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

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*Date of decision:* 11.08.2016

+ RC.REV. 557/2015

VIJAY KHURANA

..... Petitioner

Through Mr.Samrat K. Nigam, Advocate.

versus

SHIVANU MEHTA

..... Respondent

Through Mr.Sunil Kumar and Mr.Abhay Dixit,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (ORAL)**

1. The present revision petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'DRC Act') to challenge the order dated 29.06.2015 passed by the Additional Rent Controller(ARC) in an eviction petition under Section 14(1)(e) of the DRC Act whereby the application of the petitioner seeking leave to defend was dismissed and an eviction order was passed against the petitioner.

2. The respondent filed the eviction petition under Section 14(1)(e) of the DRC Act for bona fide requirement regarding property No. 18 (Shop No.18 B), New Market, Tilak Nagar, New Delhi. It was contended that the tenanted property in question was purchased by the respondent from Smt.Vinod Sharma who was the absolute owner of 3/4<sup>th</sup> undivided share of the property

after receiving a due consideration of Rs. 4,10,000/-. At that time, the petitioner was already a tenant in the said premises and was duly informed about the change of the landlord on 21.12.2009. It was stated that the petitioner had tendered rent of the shop to the predecessor-in-interest i.e. Smt. Vinod Sharma. It was further stated that the respondent is a married person and has a younger brother who is dependent upon him. The respondent does not have any parents and the younger brother is hence dependent upon him. The respondent was earlier doing a job in a confectionary shop from where he had been removed. Now, he wants to start his own business and requires the shop for his own use as well as for the use of his younger brother who is dependent upon him for commercial purposes. The family of the respondent is also disturbed and the wife of the respondent has filed a divorce case against him. Respondent has no other property in Delhi except the tenanted premises.

3. The ARC by the impugned order noted the submissions of the parties and the objections of the petitioner on the issue of landlord-tenant relationship. The ARC noted the contention of the petitioner that the respondent is not the owner of the property. It noted that the original owner was Sh.Uttam Chand and the claim of the petitioner was that the heirs of Sh.Uttam Chand are litigating over the properties and a civil suit for partition is also pending. The plea of the petitioner on this count was rejected on the ground that it is the admitted case of the petitioner that his father was inducted as a tenant by late Sh. Uttam Chand. Hence, the petitioner admitted Sh.Uttam Chand as a landlord. The respondent seeks to derive the title by way of documents such as GPA, Agreement to sell though this may not confer absolute title but would have a better interest than an admitted tenant.

It also noted that the record shows that the petitioner has been paying rent to the predecessor-in-interest of the respondent. In view thereof, it held that the relationship of landlord-tenant stands established.

On the issue of alternative accommodation being available to the respondent, the ARC noted that there is not a single averment in the application for leave to defend by the petitioner about the availability of any alternative and suitable accommodation with the respondent.

Regarding the bona fide requirement, the ARC noted the submissions of the petitioner that the respondent is gainfully employed. It was claimed that the respondent is employed in Kotak Mahindra Bank, Gurgaon and drawing a handsome salary. The brother of the respondent is said to deal in disputed properties and that he is gainfully working as a property agent and is said to work in Tilak Nagar. The said submissions have been denied by the respondent. The ARC held that it is the right of every person to excel in life. If the petitioner and his brother are of the opinion that they want to start their own business from the tenanted premises than merely doing what they are doing at present, would not in any manner modify or dilute the bona fide requirement of the respondent. Based on the above, the ARC dismissed the application for leave to defend and passed an eviction order.

4. I have heard the learned counsel for the parties.

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

(i) That there is no relationship of landlord and tenant between the parties. He submits that the legal heirs of Sh. Uttam Chand have been litigating over the property of Sh. Uttam Chand and a suit is pending adjudication before the Civil Judge and an interim stay has also been

passed directing the parties not to sell or transfer the property. It is further stated that the respondent claims to be the owner of the property based on agreement to sell, GPA which documents do not confer a valid title. Reliance is placed on the judgment of the Supreme Court in the case of *Suraj Lamp & Industries (P) Ltd. vs. State of Haryana & Anr., (2009) 7 SCC 363* to contend that no title has passed to the respondent.

(ii) It is urged that the eviction petition has been filed and allowed in violation of Section 14(6) of the DRC Act. Under Section 14(6), eviction petition cannot be filed within five years of the purchase of the tenanted premises by the new owner.

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/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..."

7. 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.

8. 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.”

9. 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.

10. I may deal with the submissions of the learned counsel for the petitioner. As far as the ownership of the property is concerned, the respondent has given a detailed description of the manner in which the tenanted property has been bought. It is urged that Sh. Uttam Chand expired on 11.11.1988. His wife-Smt. Vidyawati succeeded to the properties vide registered Will. She died on 28.06.1996 leaving behind a Will in favour of her sons, namely, Sh.Virender Kumar, Sh. Surender Kumar, Sh.Rajinder Kumar and Sh. Rajesh Kumar. Sh. Virender Kumar died on 26.06.1998 leaving behind five legal heirs including his wife, namely, Smt.Vinod Sharma. All the children of Shri Virender Kumar and two sons of Smt.Vidyawati, namely, Sh.Surinder Kumar and Rajesh Kumar vide relinquishment deed dated 30.12.2005 registered in the office of the Sub-Registrar relinquished their shares in favour of Smt. Vinod Sharma. Hence, Smt.Vinod Sharma became the absolute owner of 3/4<sup>th</sup> undivided share in the property in question. She sold the property to the respondent after receiving the consideration of Rs.4,10,000/- vide agreement to sell which was duly registered before the Sub-Registrar on 23.12.2009.

11. Admittedly, the petitioner is occupying the property in the capacity of a tenant. He admits that the predecessor of Smt.Vinod Sharma i.e. Shri Uttam Chand was the owner and landlord of the premises. It is not his case

that some other person has intervened and has sought rent as an absolute owner of the property. It is not for the petitioner to challenge the title of the respondent and convert the present proceedings into a title dispute.

12. 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*)”

13. 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*).

14. Hence, the imperfectness of the title of the respondent, if any, would not change the situation. There is no merit in the said contention of the petitioner.

15. Next contention pertains to Section 14(6) of the DRC Act. The same provision reads as follows:-

**“14. Protection of tenant against eviction. –**

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(6) Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1), on the ground specified in clause (e) of the proviso thereto, unless a period of five years have elapsed from the date of the acquisition.”

16. Hence, where a landlord acquires the premises, no petition for recovery of possession under Section 14(1)(e) of the DRC Act would lie unless a period of five years have lapsed from the date of the acquisition of the property. In the present case the agreement to sell was executed in favour of the respondent on 21.12.2009. The present eviction petition has been filed on 22.12.2014 and was listed for the first time on 24.12.2014. Hence, the petition has been filed five year after the purchase of the property. No doubt the documents were registered on 23.12.2009. However, the date of execution of the documents and the date of registration are different. The ARC had placed reliance on Sections 24, 25 and 26 of the Registration Act to conclude that a document which is executed must be presented for registration within four months from the date of its execution. Hence, the date of execution can be different from the date of registration. Accordingly, there is no merit in the present contention of the petitioner about the eviction petition being barred by Section 14(6) of the DRC Act.

17. No other point was urged. There is no merit in the present petition and the same is dismissed.

18. All pending applications, if any, also stand dismissed.

**JAYANT NATH, J.**

**AUGUST 11, 2016/rb**