

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

% **Date of decision: 04, July, 2017**

+ **CM(M) 573/2016 & CM No.21993/2016 (for stay)**

NEELIMA SINGH

..... Petitioner

Through: Mr. Sanjay K. Chadha, Adv.

Versus

ASHIT KUMAR BHATTACHARYA

..... Respondent

Through: Mr. Sanjeet Singh and Ms.
Yamini Khurana, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns the order dated 6th November, 2015 of the Rent Control Tribunal (RCT) allowing the first appeal preferred by the respondent/landlord against the order dated 5th July, 2011 of the Additional Rent Controller (ARC) dismissing as abated the petition for eviction filed by the respondent/landlord under Section 14(1)(d) of the Delhi Rent Control (DRC) Act, 1958 against the husband of the present petitioner.

2. On the demise of the husband of the present petitioner and against whom the respondent/landlord had filed the petition under Section 14(1)(d) for eviction, the respondent/landlord filed an application under Section 2(1)(iii) of the DRC Act to declare that the natural heirs of the tenant against whom the petition for eviction was filed had not inherited the tenancy rights. It was *inter alia* the plea in the application that the

tenancy of the deceased tenant had been determined in his lifetime and he was continuing as a statutory tenant and his heirs were thus not entitled to retain the tenanted premises. Notice of the said application was issued to the present petitioner only, being the wife of the deceased tenant.

3. The present petitioner being the wife of the deceased tenant contested the aforesaid position.

4. The ARC, vide order dated 5th July, 2011, dismissed the said application holding that no such declaration could be granted.

5. As a consequence, the eviction petition was also dismissed as abated for the reason that no steps had been taken to substitute the legal heirs of the deceased tenant.

6. The respondent/landlord preferred the appeal as aforesaid to the RCT. The RCT, vide the impugned order dated 6th November, 2015 has *inter alia* held (i) that the application aforesaid under Section 2(1)(iii) of the DRC Act had been preferred within time; (ii) that the respondent/landlord was not seeking any formal decree of declaration and merely wanted to continue with the eviction petition till its logical end; (iii) that the application under Section 2(1)(iii) of the DRC Act when considered as a whole disclosed that the respondent/landlord had prayed that notice be issued to the present petitioner being the wife of the deceased tenant and the present petitioner should file her reply showing her stand; otherwise, eviction order be passed; (iv) that the respondent/landlord just intended to bring her on record and wanted her

to file her reply and did not desire any formal decree of declaration; (v) that the ARC adopted a hypertechnical approach which was not called for; (vi) that the procedural laws are to facilitate promotion of justice and not to hinder the process of justice; (vii) that merely because in the nomenclature of the application, it was not cited as under Order XXII of the Code of Civil Procedure, 1908 (CPC) should not result in penalising the landlord; and, (viii) that a fair opportunity should be provided to the respondent landlord to lead evidence to show that the wife of the deceased tenant was not financially dependent on him.

7. The RCT accordingly allowed the appeal and directed the ARC to restore the petition and to proceed as per law.

8. Aggrieved from the order aforesaid, this petition has been filed and in which vide order dated 31st May, 2016, the operation of the order of the RCT was stayed. Resultantly, the ARC has not proceeded with the matter pursuant to remand by the RCT.

9. This is a classic case where both counsels are litigating contrary to the interest of their respective clients. While the interest of the present petitioner should be to assert that she has inherited the tenancy rights and is entitled to contest the petition, the interest of the respondent/landlord, if there is any truth in his averments in the application under Section 2(1)(iii), should be to stop pursuing the eviction petition and file a suit for possession against the present petitioner averring that she has not inherited the tenancy rights. Needless to state that if the petitioner has inherited the tenancy rights, she is a tenant protected by the DRC Act and no order of her eviction can be passed unless one of the grounds

provided under Section 14 thereof is satisfied; else, before the Civil Court in a suit for possession, a decree for possession can be obtained by proving that none of the legal heirs of the deceased tenant have inherited the tenancy rights.

10. I have as such enquired directly from the counsel for the petitioner, whether the petitioner wants it to be held that she has not inherited the tenancy rights and in which case the respondent/landlord will have liberty to institute a suit in the Civil Court for recovery of possession of premises in her occupation.

