

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

% **Date of decision: 23rd August, 2017.**

+ **RC.REV. 551/2016, CM No.43352/2016 (for stay) & CM No.5762/2017 (for stay)**

RIYAZUDDIN & ORS.

..... Petitioners

Through: Mr. Anil K. Khaware and Mr. Aasif Khan, Advs.

Versus

SAIRA & ORS.

..... Respondents

Through: Mr. A.K. Suri , Mohd. Elahi and Mr. Saijul Eslam, 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 6th August, 2016 in Case No.E-165/15 (Unique I.D. No.02401C0570902012) of the Court of Additional Rent Controller-1 (Central), Tis Hazari Courts, Delhi] allowing, after full trial, the petition for eviction under Section 14(1)(e) of the Act filed by the nine respondents for eviction of the three petitioners from one shop measuring 116 sq. yds. on the ground floor of property bearing no.7609, Quresh Nagar, Sadar Nala Road, Sadar Bazar, Delhi – 110 006 in the tenancy of the petitioners/their father since 6th November, 1946.

2. This petition came up first before this Court on 22nd November, 2016. The respondents/landlords having not appeared inspite of filing caveat, the matter was adjourned to 6th February, 2017. On 6th February, 2017 it was informed that the petitioner no.1 had died and the proceedings

were adjourned to 30th March, 2017. CM No.5762/2017 was filed for stay of execution and on which, vide order dated 21st February, 2017, execution of the order of eviction impugned in this petition was stayed. The heirs of the deceased petitioner no.1 were substituted and the Trial Court record requisitioned.

3. The counsels have been heard and the Trial Court record perused.

4. The respondents instituted the petition for eviction under Section 14(1)(e) of the Act, from which this petition arises, pleading (i) that the grandfather / grandmother of the respondents no.2 to 9 and the father-in-law / mother-in-law of the respondent no.1 were owners of the property bearing no. 7609, Quresh Nagar, Sadar Nala Road, Sadar Bazar, Delhi and both of whom died leaving the father of the respondents no.2 to 9 and husband of the respondent no.1 and one Smt. Mussavira Khatoon as their only legal heirs; (ii) that on 4th December, 2002, a partition / compromise was effected between the husband / father of the respondents and the said Smt. Mussavira Khatoon, where Smt. Mussavira Khatoon left / exchanged her share in the said property including the shop in the tenancy of the petitioners / tenants and got her share in properties no.7381 to 7386, Quresh Nagar, Sadar Bazar, Delhi; (iii) that the husband / father of the respondents thus became the absolute owner of the property no.7609, Quresh Nagar, Sadar Nala Road, Sadar Bazar, Delhi and part owner of properties no.7381 to 7386, Quresh Nagar, Sadar Bazar, Delhi; (iv) that the husband / father of the respondents died on 10th march, 2006 leaving the respondents as his only legal heirs; (v) that the respondents are thus the owners of the properties; (vi) that the father of the petitioners / tenants

was a tenant in respect of one shop measuring 116 sq. yds. on the ground floor of property no.7609, Quresh Nagar, Sadar Nala Road, Sadar Bazar, Delhi and after the demise of their father, the petitioners / tenants inherited the tenancy; (vii) that the respondents had also applied for eviction of the petitioners / tenants under Section 14(1)(a),(b),(c),(f) & (g) of the Act and which petition for eviction was pending; (viii) that the shop in the tenancy of the petitioners / tenants is required *bona fide* by the respondents for use and professional needs of the respondents no.7&8; (ix) that the respondent no.7 is a practising Advocate aged about 42 years, having commenced his practice in the year 1998 in Delhi; (x) that the respondent no.8 is a practising Doctor in Modern as well as Unani Medicine, having passed his BUMS degree in the year 1977 from Hamdard University, New Delhi and having started his practice in Delhi in the year 1998; (xi) that the respondent no.7 was practising law from a small office *ad measuring* 6' x 12' on the ground floor of property no.7386, Quresh Nagar, Sadar Nala Road, Sadar Bazar, Delhi; (xii) that the respondent no.7 was residing in one room measuring 8' x 16' on the first floor of properties no. 7381 to 7386, Quresh Nagar, Sadar Bazar, Delhi along with his wife and two children; (xiii) that the total area of properties no. 7381 to 7386, Quresh Nagar, Sadar Bazar, Delhi in the share of the respondent is 21 sq. yds. on which three floors are built with two shops and a small portion being used as a law office by the respondent No.7 on the ground floor and one / two rooms each on the three floors above; (xiv) that the respondent no.8 along with his family of wife and children is residing on the second floor of properties 7381 to 7386, Quresh Nagar, Sadar Bazar, Delhi and the respondent no.9 along with his family of wife and four children is residing

