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

Date of decision: 28th February, 2017

+ RC.REV. 231/2016 & CM Nos.41461-462/2016

ANIL PANDHOH

..... Petitioner

Through Ms.Anisha Jain & Mr.Nitin Jain,
Advocates

versus

KAMLESH NAGPAL AND ORS.

..... Respondents

Through Mr.P.K.Rawal & Mr.Tarun Agarwal,
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 the 'DRC Act'*) seeking to impugn the order of eviction dated 12.02.2016 passed by the Additional Rent Controller (*hereinafter referred to as the 'ARC'*) under Section 14(1)(e) of the DRC Act.

2. The respondents/landlords have filed the present petition for eviction of the petitioner regarding shop No.9, Nala Market, Patel Nagar, New Delhi. The shop was initially allotted to Late Sh.Amar Nath Nagpal. After the death of Sh.Amar Nath Nagpal, the property devolved upon his legal heirs. A family settlement took place in 2005. Hence, the respondents claim title to the property being the legal heirs of Late Sh.Amar Nath Nagpal. The ground floor of the property has four shops. It is stated that tenanted shop is required by the respondents for running of the business for the son of respondent No.3 i.e. Sh.Deepak Nagpal and for starting the business of respondent No.6

Ms.Swinky Nagpal as they do not have any accommodation to start their own business. The said Deepak Nagpal is said to have no commercial place to run his business of property dealer; because of which he is under compulsion to do the same through phone. Respondent No.6 Ms.Swinky Nagpal is doing her chartered accountancy course and she wishes to start her own boutique business and does not want to be dependent upon her mother. The mother of respondent No.6 and respondent No.6 do not own any other commercial or residential property which is available. They have rights in the shop in Shalimar Bagh from where respondent No.5 mother of respondent No.6 is running a Restaurant. Therefore, the tenanted property is required by her for starting a boutique. Similarly, neither respondent No.3 nor his son owns any commercial property.

3. The petitioner filed his application seeking leave to defend. The prime contention that has been urged before this court and that has been raised in the application seeking leave to defend is that the petitioner's father Sh.Chaman Lal Pandhoh entered into an Agreement to Sell dated 19.05.1995 with the respondents/predecessor. Payment of earnest money of Rs.10,000/- has been made vide cheque bearing No.092512 dated 23.05.1992 drawn on Bank of India. It is further stated that pursuant to part performance of the Agreement to Sell and receipt dated 19.05.1995 the status of the petitioner changed in the tenanted shop from that of a tenant to a bonafide purchaser and tenancy expressly ceased. It was further stated that the predecessor of the petitioner was considered as purchaser-in-possession. Further, it is stated that the respondents also never raised any demand for rent as both the parties had agreed to abide by the contract.

4. The ARC by the impugned order noted that there is serious doubt as

to whether predecessor of the petitioner was occupying the premises as owner or in part performance of the Agreement to Sell. This fact cannot be concluded from the alleged Agreement to Sell. It further noted that unless there is a registered document of sale in favour of the petitioner, title of the property would not get divested from the vendor and he would remain owner. Hence, it concluded that the petitioner did not acquire title to the property and defence raised is sham and does not raise any triable issue.

On alternative accommodation, it noted the submission of the petitioner about the sufficient accommodation being available with the respondents at property No.30/13, Old Rajinder Nagar, New Delhi and about the alleged four shops at Shalimar Bagh, Delhi. The ARC noted the submission of the respondents that the property at Shalimar Bagh, Delhi is suitable for respondent No.6 to open a boutique shop as it is near her residence. This submission of the petitioner was rejected by the ARC holding that no triable issue is raised.

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

6. The learned counsel for the petitioner has stressed that in view of the Agreement to Sell entered into with the respondents, there is no relationship of landlord and tenant between the parties. She relied upon judgments of the Supreme Court in the cases of *R.Kanthimathi & Ors. v. Mrs.Beatrice Xavier, AIR 2003 SCC 4149* and *Manoj Kumar v. Bhihari Lal (Dead) by LRs., (2001) 4 SCC 655*. Hence, she submits that the impugned order is erroneous as the application for leave to defend has been wrongly dismissed.

7. The learned counsel for the respondents has stressed that the Agreement to sell is of 1995. At best, a sum of Rs.10,000/- was paid out of the agreed sale consideration of Rs.3.00 lacs. He submits that thereafter this

amount had been refunded to the petitioner and no rights survive in favour of the petitioner whatsoever.

8. 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...”

9. 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.

10. 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.”

The above provisions would 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.

11. 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.

12. 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.

