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

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Date of Decision: May 23, 2017

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RC.Rev.560/2016

SOHAN LAL & ANR.

..... Petitioners

Through: Ch.Ranjit Singh & Mr.Kapil Anand,
Advocates.

versus

MOHAN LAL KHATTAR (DECEASED)

THR. LRS

..... Respondent

Through: Mr.V.K.Garg, Senior Advocate
instructed by Mr.Sudhir Naagar,
Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CM No.43975/2016

1. For the reasons stated in the application, 105 days' delay in filing the petition is condoned.
2. Application is disposed of.

RC.Rev.No.560/2016

1. The petitioners, who have been residing as tenant in property No.3808, Ram Nath Patwa Street, Paharganj, New Delhi-110055 (privately numbered as 3808/2, Ram Nath Patwa Street, Paharganj, New Delhi-110055), have invoked the revisional jurisdiction of this Court under Section

25(B) (8) of Delhi Rent Control Act assailing the order dated 5th March, 2016 whereby the learned Rent Controller, while dismissing the application under Order IX Rule 7 CPC for setting aside the exparte order, has passed an eviction order in respect of the suit property by invoking the powers vested under Order VIII Rule 10 of Code of Civil Procedure.

2. For purpose of disposal of this Revision Petition, hereinafter the parties would be referred to by their rank in this petition i.e. petitioners/tenants and respondents/landlords.

3. The eviction order has been assailed by the petitioners/tenants inter-alia on the following grounds:-

(i) The provision of Order VIII Rule 10 CPC are not applicable to the Court of Rent Controller for the purpose of filing the written statement.

(ii) The finding of learned Rent Controller granting the leave to defend operates as *res judicata*.

(iii) The respondent/landlord has not led any evidence to prove bonafide requirement.

(iv) Learned Trial Court could not have invoked the provisions of Order VIII Rule 10 CPC for passing the eviction order.

(v) There are two orders of the same date that have been passed on 5th March, 2016, one short order passed at 4.00 pm and the other running into 18 pages. The order running into 18 pages must have been subsequently passed and pre-dated as 05.03.2016.

4. Perusal of the record shows that the eviction petition No.26/2012 was filed by Sh.M.L.Khattar, Advocate under Section 14(1)(e) read with Section 25-B of Delhi Rent Control Act impleading Sh.Sohan Lal and Sh.Om Prakash – both sons of Late Sh.Har Lal as respondents. The bonafide

requirement pleaded in the petition was that the premises under tenancy of the respondents was required by the petitioner for opening a law firm for himself and his three children, who all are practicing advocates.

5. During the pendency of the eviction petition, Sh.M.L.Khattar expired on 24th September, 2013 and his three children were ordered to be substituted as his legal heirs. Since the bonafide need was for purpose of opening a law firm for his children, who are practicing Advocates, the ground to seek eviction continued to exist.

6. Notice of the eviction petition was served on the petitioners/tenants to file application seeking leave to defend raising the following triable issues:-

- (i) The suit property is trust property which could not have been sold.
- (ii) The respondents/landlords have sufficient accommodation and they were also having chambers.
- (iii) The suit property is a piece of land, hence beyond the purview of Delhi Rent Control Act.
- (iv) The application seeking leave to defend was allowed by the learned Rent Controller after noting the following facts:-

(a) In the Civil Suit No.329/2009 filed by M/s Chunna Mal Ram Nath Charitable Trust against Sh.Har Lal – late father of the petitioners/tenants, their father admitted the trust to be owner/landlord in respect of the tenanted premises.

(b) The petitioners/tenants who have stepped into the shoes of their father are estopped from taking a plea contrary to the admission made by their father in Civil Suit No.329/2009.

(c) In the Civil Suit No.329/2009, father of the petitioners/tenants pleaded that the tenanted premises is a well built house which was let out to him, hence the petitioners/tenants cannot claim the same to be a

piece of land.

(d) It is admitted case of the petitioners/tenants that there is a common wall between the tenanted premises and residential premises of the landlord and the tenanted premises.

(e) The respondent/landlord has pleaded that there are four rooms which are being used by him and his three children, who are all practicing advocates but as per the site plan, there were six rooms on the ground floor which in the opinion of learned Rent Controller was sufficient to raise a triable issue so as to grant leave to defend the eviction petition.

7. While granting leave to defend to the petitioners/tenants vide order dated 10th February, 2015 the learned Rent Controller provided thirty days time to the respondents/landlords to file the written statement and adjourned the case for P.E. on 25th March, 2015. It is admitted case of the parties that thereafter the petitioners/tenants failed to appear on the subsequent dates and have been proceeded ex parte.

8. Thereafter the petitioners/tenants filed an application under Order IX Rule 7 CPC for setting aside the ex parte order. While disposing of application under Order IX Rule 7 CPC and noting that written statement has not been filed within the stipulated period, the learned Rent Controller was of the opinion that as relationship of landlord and tenant between the parties exists and the bonafide need to get the tenanted premises vacated for purpose of opening a law firm for three children of late Sh.M.L.Khattar who are practicing advocates, existed even after the death of the respondent Sh.M.L.Khattar, the above facts were not required to be proved and the eviction order was passed.

