

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

+ **RC.REV. 363/2014**

% Reserved on: 18th March, 2015
Decided on: 7th April, 2015

**PREM CHAND SHARMA
(NOW DECEASED) & ANR**

..... Petitioners

Through: Mr. Satish Sahai and Mr. Ankur
Aggarwal, Adv.

versus

RAM GOPAL

..... Respondent

Through: Mr. J.P. Singh, Sr. Advocate with
Mr.A.C. Bhasin, Mr. Amit Bhasin,
Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Petitioners prefer the present writ petition aggrieved by the order dated 4th July, 2014 granting leave to defend to the Respondent in an eviction petition under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') filed by the Petitioners.
2. An eviction petition was filed by Shri Prem Chand Sharma however, during the pendency of the proceedings he passed away whereafter his legal heirs, that is, his daughter-in-law, wife of the pre-deceased son Smt. Pushpa Rani Sharma and his grandson Navneet Kaushik were substituted. In the eviction petition, Prem Chand Sharma claimed himself to be the owner and landlord of the tenanted premises, that is, a shop on the ground floor and mezzanine in the suit property No.42-43, U.B. Jawahar Nagar, Delhi on a monthly rent of Rs.1,250/- per month wherein Ram Gopal was carrying on his business in the name and style of M/s Cantabil. In the eviction petition it

was stated that the premises was bona fide required by the Petitioner for starting the business by his daughter-in-law namely Smt.Pushpa Sharma, wife of late Shri Ishwar Chand Sharma as well his grandson Navneet Kaushik who was aged 33 years at that time. The eldest son of Prem Chand Sharma, that is, Ishwar Chand Sharma unfortunately died on 16th February, 2007 leaving behind his widow Smt.Pushpa Sharma and one son Navneet Kaushik and one daughter. Since Smt. Pushpa Sharma had no source of income and wants to start the business of sale of readymade garments in the said shop by employing the staff and Navneet Kaushik. Navneet Kaushik had done hotel management from Bangalore and was in service earlier in Hong Kong from where he has left the job and returned to India in 2007. He will assist his mother in running the business. It was stated that the Petitioner or his family members have no other alternative business premises located in Main Bazar, Kamla Nagar, Delhi where there are various shops. The daughter-in-law of the Petitioner and her son had sufficient means to start the business.

3. In the leave to defend application, Ram Gopal took the plea that an oral Agreement to Sell was made in respect of two portions in entirety on a total sale consideration of Rs.54,70,000/-. The tenanted premises had been occupied in the year 1992 and Ram Gopal agreed to purchase the said premises, one part of which was occupied by Sardar Surender Singh and the other by M/s Hindustan Book Agency. In a meeting held Prem Chand Sharma agreed to sell the premises in question to Ram Gopal with the condition that Ram Gopal would pay Rs.36,70,000/- to Sardar Surender Singh and Rs.5,00,000/- to M/s Hindustan Book Agency through its partner Shri Jainender Kumar Jain and the balance amount of Rs.13,00,000/- would

be paid to Prem Chand Sharma. The amount as noted was paid to Sardar Surender Singh and Shri Jainender Kumar Jain on different dates. Ram Gopal claimed to be in possession of the receipts of the payment and that Sardar Surender Singh executed a surrender letter in his favour. Ram Gopal placed on record the surrender letter. An agreement dated 19th October, 1992 was executed between Prem Chand Sharma and Ram Gopal wherein the eviction Petitioner agreed to sell both the aforesaid tenanted premises to Ram Gopal which were with Sardar Surender Singh and M/s Hindustan Book Agency after taking Rs.13 lakhs. Ram Gopal had been paying house tax annually to the concerned department through cheque and enclosed the record of the said payments. It is further stated tht when Ram Gopal contacted Prem Chand Sharma to execute the Sale Deed, Prem Chand Sharma raised a legal demand and under compelling circumstances Ram Gopal signed an agreement dated 14th July, 2008. The rent receipts issued were forged and fabricated. It is further claimed that Smt. Pushpa Sharma was doing independent business left behind by her husband in the name and style of M/s Ishwar Chand Sharma and her son Navneet Kaushik was working in Hong Kong and had acquired the citizenship of that Country. Ram Gopal also claimed that the two plots, that is, 42-43, U.B., Jawahar Nagar have various portions on the three floors and some of them were lying vacant and were in possession of Prem Chand Sharma. It was further stated that the family of Prem Chand Sharma was not residing at 42-43, U.B., Jawahar Nagar but at Mandi Village, Tehsil Samalkha, District Panipat, Haryana.