on the third floor of properties 7381 to 7386, Quresh Nagar, Sadar Bazar, Delhi; (xv) of the two shops on the ground floor of properties 7381 to 7386, Quresh Nagar, Sadar Bazar, Delhi, the respondent no.9 is running his business in one of the two shops and the other shop is in the possession of an old tenant; (xvi) that the legal practice of the respondent no.7 has grown over the years and the respondent no.7 wants to shift his office into a bigger premises i.e. the shop in the tenancy of the petitioners herein; (xvii) that the respondent no.8 has been carrying on his medical practice from different rented premises from time to time and was then paying rent of Rs.7,500/- per month for portion of property no.1071, Main Road, Farash Khana, Delhi; (xviii) the frequent change of address to different premises was affecting of the goodwill of the medical practice of the respondent no.8; and, (xix) that the other respondents have no objection to allowing the respondents no.7&8 to carry on their law / medical practice from the premises in the tenancy of the petitioners.

5. The petitioners/tenants, on service of notice of the petition aforesaid for eviction, applied for leave to defend. Vide detailed order dated 1st December, 2014, leave to defend was denied to the petitioners/tenants.

6. The petitioners/tenants filed RC Rev.15/2015 and which was allowed on 5th May, 2015; the order refusing leave to defend to the petitioners / tenants was set aside and the petitioners / tenants granted leave to defend and the Additional Rent Controller directed to conclude the trial expeditiously, within one year. What prevailed with this Court in granting leave to defend to the petitioners / tenants was, that it was *inter alia* the plea of the petitioners / tenants that the respondents / landlords

earlier, in the year 2008, had filed a petition for eviction of the petitioners/tenants under Section 14(1)(e) of the Act and in which leave to defend had been granted to the petitioners/tenants on 16th January, 2010 and which order attained finality when the respondents / landlords on 30th August, 2012 withdrew RC. Rev.154/2010 preferred against the order granting leave to defend to the petitioners/tenants in the earlier petition for eviction. It was further found that thereafter the respondents/landlords failed to lead any evidence and withdrew the petition for eviction under Section 14(1)(e) of the Act, pleading that the same suffered from technical defects. It was thus held in the order dated 5th May, 2015, that the petitioners / tenants having been granted leave to defend in the earlier petition for eviction and the respondents having then taken a plea of the respondents, in the interregnum, having sold one or two properties, the petitioners / tenants were entitled to leave to defend.

7. The petitioners/tenants thereafter filed written statement *inter alia* pleading (i) that the earlier petition for eviction filed by the respondents on the same grounds having not been pursued by the respondents/landlords, the respondents/landlords had no requirement; (ii) that the respondents were also the owners of several other properties and some of which had been sold; particulars of the said properties were given; (iii) putting the respondents to proof of partition with Smt. Mussavira Khatoon; and, (iv) denying that the properties no.7381 to 7386, Quresh Nagar, Sadar Bazar, Delhi *ad measures* only 21 sq. yds.

8. The respondents filed replication to the written statement aforesaid of the petitioners/tenants, pleading (i) that the petition for eviction filed in

the year 2008 was pleading requirement of all the respondents; (ii) that the order granting leave to the petitioners/tenants to defend the said petition for eviction was a non-speaking order; (iii) the Revision Petition preferred by the respondents thereagainst was withdrawn because the same had remained pending for over two years; (iv) that the pleadings in the earlier petition for eviction created a lot of confusion and hence the respondents withdrew the earlier petition for eviction with liberty to file a fresh petition for eviction and which liberty was granted and whereafter the petition for eviction from which this Revision Petition arises was filed; (v) that in the subject petition for eviction, only the requirement of the respondents no.7&8 was pleaded; (vi) that the respondents/landlords had not sold any of the properties, owned by them; and, (vii) that none of the properties, particulars whereof were given in the written statement, were owned by the respondents/landlords; and the reason for sale, prior to the filing of the petition for eviction, of one of the properties was stated.

