

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

% **Date of decision: 24th July, 2017**

+ **RC. REV. 112/2016 & CMs No.5784/2016 & 17873/2016 (both for stay)**

RAM SAROOP & ORS **Petitioners**

Through: Mr. O.P. Verma, Advs.

Versus

VINEY KUMAR MAHAJAN **Respondent**

Through: Mr. Mr. R.P. Sharma and Mr. Vaibhav Mehra, Advs.

AND

+ **RC. REV. 130/2016 & CMs No.7021/2016 & 18430/2016 (both for stay)**

M/S SUMITI DASS & SONS **Petitioner**

Through: Mr. Sumit Singh, Advs.

Versus

VINAY KUMAR MAHAJAN **Respondent**

Through: Mr. Mr. R.P. Sharma and Mr. Vaibhav Mehra, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. These Rent Control Revision Petitions under Section 25B(8) of the Delhi Rent Control Act, 1958 impugn separate but identical orders, both dated 9th October, 2015, in E No.13/09/08 and E No.14/09/08 respectively of the Court of Additional Rent Controller (ARC), Patiala House Courts, New Delhi of dismissal of applications filed by the petitioner in each of the petitions for leave to defend the petitions for eviction under Section 14(1)(e) of the Act filed by the respondent/landlord and the consequent order of eviction of the petitioners from Shop No.17-B and Shop No.18 respectively, Regal

Building, Connaught Circus, New Delhi wherein the petitioners in both the petitions are old tenants at rent of Rs.150/- per month and Rs.236.10 per month respectively.

2. RC REV. No.112/2016 came up first before this Court on 17th February, 2016 when notice thereof was ordered to be issued.

3. RC REV. No.130/2016 came up first before this Court on 26th February, 2016 when notice thereof also was ordered to be issued.

4. Vide subsequent orders dated 11th May, 2016 and 18th May, 2016 respectively, the execution of the orders of eviction was stayed. Trial Court records were requisitioned in both the cases. On 25th April, 2017, when RC REV. No.112/2016 came up before this Court, the counsel for the petitioner stated that connected matter being RC REV. No.130/2016 was listed on 24th July, 2017 and both the matters be taken up together. The counsels though separate for each of the petitioners have argued the matter as one only and this common judgment disposing of both the petitions is being pronounced since the facts on which the petitions for eviction were filed are the same and the grounds on which leave to defendant was sought are also similar.

5. The respondent/landlord instituted the petitions for eviction against each of the petitioners pleading (i) that he was the owner landlord of the premises in tenancy of each of the petitioner, having purchased the property in shops wherein each of the petitioners was a tenant, by virtue of registered Agreement to Sell, General Power of Attorney and Will all dated 18th May, 1986 in his favour by the previous owners landlords and relying on *Asha M. Jain Vs. Canara Bank* 94 (2001) DLT 841; (ii) that the shops in the tenancy of each of the

petitioners were *bona fide* required for furtherance of the activities of running a cinema theatre; (iii) that after evicting each of the petitioners, the premises in their respective tenancy shall be used for furtherance of activities of Regal Theatre which include expansion of Regal Theatre including setting up of such activities as permissible under the Cinematograph Act, 1951 and the Regulations framed thereunder.

6. The petitioners in RC REV. No.112/2016 sought leave to defend pleading (a) that the tenancy was in the joint name of D.S. Bedi and Ram Saroop and not in the name of M/s D.S. Bedi Ram Saroop against whom the petition for eviction was filed; (b) that the respondent, on the basis of Agreement to Sell, Power of Attorney and Will, even if registered, did not become the owner of the property; (c) that the respondent did not *bona fide* require the premises in the tenancy of the petitioners; (d) that the shop in the tenancy of the petitioners had not been part of Regal Theatre though situated in the same building as Regal Theatre; (e) that besides the shop in the tenancy of the petitioners, there were other shops also in the said property; (f) that the property had not even been mutated in the municipal records in the name of the respondent; (g) that the respondent, in the recent past, had obtained vacant possession of entire first floor which was occupied by Standard Restaurant for several decades; (h) that the respondent however did not retain the said possession or use it for the purposes of Regal Theatre but instead created a lease in favour of McDonalds who is now in occupation and possession thereof; (i) that had the property been required by the respondent, it would not have been let out to McDonalds.

