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

% *Date of decision: 03.11.2016*

+ RC.REV. 267/2016 & CM Nos.18475/2016 (stay), 18587/2016 &
CM No.40732/2016

MOHD NASEER Petitioner
Through Mr.R.K.Raizada, Sr.Adv.with
Ms.Rekha Rani Dey and Mr.Siddharth Kumar,
Advocates

versus

MOHD ZAHEER AND ANR Respondent
Through Mr.Aly Mirza, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. The present Revision Petition is filed under Section 25-B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as DRC Act) seeking to impugn the order dated 16.2.2016 passed by the Additional Rent Controller (ARC) dismissing the application of the petitioner seeking leave to defend and passing an eviction order against the petitioner in respect of premises being portion of ground floor of property No.435, Chitla Gate, Chawri Bazar, Delhi-110006.

2. The respondents as landlords filed an Eviction Petition against the petitioner under section 14(1)(e) read with section 25-B of the Delhi Rent Control Act on the grounds of bona fide requirements. It was stated that the tenanted premises comprising of a hall and a small room with common courtyard etc. were let out to Mohd.Saghir. The said tenant Mohd.Saghir expired on 15.11.2011 leaving behind a number of legal heirs including the

petitioner who is a joint-tenant in succession and in occupation of the premises. The property is said to have been originally owned by one Smt.Kapoori Devi and her two sons Jagdish Prasad and Jagan Nath. Mohd.Saghir was inducted as a tenant by Smt.Kapoori Devi. The property was sold by the legal heirs of Shri Jagan Nath and Smt.Kapoori Devi and Shri Jagdish Prasad to the respondents vide registered sale deed dated 11.10.1996.

3. It is the case of the respondents/landlord that they require the premises for the bonafide personal use and that all the members of their family are dependent upon them financially and for business of manufacturing, renovating and sale of industrial tools including cutting tools from his shop 228, Meena Bazar, Delhi. It was further stated that he has no workshop of his own which is necessary for his business. Hence, the work of manufacturing and renovating of industrial tools has to be outsourced on the basis of job work and given to outside workshops which is not economically viable. It was further stated that the son of the respondent Mohd.Aseem, who is 19 years old is jobless and without any work. The respondent was duty bound to settle his son in business and he would like that his son should not only control the workshop meant for the stock in trade of respondent No.1 but also to start manufacturing of other industrial tool, for which workshop space is required which would be possible in case the legal heirs of the original tenant vacate the tenanted premises.

4. The petitioners entered appearance and moved an application under section 25-B(4) of the DRC Act for grant of leave to defend to contest the Eviction Petition. Various pleas have been taken by the petitioner in the application for leave to defend including :-

(a) that the sale deed dated 11.10.1996 relied upon by the respondent is an illegal, invalid and a sham document and that neither Shri Jagan Nath and/or Shri Jagdish Prasad and/or Smt.Kapoori Devi were having any valid transferable title in the property in question.

(b) At no point of time the original tenant Mohd.Saghir accepted the respondents as the landlord of the premises in question and there exists no relationship of landlord tenant between the parties.

(c) the original tenant Mohd.Saghir had executed and signed separate rent notes with regard to the two tenancies in favour of Smt.Kapoori Devi.

(d) The respondents have two shops in the premises in question itself i.e. premises No.435, Chitla Gate, Chawri Bazar, Delhi which are lying vacant and closed since long. Hence, alternative space is available which fact is concealed by the respondents.

(e) the respondent No.1 in partnership with his son is carrying on business from Shop No.228, Meena Bazar, Delhi and shop No.213, Meena Bazar, Delhi.

(f) Allegations are also made regarding availability of accommodation with the respondents being shop No.437, Chitla Gate, Delhi, 436 Chitla Gate, Delhi and 475-476 Chitla Gate, Delhi.