9. The respondents concluded their evidence on 1st April, 2016 and the petition for eviction was posted for 26th April, 2016 for the evidence of the petitioners / tenants.

10. The petitioners/tenants did not lead any evidence on 26th April, 2016 and sought adjournment, stating that even affidavits by way of examination-in-chief of the witnesses had not been prepared till then. Reiterating that this Court had directed, in order dated 5th May, 2015, for the trial to be concluded within one year, the learned Additional Rent Controller vide order dated 26th April, 2016 granted “one last and final opportunity” to the petitioners/tenants to file affidavits by way of

examination-in-chief within one week and directing that failing which, right of the petitioners/tenants to lead evidence shall be closed and no further opportunity granted, posted the petition for eviction for evidence of the petitioners/tenants to 2nd May, 2016.

11. By 2nd May, 2016, only list of witnesses had been filed by the petitioners / tenants and on 2nd May, 2016 the petitioners / tenants again sought adjournment. The learned Additional Rent Controller in the light of observations made in the previous order dated 26th April, 2016, closed the right of the petitioners/tenants to lead evidence and posted the petition for eviction for final arguments to 9th May, 2016.

12. The petitioners/tenants filed CM(M) No.449/2016 under Article 227 of the Constitution of India in this Court impugning the order dated 2nd May, 2016 aforesaid closing their evidence. Vide order dated 9th May, 2016, the petitioners/tenants were granted opportunity to lead evidence of three witnesses by filing affidavits by way of examination-in-chief of the two witnesses, who were not to be summoned, within one week with advance copy to the counsel for the respondents/landlords and also permitted the petitioners/tenants to summon the third witness.

13. The petition for eviction came up before the Additional Rent Controller on 13th May, 2016, when noting that the time granted by this Court in order dated 9th May, 2016 supra was expiring on 16th May, 2016 and permitting the petitioners/tenants to summon the sole witness to be summoned, the matter was posted to 8th June, 2016.

14. On 8th June, 2016, only one of the witnesses of the petitioners/tenants was present and who was examined, cross-examined

and discharged and in terms of order of this Court, the statement of the summoned witness was also recorded. The other witness which the petitioners/ tenants had been permitted to examine was not present. The petitioners/tenants had also not paid costs subject to payment of which this Court vide order dated 9th May, 2016 had granted opportunity to the petitioners/tenants. Though in terms of order dated 9th May, 2016 supra of this Court, the evidence of the petitioners/tenants should have been closed but the learned Additional Rent Controller still granted one more opportunity to the petitioners/tenants and posted the matter to 9th June, 2016.

15. On 9th June, 2016, neither the counsel for the petitioners/tenants nor the witness to be examined was present. The learned Additional Rent Controller, in terms of order dated 9th May, 2016 supra of this Court, again closed evidence of the petitioners/tenants and posted the matter to 12th July, 2016 for final arguments.

16. On 12th July, 2016, final arguments of both the counsels were heard and judgment reserved.

17. As aforesaid, vide order / judgment dated 6th August, 2016, the petition for eviction filed by the respondents was allowed and order of eviction of the petitioners/tenant passed.

18. The counsel for the petitioners/tenants has at the outset argued that the order dated 9th May, 2016 of this Court did not provide that the petitioners/tenants will be granted only one opportunity to examine the three witnesses who were permitted to be examined.

19. No merit is found in the said contention. A reading of the order dated 9th May, 2016 shows that the petitioners/tenants were directed to file affidavits by way of examination-in-chief of both witnesses who were permitted to be examined within one week with advance copy to the counsel for the respondents and the counsel for the respondents was directed to be “ready for their cross-examination on the next date” and the third witness permitted to be summoned was also permitted to be summoned for the said date.

20. Moreover, though the second witness of the petitioners/tenants did not appear on the date fixed of 8th June, 2016, but the learned Additional Rent Controller still granted one more opportunity to the petitioners/tenants to produce the said witness on 9th June, 2016.