7. As far as the ground urged, of the tenancy being in the individual

name of D.S. Bedi and Ram Saroop or petition against M/s D.S. Bedi Ram Saroop being not maintainable is concerned and which is peculiar to RC REV. No.112/2016, the necessary correction was made before the ARC and the order of eviction was passed against Ram Saroop, Manpreet Singh Bedi and Surinder Pal Singh Bedi. The only argument made during the hearing was that all the legal heirs of D.S. Bedi have not been impleaded.

8. There is no merit in the aforesaid contention. It is not the case that Manpreet Singh Bedi and Surinder Pal Singh Bedi who as legal heirs of D.S. Bedi have preferred this petition do not represent all the legal heirs of D.S. Bedi. It has been held by the Supreme Court in ***Surayya Begum Vs. Mohd Usman*** (1991) 3 SCC 114 that all the legal heirs of tenant are not required to be impleaded and the legal heirs on record represent the other legal heirs as well.

9. The petitioner in RC REV. No.130/2016 sought leave to defend pleading (i) that the entire building in which shop in the tenancy of the petitioner is situated is in possession of the respondent; (ii) that the respondent is running a cinema hall in the said building and earning crores of rupees; (iii) that his requirement is thus not *bona fide*; (iv) that the respondent is not only in the business of running Regal Cinema but has other businesses also; (v) that there are other shops also in the building; (vi) that the accommodation already in possession of the respondent in the building is sufficient for use of the respondent; (vii) that the respondent has not disclosed as to when the need for the premises arose.

10. Though replies were filed by the respondent to the applications for

leave to defendant and to which rejoinders were filed but need to go therein to is not felt.

11. The counsels for the petitioners/tenants have raised only three arguments. Firstly, it is contended that *Asha M. Jain* supra relying whereon the respondent claims to be the owner stands overruled in *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana* (2012) 1 SCC 656 and thus the respondent cannot be said to be the owner. Secondly, it is argued that the conduct of the respondent of having earlier obtained possession from Standard Restaurant which was also an old tenant in the first floor of the property and having let out the same to McDonalds showed that the respondent had no requirement. Thirdly, it is urged that a petition for eviction was also filed against tenant of another shop namely M/s D. Vaish & Sons but which has been withdrawn.

12. I may notice that the third argument aforesaid has no basis in the application for leave to defend of either of the petitioners/tenants and no credence can be given thereto.

13. As far as the first of the aforesaid arguments is concerned, though certainly *Asha M. Jain* supra overruled by *Suraj Lamp & Industries Pvt. Ltd.* supra but the learned ARC also in concluding the respondent to be the owner did not rely upon the said judgment. Again, though undoubtedly documents like Agreement to Sell, Power of Attorney and Will with respect to a property are not documents of title to property but Supreme Court in *Shanti Sharma Vs. Ved Prabha* (1987) 4 SCC 193 has held that the requirement of ‘ownership’ in Section 14(1)(e) of the Act is not of ‘absolute ownership’ but of “something more than a tenant”. In the present case, though the petitioners/tenants have

contended that the documents of Agreement to Sell etc. do not create ownership but otherwise in their applications for leave to defend have admitted that it is the respondent who obtained possession from Standard Restaurant, tenant on the first floor; that it is the respondent who has let out the first floor to McDonalds; that it is the respondent who is running the business of Regal Cinema/Regal Theatre; that the respondent besides the Regal Theatre also has number of other Theatres in Jammu, Faridabad and Delhi. It is also not the case of the petitioners/tenants that besides the respondent, any other person has been claiming to be the owner or controverting the claim of the respondent to rent of the premises. In the said state of affairs, the respondent certainly satisfies the test of ownership within the meaning of Section 14(1)(e) of the Act.

14. As far as the plea of Standard Restaurant is concerned, the same is bereft of all particulars whatsoever. The petitioners/tenants, in their applications for leave to defend, have not pleaded the month or even the year in which Standard Restaurant shifted from the premises and when in its place McDonalds was inducted. Requirement keeps on changing from time to time and without the petitioners/tenants disclosing facts to show that a premises available at the time of requirement was not put to self use, the same cannot constitute a ground of eviction. Being a resident of Delhi and in proximity of Connaught Place area and my memory being of Standard Restaurant having shut down more than a decade back, during the hearing, I have asked from the counsel for the petitioners/tenants, when did Standard Restaurant on the first floor of the building shut down.

15. The counsel for the petitioners/tenants vaguely states that it shut

down 4-5 years ago.

