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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**R.C. REVISION 22/2015 & CM Nos.586/2014 (Stay) and
1129/2015 (Stay)**

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Decided on: 5th February, 2015

HARISH CHAND

..... Petitioner

Through: Mr. Rajesh Kumar Chaurasia,
Advocate

versus

MUKESH KUMAR & ORS.

..... Respondents

Through: Mr. V.Shukla, Advocate for R-1

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. The petitioner is aggrieved by the impugned order dated 28th October, 2013 whereby his leave to defend application in an eviction petition filed by the respondent no. 1 was dismissed and vide order dated 21st November, 2014, the review petition was also dismissed.
2. The respondent no. 1 had sought eviction of the tenanted premises comprising of one shop on the ground floor of the suit premises bearing no. 2650, New No. 496-A/6-D, Gali No. 1 and 2, Mahabir Block, Main Pandav Road, Bhola Nath Nagar, Shahdara, Delhi-110032 which was in occupation of the petitioner.
3. The respondent no. 1 claimed that the suit property was originally owned by his mother Darshan Devi vide a sale deed dated 20th June, 1970. After the demise of his mother, his father and one sister in the years 2002, 2007 and 2008 respectively, the property devolved on the three surviving

sons and remaining daughters of Smt. Darshan Devi. The sisters of the petitioner namely Vimlesh and Saroj executed a relinquishment deed in favour of their three brothers that is the respondent no. 1, Ramesh Chand and Sanjay. Thereafter on an oral partition, two shops fell to the share of each brother and thus, the respondent no. 1 became the owner of the tenanted shop. The respondent no. 1 even impleaded his two brothers Ramesh Chand and Sanjay as respondents in the eviction petition. Despite service, they neither entered appearance nor raised any objection to the claim of the respondent no. 1. It is stated that the agreed rate of rent for the tenanted premises was Rs. 146 per month excluding other charges and the shop was required for opening a cloth merchandise shop for his dependent son Rahul Garg, who was aged twenty years. The respondent no. 1 stated that he was running a kiriyana business in a shop in the suit premises and possesses no other reasonably suitable commercial accommodation for being provided to his son.

4. In the leave to defend application filed by the petitioner, he contested the respondent no. 1 being the original owner of the tenanted premises; that the tenanted shop was measuring only about 8 square yard and was not suitable for running a cloth merchandise shop; that the son of the respondent no. 1 had no experience to run a business as he was a student and no document had been furnished in this regard and finally that other shops in the same premises which were under the possession of the respondent no. 1 and his two brothers were currently lying locked and vacant. No document was filed by the petitioner along with leave to defend application. However, subsequently with the review petition, he placed on record certain photographs.

5. In the reply to the leave to defend application filed by the respondent no. 1, he reiterated his claim of ownership on the basis of relinquishment deed and oral settlement inter se the brothers; that all the shops in the premises were of the same size, that the tenanted shop was not inadequate to run the business and that the respondent no. 1 was not obliged to disclose the experience of his son. The respondent further denied that any shop in the premises in question was currently lying locked and vacant and reiterated that his two brothers have nothing to do in respect of the tenanted premises in question and similarly, the respondent no. 1 has no concern whatsoever with the shops which were under possession and control of his brothers.

6. On the basis of pleadings of the parties, the learned ARC held that the petitioner did not deny that the original owner of the property was Darshan Devi who was the mother of the respondents. Besides copy of the relinquishment deed dated 30th June, 2008 executed by the sisters Vimlesh and Saroj in favour of their three brothers had been placed on record and thus, the possession of the respondent no. 1 was akin to that of an owner.

7. The learned ARC held that if a kiriyana store could be run by the respondent no. 1 in a shop of same size then his son could also run his cloth merchandise shop. In any case, the same was not in the domain of the petitioner to dictate as to how the son of respondent no. 1 should run the business of cloth merchandise and no trial was necessitated to adjudicate this issue.

8. Regarding the capacity of the son of the respondent no. 1 to run the business of cloth merchandise, the Court noted that a person with no or little experience is also entitled to engage in a new business in the same manner as an old hand and it is well settled that a boy who is at the age of 20 years can

start any business or an enterprise. Since the respondent no. 1 had sufficiently proved the requirement of his son in clear terms lack of experience can be no ground to deny him the shop.