13. The Supreme Court in *Precision Steel & Engineering Works and Another vs. Prem Deva Niranjana Deva Tayal*, AIR 1982 SC 1518 in para 22 held as follows:-

22. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in Sub-section (5) of Section 25B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts-no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant 'leave because the statute says on disclosure of such facts the Controller shall grant leave'. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.”

14. 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.”

15. Learned counsel appearing for the petitioner has vehemently argued that in view of the fact that in the present case an Agreement to Sell was executed between the parties and part consideration was paid to the respondent/landlord the relationship of landlord tenant has ceased to exist.

16. I may have a look at the judgments relied upon by the learned counsel for the petitioner. In *Manoj Kumar v. Bhihari Lal (Dead) by LRs.* (supra) the facts were that the landlord and tenants entered into an Agreement to Sell. Subsequently, the sale deed could not be executed and the sum received towards consideration was returned. However, the tenant continued to

occupy the premises. The landlord sought possession of the property and sought appropriate order of eviction. A petition was filed under Section 14(1)(e) of the DRC Act. It was in those facts, the Supreme Court held as follows:

“12. Coming to the order passed by the Additional Rent Controller, as noted earlier, he proceeded on the assumption that the appellant had not denied the relationship of landlord and tenant and in fact had admitted all the ingredients for establishing a case under Section 14(1)(e) of the Act. The impression was totally erroneous, based on a mis-reading and mis-construction of the petition filed by the appellant seeking leave to contest. On perusal of the petition, it is clear to us that what the appellant had pleaded was that there was no relationship of landlord and tenant between the parties inasmuch as he had been put in possession of the premises on the basis of the agreement to sell the property to him and not as a tenant. Unfortunately, the Additional Rent Controller failed to read the petition and the affidavit correctly which resulted in the mis-conceived idea about the case of the appellant. This mis-conception vitiated the entire order. It is unfortunate that the High Court failed to notice this manifest error in the order of the Additional Rent Controller and disposed of the Revision Petition by merely granting leave to the appellant to approach the Civil Court for appropriate interim order in the suits filed by him. We are constrained to observe that the manner of disposal of the case by the High Court was rather superficial. The order of the Additional Rent Controller which is manifestly erroneous should not have been allowed to stand.”

17. In *R.Kanthimathi & Ors. v. Mrs.Beatrice Xavier*(supra), the facts were that a question was posed whether on the execution of agreement to sell by the landlord with the tenant and landlord having received substantial portion of the sale consideration, the relationship of landlord-tenant would cease and fresh rights and obligation flow under the agreement? In that case,

the Supreme Court held as follows:

“6. Any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. Earlier when appellants were inducted into tenancy it only means both agreed that their relations is to be that of a landlord and tenant. Later when landlord decides to sell this property to the tenant and tenant agreed by entering into agreement they by their positive act changed their relationship as purchaser and seller. When seller-landlord accepts sum he actually acts under this agreement. This acceptance preceded by agreement of sale changes their relationship. This is how they intended. Once accepting such a change then their relationship of landlord tenant ceases.

7. This Court in *Arjunlal Bhatt Mall Gothani v. Girish Chandra Dutta*: AIR1973SC2256 held as under:

The appellants were tenants in the premises of the respondent-landlord and three suits, including an eviction suit, were pending against them. By an agreement between the appellants and the respondent, the respondent agreed to sell the whole property to the appellants for a certain sum to be paid to him by equal installments. Clause 5 of the agreement provided that in case of default of any installment, the agreement for sale would stand cancelled and if the purchasers failed to pay the defaulted installments within one month's notice the payments made would stand forfeited and purchasers would make over possession of the property to the vendor.

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Under Clause (5) of the agreement the question of giving notice arises only if the vendor wanted to forfeit the installments paid by the purchaser. Not even one installment having been paid the question of forfeiture does arise and no notice was necessary for cancelling agreement. It stood automatically cancelled. It was sought to be argued before us that once the agreement stood

cancelled the appellants stood restored to their original position as tenants and the suit could not be filed without giving notice under the Transfer of Property Act. We are of opinion that when the agreement, D/ June 7, 1959 was entered into the old relationship of landlord and tenant came to an end. The rights and liabilities of the parties have to be worked out on the basis of that agreement.

This decision clearly spells out that once there is agreement of sale between a land lord and a tenant, the old relationship as such comes to an end. It goes on to record that even after the cancellation of such agreement of sale the status of tenant is not restored as such. In other words, on the date of execution of the aforesaid agreement of sale their status as that of landlord and tenant changed into a new status as that of a purchaser and a seller.”

