

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

% **Date of decision: 5th July, 2017**

+ **RC.REV. No.201/2017, CM No.15749/2017 (for stay) and CM No.20796/2017 (for stay).**

ABDUL HAMEED WARSI

..... Petitioner

Through: Mr. S.D. Ansari, Mr. I. Ahmed,
Adv.

versus

ABDUL QADAR

..... Respondent

Through: Mr. Saurav Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25-B of the Delhi Rent Control Act, 1958 impugns the order dated 16th November, 2016 of the Additional Rent Controller of dismissal of application filed by the petitioner / tenant for leave to defend the petition for eviction filed by the respondent / landlord for eviction of the petitioner / tenant from Shop No.1492 on ground floor forming part of property no.1483 – 1492, Ward No.XIV, Gali Chuleh Wali, Sadar Nala Road, Pan Mandi, Sadar Bazar, Delhi – 110006 and consequently passing an order of eviction of the petitioner / tenant.

2. This petition was entertained and notice thereof issued to the respondent. Vide subsequent, also *ex parte* order dated 29th May, 2017, operation of the impugned order was stayed.

3. The counsel for the respondent / landlord appears.

4. The counsel for the petitioner / tenant has been heard at length.

5. The learned Additional Rent Controller in a lucid and well reasoned order has held (i) that there is no merit in the denial by the

petitioner / tenant in the application for leave to defend of being in possession of the shop in question owing to having a lien thereon under a building contract, because of admission of the petitioner of being a tenant under the respondent / landlord in an affidavit filed in another litigation and that owing to the said affidavit filed by the petitioner / tenant he was estopped from denying the relationship of landlord and tenant between himself and the respondent / landlord; (ii) that there is no merit in the plea of the petitioner / tenant in the application for leave to defend of the respondent / landlord being not entitled to maintain the petition for eviction for the reason of being a co-owner thereof and for the reason of non-impleadment of his brother alleged to be the other co-owner as party to the eviction proceedings because the respondent / landlord as a co-owner was entitled to maintain a petition for eviction especially in view of admission by the petitioner / tenant of the relationship of landlord and tenant with the respondent / landlord; (iii) that though the property no. 1483 – 1492, Ward No.XIV, Gali Chuleh Wali, Sadar Nala Road, Pan Mandi, Sadar Bazar, Delhi in a portion whereof the petitioner is a tenant comprises of a number of other shops as well (22 according to the respondent / landlord and 26 according to the petitioner / tenant) but the respondent / landlord had sufficiently explained in the petition for eviction as to which shop or which portion is being used by which other tenant or a family member of the respondent / landlord; the petitioner / tenant on the other hand had made vague averments, without filing any site plan, to contradict the site plan filed by the respondent / landlord; (iv) that similarly there is no merit in the plea of the petitioner / tenant in the application for leave to defend of the

three sons out of the ten sons of the respondent / landlord on the ground of whose requirement the petition for eviction was filed being gainfully employed elsewhere as the petitioner / tenant had failed to state as to what business or profession or vocation the said three sons of the respondent / landlord were carrying or from where were they carrying on commercial activities; (v) that though according to the respondent / landlord the aforesaid three sons were residing with him; according to the petitioner / tenant they were residing separately; even if it was to be held that the said three sons of the respondent / landlord were residing separately, in the absence of any alternative suitable space pleaded for them to carry on their commercial activities, the respondent / landlord could always seek eviction of the petitioner / tenant for the need of his sons who were dependent upon him for accommodation; moreover the petitioner / tenant had not stated from where were the said three sons carrying on their profession or business or what profession or business; (vi) that vague averments without any substance could not form the basis for grant of leave to defend; (vii) that thus there was nothing to contradict that the three sons, pleading whose requirement the respondent / landlord had filed the petition for eviction, were not unemployed or were not in requirement of the shop for carrying on their own commercial activities; (viii) in the absence of plea of any alternative space available to the said three sons of the respondent / landlord, they were dependent upon their father for their need for commercial space; (ix) that though as per the Sale Deed of the property in question the respondent / landlord along with his brother Abdul Majid were the owners but the respondent / landlord had proved that in a suit for

partition, a compromise was arrived at and the respondent / landlord was the landlord of the premises in question; and, (x) that no objection had been filed by the brother of the respondent / landlord namely Abdul Majid to the respondent / landlord filing the petition for eviction against the petitioner / tenant and for this reason also the respondent / landlord was entitled to maintain the petition for eviction.

6. The counsel for the petitioner / tenant has concentrated his arguments on the ground of the respondent / landlord being not entitled to maintain the petition for eviction without impleading his brother Abdul Majid as a party thereto. The counsel for the petitioner / tenant has contended that the principle of a co-owner being entitled to maintain a petition for eviction of a tenant on the ground of *bona fide* requirement would not be available in the present case owing to the suit for partition between the respondent / landlord and his brother Abdul Majid still pending consideration. The counsel for the petitioner / tenant without naming the judgment has argued that there is a judgment of the Supreme Court that when there is a dispute between the co-owners, one of the co-owners cannot maintain a petition for eviction.

7. However the counsel for the petitioner / tenant is unable to show anything on record from which it can be inferred that any such suit for partition between the respondent / landlord and his brother Abdul Majid is still pending consideration. All that he states is that now that notice of the petition has been issued and the counsel for the respondent / landlord is before this Court, he should be asked.

8. The counsel for the respondent / landlord on enquiry states that though a suit is pending before this Court but by an interim order of Justice G. S. Sistani therein the respondent / landlord was granted liberty to file the petition for eviction against the tenants.