16. The counsel for the respondent/landlords states that it was 20 years ago.

17. The counsel for the petitioners/tenants could not rebut.

18. If leave to defend were to be granted on such vague pleas, the same would defeat the legislative intent of inserting Section 25B in the Rent Act as summary procedure for dealing with petitions for eviction on the ground of requirement of the premises by the landlord for his own use. A tenant, to be entitled to leave to defend has to disclose facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. It is only such facts which when proved would so disentitle the landlord which can entitle the tenant to leave to defend. Evidence in proof of such facts has to be confined to the pleas and cannot be beyond the pleas. If the tenant is unable to make specific pleas, the Court cannot grant leave to defend on the premise that he will improve his case during trial. Leave to defend is not to be granted to allow to the tenant time to improve his case.

19. Supreme Court in ***Baldev Singh Bajwa Vs. Monish Saini*** (2005) 12 SCC 778, in the context of summary procedure under the East Punjab Urban Rent Restriction Act, 1949 held that a heavy burden lies on the tenant and the tenant is called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or *bona fide* requirement of the landlord. A mere assertion on the part of the tenant was held to be not sufficient. Similarly, in

Rajender Kumar Sharma Vs. Leela Wati (2008) 155 DLT 383 it was held that Section 25B was inserted as a special provision for eviction of the tenants in respect of specified category of cases as provided therein; where a landlord seeks eviction on the basis of *bona fide* necessity, a summary procedure is provided and the tenant has to seek leave to defend disclosing such facts which disentitle the landlord from seeking eviction; where a tenant, in leave to defend, pleads preposterous propositions and makes such averments which are palpably false and the landlord in his reply to leave to defend is able to show the said falsity, the Controller is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it. Again, in ***Ramesh Chand Vs. Uganti Devi*** (2009) 157 DLT 450, it was held that mere assertions do not raise any triable issue and if these bald assertions were entertained, then every tenant would get away with leave to defend, defeating the intent of legislature. It was further held that only in those cases leave to defend can be granted where Controller finds some substance in the issues raised by the tenant. I have also taken the same view in ***Sarwan Das Bange Vs. Ram Prakash*** (2010) 167 DLT 80.

20. Supreme Court in ***Busching Schmitz Private Limited Vs. P.T. Menghani*** (1977) 2 SCC 835 held that Controller's power to give leave to contest is cribbed by the condition that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in Section 14(1)(e) of the Act; disclosure of facts is a *sine qua non* for grant of leave. It was further held in ***Kewal Singh Vs.***

Lajwanti (1980) 1 SCC 290 that it is a salutary provision in order to prevent frivolous pleas taken by the tenants to avoid eviction. In *Precision Steel & Engineering Works Vs. Prem Deva Niranjana Deva Tayal* (1982) 3 SCC 270 it was further expanded that while browsing through the affidavit, if there emerges averment of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted; however leave to contest should not be granted unless the affidavit discloses such facts. Ultimately in *Prithipal Singh Vs. Satpal Singh* (2010) 2 SCC 15 it was held that the dominant object of insertion of Section 25B is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated *inter alia* by Section 14(1)(e) and for avoiding unusual dilatory process provided otherwise by the Rent Act and the application of Order XXXVII Rule 4 of the Code of Civil Procedure, 1908 (CPC) to Section 25B in force till prior thereto, was held to be bad.

21. I am afraid making of vague pleas in the application for leave to defend and affidavit accompanying the same, without giving any particulars, cannot be said to be disclosing facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act.

22. I may notice that the respondent/landlord in his reply to leave to defend has pleaded that the first floor where Standard Restaurant was functioning is a separate property not part of the Regal Cinema.

23. That brings me to another argument urged at this stage, of sanctioned plan having not been placed on record.

24. Again, judicial notice can be taken of and it was in news that

Regal Cinema, after running/operating continuously for 84 years, shut down on 31st March, 2017 to return as a multiplex. Therefrom, it cannot be said that the requirement pleading which eviction of the petitioners has been sought is false. In this context, it may also be noticed that even if the first floor where Standard Restaurant was situated was part of Regal Cinema and even if the Standard Restaurant had vacated the premises 4-5 years ago, as today stated by the counsel for the petitioners/tenants, even then at that time there was no plan for renovation/re-development of Regal Theatre and pleading which the petitions for eviction of the petitioners/tenants have been filed.

25. For this reason also, it cannot be said that the orders of the learned ARC requires any interference in exercise of powers under Section 25B(8) of the Act.

26. No other ground has been urged.

27. There is no merit in the petitions, which are dismissed.

28. No costs.

29. The Trial Court file requisitioned in this Court be returned forthwith.

RAJIV SAHAI ENDLAW, J.

JULY 24, 2017

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(Corrected and released on 4th October, 2017)