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

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Date of decision: 20.09.2016

+ RC.REV. 447/2016

RAM PRASAD & ORS

..... Petitioners

Through

Mr.Rajiv Dalal and Mr.Vikas Verma,
Advocates.

versus

MUSARRAT BEGUM

..... Respondent

Through

Mr.Bishwajat Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

CM No. 34030/2016(exemption)

Allowed subject to all just exceptions.

RC.REV. 447/2016 and CM No. 34029/2016(stay)

1. The present revision petition is filed under Section 25 B (8) of the Delhi Rent Control Act (hereinafter referred to as "DRC Act") to impugn the order dated 18.07.2016 passed by the Additional Rent Controller (ARC) dismissing the application for leave to defend of the petitioners under Section 25B (4) & (5) of the DRC Act and passing an eviction order.
2. The respondent filed the present eviction petition on the grounds of bona fide requirement under Section 14(1) (e) read with Section 25B of the DRC Act regarding the property being one room and latrine and some unauthorised additions or alternations made by the tenants in the property bearing Ward No.8, 2256, Gali Shankar Wali, Behind Kala Masjid, Bazar

Sita Ram, Delhi. The respondent stated that she is the landlady of the premises. Originally the property was owned by late Sh.Kanshi Nath. Sh.Kanshi Nath executed a will wherein the property was thrown in a Trust known as Kanshi Nath Ram Nath Dharmarth Trust having five trustees. The trustees vide resolution sold the property to the respondent via registered sale deed dated 01.08.2008. It was stated that the respondent is a divorcee and is alone and requires the tenanted premises bona fide as she does not have an alternate accommodation available with her for her residence. She is presently residing in a rented accommodation and the name of her landlord is Mst. Sakina. She is presently paying Rs.3,000/- per month as rent. It is further stated that the respondent does not have any other property and the property in question is the sole property available to her for occupation.

3. The petitioners filed their application seeking leave to defend and contest the case in terms of Section 25 B (4) and 5 of the DRC Act. Various pleas were raised to seek permission for grant of leave to defend. On the issue of landlord tenant relationship, it was stated that the respondent has illegally and against law, in collusion with some of the trustees of the Kanshi Nath Ram Nath Dharmarth Trust purchased the suit property vide sale deed dated 01.08.2008. The property belonging to the charitable trust cannot be sold and the sale deed is illegal. Hence, the respondent cannot claim to be the owner/landlord of the property.

On the issue of availability of alternate accommodation, the petitioners stated that the respondent is the owner of other properties. The respondent is said to have possession of property No. 2257, Aqab Kalan Masjid, Gali Shanker, Bazar Sita Ram, Delhi. It was contended that the respondent has constructed a tin shed therein and she resides there

occasionally.

On the issue of bona fide requirement, it was stated that the respondent is a rich lady having a married son. She runs a business of export and import of garments and usually visits Pakistan for the said purpose. It was further stated that the respondent does not reside at the address which is claimed to be a tenanted property but she resides at the premises bearing No. 2207, Gali Shanker Wali, Bazar Sita Ram, Delhi with her father.

4. The ARC by the impugned order dismissed the application of the petitioner for leave to defend. On the issue of landlord tenant relationship the ARC held that a landlord is not required to prove absolute ownership and only required to show that he is more than a tenant. The petitioners having admitted the relationship of landlord and tenant vis-a-vis Kanshi Nath Ram Nath Dharmarth Trust, they cannot now challenge the title of the respondent. Hence, the order concludes that relationship of landlord tenant exists.

On the issue of bona fide requirement and availability of alternative accommodation, the ARC held that the respondent has placed on record rent receipts to prove that she is residing in the rented accommodation where the landlord is Mst. Sakina. The contention of the petitioners that the respondent is residing with her father in property No. 2207, Aqab Kalan Masjid, Gali Shanker Wali, Bazar Sita Ram, Delhi was held to be an allegation without any substance as no document whatsoever has been placed on record to substantiate the contention. Regarding the tin shed at the property No. 2257, Aqab Kalan Masjid, Gali Shanker Wali, Bazar Sita Ram, Delhi, the order notes the contention of the respondent that the property is owned by her son Mohd. Suhail. Copy of the sale deed dated 01.08.2008 executed between the Trust and Mohd. Suhail was also placed on record. In the light of the above,

the trial court concluded that the requirement of the respondent is bona fide.

Trial court dismissed the application for leave to defend of the tenant and passed an eviction order.

5. Learned counsel appearing for the petitioners has vehemently made the following submissions:-

- (i) There are serious disputes of ownership regarding the respondent. In view of the fact that the Trust could not sell the property, the respondent cannot claim herself to be the owner of the property.
- (ii) That the respondent does not live in the rented premises and Mst. Sakina is not her landlord as claimed by the respondent.
- (iii) Respondent is actually residing with her father at property bearing no. 2207 in Aqab Kalan Masjid, Gali Shanker Wali, Bazar Sita Ram, Delhi. Hence, no bona fide need is made out.
- (iv) The respondent, it is stated, is a builder and is only seeking to evict the petitioners for the development of the property.

