

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC. Revision No.295/2015**

Reserved on: 3rd November, 2015
Pronounced on: 23rd November, 2015

DALJIT DUTTA Petitioner
Through: Mr. S.D. Ansari, Advocate with
Mr. I. Ahmed, Advocate along with
Petitioner in person.
Versus

SUKH DEV MONGIA Respondent
Through: Mr. Sunil Malhotra, Advocate with
Mr. Amit Sanduja, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a revision petition filed by the petitioner against the order dated 18.12.2014 passed by the learned Additional Rent Controller, (Central), Tis Hazari Courts, Delhi rejecting the leave to defend application of the present petitioner-tenant in an Eviction Petition No.E-791/14 titled *Sukh Dev Mongia v. Daljit Dutta* and passing an eviction order.
2. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent-landlord. I have also gone through the record.

3. Briefly stated the facts as alleged in the eviction petition are that the property No.4759, Deputy Ganj, Sadar Bazar, Delhi was owned by M/s. Debi Prasad & Sons. Respondent Sukhdev Mongia along with one Santosh Jain had purchased the aforesaid property in the year 1984 from M/s. Debi Prasad & Sons. It was stated in the eviction petition that on 14.07.2011 the suit property was partitioned mutually by the respondent Sukh Dev Mongia and Santosh Jain and a Partition Deed was also drawn. The present petitioner was a tenant in respect of one room and a kitchen on the ground floor with a common latrine, bathroom and an open courtyard on the ground floor and another room on mezzanine floor, more particularly shown in red in the site plan attached to the eviction petition. The petitioner was inducted as a tenant by the erstwhile owner M/s. Debi Prasad & Sons and by virtue of the suit property having been purchased by Sukh Dev Mongia and Santosh Jain the present petitioner became the tenant under them. It is also stated that after the partition, the tenanted portion fell to the share of Sukh Dev Mongia and thus Sukh Dev Mongia was stated to be the landlord of the petitioner and the owner of the present premises.

Sukh Dev Mongia is stated to be a practicing Advocate and having a law office on the first floor of the property bearing No.385, Shivaji Road, Azad Market, Delhi. It is stated that Sukh Dev Mongia is a senior citizen and suffering from age related problems because of which he finds it difficult to climb up to the stairs and hence he wants to shift to the suit property where he would not only stay but also run his law office.

4. The present petitioner filed his leave to defend application duly supported by an Affidavit. It was claimed by the petitioner-tenant that there is no relationship of landlord and the tenant between the petitioner and Sukh Dev Mongia-respondent. The respondent-landlord was alleged to be having another property bearing No.9720, Gali Neem Wali, Nawabganj, Delhi-110006 and the existence of office at 385, Shivaji Road, Azad Market, Delhi was denied. In addition, it was stated that the respondent Sukh Dev Mongia is residing at B-114, Pushpanjali Enclave, Pitampura, Delhi and is also running his law office from there. The filing of the eviction petition was stated to be actuated to compel the present petitioner to enhance the rent from Rs.22/- to Rs.2,500/- per month.

5. The learned counsel for the petitioner-tenant has also contended that in the leave to defend application the present petitioner has denied the existence of landlord-tenant relationship and therefore the eviction petition itself must fail as the jural relationship of landlord-tenant was lacking between the parties.
6. The learned ARC on the basis of the averments made in the leave to defend and the reply thereof, came to the conclusion that the relationship of landlord and tenant exists between the parties and that the issue raised by the present petitioner does not make out any triable issue so as to grant leave to defend. It was also stated that the respondent-landlord being an aged advocate maintaining law office at 385, Shivaji Road, Azad Market, Delhi it was totally unfair not to allow the respondent to retrieve the possession and thus the bona fide need of the respondent-landlord was held to be in existence and decree of eviction followed the case after rejecting the leave to defend application of the petitioner.
7. I have carefully considered the submission. However, I find myself in disagreement with the analysis of evidence arrived at by the learned ARC. The main question which has been raised by the

respondent is regarding bona fide requirement which is crystallized by the learned ARC by saying that he has a law office at Shivaji Road, Azad Market and since he is an aged person, he wants to shift in the suit property and open an office there in order to avoid the day to day travel from his residence to his office in Azad Market. The learned ARC has disbelieved the submission of the learned counsel for the petitioner that the respondent is maintaining a law office at Pitam Pura and that there is hardly any reason for him to shift to the suit property in Deputy Ganj and therefore, this was only a ploy to oust the tenant from the suit property.

8. I find considerable force in this submission of the learned counsel for the petitioner that the respondent is admittedly an advocate, who has spent considerable period of his life in litigation and merely because he has been running a law office at 385, Shivaji Road, Azad Market, Delhi and allegedly finds it difficult to travel there from his residence at Pitampura, is not a ground in itself to assume that the respondent is entitled to a decree of eviction. Despite the question of availability of alternative accommodation to the respondent-landlord at Nawab Ganj or a factum of him

letting out other portions of suit property being raises, it cannot be summarily believed that he would leave his plush office at Pitam Pura and shift to an area which is essentially a slum. It is not as if the respondent/landlord has become old overnight. It is admittedly his case, despite being old during all these years before filing of the petition, he has been coming from Pitam Pura; therefore, it cannot be assumed that he should be able to retrieve the possession only on his averments without the tenant being given an opportunity to prove his case as it raises a triable issue. To that extent, I *prima facie* agree with the view of the learned counsel for the petitioner that this is only a ploy to retrieve the possession from the petitioner-tenant. In a case where two competing stand which are dramatically opposite to each other are taken, the Court does not have a magic wand available with it to see as to whether the petitioner is telling the truth or the grounds on which the premises are sought to be taken were actuated with *mala fide* or not. The learned ARC, in my view has passed a very sketchy order on the basis of an assumption, which no reasonable person could have drawn and has arrived at a faulty conclusion. The Apex Court has

observed in a number of cases that at the stage of grant of leave to defend, the only thing which is to be seen is a ground which if proved by the tenant would disentitle the landlord from retrieving the possession and thereafter, the parties are required to adduce evidence since the Court does not have a magic wand to determine which of the parties is telling the truth. The learned Rent Controller ought to have considered this alternate view, which is also possible under the circumstances of this case, therefore, I feel that it is a fit case where the leave to defend ought to be given to the petitioner as otherwise it will result in great deal of injustice to him.

9. Further, the fact that the respondent is running a law office at his residence in Pitam Pura clearly persuades the undersigned that the sale of a part portion of the suit property in question to one Anil Jain during the pendency of a suit for recovery filed by the respondent against the petitioner is also casting doubt on his *bona fide* requirement. The suit property in Deputy Ganj is essentially a commercial property and is thus, worth crores. To that extent, I

feel the learned ARC has fell into a serious error in not appreciating the averments in their proper perspective.

10. For the above mentioned reasons, I am of the considered view that the petitioner-tenant is entitled to leave to defend to contest the matter.
11. I accordingly, set aside the impugned order of eviction dated 18.12.2014 passed by the learned ARC being an erroneous order with the direction that the petitioner/tenant filed the written statement within four weeks from today with an advance copy to the respondent, who may file response thereto within two weeks thereafter.
12. The parties to appear before the learned Additional Rent Controller on 14th December, 2015.
13. A copy of the order be sent to the learned Additional Rent Controller.

V.K. SHALI, J.

NOVEMBER 23, 2015

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