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

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Date of decision: 01.09.2016

+ **RC.REV.88/2015**

AMTUL HABIB

...Petitioner

Through

Mr.Amiet Andlay
Sharma, Advocates

and Mr.Amit

Versus

MAUJMA KHAN

...Respondent

Through

Mr.L.C.Rajput, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present Revision Petition is filed under Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as 'The DRC Act') seeking to impugn the order dated 23.9.2014 by which the ARC allowed the application for leave to defend filed by the respondent/tenant. The petitioner filed the present Eviction Petition under section 14(1)(e) of the DRC Act regarding Shop No.4912, Bara Hindu Rao, Gali Darjjan, Delhi. It was the contention of the petitioner that the property earlier belonged to Mst.Amtul Qadri mother of the petitioner who died on 27.5.1984 leaving behind two daughters, namely, the petitioner Mst.Amtul Habib and her sister Mst.Amtul Hasin. Mst.Amtul Hasin has also died leaving behind three sons, namely, Kamal, Sultan and Nazmul. Hence, it was urged that the petitioner and the three children of Amtul Hasin are the co-owners of the property in question but as regards the shop in question it is urged that the petitioner is the owner/landlady as she has been receiving rent of the premises. It was further stated that the shop is required bona fide for the use of her grandson

Mohd.Yasir Qureshi who is presently not having any employment or any business accommodation. Previously he was stated to be engaged in handicrafts but suffered losses for want of commercial accommodation. The grandson is said to be living in a joint family with the petitioner and the family members. It was stated that the petitioner requires two shops for the purpose of starting a business of general merchandise and as such she requires both the shops, namely, being shop No.4912 and also shop No.4913, Gali Darjian, Bara Hindu Rao, Delhi. On the issue of suitable alternative accommodation it was stated that the petitioner does not have any other business premises except the shop in question for the requirement of her grandson Mohd.Yasir Qureshi.

2. The respondent filed his application seeking leave to defend under section 25-B(5) of the DRC Act. Essentially the following defence was sought to be taken.

(i) The petitioner is not the landlord or owner of the property. The shop was taken on rent in 1930 from the husband of Smt Amtul Qadri. The rent has been received by the husband of the petitioner as general attorney of Smt.Amtul Qadri. After the death of the husband of the petitioner, i.e. Shri Wali-ullah @ Mustaq his son Shakil started receiving rent on behalf of Smt.Amtul Qadri. It is stated that Shakil with malafide intention has shown the name of his mother in place of Smt. Amtul Qadri and the rent receipts from 1935 till 2013 had been issued in the name of Smt.Amtul Qadri.

(ii) Some of the children of the petitioner have migrated to Pakistan and hence the property now belongs to the Custodian of Enemy's Property.

(iii) The petitioner owns an alternative accommodation, namely, No.1451. Gali Masjid, Chitli Qabar, Delhi-110007 which is a commercial premises and she can settle her grandson from there.

(iv) The petitioner is also a co-owner of property bearing No.1199 and 2677/3, Churi Walan, Delhi which is in her possession. Apart from this, the petitioner also owns another property at Kucha Chellan, Darya Ganj, Delhi.

(v) The petitioner have also filed Eviction Petition in respect of shop No.4911, Bara Hindu Rao, Delhi.

(vi) The grandson Mohd.Yasir is already running handicraft business in property No.1451, Gali Masjid Syed Rajaji Bazar, Chitli Qabar, Jama Masjid, Delhi and the said business is flourishing and hence no bona fide requirement is made out.

3. The ARC by the impugned order noted the submissions and contentions of the respective parties. It has also noted the submissions of the respondent regarding the ownership of Custodian of Enemy's property and that the husband and son of the petitioner were collecting rent on behalf of the deceased mother as General Attorney holder and concluded that triable issues regarding landlord-tenant relationship exists. It also noted allegation of the respondent that the grandson of the petitioner is doing business in handicrafts. Based on these averments and without in any manner going into the issue as to whether the facts pleaded by the respondent can be said to be bona fide requiring an opportunity to the petitioner to lead evidence, the ARC has merely in a cursory manner without giving any cogent or worthwhile reasons has granted leave to defend to the respondent.