21. The counsel for the petitioners/tenants had next contended that the respondents took nine months out of the one year’s time granted by this Court vide order dated 15th May, 2015 for completion of trial, by examining as many as 12 witnesses and the petitioners/tenants should also have been granted similar time.

22. There is no merit in the said contention. The said contention is also not today open to the petitioners/tenants. The petitioners/tenants, by CM(M) 449/2016 supra, challenged before this Court the order dated 2nd May, 2016 of the Additional Rent Controller closing the evidence of the petitioners/tenants and vide order dated 9th May, 2016 wherein the petitioners/tenants were allowed to examine only three witnesses, by filing affidavits by way of examination-in-chief within one week and by producing them for cross-examination on the next date. The argument as

raised today, if at all available to the petitioners/tenants, ought to have been raised on 9th May, 2016 in CM(M) No.449/2016 and this Court now cannot sit in appeal over the order dated 9th May, 2016. Even otherwise, there can be no parity in such matters. I may also notice that if a tenant, mischievously takes pleas in the written statement of the landlord owning number of properties, it becomes incumbent on the landlord to examine a large number of witnesses to prove that the said properties belong to others and not to the landlord. The tenant, in such circumstances, cannot thereafter complain that the landlord has examined large number of witnesses.

23. The counsel for the petitioners/tenants has next contended that the petitioners/tenants were granted leave to defend not only of the said petition for eviction but also the petition for eviction filed by the respondents in the year 2008.

24. Merely because the tenant has been granted leave to defend, does not entitle the tenant to a victory in the *lis*, post trial also. The argument is thoroughly misconceived.

25. The counsel for the petitioners/tenants has handed over written submissions. I have considered the written submissions. The counsel for the petitioners/tenants has otherwise only generally stated that his written submissions may be perused.

26. The contents of the written submissions have been perused. The same are reiteration of the written statement which has already been noticed above.

27. The written submissions however are also referring to passages of *Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh* (2014) 9 SCC 78, *Rukmini Amma Sardamma Vs. Kallyani Sulochana* (1992) 1 SCC 499 and *T. Sivasubramaniam Vs. Kasinath Pujari* (1999) 7 SCC 275.

28. The emphasis of the counsel for petitioners/tenants in his written submissions is on other properties owned by respondents/landlords. However, the petitioners/tenants have failed to prove such ownership and the respondents/landlords have denied ownership of such properties. The reliance on judgments cited is thus misconceived. Else, it is not in dispute that considering the number of family members of respondents/landlords and the accommodation available, the respondents/landlords have requirement of the premises in tenancy of petitioners/tenants.

29. I have otherwise perused the order of the Additional Rent Controller and find the same to be in accordance with law within the meaning of Section 25B(8) of the Act and do not find any ground to interfere therewith in the limited revisional jurisdiction provided thereagainst, as interpreted by Supreme Court in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 and *Hindustan Petroleum Corporation Limited* supra.

30. There is no merit in the petition.

31. Dismissed.

32. The petitioners/tenants having enjoyed stay of the order of eviction which became executable on 5th February, 2017, are liable to pay *mesne*

profits to the respondents/landlords in accordance with *Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd.* (2005) 1 SCC 705..

33. The father of the petitioners/tenants came into possession of the premises as far back, as aforesaid, in the year 1946 and the petitioners/tenants have continued to pay rent at the same rate save the increase of 10% every three years permitted under the Act. The Division Bench of this Court in *Raghunandan Saran Ashok Saran (HUF) Vs. Union of India* (2002) 95 DLT 508 (DB) noted that Rs.229.59 paise of 1998 had a value equivalent to Rs.2.97 of 1939 and therefore the landlord, owing to the provisions of the standard rent, in terms of actual money value gets only Rs.2.97 instead of Rs.229.59 paise. On account of the same, it is deemed appropriate to direct the petitioners/tenants to pay *mesne* profits to the respondents/landlords, w.e.f. 5th February, 2017 when the order of eviction impugned in this petition became executable and till the date of vacation of the premises, at the rate of Rs.25,000/- per month. The said amount if not paid will be recoverable in execution, jointly and severally from the petitioners/tenants.

RAJIV SAHAI ENDLAW, J.

AUGUST 23, 2017

‘pp’

(corrected & released on 25th January, 2018)