

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

% **Date of decision: 19th September, 2017**

+ **RC.REV. No.35/2016 and CM No.2363/2016 (for stay).**

HARI SHANKER RASTOGI

..... Petitioner

Through: Ms. Sangeeta Chandra, Adv.

versus

ALLAHABAD BANK

..... Respondent

Through: Mr. Rajesh Mahendru, Mr. Ashok
Kr. Jain and Mr. Amit, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 17th November, 2015 in Case No.E-450/13/12 of the Court of Additional Rent Controller-1 (Central), Tis Hazari Courts, Delhi) granting leave to the respondent to defend the petition for eviction under Section 14(1)(e) of the Act filed by the petitioner.
2. The petition was entertained and notice thereof ordered to be issued and the Trial Court record requisitioned.
3. Owing to the Trial Court record having been requisitioned in this Court, further proceedings in the petition for eviction pursuant to grant of leave to defend also remain stalled for the last more than 1 ½ years.
4. The counsels have been heard.
5. The petitioner / landlord instituted the petition for eviction of the respondent / tenant from one godown on ground floor bearing private no.01, Municipal No.1728-1729, Mangal Building no.1, Ram Gali, Bhagirath Palace, Chandni Chowk, Delhi – 110 006 in the tenancy of the respondent / tenant for the last several decades at a rent of Rs.312.76p

per month, pleading, (i) that the premises in the tenancy of the respondent / tenant are required by the petitioner / landlord for his *bona fide* need; (ii) that there is no other vacant commercial premises available to the petitioner / landlord; (iii) that the granddaughter of the petitioner / landlord had completed her MBBS and wants to open her own Clinic-cum-Diagnostic Centre; (iv) the premises in the tenancy of the respondent / tenant are suitable for establishing a Clinic-cum-Diagnostic Centre; (v) even otherwise it is commercially viable to open a Clinic-cum-Diagnostic Centre in the said locality; and, (vi) that the documents regarding educational qualification of the granddaughter of the petitioner / landlord were filed along with the petition for eviction.

6. The respondent / tenant applied for leave to defend pleading (i) that the petitioner / landlord had fabricated the ground of eviction; (ii) that the petitioner / landlord had failed to disclose other places available to the petitioner / landlord and as to why those places are not available to the petitioner / landlord; (iii) that the petitioner / landlord is also owner of other properties which are not disclosed; (iv) that the petition for eviction was not *bona fide* and the petitioner / landlord had no *bona fide* requirement; (v) that the tenancy premises are situated at such a place which cannot be suitable for any girl or lady to run any medical clinic; (vi) denying that the petitioner / landlord had any *bona fide* requirement or that no other premises was available to the granddaughter of the petitioner / landlord; (vii) that the petitioner / landlord had not given any details of his family and the petition for eviction was lacking in material particulars; (viii) it had not been explained in the petition for eviction as to why the granddaughter of the petitioner / landlord was not dependent

on her parents; (ix) that the said granddaughter of the petitioner / landlord was not a legal heir of the petitioner / landlord; (x) that the said granddaughter of the petitioner / landlord was not a member of the family of the petitioner / landlord; (xi) that the petitioner / landlord himself is residing in a palatial house; (xii) that the petitioner / landlord had not disclosed his income tax return, wherefrom the details of other properties of the petitioner / landlord could be ascertained; (xiii) that the present status of the granddaughter had not been disclosed; and, (xiv) that the granddaughter is not dependent upon the petitioner / landlord.

7. The petitioner / landlord filed a reply to the application for leave to defend pleading (i) that the house in which he was residing was a joint family residential property and not even in exclusive ownership of the petitioner / landlord; (ii) that the petitioner / landlord had a genuine requirement of the premises in the tenancy of the respondent / tenant to house the Clinic-cum-Diagnostic Centre of his granddaughter; and, (iii) that the granddaughter of the petitioner / landlord namely Dr. Aditi, owing to non-availability of any premises for opening her own clinic, was compelled to seek employment in Ram Manohar Lohia Hospital on contractual basis for 12 months and has thereafter joined Saket City Hospital, again on contractual basis.

8. The learned Additional Rent Controller has, vide the impugned order, granted leave to defend to the respondent / tenant reasoning (i) that during the pendency of consideration of the application for leave to defend an application under Section 151 of the Code of Civil Procedure, 1908 (CPC) was filed in order to prove that Dr. Aditi had got married and it was the contention of the respondent / tenant that she has ceased to

be a member of the family of the petitioner / landlord and no petition under Section 14(1)(e) of the Act on the ground of her requirement could be maintained; (ii) that the petitioner / landlord had miserably failed to prove the members of his family as well as the name and status of the parents of the granddaughter; (iii) it had nowhere been stated, whether the parents of the granddaughter of the petitioner / landlord have any property which can be given by them for the requirement of their daughter; (iv) as per the partition deed itself it is clear that the petitioner / landlord has got various properties and thus it remains unexplained as to how the premises in the tenancy of the respondent / tenant are the only property available on the ground floor which can be used by the granddaughter of the petitioner / landlord; and, (v) thus triable issues arose in respect of alternative properties with the petitioner / landlord and the parents of the granddaughter and as to why Dr. Aditi wants to open her Clinic-cum-Diagnostic Centre in Delhi when she is presently residing in Haryana.

9. I have enquired from the counsel for the respondent / tenant as to where in Haryana is the said granddaughter of the petitioner / landlord residing inasmuch as certain parts of Haryana are within the National Capital Territory of Delhi as well and from which people travel to and fro to the city of Delhi on a daily basis.

10. The counsel for the respondent / tenant states that all that the respondent / tenant knows is that the said granddaughter of the petitioner / landlord had got married but they are not aware of her whereabouts.