9. In relation to the availability of other shops in the suit premises lying locked and vacant under the joint possession of the respondent no. 1 and his brothers, it was held that two shops had fallen to the share of each brother. The respondent no.1 based his eviction petition on the mutual family settlement and the petitioner has not brought on record anything to deny the same or that the respondent no. 1 was in vacant and exclusive possession of any other shop except the kiriyana store which he was running. Thus, no case was made to grant leave to contest and hence, the Court passed an eviction order.

10. In the review petition, the petitioner took the plea that the site plan filed by the respondent no. 1 was not a substantive proof. Moreover, no proof of oral settlement between the respondents has been filed by the respondent no. 1. At the time of passing of the order dated 28th October, 2013, the petitioner could not place on record the site plan and the photographs because of non receipt of proper legal advice. It was stated that tenanted shop was the only source of income for petitioner and his family members. Respondent no. 1 misled the Court that only one shop on the ground floor was available whereas in fact, three other shops were also available to the respondent no. 1 for his son on the ground floor as shown in the site plan and the photographs filed by the petitioner with the review petition.

11. Though details of the occupations carried by the respondent nos. 2 and 3 have been given in the review petition but as regards the vocation of son of

respondent no. 1, it was stated that he was doing joint family business and running a general store from the suit premises on the ground floor and that he had no intention to start the business of cloth merchandise. The review petition reiterated the grounds urged in the leave to defend application except that site plan and photographs were also filed.

12. The learned ARC considering the various averments in the review petition and on hearing the parties held that the law is well settled and the landlord is not required to prove absolute ownership. He is only required to show that he has the claim on the property more than that of the tenant. The site plan and the photographs could have been filed along with the leave to defend application and thus cannot be stated to be subsequent events. No material except the site plan and some photographs have been filed and hence, the review petition was dismissed.

13. Before this Court, the petitioner reiterates the same grounds and issues as raised before the learned ARC as follows:-

- “a. Whether the eviction order can be passed without trial on the basis of oral settlement for partition of the property in question when there is no endorsement of oral settlement by the interested parties?”*
- b. Whether oral settlement for partition of the property in question can be taken into consideration without trial.*
- c. Can the Hon’ble ARC pass an order for eviction without trial in case of bonafide requirement when ownership is disputed?*
- d. Whether the site plan is the substantive proof for the partition of the family property and/or whether the oral settlement between the Respondents is substantive proof for partition and ownership of the said property*

is question without any document, statement, affidavit or evidence by the interested parties?

- e. Whether the eviction order can be passed when other alternate suitable accommodation is available in the same building?*
- f. Whether mere denial by the Respondent No.1 in his counter affidavit is enough evidence for dismissal of the leave to defend filed by the Petitioner?*

14. I have heard learned counsel for the parties. A perusal of the leave to defend application would show that the petitioner's denial of the oral settlement between the parties was without any basis and that of the bonafide requirement of respondent no. 1 was imaginary and not realistic.

15. As regards ownership, it is well settled that the landlord need not prove that he is the absolute owner of the property. The respondent no. 1, in the eviction petition, impleaded his two brothers, who despite service of notice, raised no objection to the plea of the respondent no. 1 that two shops on the ground floor had fallen to the share of the petitioner pursuant to an oral settlement between the three brothers, one being run by respondent no. 1 for his business of kiriyana store and the other being the tenanted premises. Even in the review petition wherein the petitioner had purportedly given the detailed facts, the petitioner did not state that the remaining three vacant shops are in the possession of respondent no. 1. It is stated that the shops are jointly owned by three brothers and thus, to contest the oral settlement, the trial is required. No objection having been raised by respondent nos. 2 and 3 to the oral settlement, no further proof is required for the fact that only two

shops fell in the share of respondent no. 1 that is the one where kiriyana store was being run and the other being the tenanted premises.

