

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

+ **RC.REV. 275/2014 & CM 13437/2014 (stay)**

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Reserved on: 21st April, 2015
Decided on: 20th May, 2015

OM PRAKASH

..... Petitioner

Through Mr. Puneet Goel, Adv.

versus

GURDEV SINGH

..... Respondent

Through Mr. Sudhir Batra, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. An eviction petition was filed by the respondent Gurdev Singh under Section 14(1)(e) of the Delhi Rent Control Act (in short the DRC Act). In the eviction petition it was stated that Gurdev Singh was a senior citizen who has two sons and two daughters. Both the daughters were married. His two sons Tarsem and Dalvir had two children each. Dalvir Singh is residing in U.K. and keeps coming to Delhi to meet his family. Gurdev Singh is the owner of premises No. 507, Street No. 5A, Govindpuri, Kalkaji property admeasuring 116 sq.yards (in short the suit property) consists of ground floor, first floor in which 5 rooms on the ground floor have been let out to 5 tenants and out of 5 rooms on the first floor 3 are occupied by the other tenants and one room is in occupation of Om Prakash which is the tenanted premises in question. Thus, the tenanted premises with Om Prakash

comprises of one room measuring 8 feet x 8 feet, common latrine and bathroom on a monthly rent of ₹ 1420/- excluding water and electricity charges. Gurdev Singh also owns property No. C-502, sheet No.5A Govindpuri measuring 75 sq.yds. which consists of ground floor, first floor and second floor and one room on the third floor. On the ground floor family of younger son of Gurdev Singh is residing i.e. Dalvir Singh's wife and two children and Dalvir Singh who is residing in U.K. often visits them. On the first floor elder son Tarsem Singh is residing with his family. Gurdev Singh is living on the second floor. The third floor is being used as a store room. It is stated that the tenanted premises in the suit property i.e. H.No. 507/5A was required bonafide by Gurdev Singh for using as a residence for himself and his family members who are dependent on him as they have no other reasonably suitable accommodation. Both the sons who have grown up children want their own separate share in the property and thus the suit property 507/5A was required for the use of the family. It is further stated that the premises is old and is required to be re-constructed. Report of the architect in favour of Gurdev Singh was also placed on record.

2. Conditional leave to defend was granted to Om Prakash vide order dated 21st August, 2013 only on the aspect that the other tenants of the premises have vacated the property or not. Therefore the evidence was led only with regard to whether the other tenants have vacated the suit property. Gurdev Singh examined himself, his daughter-in-law Rajinder Kaur and elder son Tarsem Singh whereas the defendant examined himself, Constable Manoj Kumar and R.C. Meena as the witnesses.

3. The learned ARC vide the impugned order dated 26th May, 2014 allowing the eviction petition held that Gurdev Singh has been able to prove

that all the other 9 tenants have vacated except Om Prakash and thus an eviction order was passed.

4. Before this Court learned counsel for Om Prakash urges that admittedly Dalvir Singh is residing in London and from the evidence on record it is apparent that he came to India 2-3 years ago. Thus the premises cannot be required bonafidely as sufficient accommodation was available to Gurdev Singh in property No. 502/5A, Govindpuri, Kalkaji. Further if the eviction is required on the ground that the property is to be re-constructed the provision applicable is 14(1)(f)&(g) of the DRC Act for which compliance of Section 20 DRC Act is required to be made. The eviction petition was not filed under Section 14(1)(f)&(g) DRC Act nor compliance under Section 20 DRC Act was made and thus the impugned order is liable to be set aside.

5. Learned counsel for Gurdev Singh on the other hand contends that the order dated 21st August, 2013 granting conditional leave to defend to Om Prakash has attained finality. Thus, the only question required to be considered by the learned ARC was whether the other 9 tenants have evicted the suit property No. 507/5A, Govindpuri, Kalkaji. No permission of MCD was required to demolish the suit property.