11. Surprisingly, the counsel for the petitioner states that he will have to obtain instructions from his client who is not present.

12. The same direct question has then been asked from the counsel for the respondent/landlord i.e. whether according to him the wife of the deceased tenant has inherited the tenancy rights or according to him the tenancy rights have not been inherited. The tenancy premises being residential in nature, if according to the respondent/landlord, the tenancy rights have not been inherited, the remedy of the respondent/landlord is not to first obtain a declaration to this effect from the ARC and to thereafter file a civil suit for possession; in fact, the ARC would have no jurisdiction also to grant such a declaration.

13. Though the stand of the respondent/landlord in his application under Section 2(1)(iii) supra was of the tenancy rights having not been inherited, surprisingly the counsel for the respondent/landlord today states that the respondent/landlord accepts the petitioner as a tenant

under the respondent/landlord in the premises. Even though the said stand is contrary to what was pleaded in the application under Section 2(1)(iii) but is to the benefit of the present petitioner.

14. However, the present petitioner does not accept the same.

15. The counsel for the petitioner has also urged (a) that no application for substitution even of the petitioner having been filed, the petitioner could not have been substituted; and, (b) that the deceased tenant besides leaving the petitioner as his wife has also left two sons and who have not been impleaded.

16. The counsel for the respondent/landlord states that it is the own case of the petitioner that the deceased tenant had disowned one of the sons and that the other son was not financially dependent upon the husband of the petitioner. He adds that even the petitioner, being the wife, was not financially dependent on her husband.

17. If that is so then petitioner also will have no tenancy rights after one year. However the respondent/landlord is being graceful and still accepts the petitioner as a tenant. Unfortunately, the grace is not accepted.

18. As far as the contention of the counsel for the petitioner of the sons of deceased tenant having not been impleaded is concerned, it will be open to the petitioner to, before the ARC, take a stand to the said effect and if the respondent/landlord does not choose to implead the sons, will be doing so at his own risk. However, that is no ground to not substitute at least the present petitioner as one of the heirs.

19. Before parting, reference may be made to the judgment of the 5 Judges bench of this Court in *Shri. Kedar Nath Vs Smt. Mohani Devi* AIR 1974 Del 171 (FB). The same situation as has arisen herein was for consideration before the Full Bench. There also the contention was that it being the case of the landlord that tenancy rights of the deceased tenant had not been inherited by his legal representatives, there was no need to substitute the legal representatives in the proceedings before the Rent Controller in as much as without the relationship of landlord and tenant, no order of eviction could be passed. The Full Bench, overruling an earlier three Judges Full Bench, held i) a legal representative is appointed merely in order that the suit or the proceeding may proceed and a decision is arrived at; ii) it is the original parties' rights and disabilities that have to be considered and the mere fact that the legal representative could not personally claim the right or could not personally be subjected to that disability, is not sufficient to render the proceedings initiated by the landlord liable to be dismissed; iii) it is the obligation of the deceased tenant and not that of the heirs who have been brought on record as legal representatives and in whose hands the possession of the property now is; iv) the relief granted by the Controller after the death of the tenant against his legal representatives would not become nugatory; v) thus if the statutory tenant dies before an order of eviction is passed, the basis of the claim of the landlord for eviction does not shift from the proviso to Section 14(1) to that of his general title; vi) the legal representatives of the deceased tenant have to be brought on record to enable them to defend proceedings on behalf of the deceased tenant; vii) jurisdiction of the Controller to deal with the applications for

eviction continue unaffected and the competence of the application for eviction as originally filed remain unimpaired.

20. It would thus be seen that the application of the respondent/landlord before the ARC, in the present case, was in consonance with the dicta aforesaid of the Full Bench and which has been ignored by the ARC as well by the RCT.

21. No error can be found in the reasoning of the RCT of the application under Section 2(l)(iii) when read as a whole being in fact for substitution, especially when it is to the advantage of the petitioner but which the petitioner is not advised to understand.

22. With the hope that better sense will prevail, the petition is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 04, 2017

Bs (corrected and released on 1st August, 2017)