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

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Date of decision: 05.12.2016

+ RC.REV. 577/2016

ATHAR (LEGAL HEIR OF LT. ASHRAF KHAN)..... Petitioner
Through Mr.Santosh Pratap, Advocate.

versus

AWADH NARAYAN Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No. 44875/2016 (exemption)

Exemption is allowed subject to all just exceptions.

RC.REV. 577/2016 and CM No. 44876/2016 (stay)

1. The present revision petition is filed under Section 25(B) (8) of the Delhi Rent control Act, (hereinafter referred to as the DRC Act) to impugn the eviction order dated 03.06.2016 passed by the court of Additional Rent Controller (ARC) under Section 14(1)(e) of the DRC Act.
2. The respondent filed the present eviction petition under Section 14(1)(e) of the DRC Act stating to be the owner and landlord of the premises bearing No. D-104, New Seelampur, Delhi 110053. The petitioner was said to be a tenant in respect of one shop on the ground floor let out sometime in

October 1990. No written agreement was executed. The respondent was said to be paying rent @ Rs. 90/- per month and had paid rent up to September, 2015. The respondent states that the family of the respondent comprises himself who is about 80 year old, his son-Sh. Shiv Shyam Shukla and his wife-Sh. Rama Shukla. The respondent has two grandsons, namely, Rajeev Shukla and Sriram Shukla and one granddaughter, namely, Kalpana who are all residing with the respondent. The grandson of the respondent i.e. Rajeev Shukla who is said to be 28 year old and married has a son and a daughter. The family of Rajeev Shukla is unable to stay with the respondent and is staying in Pratap Garh, District U.P. due to paucity of accommodation. The other grandson, namely, Sh.Sriram Shukla who is aged 28 year old and unmarried is pursuing the course of Chartered Accountancy. The granddaughter of the respondent, namely, Ms.Kalpana is also residing with the respondent on account of some matrimonial dispute with her husband. Besides the above family members, the respondent also has three married daughters who are residing at Pratap Garh, District U.P. and due to paucity of accommodation, are unable to come to Delhi and reside with the respondent.

3. The suit premises comprises the ground floor and first floor. The ground floor comprises one living room, one kitchen and one bathroom. The respondent and his grandson is said to be using the living room for sleeping during the night hours and for the purpose of studying. First floor consists of two rooms, bathroom and toilet out of which one room is used for the purposes of bedroom by the son of the respondent, namely, Sh.Shiv Shyam Shukla and his wife Smt. Rama Shukla. The second room is being used by Sh. Rajiv Shukla and Ms. Kalpana for residential purposes. It is stated that

apart from the said premises, the respondent has no other suitable alternative accommodation.

4. It is further stated that the son of the respondent i.e. Sh.Shiv Shyam Shukla is imparting home tuitions by going to the residence of children. The respondent wants to settle his son-Sh.Shiv Shyam Shukla in the work of running a full time tuition centre in the tenanted premises.

5. The petitioner filed the application under Section 25B(4) of the DRC Act seeking leave to defend the eviction petition. The only argument raised by the petitioner in the application is that the petitioner purchased the property from the respondent in 1976 for a sum of Rs. 5,000/-. In this regard reliance is placed on three documents including power of attorney, agreement to sell and a receipt. Based on these documents, it is urged that the title has passed to the petitioner and hence, the present eviction petition is misconceived. It is also stated that the respondent has left the premises in question and is staying in his native place at Pratap Garh, Dist. U.P. though it is admitted that the son of the respondent is residing in a part of the premises in question.