6. A perusal of the written statement filed by Om Prakash would reveal that no objection was taken on the maintainability of the eviction petition under Section 14(1)(e) DRC Act and the grounds urged were that Gurdev Singh had sufficient accommodation, his son Dalvir Singh was living in London, Gurdev Singh was inducting new tenants in place of old tenants in the property to increase rental income and was pressurizing Om Prakash to increase the rent or vacate the premises. A perusal of the eviction petition

would show that Gurdev Singh sought eviction on the ground of bonafide requirement and it was incidentally stated that the property would be re-constructed after demolishing the same as the same was not in a habitable condition and thus all tenants were required to be evicted.

7. Section 14(1)(f) DRC Act provides eviction of the tenant from the tenanted premises if the property has become unsafe and unfit for human habitation and is required bonafide by the landlord for carrying out repairs which cannot be carried out without the premises being vacated. Section 14(1)(g) is applicable where the eviction of the premises is sought on the bonafide ground by the landlord for the purpose of building or rebuilding or making substantial addition or alteration and that such alteration cannot be carried out without premises being vacated. Section 20 DRC Act provides that while making any order on the ground specified in Clause (f) or Clause (g) of the proviso to sub-Section (1) of Section 14 of DRC Act, the Controller shall ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenants so elects, shall record the fact of election in the order and specify therein the date on or before which he shall deliver the possession so as to enable the landlord to commence the work of repairs or re-building. Section 14(1)(f)&(g) DRC Act thus permits eviction of the tenant for limited period subject to the tenant exercising the said option, however they do not apply to the cases where the landlord requires the premises bonafidely for his own use or for the use of his dependents.

8. In the present case Gurdev Singh stated that the premises was required as their family was extending and though Dalvir Singh was living in London, his wife and children were staying in India with him and since the children

were grown-up they needed their separate rooms. Thus Sections 14(1)(f)&(g) DRC Act have no application to the facts of the present case. Moreover this issue was neither raised in the written statement before the learned ARC nor argued and hence the same cannot be agitated before this Court for the first time. In Hyderabad Cricket Association & Anr. Vs. Gunrocck Cricket Club, 2004 AIHC 4565 it was held-

“7.....It is needless to say that unless a specific plea is raised in this regard and the parties are put on notice on such a plea by surprise such a plea cannot be taken at the revisional stage and in the absence of such a plea or an issue or recording of finding in relation thereto, I am not inclined to permit the revision petitioners to raise such ground at the revisional stage for the first time so as to throw out the OPs on the ground of maintainability.”

9. The issue thus arises as to whether a conditional leave to defend can be granted under Section 25(B)(8) of the DRC Act?

10. In Precision Steel & Engineering Works & Anr. Vs. Prem Deva Niranjana Deva Tayal (1982) 3 SCC 270 it was held that though the Court can grant conditional leave limited to the issue under Order XXXVII Rule 3(5) CPC, however there is no such power conferred on the Controller under sub-Section 5 of Section 25B of the DRC Act. Thus, there is no provision of grant of conditional leave to defend under Section 25B DRC Act. It was further followed by this Court in S.K. Dey Vs. D.C. Gagera AIR 1985 DELHI 169 and Bhauri Devi (deceased) through her legal heirs Vs. Shri Mahender Kumar 2007 X AD (DELHI) 597 and it was noted that the Controller is not competent to grant restricted leave i.e. leave limited to any particular issue. In other words, whenever the Controller is satisfied that the respondent/tenant is entitled to leave to contest on one or more of the

grounds disclosed in his application for leave to defend, such leave would be deemed to be unrestricted and untrammelled by any kind of fetters and it would be open to the respondent/tenant to take up whatever pleas are available to him under law in his written statement.

11. The entire proceedings before the learned ARC has proceeded on the ground that since a conditional leave to defend was granted the only point required to be proved by the petitioner during trial was whether the other tenants have vacated the property or not. Thus, both the petitioner and respondent were restricted in the scope of filing their written statement, leading evidence and arguments.

12. In view of this grave illegality which has occurred in the trial and since the learned ARC vide the impugned order only confined itself to the fact that conditional leave to defend having been granted there was no scope to go beyond the same, the impugned order is set aside. The matter is remanded back. The parties will be at liberty to lead additional evidence, if so required, on the other issues raised by them during the trial and thereafter an order will be passed by the learned Trial Court.

13. Petition and application are accordingly disposed of.

(MUKTA GUPTA)
JUDGE

MAY 20, 2015
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