5. The trial court by the impugned order on the issue of relationship of landlord tenant noted that Shri Jagan Nath, Shri Jagdish Prasad, Smt.Kapoori Devi/ legal heirs executed a sale deed in favour of the respondents on 11.10.1996. It also noted that the petitioner does not dispute the ownership of Smt.Kapoori Devi. It also noted that admittedly a registered sale deed has been executed in favour of the respondents in 1996 and there is no suit pending in any court by virtue of which the right of Shri

Jagan Nath or legal heirs of Shri Jagdish Prasad have been challenged or a challenge has been made to the sale deed dated 11.10.1996. Hence, the trial court concluded that the ownership of the respondents over the premises in question cannot be disputed in the present proceedings and the existence of landlord tenant relationship is indisputable.

6. On the issue of bona fide requirement, the trial court noted the submissions of the petitioner that the property in question is surrounded by a paper market and the place may not be suitable for carrying on the activities of workshop for industrial tools etc. It noted the contention of the petitioner about the claim of various properties allegedly available with the respondents. The trial court also noted the submissions of the respondent that the respondent No.1 is a member of a large family of 8 brothers. All the brothers were living in the property No.436, Chitla Gate, Delhi which is a DDA property. On account of acute paucity of accommodation, families of three brothers had shifted to property No.475-476 Chitla Gate, Delhi. Regarding ShopNo.4664, Hauz Qazi, Delhi, it was noted that this is owned by one Akhtar Sultan Begum and was in the tenancy of the father of the respondent No.1 and is now in occupation of the brother Mohd.Shamim and Gulzar Ahmed who are running their own business. It is also noted that the respondent has denied having possession of any other properties. Based on the above discussions, the trial court concluded that there is no other suitable accommodation available to the respondents. On bona fide requirements, based on the averment of the respondent, the trial court concluded in favour of the respondents and dismissed the application of the petitioner and passed the eviction order.

7. I have heard learned senior counsel appearing for the petitioner and learned counsel for the respondent. Learned senior counsel for the petitioner has strenuously urged that a clear averment has been made in the application for leave to defend by the petitioners of availability of two shops with the respondents in premises 435 Chitla Gate, Chawri Bazar, Delhi. He submits that there is no proper denial by the respondents in their reply and further the latest rent receipts of these shops have not been placed on record. Hence, he submits that this constituted sufficient averments which warranted grant of leave to defend to the petitioner. He secondly submitted that there was a serious dispute on the issue of landlord tenant relationship. He submitted that there was a challenge to the title of the respondent and the petitioner had filed a suit challenging the said title. This plea was later not pressed as it was conceded that the suit was actually filed by the respondent against the petitioner for injunction. He submits that these facts warranted that an opportunity should have been given to the petitioner to lead evidence to prove its case.

8. Learned counsel appearing for the respondent has on the submission of learned senior counsel for the petitioner regarding availability of two shops at premises No.435, Chitla Gate, Chawri Bazar, Delhi taken me through his reply and the rejoinder filed by the petitioner to point out that a clear denial is there by the respondent about availability of any such premises. He submits that rent receipts of 1996 were filed as it is in that period that respondent had purchased this property. He submits that the rejoinder filed by the petitioner is vague and did not warrant any further filing of documents by the respondents. He strenuously urged that the two shops are with tenant. He has reiterated that the respondents have purchased

the property in question by registered sale- deed way back in 1996 nearly 20 years ago and hence it is not for the petitioners to challenge the title of the respondent.

9. I may first see the scope of the present petition. The Supreme Court in ***Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta, (1999) 6 SCC 222/(MANU/SC/0132/1999)*** described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law". For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available...”

10. Hence, this court is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.

11. Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction.- (1)
Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by a court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

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(e) that the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation.”

12. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependant upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

13. In the present case the trial court declined to grant leave to defend to the petitioner. The parameters for granting leave to defend are well known.

14. This court in the case of *Sarwan Dass Bange vs. Ram Prakash*, **MANU/DE/0204/2010** noted as follows:-

“7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition. However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.”

15. Similarly, this court in *Deepak Gupta vs. Sushma Aggarwal*, **2013 102 DLT 121** held as follows:-

“24.From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of Precision Steels (supra), it is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the

question as to grant or not grant of the leave to defend but the real question is tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of the grant of the leave to defend by going into the complicated questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of Charan Dass (supra) and Precision Steel (supra) are holding the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of Inderjit Kaur vs. Nirpal Singh, : 2001 (1) R.C.R. 33 and Tarun Pahwa vs. Pradeep Makin, : 2013 (1) CLJ 801 Del.)”