6. By the impugned order, the ARC rejected the documents relied upon by the petitioner claiming title to the property. It concluded that along with the leave to defend application the only documents filed are photocopies of invitation card, copy of letter, copy of cheque book, etc. No registered conveyance deed in respect of the shop has been filed. The ARC relied upon the property tax receipts of the municipal corporation in favour of the respondent and the ration card issued by the authority in favour of the respondent to show that the status of the respondent is not that of a stranger or a tenant. Further the rent receipt dated 04.10.2015 issued by the

respondent also corroborates the version of the respondent that the petitioner is residing in the premises as a tenant. The ARC also concluded that the petitioner did not dispute that the space occupied by the family of the respondent is less than their requirements. He did not dispute that the respondent wants to settle his son-Sh.Shiv Shyam Shukla by using the shop in question as a tuition centre. He also did not dispute that there is no other reasonable suitable accommodation available to the respondent. Based on the same, the ARC rejected the bald plea of the petitioner about title and dismissed the leave to defend application.

7. It may be noted that the documents relied upon by the petitioner for his title, namely, the agreement to sell, power of attorney and receipt were not filed along with the leave to defend application. Hence, they were not filed within the statutory period of 15 days from the date of service. These documents have been filed subsequently along with an application filed under Section 151 CPC praying that the said title documents may be taken on record and may be considered in support of leave to defend application. The ARC by a separate order dated 03.06.2016 held that the the documents had to be filed within 15 days of service of summons and having not done so, the petitioner cannot at this belated stage be permitted to file the documents. There are no grounds stated as to why these documents were not traceable by the petitioner. The ARC examined the documents and also held that the photocopies of GPA dated 27.07.1976, Agreement to Sell dated 27.07.1976 and receipt dated 27.07.1976 cannot be considered in the absence of any original. The documents being unregistered do not confer title on the petitioner.

8. I have heard the learned counsel for the petitioner. He has reiterated his submissions about the title to the tenanted premises based on the three documents. He further submits that after knowing the intention of the respondent, the petitioner has filed a title suit.

9. 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...”

10. 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.

11. 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:-

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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.”

The above provisions in view of the judgment of the Supreme Court in *Satyawati Sharma(dead) by LRs vs. Union of India & Anr., AIR 2008 SC 3148* apply to commercial premises also.

12. 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.

13. 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.

14. This court in *Deepak Gupta vs. Sushma Aggarwal, 2013 202 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.)”

15. I may hence test the findings recorded by the ARC on the touchstone of the requirement of the parameters stated above for determining as to whether the trial court rightly refused the leave to defend to the petitioner. The only dispute raised is about relationship of landlord and tenant. The petitioner does not dispute that originally the respondent was the owner of the property. The claim is that in 1976 the property was purchased from the respondent for a consideration of Rs.5,000/-.

16. Coming to the documents relied upon by the learned counsel for the petitioner, these documents admittedly have been filed by the petitioner after 15 days from the date of receipt of notice without any proper explanation as to why the documents were not filed in time. The Supreme Court in the case of ***Prithipal Singh vs. Satpal Singh, 2010 (2) SCC 15*** noted as follows:-

“16. From a careful perusal of Sub-section (4) of Section 25B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. This Section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceeding shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition. At this stage, we may also note that in Sub-section (4) of Section 25B of the Rent Act read with Third Schedule, it has been made clear by the Legislature that if the summons of the proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceeding within

15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.

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31. There is another aspect of this matter. It is difficult to understand how an application for leave to contest having been rejected, may be on the ground of delay, could be allowed when it is not disputed by the tenant respondent that no application for condonation of delay could be entertained by the Rent Controller as the provisions of the Limitation Act, 1963 could not be attracted. That apart, we have also carefully examined the special reason given by the tenant/respondent in the original application for leave to contest and the present application after order of eviction was passed. On a reading of these two applications, we find that the same defence was taken by the tenant after the order of eviction was passed and therefore, we do not think that such reason can be considered to be a special reason within the meaning of Order 37 Rule 4 of the Code for allowing the tenant to defend the proceedings if Order 37 Rule 4 of the Code applies to a special Act.”

