz the tenant i.e. the owner should be something more than the tenant". The contention of Dr. Gulati was declined for the reason he himself admitted that he was inducted as a tenant by the mother of Hira Lal. After the death of the

mother of Hira Lal the property devolved on the legal heirs and Hira Lal was one of the legal heirs. Further Dr. Gulati admittedly was paying rent to Hira Lal after the death of his mother and that Dr. Gulati filed no document to show that the sister-in-law of Hira Lal is the sole owner of the tenanted premises to the exclusion of Hira Lal, rather he submitted an application of the year 2008 wherein he stated that in 2008 Hira Lal informed him that the family of Hira Lal and his sister-in-law have applied for mutation in the land records in the name of all the legal heirs. Further, even if the sister-in-law had not given any authority to the respondent to file an eviction petition, still being the co-owner the petitioner can file eviction petition without impleading other co-owners.

8. Learned counsel for Dr. Gulati has vehemently urged before this Court that the finding of the learned ARC on this count is wrong, illegal and liable to be set aside. In the initial receipts issued to Dr. Gulati, Hira Lal nowhere mentioned himself to be the owner of the premises. It is only when disputes arose between the parties and the eviction petition was to be filed that printed rent receipts were got signed wherein under the name of H.L. Singh the words 'owner/landlord' were noted. The grievance of Dr. Gulati is that Hira Lal has filed the petition by concealment of material facts i.e. Hira Lal was never the owner of the premises, at best he was a co-owner which right also he relinquished in favour of his sister-in-law by way of a settlement agreement. However, no material has been placed to show that there was a settlement between Hira Lal and his sister-in-law showing that the property in question has fallen to the share of sister-in-law. The version of Dr. Gulati is denied by Hira Lal and to prove his case he has placed on record an

authorization on behalf of his sister-in-law to file the petition. Even if the same is filed after the issue was raised in the leave to defend application the same being procedural would not make the issue raised by Dr. Gulati a triable issue. Indubitably, after the death of the mother Smt. Basant Kaur, Hira Lal inherited the property as one of the co-owners as her legal heir and Dr. Gulati attorned to him by paying the rent. Merely because the earlier rent receipts were hand-written and did not note that H.L.Singh was the owner/landlord of the premises and subsequently printed receipts were used would not make the case of Hira Lal on a lesser footing. Dr. Gulati had been paying rent to Hira Lal without demurer, thus he will be deemed to have attorned Hira Lal as the landlord of the premises. The family settlement, if any between Hira Lal and his sister-in-law, does not affect his capacity to file the eviction petition since the sister-in-law has also given an authorization in favour of Hira Lal . The plea of Dr. Gulati that Hira Lal did not come to the Court with clean hands and claimed to be the owner without disclosing subsequent facts cannot be a ground to grant leave to defend to Dr. Gulati.

9. It is trite law that while filing an eviction petition the landlord has to only show that he has a title better than the tenant. The Supreme Court in <u>*Mohinder Prasad Jain Vs. Manohar Lal Jain (2006) 2 SCC 724*</u> has held as under:-

> *"10. This question now stands concluded by a decision of this Court in India Umbrella Mfg. Co. v. Bhagabandei Agarwalla [(2004) 3 SCC 178] wherein this Court opined: (SCC p. 183, para 6)*
>
> *"6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in*

the property generally owned by the co-owners. (See Sri Ram Pasricha v. Jagannath (1976) 4 SCC 184 and Dhannalal v. Kalawatibai (2002) 6 SCC 16 para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law."

10. In <u>*Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors. 155 (2008) DLT 383*</u> this Court held-

12. It is settled law that for the purpose of Section 14(1)(e) of Delhi Rent Control Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is required to show only that he is more than a tenant. In this case, the landlady had placed on record the documents by which she became owner. The atornment given by the erstwhile landlord in her favour as well as an admission made by the tenant by filing petition under Section 27 of Delhi Rent Control Act acknowledging the landlordship of landlday. Thus, the conclusion arrived at by the ARC regarding ownership and relationship of landlord and tenant were based on sound legal position and the cogent material before it.

11. Thus I find no illegality or perversity in the impugned order rejecting the contention of Dr. Gulati that since Hira Lal is not the owner of the premises a triable issue is raised. As regards the plea of site plan the learned

ARC noted that merely treating room as storeroom would not render the site plan incorrect. A perusal of two site plans show that the area depicted is the same and hence no triable issue can be raised on this count, as rightly held by the learned ARC.

12. As regards bonafide requirement, the learned ARC noted the two contentions of Dr. Gulati that Hira Lal has at one place stated that he required the premises for himself and on the other place the same was required for the expansion of the business of his son. It was further stated that the proposed use of property for starting auto-parts or auto-workshop was not permissible and the area was restricted for use as residential as per the Master Plan of Delhi 2021. The contention of Dr. Gulati deserves to be rejected. At no point of time Hira Lal sought eviction of the tenanted premises for opening an auto-workshop. He stated that his son was selling tyres and had a wheel balancing machine and he wants to open a shop for sale of motor-parts and accessories. Hira Lal has placed on record a Trade License issued by the MCD in the name of his son. The fact that Hira Lal has mentioned two bonafide requirements i.e. to start the business for himself and the other for expansion of business of his son would not nullify his bonafide requirement. There is no requirement in the law that while filing an eviction petition under 14(1)(e) DRC Act the landlord must restrict himself to only one bona-fide requirement. The fact that Hira Lal has no experience to start the business is immaterial.

13. The reliance of the learned counsel for Dr. Gulati on the decision in <u>*Vijay Nayyar Vs. Om Prakash Malik 2011 (126) DRT 323*</u> wherein this Court held that the genuineness of the requirement of the shop was required to be

tested by way of cross-examination for the reason that the landlord actually intended to start a business in the shop when he has not done so for six years after seeking voluntary retirement from service from NDPL is a triable issue. In the said case, on the facts of the case it was pointed out by the tenant that the landlord was still in possession of other two shops and that he had sold the shops in the month of April 2009 which pleas were required to be tested to find out whether there was a bonafide requirement or not and hence leave to defend was granted. In the present case, Hira Lal has claimed that his son opened his business in 2002 whereas Hira Lal retired in 2003 and since then he was helping his son in settling the business. Since the business of the son has now been settled he wants to open his own independent business. Further his son also wants to expand the business. Every person has a right to settle even after retirement and to expand business. Thus, in the present case there is no requirement for grant of leave to defend as no plea of availability of alternative accommodation has been taken by Dr. Gulati. Merely because the landlord has multiple requirements of the tenanted premises, his eviction petition cannot be dismissed on ground of vagueness or that he is confused about the requirement. It will be for the landlord to use the same for the more pressing requirement and the Court cannot dictate the same.

14. There is yet another issue which needs consideration. In the eviction petition Hira Lal stated that Dr. Gulati has premises at his disposal at C-117, West Patel Nagar which was just opposite the premises in question, the same was not being used and was lying locked for the last more than 7-8 years. This fact has not been denied by Dr. Gulati in the leave to defend

application. This Court in *Ranjit Kumar Chopra Vs. Virender Khosla 2008 (155) DLT 658* held that if the landlord seeks premises on bonafide requirement and it is pointed out that the tenant has acquired another property then the tenant cannot hold premium and continue with the property of the landlord and eviction order must be passed.

15. The view taken by the learned ARC being plausible, I find no reason to interfere in the same. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 08, 2015
'ga'