6. 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/0432/1999*** 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..."

7. The issue is as to whether in the light of the averments made by the petitioners in the leave to defend application, the petitioners should have been granted leave to defend. This court in the case of ***Sarwan Dass Bange vs. Ram Prakash***, MANU/DE/0204/2010 noted as follows:-

“5. The Additional Rent Controller has in the order impugned in this petition dealt with the matter in a very cursory manner. After reproducing the pleadings, arguments and passage from the judgment of the Supreme Court in Precision Steel and Engineering Works Ltd. v. Prem Deva Niranjana Deva Tayal AIR 1982 SC 1518, it has merely been observed that the respondent/tenant has disputed each and every ingredients of Section 14(1)(e) of the Act and thus disputed question of fact arise making the respondent/tenant entitled to leave to defend. Though the judgments cited by the petitioner are recorded in the

order but there is no reasoning as to why the law laid down therein is not to be applied. Aggrieved there-from the present revision petition has been preferred.

8. This court thereafter stated 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.”

9. Hence, test is to see that tenant has been able to give 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 to examine the pleas of facts raised and then to determine the impact thereof.

10. 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 and 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.”

11. 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 dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

12. On the issue of landlord tenant relationship, the contention of the petitioners is that the respondent is not the owner and that the Trust in question from whom the property was purchased had no authority being a public trust to sell the property. The trial court rightly concluded that the petitioners admit the fact of being the tenant of the said Kanshi Nath Ram Nath Dharmarth Trust. The trial court rightly held that the landlord is not required to prove absolute ownership as required under the Transfer of

Property Act. All that the landlord is required to show is that he is more than a tenant.

13. The Supreme Court in the case of *M/s Boorugu Mahadev & Sons & Anr. vs. Sirigiri Narasing Rao & Ors. JT 2016 (1) SC 256*, 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 & Ors. vs. Firm Prahlad Rai Prem Prakash*, (2002) 3 SCC 375).”

14. 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”

15. In my opinion, there is no infirmity in the conclusion of the ARC regarding the relationship of landlord tenant in the present case. The respondent claims title through a registered sale deed dated 01.08.2008. Eight years have gone by and nobody has challenged the title of the respondent or the sale in favour of the respondent. The petitioners cannot

challenge the title of the respondent in the eviction petition in this manner. Having accepted the Trust as their landlord, in view of the legal position as stated above, they cannot now succeed in the present contention on this ground.

16. On the issue of bona fide requirement, it is stated that the respondent does not live in the rented premises and that her landlord is not Mst.Sakina as alleged. It is further stated that the respondent was in fact residing with her father in property No. 2207, Aqab Kalan Masjid, Gali Shanker Wali, Bazar Sita Ram, Delhi.

17. In *G.C. Kapoor Vs. Nand Kumar Bhasin & ors.*, AIR 2002 SC 200, MANU/SC/0736/2001 the Supreme Court noted as follows:

“It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Anr.: [1999] 2 SCR 912, this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt.”

18. There is only a bare denial that the respondent is not staying in a rented accommodation. The petitioners have not placed on record any material to support any of the said contentions.

Even assuming as claimed by the petitioners that the respondent is staying with her father, it does not mean that she is not entitled to live in her own accommodation and she has to necessarily depend upon her father or

son for accommodation. The right of the respondent to stay independently from her father cannot be denied to her. It is not for the petitioner to dictate to the respondent as to where she should reside.

19. The last contention of the petitioners before this court is that the respondent is actually a builder seeking to redevelop the building. On the basis of this contention, it is sought to urge that there is no bonafide in the plea raised by the respondent. It may be noted that admittedly the present plea namely that the respondent is actually a builder who is seeking to redevelop the property has not been raised by the petitioners in the application for leave to defend. The plea being beyond pleadings cannot be considered. Even otherwise, in fact, an entirely different version is stated by the petitioners in the leave to defend application. There they have said that the respondent is a rich lady who runs a business of export and import of garments and usually visits Pakistan for her business purposes. Hence, suddenly from being a business woman dealing in export and import of garments the petitioners claim that the respondent is a builder. This contention cannot in any case be accepted.

20. In the light of the above, the present petition has no merit. The petitioners have failed to show that the impugned order passed by the ARC is not in accordance with law or that conclusions arrived at by him are wholly unreasonable or one that no reasonable person acting with objectivity could not have reached.

21. The present petition is dismissed.

JAYANT NATH, J

SEPTEMBER 20, 2016/rb