17. Similar observations were made by this Court relying on the above judgment in RC.Rev.488/2011 dated 24.7.2014 titled ***Mirajuddin vs. Mohd.Habib & Ors.*** Relevant paragraph of the said judgment are as follows:-

“9. Learned counsel for the petitioner wanted to argue orally before this Court by placing reliance upon certain documents by stating that facts have now come to notice which entitle grant of leave to defend, however, this is not permitted in law in view of the judgment of the Supreme Court in RC REV No.488/2011 Page 8 of 9 the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15 and which holds that whatever has to be stated for grant of leave to defend has to be necessarily and only stated

within 15 days in the leave to defend application and the statutory period of 15 days is sacrosanct. Supreme Court has held in the case of Prithipal Singh (supra) that there cannot be condonation of delay of even one day in filing of an application for leave to defend because neither the provision of Section 5 of the Limitation Act, 1963 nor the provisions of CPC, 1908 apply to the exhaustive procedure for bonafide necessity under Section 25 B of the Act. Once the period of 15 days is sacrosanct, it is not permissible to a tenant after the period of 15 days to keep on filing affidavits or documents to urge grounds for seeking leave to defend, and which if permitted to be done, will be violative of the ratio of the judgment of the Supreme Court in the case of Prithipal Singh (supra) that 15 days period for filing of leave to defend application is non-flexible and a fixed period, and every aspect for seeking leave to defend has to be stated within 15 days only and not thereafter. Therefore, the so called subsequent events which are sought to be urged cannot be urged on behalf of the petitioner.”

18. Accordingly the said documents in view of the legal position could not have been taken on record. The ARC by the impugned order has, however, though having noted the said legal position has still taken note of the documents and has rejected the same as being not supportive of the case of the petitioner.

19. I have also carefully gone through the documents placed on record.

20. Only photocopies of some documents have been filed. A perusal of the photocopies does not inspire any confidence. The agreement to sell dated 27.07.1976 is stated to be signed by the petitioner’s predecessor in Urdu and by the respondent in Hindi whereas the document is in English. It merely says that the parties have entered into an agreement to sell and an advance of Rs. 5,000/- has been paid. It only says that the respondent has agreed to sell

the said property and the amount is received. The power of attorney dated 27.07.1976 also gives limited powers to the predecessor of the petitioner, namely, Sh. Ashraf Khan. Sh. Ashraf Khan has died and hence, the power of attorney has ceased to be valid. It only authorizes Sh. Ashraf Khan to file applications, affidavits and to appoint further attorney and to build a shop over the said shop and apply for house tax, electricity and water meter on behalf of the respondent. Other than that, it does not give any other rights.

21. In my opinion, the above documents inspire no confidence. Mere photocopies of unregistered documents have been placed on record. The entire consideration is stated to have been paid in cash. This court in ***Indira B.Rai vs. Bir Singh, 176(2011) DLT 301*** noted that ordinarily in a transaction for sale of immoveable property at least part payment is made by way of demand draft/cheque so as to obtain an authentic documentary proof of the payment.

The Supreme Court in ***Suraj Lamp and Industries Private Limited vs. State of Haryana and Another, (2012) 1 SCC 656*** held that such documents i.e. power of attorney, agreement to sell do not confer any title on the alleged purchaser. Hence, the contention of the petitioner is bogus and make belief. For the purpose of this petition, there was no sale of property by the respondent in favour of the petitioner. The respondent remains the owner of the property.

22. 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).”

23. In view of the above legal position, it is manifest that the respondent is the landlord of the property. There exist the relationship of landlord and tenant. There is no infirmity in the order of the ARC regarding the said finding.

24. On the other two issues, namely, bona fide requirement of the respondent and availability of alternative accommodation to the respondent, there have been no submissions made by the petitioner. No such averment was also made in the application for leave to defend. Accordingly, the ARC has rightly dismissed the application seeking leave to defend and has passed the impugned eviction order. There are no reasons to interfere with the impugned order. The present petition is dismissed. All pending applications also stand dismissed.

JAYANT NATH, J.

DECEMBER 05, 2016
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