

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

+ RC.REV. 381/2013 & CM 16524/2013 (stay)

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Reserved on: 27th January, 2015

Decided on: 4th February, 2015

NAND KISHORE SAINI

(SINCE DECEASED) THROUGH

ONE OF HIS LRS KESHAV SAINI

..... Petitioner

Through

**Mr. Pradeep Diwan, Mr. Ujjwal Jha,
Advts.**

versus

GAJ RAJ SINGH & ORS

..... Respondent

Through

**Mr. Rajat Aneja, Mr. Kartikeya
Bhargava, Advts. for R-1.**

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The petitioner is aggrieved by the order dated 16th July, 2013 whereby his leave to defend application in an eviction petition filed under Section 14(1)(e) of the Delhi Rent Control Act, 1958 by the respondent was dismissed and eviction order was passed.

2. In the eviction petition, the respondent stated that he was residing with his family comprising of his two sons aged 21 years and 15 years respectively, two daughters and wife, the eldest daughter being married and the second daughter and son being of marriageable age, at 1883, Ram Mandir Marg, Kotla Mubarakpur. The respondent is the owner and landlord

of the shop No.1407 Gurdwara Road, Kotla Mubarakpur which was let out to the petitioner as tenant at a monthly rent of ₹150/-which rent is being paid regularly. The respondent pleaded that tenanted shop was required bonafidely for the use and occupation of his elder son who was jobless and for himself. Despite being owner and landlord of the shop, the respondent is in penury condition and has no outlet available to him that is why the respondent's son has to sit in front of the tenanted shop on the pavement on the road on a small table of 3 feet x 2 feet to sell the shoes which do not attract enough buyers and simultaneously face the ordeal of Police and the MCD. Besides the tenanted shop, the respondent does not own or possess any other commercial premises. He filed the site plan of the shop.

3. In the leave to defend application the petitioner pleaded that the respondent was neither the landlord nor owner of the tenanted premises. The petitioner came in occupation of the premises in the year 1963 which was a vacant land and subsequently structure was converted into semi-pucca and finally into a pucca structure which cost of construction was borne by the petitioner. As per the MCD record the property tax bill is raised in the name of M/s. Saini Electronics and is paid by the petitioner. Thus over a period of time the petitioner has perfected his title. In the leave to defend application, the petitioner further admits that in the year 2002 since sealing drive was being carried out by the MCD on the advice of the respondent certain receipts were executed to show that the property was tenanted and thus to escape the sealing drive of the MCD the petitioner got prepared the rent receipts which are being misused by the respondents. The tenanted shop is

the only source of livelihood of the petitioner and his family members, and thus the eviction petition be dismissed.

4. The eviction petitioner filed a reply to the leave to defend application and denied that the counterfoils/ receipts signed by the petitioner were being misused and he placed on record two counterfoil/rent receipt books duly signed by the petitioner on record.

5. Thus the main issue raised by the petitioner before the learned ARC was the relationship of the landlord tenant on which the learned ARC observed that the respondent has placed on record the receipt books for the period from 1st April, 2002 up to 1st April, 2006 which bear the signatures of the tenant except at two places on the receipts dated 1st February, 2006 and 11/3 + 4/06. The second receipt book bears the signature of the tenant up till the receipt dated 1st August, 2009. In view of the rent receipts wherein the signatures were not denied by the petitioner the learned ARC came to the conclusion that the contention of the petitioner that the respondent was not the landlord or owner of the premises and he entered into the possession of the tenanted premises which was lying vacant and over the years he has perfected the title was not a plausible explanation. Relying upon the decision of this Court in Ramesh Chand Vs. Uganti Devi 2009 157 DLT 450 it was held that having admitted the relationship of landlord and tenant the petitioner herein was thus estopped from taking another stand in view of Section 116 of the Evidence Act. As regards the bona-fide requirement it was held that the requirement of the father to settle his dependent son in some kind of business activity cannot be considered to be divested of any bona-fide, in the absence of any cogent material to dispense such need.

There being no other suitable commercial accommodation the leave to defend application was dismissed and eviction order was passed.

6. Before this Court learned counsel for the petitioner does not rely upon the facts stated in the leave to defend but relies on a subsequent event i.e. that subsequently the same Rent Controller vide its order dated 22nd November, 2013 in an eviction petition under Section 14(1)(a) DRC Act noted that the claim of the landlord needed trial and thus on the same facts two contrary views have been taken by the same learned Rent Controller. The same is sufficient to grant leave to defend to the petitioner. Reliance is placed on Bansraj Laltaprasad Mishra Vs. Stanley Parker Jones AIR 2006 SC 3569 and Shambhunath Mitra & Ors. Vs. Khaitan Consultant Ltd. & Ors. AIR 2005 Calcutta 281.

7. Learned counsel for the respondent on the other contends that the learned ARC and this Court can only consider facts which were pleaded in the leave to defend application. Though the finding of the learned ARC would be subsequent, however the same was arrived at on the basis of a document which was available to the petitioner herein but not pleaded in the leave to defend application and thus no new ground can be taken at this stage because the same would have the effect of extension of time in filing leave to defend. Reliance is placed on Shanti Sharma & Ors. Vs. Smt. Ved Prabha & Ors. (1987) 4 SCC 193 and Ramesh Chand Vs. Uganti Devi 2009 (157) DLT 450.

