

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

% **Date of decision: 31st July, 2017**

+ **RC.REV. 219/2015 & CM No.8466/2015 (for stay) & CM No.3465/2017 (u/S 151 CPC)**

RAVI DUTT

..... Petitioner

Through: Mr. Sandeep Sharma, Mr. Ankur Goel & Mr. Aman Dhyani, Advs.

Versus

VINITA

..... Respondent

Through: Mr. Mohit Gupta & Ms. Alka, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 9th February, 2015 in E-394/2013 (Unique ID No.02401C0470712013) of the Court of Administrative Civil Judge (ACJ)-cum-Additional Rent Controller (ARC) (Central), Tis Hazari Courts, Delhi] of dismissal of the application filed by the petitioner / tenant for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent / landlord for eviction of the petitioner / tenant from a shop in property No.8, Model Basti, Near Filmistan Cinema, New Delhi-110005 and the consequent order of eviction.

2. The petition was entertained and notice thereof issued and execution of the eviction order stayed. Vide subsequent order, the continuance of the stay of the eviction order was made subject to payment by the petitioner / tenant to the respondent / landlord, instead

of rent of Rs.25/- per month at which the petitioner was a tenant in the premises, a sum of Rs.7,500/- per month. On review filed by the petitioner / tenant, the said amount was reduced to Rs.4,000/- per month.

3. The counsel for the petitioner / tenant at the outset states that it is *inter alia* the case of the petitioner / tenant that the respondent / landlord had agreed to sell the subject shop to the petitioner / tenant; that the petitioner / tenant had instituted a suit for specific performance of the said agreement to sell and which suit was dismissed; that the petitioner / tenant had preferred an appeal and which appeal has been allowed by the ADJ by remanding the matter to the Civil Judge for hearing afresh.

4. The counsel for the petitioner / tenant thus seeks adjournment, awaiting fresh decision in the suit and contends that any finding / observation qua the agreement to sell, in this proceeding, will prejudice the claim of the petitioner / tenant in the suit.

5. I have enquired from the counsel for the petitioner / tenant the date of the agreement to sell and whether the same is registered.

6. The counsel for the petitioner / tenant states that the agreement to sell is of the year 2005 and unregistered.

7. In the light of the judgment of this Court in ***Jiwan Dass Rawal Vs. Narain Dass*** AIR 1981 Del 291 holding that an agreement purchaser has no right in the property agreed to be purchased, not only till when a decree for specific performance of the said agreement is

passed but also till the conveyance deed in pursuance thereto is executed and which judgment has been consistently followed in ***Cement Corporation of India Ltd. Vs. Life Insurance Corporation of India Ltd.*** (2014) 145 DRJ 148 (DB), ***Deewan Arora Vs. Tara Devi Sen*** (2009) 163 DLT 520, ***Sunil Kapoor Vs. Himmat Singh*** (2010) 167 DLT 806, ***ASV Industry Vs. Surinder Mohan*** (2013) 137 DRJ 429 and for the reason of this Court in ***Sanjiv Pathak Vs. Som Nath*** (2013) 204 DLT 667, further holding that post the amendment in the year 2001 of the Registration Act, 1908 and the insertion of Section 17(1A) therein *inter alia* providing that there can be no delivery of possession in part performance under Section 53A of the Transfer of Property Act, 1882, without a registered Agreement to Sell, the petitioner, even if has agreed to purchase the premises in his tenancy, is not entitled to save his possession of the premises as a tenant and if has incurred a ground of eviction under the Rent Act and is liable to be evicted from the premises. The petitioner, if succeeds in the suit for specific performance, can, after conveyance deed is executed in his favour, recover possession also of the premises. Similarly the petitioner can apply to the suit Court to restrain the respondent from, after evicting the petitioner, dealing with the premises so as to defeat the rights of the petitioner, if were to succeed in the suit. Not only so, Section 14(1) of the Rent Act also is “Notwithstanding anything to the contrary contained in any other law or contract.....”. While Section 14(1) on the one hand prohibits any order or decree for recovery of possession in favour of landlord against a tenant being passed, it on the other hand empowers the Controller constituted under the Act to, if

