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

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Date of decision: 08.12.2016

+ RC.REV. 54/2016

RAM AWADH YADAV

..... Petitioner

Through: Mr.Pradeep Kr.Saini, Adv.

versus

RADHEY SHYAM & ORS

..... Respondent

Through: Mr.Neeraj Bhardwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This revision petition is filed under Section 25 (B) 8 of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) seeking to impugn the order dated 28.10.2015 dismissing the application filed by the petitioner seeking leave to defend and passing an eviction order against the petitioner.

2. The respondent/landlord filed the eviction petition under Section 14(6) read with 14(1)(e) and 25B of the DRC Act. The tenanted premises comprises a single room measuring 8 x 10 feet situated on the ground floor of the property bearing No. 1881, Gali No. 3, Kailash Nagar, Delhi. It is the case of the respondents/landlords that they are the lawful owners of the suit property by virtue of a Will executed by the previous owner i.e., their mother in favour of the respondents dated 05.10.2000. The tenanted premises is said to have been let out by the father of the respondents to the petitioner for residential purposes. Only after the death of their mother Smt. Sunderi Devi

in 2002, the respondents state that they have now become the owners of the said property and the rent is payable to them. It is averred that the family of respondents No.1 and 2 i.e. brothers, namely, Sh.Radhey Shyam and Sh.Jagdish Prasad, comprises 14 members including wives, children etc. It is also stated that the petitioner had filed a suit for injunction against Sh. Kundan Lal, the real brother of the respondents for permanent injunction. In the said suit the petitioner is said to have categorically admitted that the petitioner is a tenant in the suit property. However, the said Sh. Kundan Lal made a statement in court in the said suit that he is not the landlord of the property and hence, the petitioner had withdrawn the said suit.

The respondents further stated in the eviction petition that they have retired from their respective Central Government jobs. Respondent No.2 has left his allotted Government accommodation. It is further stated that the respondents have no other property except the above mentioned property and the respondents have no other choice but to take steps to have the said property vacated.

3. The Additional Rent Controller (hereinafter referred to as the ARC) by the impugned order on the issue of landlord-tenant relationship noted that the respondents claim themselves to be the owner and landlord of the tenanted premises by virtue of a Will dated 05.10.2000 of their mother, the registered owner i.e. Smt. Sunderi Devi. The plea of the petitioner was noted namely that it was Sh. Kundan Lal who was the landlord. However, the impugned order also noted that the petitioner had filed a suit against the said Sh. Kundan Lal. Sh. Kundan Lal is the brother of the respondents. He made a statement that he has no concern with the suit property being neither the

owner nor the landlord thereof. The petitioner had withdrawn the suit. The order concludes that the petitioner has failed to raise any triable issue in this regard i.e. the issue of landlord-tenant relationship. On the issue of bona fide requirement and non-availability of reasonable suitable accommodation, the impugned order notes the submission of the petitioner that the respondents own a property at Sonia Vihar. However, it was self-evident that in the entire leave to defend application, no details of the property allegedly owned by the respondents at Sonia Vihar are given. On the other hand, the respondents have stated that the property at Sonia Vihar is the residence of their brother Sh. Kundan Lal. The respondents have placed on record photocopies of various identity proofs of Sh. Kundan Lal and his family showing the address as Sonia Vihar. In the absence of any better particulars being provided by the petitioner, the ARC concluded that nothing viable is stated pertaining to alleged alternative accommodation available with the respondents.

On the issue of bona requirement, the impugned order notes that there is no denial by the petitioner about the number of family members of the respondents. Accordingly, the impugned order holds that the no grounds are made out for grant of leave to defend and dismissed the application of the petitioner and passed the eviction order.

4. I have heard the learned counsel for the parties.
5. Leaned counsel for the petitioner has reiterated his submissions made before the ARC i.e., Firstly that Sh.Kundan Lal used to collect rent from the petitioner and is the landlord. Secondly, it is urged that the respondents have alternative property at Sonia Vihar. No doubt, it is submitted that the

respondents have filed Aadhar Card, Voter ID-Cards, etc of Sh. Kundan Lal showing his address as Sonia Vihar, but it is urged that respondents have not filed any title deed.

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:-

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.”

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. 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.

11. 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.”

12. 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.)”

13. 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.

14. In my opinion, there is no merit in the contentions of the petitioner. The petitioner admits to be a tenant. He, however, pleads that the landlord is Sh.Kundan Lal. The said Shri Kundan Lal has before the court in a previous

suit made a statement that he is neither the owner nor the landlord of the suit property. There is nothing on record to dispute the title of the respondents.

15. It is further averred by the respondents that till 2003 respondents used to regularly visit the suit property and the petitioner has paid the rent to the respondents. Rent receipts have also been given of the other tenants in the neighbouring properties. From 2003-06, it has been stated that the son of respondent No.1, namely, Sh. Anjani Kumar used to visit the property on the first Sunday of every month for collection of the rent. Accordingly, it is clear that the impugned order has rightly concluded that the petitioner is needlessly trying to create a dispute where none exists.

16. It is settled law that the term ‘Owner’ has to be something more than a Tenant. 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*)”

17. 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. (2016) 3 SCC 296*.

18. On the issue of alternative accommodation, in the course of arguments, it was put to the learned counsel for the petitioner as to what is the size of the property at Sonia Vihar. The learned counsel for the petitioner had no answer. Even otherwise, a mere bald contention has been raised claiming that the respondents own a property at Sonia Vihar. The contention is bereft of details. Neither the address nor the area of the property is placed on record. The respondents have on affidavit stated that they do not own any property at Sonia Vihar. It is clear that the contention is a bald allegation not worthy of any consideration.

19. The bona fides of the respondents cannot be disputed. There are 14 members in the family of the respondents who wish to utilize the said premises and the adjoining premises for the residential purposes. They have no alternative accommodation.

20. There are no reasons to differ with the view of the ARC. The present petition is without merit and is dismissed. All pending applications, if any, also stand dismissed.

JAYANT NATH, J

DECEMBER 08, 2016/rb

Corrected and signed on 08.06.2017