16. I may hence test the findings recorded by the ARC on the touchstone of the requirement of the parameters stated above for determining as to whether the trial court rightly refused the leave to defend to the petitioners.

17. The basic contention which has been urged before this court is that the petitioners had available alternative accommodation in premises bearing No.435, Chitla Gate, Chawri Bazari, Delhi. A perusal of the reply filed by the respondents shows that they have completely denied availability of the said shop. The relevant portion of their reply reads as follows:-

“7... I say and submit that the petitioners are not in occupation of two shops in property No.435, Chitla Gate, Chawri Bazar, Delhi. The petitioners had purchased the suit-property by registered Sale-deed and the two shops were already in the

tenancy of Mohd.Saleem and Mohd.Sharif, having been let out by the previous owners...”

18. In rejoinder the petitioners have stated as follows:-

“7...It is denied that the petitioners are not in occupation of two shops in property No.435, Chitla Gate, Chawri Bazar, Delhi. It is denied that the petitioners had purchased the suit property by registered sale deed and the two shops were already in the tenancy of Mohd.Saleem and Mohd.Shareef, having been let out by the previous owners as alleged...”

19. Clearly, the contentions raised by the petitioners appear to be an allegation without any basis whatsoever. The respondent on affidavit has denied the contention and has named the occupants/tenants. The petitioner themselves are occupying a shop in the premises and would certainly have better details if the respondent was in occupation of the two shops. Mere raising of baseless contentions against the landlord cannot be a ground for being granted leave to defend to the petitioners. It cannot be said that the petitioners have given facts or particulars which require to be established by way of evidence. The petitioners have merely made allegations for the sake of making allegation. There is no merit in the said plea of the petitioner.

20. The trial court has rightly concluded that the petitioners have failed to place on record any material to raise a suspicion that the respondents are having a vacant space on the ground floor of the suit property which can be used by them to open his workshop for industrial tools.

21. On the issue of landlord tenant relationship though the learned senior counsel has stated that the petitioners have filed a suit challenging the title of the respondent it transpired that no such suit has been filed. It is admitted that the original tenant, namely, the predecessors of the petitioner Shri

Mohd.Saghir was a tenant in the property. It is claimed that Mohd.Saghir executed and signed rent notes in favour of Smt.Kapoori Devi. Hence, it is admitted that the predecessor of the petitioner was a tenant of Smt.Kapoori Devi. The respondents claimed title through a sale deed of 1996 executed by Smt.Kapoori Devi and her sons Shri Jagdish Prasad and Jagannath and their legal heirs. There is no challenge to the sale deed in favour of the petitioners though it was executed 20 years ago. There are no reasons to disagree with the findings recorded by the trial court about the respondent being a landlord of the premises and there being a relationship of landlord tenant between the parties.

22. Reference in this context may be had to the judgment of the Supreme Court in the case of *Boorugu Mahadev & Sons And Anr. v. Sirigiri Narasing Rao And Ors.*, (2016) 3 SCC 343 where the supreme Court held as follows:

“19. It is also now a settled principle of law that the concept of ownership in a landlord-tenant litigation governed by rent control laws has to be distinguished from the one in a title suit. Indeed, ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to retain control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. (Vide *Sheela v. Firm Prahlad Rai Prem Prakash*)”

23. The above proposition has also been reiterated in a judgment of the Supreme Court in the case of *Kasthuri Radhakrishnan & Ors. v.*

M.Chinniyan & Anr., (supra).

24. Clearly, hence in view of the above legal position, there is no merit on the contention of the petitioner that the respondent cannot be said to be the landlord. There are no facts stated by the petitioner which require evidence.

25. In my opinion, there are no reasons to interfere with the view recorded by the ARC. The petition is without merit and is dismissed. All the pending applications are also dismissed.

JAYANT NATH, J

NOVEMBER 03, 2016

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