4. In the reply to the leave to defend application Prem Chand Sharma denied the sale consideration of Rs.57,20,000/- and that no Agreement to

Sell was entered into between the parties and that in view of the last rent Agreement dated 14th July, 2008 the landlord-tenant relationship was established and the plea of Ram Gopal was frivolous. It was denied that Navneet Kaushik has taken citizenship of Hong Kong and it was stated that at the time of filing of the petition he was very much in India however, as no business premises was available he again joined the service at Hong Kong but he wants to permanently settle in India. Navneet Kaushik has not obtained citizenship of Hong Kong. It was further stated that Smt. Pushpa Sharma was residing on the first floor of the suit premises however, she was not doing any business or having any income from any paying guests. Prem Chand Sharma claimed that the property had been partitioned and the portions thereto had fallen into the share of his brother Mohan Pratap Chand Kaushik.

5. On the ground that the landlord-tenant relationship was disputed, that there were contrary pleas with regard to source of income with Smt. Pushpa Sharma and the fact that Navneet Kaushik joined back his job in Hong Kong, the learned ARC came to the conclusion that triable issues were made out and thus granted leave to defend.

6. Learned counsel for the Petitioner states that the eviction petition was filed for the requirement of the business of Smt. Pushpa Sharma, the Petitioner No.1 (b) herein and the son Navneet Kaushik was only to assist her. Thus his not being in India cannot be the ground for granting the leave to defend application. Further once the premises are available Navneet Kaushik would come and settle in India as has been stated. As regards the landlord-tenant relationship the suit for specific performance filed by the Ram Gopal has already been dismissed and thus no triable issue regarding

dispute of landlord-tenant relationship can be raised. The Petitioner No.1 has no livelihood and in the reply to the leave to defend application she explained each and every portion of the premises in her occupation. She has no vacant space available. Learned counsel for the Petitioner relies upon the decision on *Sait Nagjee Purshotham Co. Ltd. vs. Vimlabai Prabhulal and others*, 2005 (8) SCC 252; *Sarwan Dass Bange vs. Ram Prakash*, 167 (2010) DLT 80 and *Sanjay Singh vs. Corporate Warranties Pvt. Ltd.*, 204 (2013) DLT 12.

7. Learned counsel for Ram Gopal contends that since Ram Gopal has disputed the landlord-tenant relationship, the availability of other space and that Navneet Kaushik is not in Delhi but settled in Hong Kong, the learned ARC rightly granted leave to defend as triable issues were raised. During the course of hearing before the learned ARC in the eviction petition Ram Gopal also pointed out a subsequent fact. In the said application it was revealed that Smt. Pushpa Sharma had purchased second floor with its roof and terrace rights in property No.89-F, Kamla Nagar vide Sale Deed dated 7th June, 2012 and has thus shifted the students from four rooms situated on the third floor of the property No. 42-43, U.B., Jawahar Nagar to the newly purchased property at Kamla Nagar. In the reply filed the Petitioner did not dispute the factum of purchasing of the aforesaid property vide Sale Deed dated 27th June, 2012 however, stated that the third floor of the property No.42-43, U.B., Jawahar Nagar was never let out to the students and thus there was no question of shifting them to Kamla Nagar property. This being a subsequent event and the plea of Ram Gopal being availability of four more rooms on the third floor in the suit property, the same was an additional fact which also needed consideration. This Court has to examine

the legality of the impugned order with respect to the material placed before the learned ARC. The contention of the learned counsel for the Petitioner that the suit for specific performance filed by Ram Gopal has been dismissed cannot be looked into as the said plea was not taken before the learned ARC. Ram Gopal placed on record the affidavit of Sardar Surender Singh in whose presence the transaction took place including the surrender letter.

8. Though the Petitioners claimed that the tenanted premises is required for carrying out the business of Smt. Pushpa Sharma who as per the eviction petition has no source of livelihood after her husband's death however, in view of the subsequent event of Smt. Pushpa Rani Sharma acquiring further property, the availability of an alternate space and suitability thereof is required to be examined. Though the Petitioner contended that Navneet Kaushik has not acquired citizenship of Hong Kong but no material was placed on record to show that he continues to be an Indian citizen and had every intention to return to Delhi. Thus on the material placed before the learned ARC it cannot be said that the view taken was illegal or perverse. Hence I find no reason to interfere with the same.

9. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 07, 2015
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