4. I have heard learned counsel for the parties. Learned counsel for the respondent has pointed out that another co-owner has for the bona fide requirement of another relative filed an Eviction Petition against the respondent. It is urged that these circumstances show that there is no relationship of landlord tenant between the parties.

5. 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...”

6. 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.

7. 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 any 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:-

XXXXX

(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.”

8. 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.

9. 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.

10. 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.”

11. 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.)”

12. I may hence test the findings recorded by the ARC on the touchstone of the parameters stated above for determining as to whether the trial court rightly granted leave to defend to the petitioner.

13. As far as the landlord tenant relationship is concerned the respondent admits that the property was taken on rent from the father of the petitioner in 1930. The respondent have admittedly been paying rent to Smt.Amtul Qadri and claim to have issued rent receipts from 1935 till 2013 in her name. It is admitted that rent has been paid to the son and the husband of the petitioner on behalf of Smt.Amtul Qadri. It is also admitted that Shri Shakil the son of the petitioner has with mala fide intention shown the name of his mother i.e. the petitioner Smt.Amtul Habib in place of Smt.Amtul Qadri the mother of the petitioner.

14. These facts, as noted above, clearly show relationship of landlord and tenant. The mother of the petitioner Smt.Amtul Qadri died on 27.5.1984. Despite lapse of more than 30 years nobody has come forward to claim that the petitioner is not the daughter of Smt.Amtul Qadri. The respondents have accepted Smt.Amtul Qadri as the landlord. The legal heirs of Smt.Amtul

Qadri after her death became landlord for the present purpose and are entitled to file the Eviction Petition.

15. 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*)”

16. The above proposition has also been reiterated in the judgment of the Supreme Court in the case of *Kasthuri Radhakrishnan & Ors. v. M.Chinniyan & Anr.*, (*supra*).

17. Similarly, this court in the case of *Puran Chand Aggarwal vs. Lekh Raj*, 210 (2014) DLT 131 held as follows:-

“34. It is settled law that in the context of the Act what appears to be the meaning of the term "owner" is that à the tenant the owner should be something more than the tenant. The position in law is that the "ownership" of the landlord for the purpose of maintaining a petition under Section 14(1)(e) of the Act is not required to be an absolute ownership of the property, and that it is sufficient if the landlord is a person who is collecting the rent on his own behalf. The imperfectness of the title of the premises can neither stand in the way of an eviction petition under Section 14(1)(e) of the Act, nor can the tenant be allowed to

raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying the rent to the landlord. The tenant inducted by landlord is estopped and cannot dispute the title of his landlord in view of the provisions of Section 116 of the Indian Evidence Act without there being any subsequent change in the situation. This aspect has been discussed in the following judgments:

- i. Shanti Sharma vs. Smt. Ved Prabha, AIR 1987 SC 2028
- ii. Zahid Hussain thr. LRS vs. Aenul Haq Qureshi thr. LRS, 2005 (1) RCR 323
- iii. Ram Chander vs. Ram Pyari, 109 (2004) DLT 388
- iv. Mukesh Kumar vs. Rishi Prakash, 174 (2010) DLT 64
- iv. Rajender Kumar Sharma & Ors. vs. Smt. Leela Wati & Ors., 155 (2008) DLT 383
- v. Meenakshi vs. Ramesh Khanna & Anr., 60 (1995) DLT 524
- vi. Tej Pal Gupta vs. Rattan Singh, 160 (2009) DLT 726
- vii. Kamla Rani & Ors. vs. Texmaco Ltd., 139 (2007) DLT 61
- ix. Keshar Lal H. Pardeshi vs. Vithal S. Patole, (2005) 10 SCC 249
- x. Ramesh Chand vs. Uganti Devi, 157 (2009) DLT 450
- xi. M.M. Quasim vs. Manohar Lal Sharma, (1981) 3 SCC 36
- xii. B.R. Anand vs. Prem Sagar, 2002 (1) RCR (Rent) 234
- xiii. D. Rani Puri vs. Chanan Lal, 65 (1997) DLT 313
- xiv. Shree Ram Sharma vs. Mohd. Sabr, 178 (2011) DLT 1
- xv. Bharat Bhushan Vij vs. Arti Teckchandani, 153 (2008) DLT 247
- xvi. Jiwan Lal vs. Gurdial Kaur & Ors., 57 (1995) DLT 262”