satisfied of a ground of eviction prescribed therein to have accrued to a landlord, to pass an order of eviction. Thus, once a ground of eviction prescribed under the Rent Act has accrued to the landlord and the Rent Controller is satisfied in this respect, the tenant would be liable to be evicted, notwithstanding any other law or contract. Moreover, the suit for specific performance is still in the first Court and there are likely to be multiple appeals therefrom and the respondent / landlord, if entitled to evict the petitioner / tenant, cannot be deprived of his property even before, in the suit for specific performance, he is found to be liable to convey the same to petitioner / tenant. Adjournment is thus refused.

8. The counsel for the petitioner / tenant has raised three arguments.

9. Firstly, that the learned ARC in the impugned order has not returned finding on all the issues. Secondly, that the petition for eviction was not entertainable and leave to defend should have been granted to the petitioner / tenant because of the incorrect description of the tenancy premises in the petition for eviction. The third and the last argument is the same, on which the adjournment was sought and which has been dealt hereinabove.

10. As far as the first argument is concerned, the counsel for the petitioner, on being asked to elaborate the same, has contended that no finding has been returned in the impugned order on the other two arguments aforesaid, also urged before the ARC.

11. With respect to the second argument, the counsel for the petitioner has drawn attention to paras no.1 and 8 of the petition for eviction where the municipal number of the premises is given as No.8, Model Basti, Near Filmistan Cinema, New Delhi-110005 and the details of accommodation available are described as “one shop, as shown red in the site plan of out of property bearing No.8, Model Basti, situated near Filmistan Cinema, New Delhi-110005.” Attention is next invited to sub-para (8) under para 18(a) of the petition for eviction where it is *inter alia* pleaded “that property no.8, Model Town, New Delhi of which the respondent is the tenant is situated on main road facing Filmistan Cinema.....” Attention is next invited to the site plan filed by the respondent / landlord along with the petition for eviction where the shop in the tenancy of the petitioner is shown as not facing the front road as shown in the site plan but facing the gali as shown in the site plan.

12. The counsel for the petitioner / tenant has argued that owing to the said wrong description in sub-para (8) of Para 18(a) of the petition only, this Court on 23rd February, 2017 being under the impression that the shop is on the front road had fixed the *mesne profits* at Rs.7,500/- per month and which was reduced to Rs.4,000/- upon it being pointed out that the shop was in the rear gali.

13. The counsel states that the same raises a triable issue.

14. I have enquired from the counsel for the petitioner / tenant, whether in the site plan annexed to the petition for eviction the shop in the tenancy of the petitioner / tenant is correctly shown.

15. The counsel for the petitioner states he has not checked.
16. That is as good as an admission of correctness of the site plan.
17. The counsel for the respondent / landlord states that the shop has been correctly shown in the site plan and no objection in that regard was raised.
18. Both counsels are ad idem that no site plan was filed by the petitioner / tenant.
19. The contention of the counsel for the petitioner / tenant is that no finding has been returned by the ARC on the aforesaid.
20. Even if the ARC has not returned any finding, the same would not amount to any error requiring interference under Section 25B(8) of the Act inasmuch as the argument is misconceived and without reference to the Delhi Rent Control Rules, 1959 which provide for a format for filing of the petition for eviction and also require a site plan demarcating the tenancy premises therein to accompany the petition for eviction.
21. There is no challenge to the description in paras 1,2 and 8 of the petition for eviction, of the shop in the tenancy of the petitioner or to the site plan with reference to which the order of eviction, if a ground therefor is made out, is required to be passed by the ARC.
22. Wrong description if any in Sub-para (8) of para 18(a) of the petition, where the landlord is required to set out the ground on which the eviction of the tenant is sought, is of no consequence.

23. Not only so, I fail to see that once there is no dispute as to the identity of the shop in the tenancy of the petitioner, what is this noise about or on what aspect evidence is required to be led, for which leave to defend is sought.

