

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

+ **RC. Revision No.514/2015 & C.M. No.20742/2015**

Decided on : 14th December, 2015

SAROJ GAMBHIR Petitioner
Through: Mr. S.P. Singh Chaudhari, Advocate.

Versus

JAIPAL SINGH TANWAR Respondent
Through: Mr. B.L. Chawla, Advocate.

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

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order of eviction dated 1.6.2015 by virtue of which the order of eviction was passed against the petitioner in respect of shop No.B-4, Shopping Centre, Tagore Garden, New Delhi measuring 140 square feet, more particularly, shown in red in the site plan.

2. Before dealing with the submissions of the learned counsel for the petitioner, it may be pertinent here to give the brief background of the case. The respondent/landlord, Jaipal Singh Tanwar, filed an eviction petition against the petitioner/tenant under Section 14 (1) (e) in respect of a shop measuring 140 square feet bearing No.B-4, Shopping Centre, Tagore Garden. The plea which was setup was that the aforesaid shop is needed by the respondent/landlord, who is aged 70 years, for his own use.

It was alleged in the petition that originally Ram Lal Gambhir was inducted as a tenant in the year 1975. After his death, the tenancy was transferred in the name of his son Keshav Dass Gambhir, husband of the petitioner. However, on his death on 25.8.2007, the tenancy was transferred in favour of his legal heirs, i.e., his son, Vineet Gambhir, his wife (the petitioner herein) and three daughters. So far as three daughters were concerned, they were married and were settled in their respective families. It has been stated that the respondent/landlord does not have any other suitable alternative accommodation. The learned ARC issued notices on the prescribed proforma. A report was received from the process server that the petitioner/tenant was served on 19.9.2014 and since she had not chosen to file any reply affidavit, consequently, she was supposed to file leave to defend application within 15 days from 19.9.2014 which was not done. In the meantime, it has been observed by the learned Rent Controller in the impugned order that on 7.8.2014, the petitioner/tenant filed an application of the said date that she was served a notice on 25.7.2014 and as she does not have complete set of paper book with her, therefore, it was not possible for her to file the leave to defend application. It is because of this reason, the leave to defend application of the petitioner was not filed. No leave to defend application having been filed, the averments in the eviction petition were treated as having been admitted and accordingly, the decree of eviction followed, which has been assailed by the petitioner/tenant.

3. The learned ARC dealt with the submission of the learned counsel for the petitioner which was sought to be urged before this court also that as the petitioner/tenant was served on 25.7.2014, at the earliest on 7.8.2014 she had complained to the court that she does not have the complete set of paper book along with the documents and therefore, it was not possible for her to file the leave to defend application.

4. Reply to this application was also filed on 23.9.2014 but the factum of non-supply of paper book was disputed. On the contrary, the court noted that the record of the court showed that even on the second occasion, two sets of paper book were filed for being sent along with the summons and through postal authorities in order to effect the service.

5. Be that as it may, one of the contention before the High Court for setting aside the order of eviction is that the petitioner has not been validly served inasmuch as apart from the process server, the notice of the eviction petition has to be served on the petitioner by registered post also while as in the instant case, there was nothing on record to show that it was sent by registered post.

6. I do not agree with this contention of the learned counsel for the petitioner. The reason for this is no doubt that Rule 22 of the Delhi Rent Control Rules, 1959 envisages that apart from service through process server, the notices must also be issued to the tenant by registered post. It is also envisaged that the said service has to be effected personally on the

tenant. In the instant case, there is no dispute about the fact that the notices were served on the petitioner/tenant personally although she says that she was served on 25.7.2014 but the record of the court shows that even on the second occasion, she was served on 19.9.2014 according to the process server report.

7. From either of the two dates, it has not been shown that the leave to defend application has been filed within the prescribed time of 15 days. So far as the question of service is concerned, the purpose of affecting service is to make opposite party aware of filing of the proceedings against him. The party can not to take a plea that service must be affected by all modes and in the instant case, by both the modes before it could be said to be validly served, therefore, this argument, in my view, is an absurd argument reason being the purpose of service is to make the tenant aware of the initiation of proceedings seeking his eviction on the ground of *bona fide* requirement.

8. In the instant case, the period of 15 days even if it is taken from either of the two dates, that is, 25.7.2014 or 19.9.2014, still the leave to defend application has not been filed by the petitioner/tenant within 15 days. Therefore, in the absence of leave to defend application and since the learned ARC does not have any power to condone the delay, the learned ARC had no other option but to pass an order of eviction in respect of the shop in question. Accordingly, it is stated that there is no

illegality, impropriety or infirmity in the order dated 1.6.2015 with regard to the vacation of the petitioner/tenant.

9. Mr. Chaudhari, the learned counsel for the petitioner has sought to give altogether a different colour to the proceedings. He has contended that a fraud has been played and the fraud which he alleges is that only the petitioner was made as a party knowing fully that Keshav Das Gambhir was survived by four other legal heirs, namely, three daughters and one son, who is stated to be now pre-deceased and his son's son along with three daughters ought to have been impleaded as co-tenants. This is the fraud which is alleged to have been played by the respondent/landlord on the basis of which the decree of eviction against the present petitioner is stated to be obtained by fraud and does not deserve to be entertained by the court. The learned counsel has also placed reliance in case titled *S.P. Chengalvaraya Naidu vs. Jagannath; 1994 AIR SC 853* passed by the Supreme Court wherein it has been held that fraud detected at any stage vitiates everything.

10. In the instant case I do not agree with the contention of the learned counsel for the petitioner/tenant that any fraud has been played. If one sees the petition, it is very clearly mentioned that originally Keshav Das Gambhir was the tenant and when he dies, his tenancy rights were exclusively given to the son, who used to run his business from the shop in question and no objection at that point of time was taken either by the present petitioner or by the three married daughters that they be also

impleaded as co-tenants. Incidentally, it may be mentioned that all the daughters are married. After the death of Keshav Das Gambhir all the legal heirs gave in writing permitting the widow Saroj Gambhir, the present petitioner, to contest the matter. Once the sequence of event is explained by the respondent/landlord as to how Saroj Gambhir has been inducted as a tenant, it does not lie in the mouth of the learned counsel for the petitioner to contend that there were co-tenants in the shape of the married daughters. Once the daughter gets married, she does not inherit the right of tenancy itself as envisaged under Section 2 (l) (iii), which defines the term ‘tenant’ and inheritance of the tenancy rights by persons, who may be financially dependent or may not be dependent on the person concerned. I feel there is no point in referring to the judgments of the Supreme Court in *Chengalvaraya Naidu’s* case (*supra*) and others wherein it has been stated that fraud vitiates anything to contend that there has been any fraud and therefore the order deserves to be set aside. As a matter of fact, the fraud which is alleged by the petitioner herein does not *prima facie* even get established. Therefore, it remains a bald allegation.

11. I do not find that there is any illegality, infirmity or jurisdictional error in rejecting the leave to defend application and permitting the present petitioner to file the revision petition. Hence, the revision petition is totally misconceived and the same is dismissed.

V.K. SHALI, J.

DECEMBER 14, 2015/‘AA’