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

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Date of decision: 29.08.2016

+ RC.REV. 264/2015 & CM Nos.9685 & 22318/2015

ANAND PAL SINGH

..... Petitioner

Through

Mr.Yogesh Swaroop, Advocate

versus

RAJ KUMAR SAINI

..... Respondent

Through

Mr.Anshul Garg, Mr.Puneet Sharma
& Mr.Abhishek Goyal, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present petition filed under Section 25(B)(8) of the Delhi Rent Control Act, the petitioner seeks to impugn the order of the Additional Rent Controller (*hereinafter referred to as the 'ARC'*) dated 29.11.2014 by which the application filed by the petitioner under Section 14(1)(e) of the Delhi Rent Control Act (*hereinafter referred to as the 'DRC Act'*) was dismissed and an eviction order was passed against the petitioner in respect of the suit premises bearing Shop No.3, (front side) 69, Bhagwan Nagar, Ashram, New Delhi- 110014.

2. The present eviction petition was filed by the respondent under Section 14(1)(e) of the DRC Act stating that the father of the respondent/landlord Sh.Hari Chand Saini on 24.09.1986 let out the property at a monthly rent of Rs.500/- to the petitioner. Sh. Hari Chand Saini is said to have expired on 17.06.2009. As per the registered Will, the property was

bequeathed to his two sons, namely Sh.Raj Kumar Saini and Sh.Prem Kumar Saini.

3. Sh. Prem Kumar Saini died on 15.01.2004 and his wife Smt.Geeta was accepted as owner/landlord by the petitioner. Smt.Geeta used to collect the rent from the petitioner. Smt.Geeta was in need of finances and sold off her share to the respondent on 15.09.2005. The petition avers that the respondent's family consists of his wife and two sons, one son being Sh.Amit Kumar Saini, aged about 34 years, who is married and running a tent house business in partnership at the backside of the shop of the petitioner and Sh.Rajiv Kumar Saini, aged about 31 years, who is an MBA in Health Care Services besides having done computer course. The petition states that the petitioner needs the suit premises for his son namely Sh.Rajiv Kumar Saini as the petitioner's son wants to start his business of sale of equipments of Health Service in retail. Jiwan Hospital is nearby the shop in question and hence the desire to start the said business. Except the said tenanted shop, the petitioner has no other alternative vacant/tenanted shop which can be used or utilized by the petitioner for bona fide need and requirement of his son namely Sh.Rajiv Kumar Saini.

4. In the application for leave to defend under section 25-B (5) of the DRC Act the petitioner has raised various grounds seeking leave to defend. It was firstly stated that Smt.Geeta Saini was the landlord and the petitioner has been tendering rent to her till date. On a couple of occasions it is stated that the respondent collected rent on behalf of Smt.Geeta Saini by way of blank signed cheques. Secondly, it is submitted that the son of the respondent Shri Rajiv Kumar Saini is giving tuitions and is also helping the respondent run his shop where the respondent is running the business of

milk and other related products. Hence, it was urged that Shri Rajiv Kumar Saini is suitably employed and well settled in life and is not unemployed owing to lack of suitable accommodation. Thirdly, it was stated that the respondent is successfully carrying on business of milk and related products from the other property i.e. Shop No.696, Bhola Nagar, Kotla Mubarakpur, Delhi.

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* 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. 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.

7. The trial court by the impugned order noted that the eviction petitions are not title suits and the petitioner/tenant cannot be allowed to raise plea of imperfect title or title not vesting in landlord, especially when he pays rent to the landlord. It noted the contention of the petitioner that the respondent used to accept the rent on behalf of Smt.Geeta by way of blank signed cheques. The ARC concluded that there is a relationship of the landlord and tenant between the parties and no triable issue in this regard is raised. On the bona fide requirement, the ARC noted that the nothing had come on record to suggest that the son of the respondent is gainfully employed somewhere or is doing some specific business from some other place. Noting that the landlord is the best judge of his requirement and has complete freedom in the matter, the ARC concluded that the respondent has made out a case of bona fide need and no triable issue has been raised by the petitioner in this regard. On availability of suitable accommodation, it was the stand of the petitioner that the respondent is carrying on business from his Shop No.696, Bhola Nagar, Kotla Mubarakpur, New Delhi. The respondent had clarified in his reply that the said shop was sold way back in 1985 and thereafter he purchased property No.365/2 on the ground floor of which he is doing the

business of milk products and upper floor is being used by the family of the respondent for residence. Hence, the ARC concluded that there is no suitable alternative accommodation available with the respondent and dismissed the application of the petitioner and passed the eviction order.

8. At the outset, it may be noted that interim order passed by this court earlier was vacated on 23.09.2015 subject to condition that the respondent can proceed with the execution and shall not create any third party interest in the tenanted premises.

9. Pursuant to the said order, the possession of the premises has been taken by the respondent.

10. The learned counsel for the petitioner reiterates his contention that the respondent is not the owner of the concerned property. He relies upon an unregistered communication dated 15.09.2005 said to have been written in hand by Smt. Geeta Saini by which it is claimed that the shop has been sold to the respondent/landlord.

11. The basic contention raised before this court is about the landlord tenant relationship. The settled position regarding ownership under the Delhi Rent Control Act is that the landlord must be having better rights than the tenant. No other point has been urged before this court.

12. It was the contention of the respondent/landlord in the eviction petition that the shop came to the share of Sh.Prem Kumar Saini and after his death his wife Smt. Geeta Saini and that Smt. Geeta Saini sold the shop on 15.09.2015. The communication relied upon by the learned counsel for the petitioner does not in any manner change the facts and circumstances of this case. Admittedly, the rent cheques have been received by the respondent. The learned counsel for the respondent has placed on record

photocopy of the passbook of the respondent which shows that the payments have been received from the petitioner since 2009 onwards to contend that rent has been paid by the petitioners and credited into the account of the respondent. 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:

“18. 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*)”

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., (2016) 3 SCC 296***.

13. Clearly, hence in view of the above the legal position, there is no merit on 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.

14. 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.

AUGUST 29, 2016/v

JAYANT NATH, J.