

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

+ RC.REV. 482/2013 & CM No.20259/2013 (stay)

% Reserved on: 21st January, 2015
Decided on: 29th January, 2015

UNION OF INDIA & ORS Petitioner
Through Dr. Ashwani Bhardwaj, Adv.

versus

RAJENDER KUMAR Respondent
Through Ms. Kamlesh Sabharwal, Adv.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 25th July, 2013 dismissing the application filed by the petitioner seeking leave to defend in an eviction petition filed by the respondent under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act (in short DRC Act) the petitioner prefers the present petition.

2. The petitioner pleaded in the eviction petition that he along with his brother purchased property bearing No. WZ-246A, Plot No.5, Inderpuri, New Delhi vide registered sale deed on 6th March, 2004. A portion of the said property having carpet area measuring 471 sq.feet on the ground floor shown in red colour in the site plan was let out by the previous owner to the petitioner herein for running a Sub Post Office. After the suit property was

purchased a family settlement was arrived at between the respondent and his brother and the portion situated on the west side including tenanted portion fell to the share of the respondent, hence the respondent was the owner and landlord of the tenanted premises. It was further stated that tenanted premises was let out to the petitioner vide lease deed dated 7th February, 1984 for a period of five years @ ₹1413 per month. The petitioner filed a petition under Section 20 of the Arbitration and Conciliation Act, 1940 before this Court in view of the Arbitration Clause in the lease deed, however this Court vide order dated 16th July, 1996 held that in view of the statutory tenancy being created, the petitioner could be evicted only in accordance with the provisions of DRC Act, 1958 and the same cannot be decided by the Arbitrator. However, the dispute with regard to the market rent was referred to the Arbitrator for adjudication, though no Arbitrator has been appointed. This order was challenged in appeal by the respondent which was dismissed. Hence to the extent of maintainability of the petition under Section 14(1)(e) of the DRC Act it cannot be now disputed.

3. In the eviction petition it was further stated that the respondent along with his family comprising of his wife, three children aged 15 years, 14 years and 4 years and his parents was residing in a Janta Flat H-140, Naraina Vihar, New Delhi which was owned by his mother. The said Janta Flat has only two rooms which are insufficient for the respondent and his family members and he bonafidely needs at least 4 bed rooms, drawing room, dining room, one pooja room besides bath rooms, kitchen, etc. According to the eviction petition, the suit property besides the tenanted premises on the ground floor comprises of two small rooms on the back side of the Post

Office and a hall and two rooms being used as store by the respondent on the first floor. It is stated that the two small rooms at the back portion of the tenanted premises cannot be used for residential purposes unless the tenanted premises is merged under the two rooms. Further there is no independent access to the said rooms on the back side and the respondent is presently using the ingress and egress to the said room from the portion of his brother.

3. On service of summons petitioner entered appearance and filed a leave to defend application and stated that after the sale of the property to the respondent and his brother, the petitioner sought execution of fresh lease deed which was not done by the respondent. The petitioner denied the claim of the respondent of bona-fide requirement and stated that the petitioner has no place to shift the Post Office immediately and the same would take some time.

4. A perusal of the leave to defend application would show that the jural relationship of landlord tenant has not been disputed. It is stated that the rent has been paid punctually along with the electricity charges and that the parties had amicably settled their disputes in the year 1999 when the rent was enhanced to ₹1990/- per month for the next three years. Thereafter the landlady sold the property in the joint name of the respondent and his brother on 6th March, 2004 and despite sending letters, the respondent has not entered into a lease deed. Thus, the terms of the lease deed entered with the erstwhile landlady have become final. Regarding the ground of eviction as taken by the respondent, it is only urged that the same cannot be a bona-fide reason for immediate eviction and that the Post Office in question has no place to establish at some other place and would take some appropriate time.

Thus, accept an averment that requirement cannot be bona-fide no other fact is pleaded in the leave to defend application which is not sufficient to non-suit the respondent/landlord.

5. It is well settled that leave to defend can be granted only if the facts stated in the affidavit have the effect of non-suiting the landlord. It is settled law that as per Section 25B(4)&(5) of the Act, the onus is placed on the tenant to disclose such facts in his affidavit as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in Clause (e) of the proviso to Section 14(1) of the Act. (See Precision Steel & Engineering Works & Anr. Vs. Prem Deva Niranjan Deva Tayal AIR 1982 SC 1518) and Inderjeet Kaur Vs. Nirpal Singh (2001) 1 SCC 706. Further, if the defence is practically moonshine, sham or illusory the same cannot be held to be a triable issue, else the whole purpose behind enacting the provision for granting leave to defend would stand defeated (See Rita Lal Vs. Raj Kumar Singh AIR 2002 SC 3341 and Charan Das Duggal Vs. Brahma Nand (1983) 1 SCC 301).

6. The learned ARC considering this aspect and the fact that the landlord cannot be compelled to squeeze his family in a Janta Flat of two rooms, a family which comprises of 4 elders and 3 minors, held that the bona-fide requirement has been shown by the respondent and that he has no other reasonable suitable accommodation available to him and declined to grant leave to defend as no triable issue was raised which would non-suit the respondent.

7. As regards the plea of inconvenience in shifting of the post office is concerned, the same cannot be a ground to grant leave to defend to the

respondent. It is well settled that comparative hardship is not a legal ground to reject the eviction petition. In Mohd. Ayub Vs. Mukesh Chand (2012) 2 SCC 155, the Supreme Court held that the hardship the landlord would suffer by not occupying his premises would be far greater than the hardship the tenant would suffer by having to move out to another place, mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. The Supreme Court further observed that hardship of the tenant who is in occupation of the premises for a long time can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make an alternative arrangement. The Supreme Court cautioned that the length of tenancy ought not weigh with the Courts if the bona fide requirement of the landlord is made out.

8. Even in S.N. Kapoor(D) by his L.Rs. Vs. Basant Lal Khatri & Ors. JT 2001 (9) SC 456 the Supreme Court held that though the choice or proclaimed need cannot be whimsical or mere fanciful yet certain amount of discretion has to be allowed in favour of the landlady too and the Courts should not also impose its own wisdom forcibly upon the landlady to arrange her own affairs, according to their own perception carried away only by the interests of hardship of the tenant and inconvenience that may result to him in passing an order of eviction.

9. This Court in Ajit Singh Vs. Inder Saran 1979(1) RCJ (Rent) 152 repelling the pleas of the tenant that he would have to spend time for house hunting, would be impossible to get a similar premises for residence in the vicinity of the clinic and would have to pay rent which will be many times more than the present noted that unfortunately this is one incident of

occupation of a tenanted premises and in granting eviction Court has to strike a reasonable balance between the bona fide needs of the owner and the minimum required protection to the tenants. The Act unfortunately makes no provision for alternative accommodation for the evictees and the hardship that may be caused to them is not a ground to deny to the owners their *bona fide* of a premises.

10. In the present case as noted above the main emphasis of the petitioner in the leave to defend application is the inconvenience likely to be caused in shifting the sub-post office and has pleaded for time to vacate. The impugned order was passed on 25th July, 2013 wherein statutory time of six months was granted for eviction of the premises. On 6th March, 2014 this Court stayed the operation of the impugned order. When the matter was part heard on 19th January, 2015 learned counsel for the petitioner sought time to take instructions from the competent authority as to how much time would be required to vacate the premises. On 21st January, 2015 learned counsel stated that he has instructions to argue the matter and couldnot make any statement as to how much time would be required to vacate the premises.

11. In view of the legal position noted above, I find no merit in the petition. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 29, 2015
‘ga’