8. The facts not being disputed by the petitioner are the number of family members of the respondent, age of the son and that the respondent has no other suitable alternative commercial premises. Thus the only issue which

requires consideration is whether jural relationship of landlord tenant has been established and whether the subsequent order of the ARC would entail grant of leave to defend to the petitioner.

9. It is trite law that in an eviction petition the landlord need not show that he is the absolute owner of the property and suffice it is if he is able to show that he has a better title than the tenant. In Shanti Sharma & Ors. Vs. Smt. Ved Prabha & Ors the Supreme Court held:

“14. The word “owner” has not been defined in this Act and the word ‘owner’ has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term “owner” has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be

entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term “owner” is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term “owner” as is contemplated under this section. This term came up for consideration before the Delhi High Court and it was also in reference to Section 14(1)(e) and it was held by the Delhi High Court in *T.C. Rekhi v. Smt Usha Gujral* [1971 RCJ 322, 326 (Del HC)] as under:

“The word ‘owner’ as used in this clause, has to be construed in the background of the purpose and object of enacting it. The use of the word ‘owner’ in this clause seems to me to have been inspired by the definition of the word ‘landlord’ as contained in Section 2(e) of the Act which is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person. Construed in the context in which the word “owner” is used in clause (e), it seems to me to include all persons in the position of Smt Usha Gujral who have taken a long lease of sites from the government for the purpose of building houses thereon. The concept of ownership seems now to be eclipsed by its social and political significance and the idea of ownership, in case like the present is one of the better right to be in possession and to obtain it. To accede to the contention raised by Shri Kapur would virtually nullify the effect of clause (e) and would render all such landlords remediless against tenants however badly they may need the premises for their own personal residence. I do not think such a result was intended by the legislature and I repel the appellant's

contention. I consider it proper before passing on to the next challenge to point out that the word ‘owner’ as used in clause (e) in Section 14(1) does not postulate absolute ownership in the sense that he has an absolutely unrestricted right to deal with the property as he likes. To describe someone as owner, and perhaps even as an absolute owner, of property is to say two things: it is to assert that his title to the property is indisputable and that he has all the rights of ownership allowed by the legal system in question. Rights of ownership may, therefore, be limited by special provisions of law and include in those provisions such as are in force in New Delhi according to which citizens are granted long leases of sites for constructing buildings thereon. Now, the words of a statute, though normally construed in their ordinary meaning, may contain inherent restrictions due to their subject matter and object and the occasion on which the circumstances with reference to which they are used. They call for construction in the light of their context rather than in what may be either their strict etymological sense or their popular meaning apart from the context (see *Halsbury's Laws of England*, Third Edn., Vol. 36 para 893 p. 394). The meaning of the word “owner” in clause (e) is influenced and controlled by its context and the appellant's construction is unacceptable because it seems to be quite clearly contrary to the reasonable operation of the statutory provision.”

10. Admittedly in the leave to defend application no “fardh” was filed showing the possession of the property; on the contrary the rent receipts were admitted though an explanation was rendered for counter-signing the rent receipts which explanation was neither reasonable nor plausible and rightly rejected by the learned ARC. The said “fardh” which is now being placed on the record of this Court and on the basis of which evidence was led in the other eviction petition filed by the respondent under Section

14(1)(a) of the DRC Act cannot be said to be not in possession of the petitioner when the leave to defend application was filed. This “fardh” was not placed on record with the leave to defend application to show that the petitioner is the owner of the premises. Reliance was placed only on house-tax receipts and electricity bills which were also filed before this Court. In Pritpal Singh Vs. Satpal Singh (2010) 2 SCC 15 the Court stated that no extension of time could be granted in filing the leave to defend application. Thus if amendments are allowed the same would have the effect of extension of time as held by this Court in Madhu Gupta Vs. Gardenia Estates (P) Ltd. 184 (2011) DLT 103 and the whole purpose and intent of the provisions of 25B(4) DRC Act would be defeated by permitting amendments. In Ruparel & Company (Delhi) Vs. Sardar Avtar Puri (decd.) thr. LRs & Ors. 159 (2009) DLT 101 this Court also held that subsequent events cannot be looked into. Further the scope of jurisdiction of this court while considering a revision petition is limited to the extent whether the order passed by the trial Court was passed in accordance with law and there was no transgression of jurisdiction. This Court has to consider the order of the trial Court on the basis of cause of action, evidence and material placed before the trial Court. This Court while seeing the legality of order cannot take into account the subsequent events which occurred after passing of the order of the Trial Court.

11. The contention of the petitioner that the eviction petition filed by the respondent under Section 14(1)(a) DRC is proceeding trial and hence the triable issue is raised in the present petition also does not merit consideration as the same is on the facts of the said case and a petition under Section

14(1)(a) cannot be summarily decided. As noted above the petitioner did not file the “fardh” during the proceedings of eviction petition under Section 14(1) (e) DRC Act. Even in the decision relied on by learned counsel for the petitioner in Bansraj Laltaprasad Mishra (supra) it was held that the principle of estoppel arising from the contract of tenancy is based upon the healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. In the present case the petitioner has admitted the rent receipts.

12. The admitted rent receipts in the present case fulfill the requirement of a jural relationship between a landlord and tenant. Consequently, I find no infirmity in the impugned judgment. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 04, 2015
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