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

% ***Date of decision:* 11.07.2016**

+ R.C. REV No.329/2016

PAWAN KUMAR JAIN Petitioner

Through Mr.Adarsh Ganesh, Advocate.

versus

MUNSHI LAL SHARMA Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.24071/2016 (*exemption*)

Allowed subject to all just exceptions.

CM No.24070/2016 (*delay*)

By the present application, the petitioner seeks condonation of 4 days delay in filing the accompanying petition. For the reasons stated in the application, the same is allowed.

R.C. REV No.329/2016 & CM No.24069/2016 (*stay*)

1. The petitioner seeks to impugn the order dated 10.02.2016 passed by the learned ARC allowing the petition of the respondent under Section 14(1)(b) & (e) read with Section 25-B of the DRC Act in declining leave to defend the petition of the petitioner.

2. The learned counsel appearing for the petitioner has confined his submission to challenge the impugned order on the limited ground that there was no relationship of landlord and tenant between the petitioner and the respondent Ojha Samaj Dharamshala. It is urged that the owner of the suit

property was Sh. Shiv Nath Ojha. It is also urged that it was Sh. Shiv Nath Ojha who was the landlord of the petitioner. The respondent is merely claiming to be the owner of the property/landlord of the premises.

3. It was put to the learned counsel for the petitioner that the trial court has noted the title of the respondent. The respondent has placed on record the GPA, Receipt and Agreement to Sell dated 14.11.1979 of the land measuring 200 Sq.Yds. purchased from Ms.Mohini Makhija in the name of the respondent. Admittedly, there are no specific denials regarding these documents. The trial court also noted that the respondent society is a registered society and the address of the society is the same as the property in question and is mentioned on the registration certificate. The learned trial court further stated that the relationship of landlord and tenant was not denied by the petitioner in a previous petition.

4. When these observations of the learned trial court were put to the learned counsel for the petitioner, he has submitted as follows:

i) Sh. Shiv Nath Ojha was the landlord of the petitioner. Last rent was paid to Sh. Shiv Nath Ojha 10 years ago. No rent receipt to that effect has been filed.

ii) The previous petition relied upon by the respondent to claim that relationship of landlord and tenant was not denied therein has to be proved by the respondent and merely filing the copy would not be sufficient.

5. In my opinion there is no merit in the submission of the petitioner. There are clear documents on the record showing the respondent to be the owner of the property in question without any denial by the petitioner. Undoubtedly, the documents comprises of GPA/Receipt and Agreement to Sell. The Supreme Court in the case of *Suraj Lamp & Industries Pvt. Ltd. v.*

State of Haryana & Anr., (2012) 1 SCC 656 has held that such documents do not constitute title documents. However, the court had clarified that the said observations would not affect the transactions entered into prior to the said judgment.

6. Reference may be had to the judgment of this Court in the case of *Sushil Kanta Chakravarty v. Rajeshwar Kumar, (1999) 79 DLT 210 (MANU/DE/0888/1999)*. The Court held as follows:

“9. In the light of the aforesaid authorities of this Court as well as Supreme Court it cannot be said that for invoking the aid of Section 14(1)(e) of the Act in order to maintain a petition the owner has to be an absolute owner. What the Legislature intended in incorporating the word 'owner' in Section 14(1)(e) of the Act is not to use the same in the sense of absolute owner but it was used in contra-distinction with a landlord as defined who is not an owner but who holds the property for the benefit of another person. The word 'owner' occurring in Section 14(1)(e) of the Act means something more than a tenant. Let us take an example, in Delhi it is of common knowledge that property is transferred and re-transferred on the basis of a power of attorney and, Therefore, if the word 'owner' has to be construed in the strictest sense then a transferee on the basis of a second power of attorney of a residential house cannot seek eviction of a tenant which property has been constructed by the previous transferee and who has inducted the tenant on the basis of second power of attorney. That will negate the whole object of incorporating Sub-clause (e) in Section 14(1) of the Act. In the case before me it has not been pleaded that there was any fraud in executing the agreement to sell between one brother in favour of other brother or that the power of attorney was executed in order to get rid of the tenant. On the contrary, there was litigation between two brothers and Shri Sunil Kanta Chakravarty had revoked the power of attorney given in favor of Shri Sushil Kanta Chakravarty the petitioner herein, and a public notice to the same effect was issued in the newspaper and the present petitioner, Shri Sushil Kanta Chakravarty, had

to file a suit for specific performance. All these facts will demonstrate that the transfer was not to defeat what was contemplated by the Legislature pursuant to enactment of Section 14(6) of the Act but was a genuine transfer. I find support from the view taken by the learned Single Judge of this Court in Rameshwar Narain (Deceased) through LR's case (supra) wherein it was held that:

"This interpretation of the word "owner" has been accepted by Hon'ble Supreme Court in Smt. Shanti Sharma and Ors. v. Smt Ved Parbha and Ors. MANU/SC/0816/1987: [1987]3SCR1075. Under the Delhi Rent Control Act, the word "owner" occurring in Clause (e) of the proviso to Section 14(1) is not used in the sense of absolute owner. It is only used in contradistinction with a landlord as defined, who is not an owner but who holds the property for the benefit of another person. A landlord as defined, who is holding the property for himself and for his own benefit and not for the benefit of another person is certainly the owner/landlord. This is the view which has already been taken by the Court in Kanwal Kishore Chopra v. O.P. Dwivedi and Ors. MANU/DE/0027/1978: AIR1978Delhi53."

7. Keeping in view the above legal position, it may also be noted that the petitioner has failed to file any document to substantiate his contention that Sh.Shiv Nath Ojha is the owner of the property. Keeping in view the documents filed by the respondent and the legal position, the conclusion is quite clear namely that the respondent is owner/landlord of the property.

8. There is clearly no merit in the contentions of the petitioner. No ground is made out to impugn the order dated 10.02.2016. The petition is accordingly dismissed.

JAYANT NATH, J.

JULY 11, 2016/v