9. Learned counsel for the petitioners/tenants has submitted that the

impugned order is illegal and may be set aside by this Court in exercise of revisional jurisdiction for the reason that after the case was fixed for evidence, without letting the petitioner to lead any evidence, the eviction order has been passed. It has been further submitted that the learned Rent Controller failed to note that the leave to defend had been granted in this case and the finding of the Court to that extent operates as *res judicata*. Learned counsel for the petitioners/tenants has also submitted that there are two orders of the same date i.e. 5th March, 2016 and the subsequent order running into 18 pages was not dictated in their presence and this order is nothing but an attempt by the learned Rent Controller to cover up the deficiency in the reasoning in the short order dated 5th March, 2016. Hence, this order needs to be set aside.

10. I would like to deal with the last contention first. Undisputedly, there are two orders dated 5th March, 2016 whereby the learned Rent Controller while dismissing the application under Order IX Rule 7 CPC and recording that the written statement has not been filed within the stipulated period was of the view that in the given facts, the eviction order was to be passed without calling for any evidence. The bonafide requirement of the legal heirs of late Sh.M.L.Khattar, Advocate to get the tenanted premises vacated for opening a law firm continued to exist even after the death of their father. A detailed order is also there on record of the same date. It appears that the short order was passed recording the brief facts, summary of the proceedings and the operative portion of the order. But detailed reasons for passing the eviction order have been given by separate order, running into 18 pages. Recording gist of the order in the ordersheet and passing a separate detailed order in itself is no ground requiring interference by this Court in exercise of revisional jurisdiction.

11. The contention raised on behalf of the petitioners/tenants that observations made while allowing the application seeking leave to defend operates as *res judicata* needs to be rejected outrightly for the simple reason that the leave to defend has been granted just on the basis of number of rooms shown in the site plan by the petitioners/tenants. Other facts required to be proved in a petition seeking eviction on the ground of bonafide requirement have been held to be in favour of the landlords on the basis of admissions by their father/predecessor-in-interest in the litigation with the trust in Civil Suit No.329/2009. The learned Trial Court has specifically noted that their predecessor-in-interest i.e. their father Sh.Har Lal admitted the trust to be the owner/landlord in respect of the tenant premises which was not a piece of land but well built house. Learned Rent Controller while disposing of the application seeking leave to defend also noted that death of the petitioner in this case did not put an end to the need of the landlord to have the tenant premises for opening a law firm for his three children who are practicing advocates.

12. Another contention raised on behalf of the petitioner is that learned Rent Controller could not have passed a decree for eviction without asking the petitioner to lead evidence. The contention though appears to be attractive but has to be rejected for the reason that case was ordered to be fixed for evidence by the learned Rent Controller on 10th February, 2015 itself when the leave to defend was granted. The relevant part of the order reads as under:-

‘.....After perusing the site plan, I am of the prima facie view that respondents have raised triable issue that petitioner has sufficient accommodation available with him to meet out his alleged bonafide requirement. The petitioner has also not placed anything on record to prima facie show that his eldest

son Sh.Praveen khattar has taken any property on rent. Hence, leave to defend application of espondent is allowed.

Written statement be filed by respondents within 30 days from today with supply of advance copy of the same to the opposite party.

Put up for filing of replication, if any, and for PE on 25.03.2015. Advance copy of affidavit be supplied to opposite party.'

13. Thus, it is clear that the case was fixed for P.E. under the belief that written statement would be filed by the respondent/tenant. Admittedly, the petitioners/tenants have not filed any written statement within the specified period. Even when the application under Order IX Rule 7 CPC was filed, it was not accompanied by the written statement. The learned Rent Controller passed the eviction order observing as under:-

*'29. To quote Justice Vivian Bose in case titled "**Sangram Singh Vs.Election Tribunal, Kotah**" AIR 1955 SC 425 at p.429 "The code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment for penalties; not a thing designed to trip people up"*

Nonetheless, in the present case, besides non-compliance of direction of Court by filing written statement within thirty days of order dated 10.02.2015, respondents' mala fide intention to delay the proceedings for depriving LR of petitioner late Sh.M.L.Khattar of their genuine and honest need for law firm office is also evident from the frivolous plea of defence which in case allowed will amount to abuse of process of law besides wastage of precious judicial time. Therefore, in my considered opinion, LR of late Sh.M.L.Khattar are entitled to eviction order to be passed under Order VIII Rule 10 CPC in view of respondent' failure to file their written statement within 30 days from order dated 10.02.2015.

30. *Order VIII Rule 10 CPC is re-produced in verbatim for reference:*

“10.Procedure when party fails to present written statement called for by Court. – Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.”

31. *Hence, considering that written statement was filed by respondents on 14.07.2015 after more than 90 days since order dated 10.02.2015 and subsequent to their application under Order IX Rule 7 CPC filed on 22.05.2015 coupled with fact that frivolous pleas have been raised in their written statement none of which constitute any valid defence requiring trial, eviction order is accordingly passed against respondents Sh.Sohan Lal and Sh.Om Prakash in respect of tenanted premises forming part of property bearing no.3808, Ram Nath Patwa Stree, Paharganj, New Delhi-110055 (privately numbered as 3808/2, Ram Patwa Street, paharganj, New Delhi-110055) more specifically shown in red colour in the site plan filed by petitioner. This order shall however not be executed within a period of six months from today as per Section 14(7) of DRC Act.*

File be consigned to record room.'

14. Since the order impugned herein has been passed by the learned Rent Controller invoking the power under Order VIII Rule 10 CPC, the same cannot be termed as having been passed without jurisdiction.

15. The order impugned herein does not suffer from any illegality, infirmity or jurisdictional error.

16. The revision petition is dismissed.

17. A copy of this order be sent to the concerned Court for information and be also given dasti to learned counsel for the parties, as prayed.

CM No.43973/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 23, 2017

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