9. I have reminded the counsel for the petitioner / tenant of the judgment of the Supreme Court in ***Surayya Begum Vs. Mohd. Usman*** (1991) 3 SCC 114 and he confirms that he was referring to the same judgment.

10. Supreme Court in ***Surayya Begum*** was concerned not with a case of co-owners but with a case of petition for eviction after death of original tenant, impleading only some of the heirs of original tenant as party thereto. The question for adjudication was, whether the order of eviction was non-executable for non-impleadment of some of the heirs of original tenant. It was held that the principle of representation of interest of a person, not impleaded by name in a judicial proceeding, through a named party, is well known; however the same is subject to essential condition that the interest of a person concerned has really been represented by the others – his interest has been looked after in a *bona fide* manner; if there be any clash of interest between the person concerned and his assumed representative, or if the latter due to collusion or for any other reason *mala fide* neglects to defend the case, he cannot be considered to be a representative.

11. Even if the said principle is to be applied, the same would not make the subject petition for eviction by the respondent / landlord alone, without impleading his brother, non-maintainable. Supreme Court, in

Kanta Goel Vs. B.P. Pathak (1977) 2 SCC 814 held that a co-owner is as much an owner of the entire property as any sole owner and that there is no substance in the contention that the absence of other co-owners disentitled a co-owner from suing for eviction. Again, in ***Pal Singh vs. Sunder Singh*** (1989) 1 SCC 444, it was reiterated that when the other co-owner did not object to the eviction, one co-owner could maintain an action for eviction even in the absence of other co-owner. To the same effect are ***Dhannalal Vs. Kalawatibai*** (2002) 6 SCC 16, ***India Umbrella Manufacturing Co. Vs. Bhagabandei Agarwalla (dead) by LRs Savitri Agarwalla*** (2004) 3 SCC 178 (where it was further held that consent of other co-owner is assumed as taken unless it is shown that other co-owner is not agreeable to eject the tenant and the proceedings for ejectment are inspite of disagreement and that the co-owner cannot withdraw the consent midway through the proceeding so as to prejudice other co-owner) and ***Mohinder Prasad Jain Vs. Manohar Lal Jain*** (2006) 2 SCC 724. In the present case though the brother of the respondent / landlord has filed a second suit for partition and which is pending but the Court where the said suit is pending has permitted the filing of petition for eviction by the respondent / landlord. No objection has been raised by the brother of the respondent / landlord. It is not the case that in the event of brother of the respondent / landlord succeeding in the suit for partition, will not have the benefit of eviction order or that the respondent / landlord is in collusion with the petitioner / tenant or not *bona fide* representing interest if any of his brother. There is nothing to show that Abdul Majid is interested in continuing with the petitioner as a tenant.

12. The counsel for the respondent / landlord clarifies that the suit for partition which was withdrawn was an earlier suit and thus the statement to that effect is not erroneous.

13. Thus, no merit is found in the challenge by the counsel for the petitioner / tenant to the impugned order on the ground of the Additional Rent Controller having erred in holding the respondent / landlord to be entitled to maintain the petition for eviction.

14. The counsel for the petitioner / tenant has next, with reference to the site plan filed by the respondent / landlord (the petitioner / tenant did not file any site plan of his own) has contended that while according to the petitioner / tenant some portions shown therein as tin sheds are in fact shops, according to the respondent / landlord they are tin sheds. However, in the same breath the counsel for the petitioner / tenant has argued that the respondent / landlord during the pendency of petition for eviction raised construction on the portions shown as tin shed in the site plan and has referred to the photographs on record in this regard.

15. It is not disputed that the family of the respondent / landlord comprises of ten sons and is carrying on business from whatsoever portions are available in property no.1483 – 1492, Ward No.XIV, Gali Chuleh Wali, Sadar Nala Road, Pan Mandi, Sadar Bazar, Delhi from one of the shops wherein eviction of the petitioner / tenant is sought.

16. I have enquired from the counsel for the petitioner / tenant the total area of property no.1483 – 1492, Ward No.XIV, Gali Chuleh Wali, Sadar Nala Road, Pan Mandi, Sadar Bazar, Delhi.

17. He states that the area is about 670 to 700 sq. yds.

18. The counsel for the respondent / landlord states that the area is 675 sq. yds. and out of which some portions are in occupation of Abdul Majid and the other portions are in possession of the respondent / landlord and his family members and yet further portions are in occupation of some other persons and against whom also proceedings for recovery of possession have been instituted.

19. It is thus not as if the requirement for the commercial premises in the tenancy of the petitioner / tenant, pleading which the petition for eviction has been filed, is fanciful or that the respondent / landlord and his family members are for the first time pleading requirement for commercial purposes without till now being in business. Once it is the admitted fact that the respondent / landlord and his family members are a business family and are carrying on their business from whatever portions are available or from time to time have become available in the property no.1483 – 1492, Ward No.XIV, Gali Chuleh Wali, Sadar Nala Road, Pan Mandi, Sadar Bazar, Delhi, they are always entitled to seek eviction of tenant in other portions of the aforesaid property for the purposes of expanding their business.

20. The counsel for the petitioner / tenant has also argued that the requirement being that of additional accommodation, leave to defend has to be necessarily granted.

21. No such proposition can be accepted in law. Law does not require that for leave to defend to be rejected the landlord should be on road and without any accommodation. If on the basis of facts, a case for refusal of leave to defend a petition for eviction on the ground of requirement for

additional accommodation is made out, merely because the landlord already is in occupation of some portion cannot be a ground for grant of leave to defend.

22. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 05, 2017
'pp'



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