16. This Court in Ghanshyam Vs. Vijender 2014 SCCONLINE DEL 3983: MANU/DE/1881/2014 did not consider it fit to grant leave to defend to rebut a family settlement. It was held –

“5. So far as the aspect that whether the respondent is the owner/landlord of the suit premises is concerned, it is noted that the petitioner/tenant does not dispute that the premises were owned by the father of the respondent, Sh. Hari Ram. The respondent/landlord has stated that there was an understanding between the family members whereby the father distributed the property and gave the suit/tenanted shop to the respondent/landlord and the adjacent shop to the brother of the respondent/landlord. In my opinion, merely pleading that the respondent is not the owner or landlord of the premises does not create any triable issue because the factum with respect to ownership of the suit shop could only have been disputed by the father of the respondent/landlord or by the brother of the respondent/landlord, but none of these two persons are disputing the ownership of the respondent/landlord qua the suit tenanted shop. Therefore, I hold that the petitioner/tenant has no locus standi to question the family settlement, and that is more so because two other interested parties i.e the father and the brother of the respondent/landlord, are not questioning the ownership of the suit/tenanted shop as belonging to the respondent/landlord. This argument of the petitioner is, therefore, rejected.”

17. No strict measurements for a shop for running cloth merchandise are prescribed and a person can run a shop only according to his capacity. Even in small shops, cloth merchandise business can be run and the petitioner cannot claim that being unfit for running a cloth merchandise business or the respondent no. 1 having not proved from where he will get the finances to establish this shop, leave to defend should be granted to the petitioner.

18. It is trite law that the landlord is the best judge of his requirement and neither the tenant nor the Court can substitute the standards to be maintained by the landlord. (*Prativa Devi (Smt.) vs. T.V. Krishnan* 1996 (5) SCC 353 and *Raghvendra Kumar vs. Prem Machinery and Company*, AIR 2000 SC 534).

19. The issues raised by the petitioner in the present petition that the oral settlement was required to be proved by way of trial and the site plan cannot be treated as substantive proof are contrary to the purpose for which Section 25(B) of the Delhi Rent Control Act was incorporated.

20. In *Liaq Ahmed and others vs. Habeeb-Ur-Rehman*, AIR 2000 SC 2470 the Hon'ble Supreme Court held:

“4. The Delhi Rent Control Act (hereinafter referred to as “the Act”) has also been enacted to provide for the control of rents and evictions of the tenants from the premises covered by the Act. Section 2(e) and (l) defines “landlord” and “tenant” respectively. Section 14 provides protection to the tenants against eviction. Eviction against a tenant can be ordered by the Rent Controller only on the grounds specified in various clauses and sub-sections of the said section. Sections 14-A to 14-D confer rights upon the landlord to recover immediate possession of premises on the grounds mentioned therein. Section 15 specifies the circumstances where the tenant can get protection against his eviction. If the eviction of the tenant is sought under Section 14(1)(e) of the Act, as was the prayer made by the respondent herein, the tenant of the premises upon service of the summons can pray to obtain leave from the Controller to defend the case. Sub-section (5) of Section 25-B provides: “25-B. (5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the

premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14-A.”

5. From the scheme of the Act it is evident that if the tenant discloses the grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave to defend his case against the eviction sought by the landlord. The inquiry envisaged for the purpose is a summary inquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. If the tenant brings to the notice of the Controller, such facts as would disentitle the landlord from obtaining an order for recovery of possession, the Controller shall give him leave to contest. The law envisages the disclosure of facts and not the proof of the facts. In the instant case the Controller as well as the High Court appear to have completely ignored the object of the rent control legislation and the scheme of the Act while dealing with the case of the appellants.”

21. The scheme of the DRC Act would show that at this stage no substantive proof is required because no evidence is being led however, along with an affidavit the tenant has to place some material to discharge his burden to show that the defence taken by him is not illusionary, sham or moonshine. The Petitioner in the present case seeks a trial to dispute the oral settlement. The landlord/Respondent has discharged the onus which was on him as he is admittedly one of the co-owners of the property and the other co-owners have not disputed the oral settlement. The petitioner has placed no material on record to show how he would rebut the oral settlement if leave to defend is granted. Similarly the site plan also at this stage is not a substantive evidence however, it is a prima facie material to substantiate the case of a party which gives assurance to the court that what is being stated is

not a bald assertion and if trial is granted the tenant will be in a position to prove a defence which may oust the landlord. Merely by raising the so called issues as raised by the Petitioner before this Court the Petitioner cannot claim leave to defend and a trial. Though the stage of proving facts does not arise while granting leave to defend however the assertions of the tenant should be prima facie substantiated by material on record so as to show that the defence raised by him is not sham or illusionary or moonshine.

22. Since there is no illegality in the impugned judgment declining to grant leave to defend to the Petitioner, the present petition and the application are dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 05, 2015
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