18. I may deal with another contention of the respondent. It has also been argued by the learned counsel for the respondent that for the same premises another co-owner for the bona fide requirement of another person has also

filed an eviction petition. No details are forthcoming of the stage at which the eviction petition is pending. However, in my opinion, the legal position is quite well settled. One co-owner can file a suit for eviction of a tenant where there are other co-owners.

19. Reference in this context may be had to the judgment of this court in the case of *Sheikh Mohd. Zakir & Ors. v. Shahnaz Parveen & Ors.*, CM(M) 779/2012, decided on 13.07.2012. That was a case where one co-owner moved an application under Order 1 Rule 10 CPC for being impleaded. This court held as follows:

“7. On perusal of the records, it is evident that petitioners are claiming to be co-owners of the property in question, but they cannot disturb the eviction petition against respondent no.2 & 3. It is well settled law that in the suit between the landlord and tenant, a third person claiming to be co-owner of the property cannot intervene as the issue of ownership could not be decided in the proceedings under the DRCA.

8. The respondent no. 1 cannot be forced to implead the applicants as co-petitioners in the eviction petition. Even if it is taken to be correct that the applicants are co-owners of suit premises along with the respondent No. 1, but the petition filed as such by respondent No. 1 alone was also maintainable. It is not necessary that all co-owners need to file the petition for eviction. In *India Umbrella Manufacturing Co. & Anr. Vs. Bhagabandei Agarwalla (Dead) by LRs Savitri Agarwalla (Smt.) & Ors.* reported in (2004) 3 SCC 178 it has been held as under :-

“6..... It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the 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 as an agent of the other co-owners...”

The above mentioned principle has been reiterated by the Hon'ble Apex Court in FGP Ltd. vs. Saleh Hooseini Doctor and Anr. 2009(10) SCC223.”

20. Similarly, the Full Bench of the Patna High Court in *Sharfuddin vs. Bibi Khatija*, AIR 1988 PAT 58 while considering the proposition i.e. whether one co-owner can obstruct another co-owner from seeking relief of eviction of the tenant by seeking continuation of the tenancy held as follows:

“25. To my mind, collusion or consent by one of the co-owners for the continuance of a tenant who has otherwise clearly incurred the liability of eviction under the law can and should make no difference to the rights of the other co-owners to eject him from the property. Once the tenant incurs the disability of being evicted under the express, though limited, conditions provided therefor under the rent law, then the same are not to be nullified, unilaterally by the collusion of one of many co-owners. A single co-owner out of ten or twenty has no veto over the other body of co-owners for the continuance of a tenant otherwise liable to eviction under the law. Holding so, as noticed above, would not only give him a kind of veto but also a power to override and nullify the provisions of the law itself which confer the right on the landlord either as a body or singly to evict him. I do not think that the volition of a single co-owner in collusion with a defaulting tenant would warrant any such legal result.”

Hence, merely because another co-owner has filed an eviction petition cannot be a ground which the respondents can raise in their favour to thwart the present eviction petition.

21. Hence in view of the above legal position, there is no merit in the contention of the petitioner that the respondent cannot be said to be the landlord. There is no fact stated by the petitioner which requires evidence.

