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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment : 23.05.2016

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RC.REV. 290/2016, Cav No.450/2016 & C.M.Nos.19733-35/2016
NATIONAL ASSOCIATION OF STATES AGRO INDUSTRIES

..... Petitioner

Through Mr.M.L. Sharma, Adv.

versus

DR (MRS) RAJINDER KAUR & ORS

..... Respondents

Through Mr. Gurinder Pal Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1 Order impugned before this Court is the order dated 27.11.2015. The eviction petition filed by the landlady (Dr. Rajinder Kaur) under Section 14 (1) (e) of the Delhi Rent Control Act (DRCA) stood decreed in her favour. The application filed by the tenant (National Association of States Agro Industries) seeking leave to defend had been dismissed.

2 Record shows that the present eviction petition has been filed by the landlady on the ground of bonafide requirement. She claimed herself to be the co-owner of the suit property. Suit property is at first floor, 2 Tansen Marg, New Delhi. Contention in the eviction petition was that this property comprised of ground, first and second floor. The first floor had been tenanted out to the tenanted described in the site plan as Annexure II. The rent was

Rs.1,500/- per month; a lease agreement was entered into between the father of the petitioner (late S. Sajjan Singh) and the tenant on 09.03.1976. The tenancy was w.e.f. 10.03.1976. The petitioner is the daughter of S. Sajjan Singh. She has become the exclusive owner of the suit property by virtue of a family settlement which settlement is dated 27.09.2013. This family settlement had been placed a record before the Trial Court. Averments in this family settlement have been perused. Prior to this family settlement, a suit for partition had been filed inter-se the siblings of the petitioner. This was after the death of her father S. Sajjan Singh. This partition suit stood compromised on 13.08.2013 and by virtue of this compromise decree, the petitioner had become co-owner of the suit property. This factum is not disputed. Thereafter, after this decree of 13.08.2013 (passed on an application under Order XXIII Rule 3 of the CPC), a family settlement had been arrived at on 27.09.2013 which was also inter-se all the siblings and children of deceased S. Sajjan Singh. The first floor of the petitioner, in terms of this family settlement, fell to the share of the petitioner exclusively. This family settlement has been signed by all the members of the family. None of them have disputed this document.

3 The bonafide need of the landlady was contained in para 18 of the eviction petition. This was the need of the landlady (stated to be 72 years old widow) who was a qualified medical doctor but because of her illness, (both physical and mental) which included loss of bladder movement, dysphagia, guillain barre syndrome, diabetes mellitus with an organic brain syndrome along with a major depressive disorder had made her bed ridden for which she required constant medical supervision as also a round the clock medical assistance. She also required physiotherapy. Her younger daughter Harjyot Kaur was living in a tenanted property at Chitranjan Park. Copy of the registered lease deed entered between Harjyot Kaur and her landlord had been placed on record.

4 In this eviction petition, it has been disclosed that the husband of the landlord had died in the year in 1991. She has two daughters of whom the elder daughter was married and is living in United Kingdom. Her younger daughter was living in a rented accommodation and she constantly looking after the needs of her mother (petitioner) who was staying with her daughter in this rented accommodation. Harjyot Kaur has also a sister-in-law who also visited her frequently; the requirement of the landlady is thus for a guest room as well in order to accommodate her guests. She also needed a

Gurudwara being involved in religious activities as she could not go to the Gurudwara because of her ill-health. The petitioner did not have any source of income. She was unable to hire a full time medical attendant to look after her due to lack of sufficient space. She needed at least two full time attendants. She accordingly required the aforementioned accommodation bonafide to accommodate herself and her daughter. The petitioner-landlady was earlier living in United Kingdom but because of her ill-health, she was now continuously living in Delhi along with her daughter. The need has been described as the need of the landlady as also of her daughter and two grand children as also the guests who would be visiting her. There was no other alternate accommodation available with the petitioner. This has also been specifically stated in the eviction petition. Eviction petition was accordingly filed.

5 An application seeking leave to defend has been filed by the tenant. In this application, it had been stated that there was no relationship of landlord-tenant between the parties. Orally it has been submitted by the learned counsel for the petitioner that he had recognised only S. Sajjan Singh as his landlord and not the present petitioner. His submission is that although a letter dated 07.10.2013 (letter of attornment sent by the present landlady to

the tenant) had been sent but the same had not received by him. He had also disputed the family settlement as also the compromise in the partition suit. The application seeking leave to defend is in fact an application running into 4- ½ pages but the only triable issue which can be deciphered from this application (along with the accompanying affidavit) is that the relationship of landlord-tenant is not recognised by the tenant. On this count, learned counsel for the petitioner also fairly concedes that in this application seeking leave to defend, there is probably no other triable issue which has been raised by him. His additional submission however is that he had also sought permission of the learned ARC to place on record an additional affidavit but that was declined without any reason on 18.11.2015. To support his submission that such an additional affidavit should have been taken on record, he has placed reliance upon AIR 1982 Delhi 205 S.K. Arora Vs. S.L. Sarna as also nother judgment of this Court reported in AIR 1979 Delhi 245 Jijar Singh Vs. Smt. Mohinder Kaur.