18. The legal position that follows from above two judgments of the Supreme Court is that pursuant to an Agreement to Sell that may be executed between the landlord and tenant whereby the tenant agrees to purchase the tenanted property from the landlord, depending upon the terms and conditions of the Agreement to Sell, the jural relationship between the two parties may change and that relationship of landlord- tenant may normally come to an end and even after cancellation of the Agreement to Sell the status of a tenant may not necessarily be restored.

19. I may come to the facts of the present case. The petitioner in his application for leave to defend has vehemently pleaded that he agreed to purchase the property from the respondents and paid an earnest sum of Rs.10,000/- vide cheque dated 23.5.1992 drawn on Bank of India. On 25.3.1993 one of the co-owners Smt. Motia Devi expired. It is the case of the petitioner that certain family arrangements/agreements took place in the

family of the respondents to enable conclusion of the transaction with the petitioner. Thereafter in 1995 it is stated that LRs of Late Shri Amar Nath Nagpal entered into an Agreement to Sell and a further sum of Rs.50,000/- was paid to the respondents. It is also claimed that it was expressly agreed that the purchaser, namely, Shri Chaman Lal Pandhoh the father of the petitioner shall cease to be a tenant of the property and was not liable to pay rent. It is pleaded that in view of the written contract the status of the petitioner changed from that of a tenant to a bonafide purchaser. It is urged that no rent has been paid thereafter.

20. The respondents in their reply to the said application for leave to defend filed by the petitioner have not denied that an Agreement to Sell was entered into by Smt. Motia Devi with the father of the petitioner on 23.5.1992. However, it is their case that the Agreement dated 23.5.1992 stands frustrated and the money has been taken back by the father of the petitioner leading to cancellation of the Agreement and no right survived in favour of the parties. It is also pleaded that existence of such an Agreement does not terminate the relationship of landlord and tenant between the parties.

21. The ARC in the impugned order, however, did not believe the version of the petitioner noting that in the Agreement to Sell relied upon by the petitioner there is an insertion regarding the occupation of the premises as an owner/in part performance of the Agreement to Sell. These words are not in the copy of the Agreement to Sell filed by the respondents. The ARC concluded that this insertion appears to be added later on with an intent to give an impression that the landlord tenant relationship has come to an end. The reliance of the petitioner on section 53A of the Transfer of Property Act

was rejected. The ARC also concluded that the petitioner does not acquire title to the property and ownership vests with the respondents. The contention of the petitioner that possession was agreed to be delivered in part performance of the Agreement to Sell was held to be not borne from a bare reading of the Agreement to Sell. The impugned order also noted that the terms necessary to construe a valid agreement to sell do not exist and did not believe the version of the petitioner and dismissed the application of the petitioner seeking leave to defend.

22. The facts as pleaded above show that the case of the petitioner is that there is no relationship of landlord and tenant between the parties inasmuch as the petitioner has possession of the premises on the basis of the Agreement to Sell and not as a tenant. He also states that he has not paid any rent to the respondents after execution of the Agreement to Sell. As per legal position the jural relationship between the two persons is created by Agreement and can be changed through agreement. In my opinion, by raising the contentions the petitioner/tenant has raised facts/given particulars which require to be established by evidence and which if established would disentitle the landlord/respondent from an order of eviction.

No doubt, the case of the respondent/landlord is that the advance that was received has been paid back to the petitioner. Even otherwise, the Agreement is stale and the rights, if any, that the petitioner had stand forfeited on account of his conduct and lapse of time. However, it is manifest that the contentions and documents placed on record do warrant an opportunity to the tenant to lead evidence in the facts of this case. The impugned order has been passed with material illegalities.

23. It may, however, be noted that the stand of the petitioner/tenant is

quite clear that he has ceased to be a tenant and is occupying the premises on the strength of the Agreement to Sell. The Supreme Court in ***R.Kanthimathi & Ors. v. Mrs.Beatrice Xavier (supra)*** has noted that if the parties in the Agreement to Sell do not perform the obligations, remedy can be availed, as permissible in law. Such alternative legal option is always open to the respondent.

24. Accordingly, it is manifest that the impugned order suffers from material illegality. Sufficient facts had been pleaded to warrant that the application for leave to defend filed be allowed. Accordingly, I quash the impugned order and allow the application of the petitioner under section 25(B)(4) of the DRC Act granting leave to defend to the petitioner. Parties to appear before the ARC for further proceedings on 3.8.2017.

25. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J.

FEBRUARY 28, 2017/v
Corrected and signed on 06.06.2017