11. Per contra, the counsel for the petitioner / landlord states that Dr. Aditi along with her husband is residing in Delhi at Yamuna Apartments,

Flat No.G-204, Alaknanda, New Delhi and has in this regard drawn attention to the rejoinder filed by the petitioner / landlord in this petition. Attention is also drawn to the reply filed by the respondent / tenant to this petition in which the respondent / tenant has given the address of the parents of Dr. Aditi of C-004, Yamuna Apartments, Alaknanda, New Delhi – 110 019 and filed documents in proof thereof and have pleaded the said Dr. Aditi to be residing in flat no. Flat No.G-204, Yamuna Apartments, Alaknanda, New Delhi aforesaid.

12. Supreme Court recently in *Nidhi Vs. Ram Kripal Sharma* (2017) 5 SCC 640 has held that marriage of a female does not come in the way of the petition for eviction filed by her before her marriage for requirement of self and for members of her family and marriage of a female cannot be permitted to defeat the petition for eviction. In that case, the female, post marriage was not even residing in the same city. It was held that it is for the landlord to decide what he wants to do with the property.

13. The contention of the counsel for the respondent / tenant of a married female being not dependent upon her grandfather or father but being dependent upon her husband are of no avail. The respondent / tenant forgets that the female in the present case is admittedly a qualified doctor and the question of her dependency even on her husband does not arise. However qua the concept of requirement for self use under the Rent Control Laws, it has been held in *C.L. Davar Vs. Amar Nath Kapur* MANU/PH/0327/1962, *Labhu Lal Vs. Sandhya Gupta* (2010) 119 DRJ 599 and *Bhupinder Singh Bawa Vs. Asha Devi* (2016) 10 SCC 209 that the dependency is not financial but for the purposes of

accommodation. Thus merely because a family member may be financially independent does not prevent any other family member from seeking eviction of tenant for the requirement of such financially independent member of the family.

14. In fact the order granting leave to defend as also the application for leave to defend filed by the respondent / tenant is not found to be in accordance with law for the reason of having misconstrued the scope of an application for leave to defend. Per Section 25B(5) of the Act, the tenant is entitled to leave to defend only if in the application discloses facts as would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. The phrase “discloses facts” is distinctly different from putting the landlord to proof as has been the tenor of the application for leave to defend and the impugned order which confuses between the application for leave to defend and a written statement. Merely stating that the landlord has not proved this or that, and without the tenant disclosing the facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act, does not entitle the tenant to leave to defend. Thus it was for the respondent / tenant to disclose what all other premises were available to the said granddaughter of the petitioner / landlord for setting up her Clinic-cum-Diagnostic Centre as doctor. Reference in this regard can be made to judgment dated 24th July, 2017 in RC Rev. No.112/2016 titled ***Ram Saroop Vs. Viney Kumar Mahajan*** and judgment dated 2nd August, 2017 in RC Rev. No.352/2017 titled ***Lalta Prasad Vs. Sita Ram***.

15. As far as the contention of the respondent / tenant, of the premises being not suitable for a female is concerned, the said argument is gender

biased which is not befitting the respondent / tenant as a State within the meaning of Article 12 of the Constitution of India.

16. Not only it is the settled law (See *Anil Bajaj Vs. Vinod Ahuja* (2014) 14 SCC 610, *Sait Nagjee Purushotham & Co. Ltd. Vs. Vimalabai Prabhulal* (2005) 8 SCC 252 and *Sarla Ahuja Vs. United India Insurance Co. Ltd.* (1998) 8 SCC 119) that the tenant is not entitled to dictate terms to the landlord and his family members as to how they should arrange their affairs but the respondent, who has been a tenant for decades in the premises ought to know that the locality where the premises are situated is densely populated and having huge demand for medical and diagnostic facilities. Thus the plea, of the premises being not suitable for a female or for a doctor or a diagnostic clinic are not such which can disentitle the landlord from an order of eviction under Section 14(1)(e) of the Act.

17. The counsel for the respondent / tenant has also contended that the essential plea of the said Dr. Aditi being dependent upon the petitioner / landlord for accommodation was lacking in the petition for eviction.

18. The Courts in *J.L. Mehta Vs. Hira Devi* (1970) 6 DLT 484, *Gobind Dass Vs. Kuldeip Singh* ILR (1970) I Delhi 585, *Joginder Pal Vs. Naval Kishore Behal* (2002) 5 SCC 397 and *Kailash Chand Vs. Dharam Das* (2005) 5 SCC 375 have held that the words ‘member of the family’ in the grounds of eviction provided under the various Rent laws, have to be understood and interpreted in the Indian context and in the concept of a family as is prevalent in India. When we apply the said concept, it cannot be said that merely owing to the relationship of grandfather and granddaughter, the granddaughter would not be a

member of the family of the grandfather or that the grandfather would be prevented from seeking eviction of a tenant for accommodating his granddaughter. I have already hereinabove drawn attention to the dicta of the Supreme Court where a female was held to be entitled to continue the petition for eviction on the ground of requirement for self and members of her family, instituted prior to her marriage and it was further held that merely by being married her parents did not cease to be her family.

19. There is thus merit in the petition. The order impugned is not found to be in accordance with law and is set aside.

20. Resultantly, the petition is allowed and the application of the respondent / tenant for leave to defend is dismissed.

21. An order of eviction is axiomatically passed in favour of the petitioner / landlord and against the respondent / tenant with respect to the premises as described in paras 1,2 and 8 in the petition for eviction and as shown in the site plan filed along with the petition for eviction. In accordance with Section 14(7) of the Act, the respondent / tenant is granted six months time to vacate the premises.

The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 19, 2017

‘pp’..

(Corrected and released on 14th October, 2017).