6 Per contra, learned counsel for the landlady has disputed this proposition. Submission is that the additional affidavit was rightly declined on 18.11.2015. It is submitted that if the additional affidavit was taken on record and new grounds were permitted to be raised by way of an additional

affidavit, the whole purpose of summary procedure would be defeated and to support this proposition he has placed reliance upon MANU/DE/6806/2011 Syed Mohammed Main Nizami (deceased) represented by Syed Maanזור Nizami and Others Vs. Qasima Khatoon and Others

7 Arguments have been heard. Record has been perused.

8 The eviction petition as noted supra has been filed by the landlady to accommodate herself and her daughter who is presently living in a rented accommodation. The first floor of the suit property is required not only by the landlady, her daughter but also by her two grand children apart from a guest room she also required a Gurudwara room. The submission of the landlady that she has no other reasonably suitable accommodation has in fact not been disputed.

9 The only averment made in the application seeking leave to defend is that there is no relationship of landlord-tenant between the parties.

10 This Court has time and again reiterated that for a petition to succeed under Section 14 (1)(e), it is not ownership in the strict sense which has to be established.

11 In this context the observations of a Bench of this Court in 1995 RLR
162 Jiwan Lal Vs. Gurdial Kaur & Ors. are relevant:-

“There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises.”

12 The relationship of the landlord-tenant in his view of this Court stands admitted. The fact that the tenant has admitted that there was a earlier lease deed dated 09.03.1976 entered into between S. Sajjan Singh (HUF) and the petitioner-tenant; admittedly, S. Sajjan Singh has died during the pendency of these proceedings and admittedly the petitioner is the daughter of S. Sajjan Singh. The partition suit in terms of which a compromise decree had been arrived at inter-se the children of S. Sajjan Singh dated 13.08.2013 is also a document which has not been challenged. It is an admitted document. This document was also not challenged in the application seeking leave to defend. The submission of the petitioner that a family settlement which is not registered cannot be read in evidence is an argument bereft of force as even

this document has not been disputed by the tenant; it is thus deemed to be admitted. That apart the decree was passed in the partition suit on 13.08.2013 and which is a Court order wherein part ownership had vested with the landlady and even presuming that the family settlement has to be ignored, the decree passed in the partition suit has since become final.

13 It is also well settled that a co-owner without impleading other co-owners, can also file an eviction petition. In AIR 2004 SC 1321 M/s India Umbrella Manufacturing Co. & Ors. vs. Bhagabandei Agarwalla (dead) by L.Rs. & Ors. it has been held that one of the co-owners can file a suit for eviction of a tenant in the property owned by co-owners; this principle is based on the doctrine of agency; one co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and also on behalf of the other co-owner.

14 The Trial Court had also noted that the additional affidavit which had been filed much after the application seeking leave to defend was beyond the stipulated period of 15 days. This additional affidavit was rightly declined on 18.11.2015 which order has now become final. What is challenged before this Court is the eviction decree passed on 27.11.2015. The judgment dated 27.11.2015 on no count suffers from any infirmity as the procedure

prescribed under Section 25-B of the DRCA is a strict mandate which casts a duty upon the ARC and he has to strictly follow the procedure contained therein. This procedure presupposes that an application seeking leave to defendant along with accompanying affidavit has to be filed within 15 days from the date of service. Fresh grounds which were sought to be raised by way of additional affidavit and which was declined by the order dated 18.11.2015, if permitted, would have ignored the procedure as mandated in Section 25-B of the DRCA which, at the cost of repetition, is a pronoun laid down not only by the Legislature but reiterated by the pronouncements of various courts including the Apex Court.

15 The judgment of S.K. Arora (supra) does not benefit the petitioner as the Apex Court has been strict on this procedure. The following observations of the Apex Court in this context in the judgment of MANU/SC/1920/2009 Prithipal Singh Vs. Stapal Singh (D) Th. Lrs. which had while dealing with the procedure under Section 25-B of the DRCA and contention of the petitioner in that case which was that the affidavit filed by him was after a delay of eight days i.e. beyond the period of 15 days, the Court had made the following observations which are relevant in the context of the instant matter.

“ Next comes the very important provision in Section 25B of the Rent Act, i.e., sub-section (4) of the same. It clearly provides that a tenant on whom the summons is duly served in the form specified in the Third Schedule shall not contest the prayer for eviction fromt eh premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller, as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaing such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

From a careful perusal of sub-section (4) of Section 25B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the controller. Thbis Section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceedings shall be deemed to be admitted by the tenant and the

landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition.

At this stage, we may also note that in sub-section (4) of Section 25B of the Rent Act read with Third Schedule, it has been made clear by the Legislature that if the summons of the proceedings is received by the tenant he has to appear and ask for leave to contest the eviction proceedings within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bon fide requirement shall be made.

In view of our discussions made hereinabove that Section 25B has been inserted by the Legislature for eviction of a tenant of a certain classes of landlords, in which the entire procedure has been given, it is difficult for us to hold that Rule 23 of the Rules can be applied in the present case in view of the specific provisions provided in Section 25B of the Rent Act. Accordingly, we are of the view that Rule 23 has no manner of application.

That being the position, if Rule 23 cannot be applied in the present case because of applicability of Section 25B, which is a special code and specific procedure for eviction of a tenant by a landlord on the ground of bona fide requirement, we cannot agree with the courts below that in view of

Rule 23 of the Rules, the provisions of the Code can be applied in the present case and therefore, we are of the view that the High Court had acted illegally and with material irregularity in the exercise of its jurisdiction in setting aside the order of eviction and in allowing the affidavit filed by the tenant for the purpose of defending the proceedings for eviction.”

16 The delay of eight days in filing the affidavit had not been condoned by the Apex Court in that case.

17 The impugned order in this background, does not suffer from any infirmity. Eviction petition was rightly decreed as no triable issue had arisen on any count. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MAY 23, 2016

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