24. The argument is nothing but an attempt to delay the passing of the order for eviction.

25. The only other argument urged as aforesaid is that the petitioner / tenant in the application for leave to defend pleaded that the respondent / landlord had in the year 2005 agreed to sell the said shop to the petitioner / tenant and had received the entire sale consideration. Attention is drawn to the various documents stated to have been filed by the petitioner / tenant in this regard along with his application for leave to defend. It is argued that the learned ARC has not dealt with the said plea and had the learned ARC dealt with the said plea, on this plea alone leave to defend would have been granted.

26. I have reminded the counsel for the petitioner / tenant that it was his plea at the beginning of the hearing that this Court should not return any finding on the claim of the petitioner / tenant for specific performance so as to prejudice the same.

27. The counsel for the petitioner / tenant contends that the respondent / landlord, in response to the said pleas in the application for leave to defend, pleaded that the documents containing agreement to sell filed by petitioner / tenant were forged and fabricated and denied having ever agreed to sell the shop to the petitioner / tenant. It

is argued that the plea of the documents being forged and fabricated certainly raises a triable issue on which leave to defend should have been granted.

28. The same again shows the dichotomy of the contention of the counsel.

29. While the counsel on the one hand sought adjournment stating that any observation by this Court on the claim of the petitioner for specific performance may prejudice the said claim but the counsel on the other hand is wanting an adjudication of the said claim for specific performance not only in the suit filed therefor but also before the Rent Controller. The Rent Controller is a Tribunal of limited jurisdiction empowered to decide only the matters vested in it under the Rent Act and does not have jurisdiction to decide whether the petitioner is entitled to specific performance or not.

30. Rather, it has been repeatedly enquired from the counsel for the petitioner / tenant and to which no response has been coming, that if the effect of the law is as laid down in ***Jiwan Dass Rawal*** and ***Sanjiv Pathak*** supra and in host of other judgments (reference can be made to ***Jagdambey Builders Pvts. Ltd. Vs. J.S. Vohra*** (2016) 228 DLT 49 and ***Hari Gopal Manu Vs. B.S. Ojha*** MANU/DE/0384/2016, ***Sanjay Singh Vs. Corporate Warranties Pvt. Ltd.*** (2013) 204 DLT 12) is that the Agreement to Sell under which the petitioner / tenant claims to have agreed to purchase the shop being unregistered and being of a date post the amendment of the year 2001 of the Indian Stamp Act and Registration Act does not entitle the petitioner to take the plea of being

in possession of the premises in part performance of the agreement to sell and thus the possession of the petitioner of tenancy premises continues as that of the tenant, what purpose would grant of leave to defend serve in as much as even if the matter were to be put to trial, the position in law would remain the same.

31. In view of the repeated dicta of the Court, need to elaborate further is not felt. Suffice it is to state that the second argument also does not disclose any such facts which it can be said if proved would disentitle the respondent / landlord from an order of eviction under Section 14(1)(e) of the Act.

32. A plea taken by the tenant in application for leave to defend, even if proved to be correct, if does not disentitle the landlord from obtaining an order of eviction under Section 14(1)(e), cannot be a ground for grant of leave to defend.

33. Be that as it may, to satisfy my judicial conscience, I have enquired from the counsel for the petitioner / tenant as to how the sale consideration was paid.

34. The answer is that it was in cash.

35. On further enquiry, whether the cash has been reflected in the income tax returns and the source of the said cash, the counsel states that he has no instructions in this regard. The counsel states that he has no knowledge, whether the petitioner is an income tax assessee but states that the cash was withdrawn from the bank and a copy of the

passbook showing withdrawal on 11th November, 2006 (Agreement to sell is of the same date) is shown.

36. Suffice it is to state that the factum of cash payment and unregistered agreement do not inspire confidence.

37. No other ground has been urged.

38. There is no merit in the petition.

Dismissed.

No costs.

JULY 31, 2017
'gsr' ..

RAJIV SAHAI ENDLAW, J.