22. Another submission noted by the ARC in the impugned order is that the respondents claim that the tenanted premises is under the ownership of

Custodian of Enemy's property. The only basis to make this allegation by the respondent is that the children of the petitioner have migrated to Pakistan. Merely, because the children have migrated Pakistan cannot *ipso facto* imply that the property now belongs to the Custodian of Enemy's property. No details of any order or steps taken by the concerned authority in this regard are pleaded or stated. The allegation is absolute bereft of any relevant material or particulars.

23. On the issue of bona fide requirements, the ARC noted the contention of the respondent that the grandson of the petitioner is presently doing handicraft business from property at 1451, Gali Masjid Syed Rajaji Bazar, Chitli Qabar, Jama Masjid, Delhi. The ARC completely ignored that the said averment has no basis or background. The petitioner in her reply has pointed out that the grandson is not doing any business whatsoever and that the said property No. 1451, Gali Masjid Syed Rajaji Bazar, Chitli Qabar, Jama Masjid, Delhi is a residential property used for the residence of the petitioner and her family members and is not a commercial property. In fact a perusal of the Eviction Petition itself shows that in the Memo of Parties the same address is stated as that of the petitioner. If the petitioner and her family are residing at the said address, the premises could not be used for commercial purposes.

24. In any case it is settled legal position in a catena of judgments of this court that while filing of Eviction Petition for the bona fide requirement of any particular person he is not expected to remain idle and not to carry on any work. Merely because the grandson is carrying on any work of handicrafts even if the allegation is accepted to be correct cannot mean that the petitioner does not require the premises bona fide for the requirement of her grandson.

25. In the above context reference may be had to the judgment of the Supreme Court in the case of *Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Ors. 2005 (8) SCC 252* where it was held as follows:

5. Learned counsel for the appellant submitted that in fact this plea of either starting business or expanding it at Calicut is nothing but sham and it was also pointed out that some of the sons have multifarious activities and are already established in some other business and one of the sons i.e. respondent No. 9 had already gone to United States of America and he has settled there. Therefore, the need is not bona fide. We fail to appreciate that when two sons are there and if they want to expand their business at Calicut then it cannot be said that the need is a sham one. It is not possible for the landlords and their sons to wait till the disposal of the case. They have to do something in life and they cannot wait till the appellant is evicted from the premises in question. It is common experience that landlord tenant disputes in our country take long time and one cannot wait indefinitely for resolution of such litigation. If they want to expand their business, then it cannot be said that the need is not bona fide. It is alleged that one of the sons of the landlords has settled in the U.S.A. That does not detract from the fact that the other sons of landlords want to expand their business at Calicut. Indian economy is going global and it is not unlikely that prodigal sons can return back to mother land. He can always come back and start his business at Calicut. On this ground we cannot deny the eviction to the landlords.

26. The petitioners have clearly made out a case for bona fide requirement of the concerned premises.

27. Regarding availability of alternative accommodation, the petitioners have denied that they have any rights in property 1199 and 2677/3 Churi Walan, Delhi as is sought to be claimed. The allegation about availability of alternative accommodation is without any details of any nature. The

submission is without any basis and cannot be a ground to seek leave to lead evidence.

28. In the light of the above, it is clear that the petitioners had made out a case of existence of landlord and tenant relationship. The requirement of the petitioners was bonafide. The petitioners do not have any alternative accommodation available from where her grandson can start his business. The ARC by the impugned order has failed to note that the respondents have failed to bring on record any material or any facts which would require evidence or which would entitle the respondents to lead evidence.

29. In the light of the above, in my opinion, the order of the ARC suffers from material illegality. The ARC has failed to act in accordance with law and has accepted all the averments of the respondent to hold that the respondent is entitled to leave to defend without giving any cogent and relevant reasons. The impugned order suffers from material illegality and is liable to be set aside. The leave to defend application of the respondent accordingly stands dismissed and Eviction Order is passed in favour of the petitioner and against the respondent. However, the same shall not be executed in terms of Section 14(7) of the DRC Act within six months from today.

(JAYANT NATH)
JUDGE

SEPTEMBER 01, 2016/n/v