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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. No.449/2015 & CM No.17013/2015 (for stay).
MAYA VERMA Petitioner
Through: Mr. S.K. Bhalla, Adv.
Versus
NEELAM DEVI Respondent
Through: Mr. R.K. Sahni, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.07.2017

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order dated 8th April, 2015 of the Rent Controller (East), Karkardooma Courts, Delhi of eviction of the petitioner under Section 14(1)(e) of the Act, consequent to the dismissal of the application filed by the petitioner for leave to defend the petition.
2. This petition was entertained and notice thereof issued and Trial Court record requisitioned.
3. The counsel for the respondent on 16th December, 2015 made a statement before this Court that the order of eviction will not be executed till the next date of hearing.
4. Thereafter, vide order dated 23rd February, 2016 the petitioner / tenant was directed to pay user charges @ Rs.1,000/- per month to the respondent / landlord with effect from the date of the order of eviction; vide yet subsequent order dated 28th July, 2016 the respondent / landlord was directed to provide the number of her bank account in which the petitioner / tenant may deposit the said amount.

5. The counsel for the respondent on enquiry states that the petitioner has complied with the said direction.
6. The counsels have been heard.
7. The counsel for the petitioner / tenant has argued (i) that to maintain a petition under Section 14(1)(e) supra, the respondent / landlord was required to be the owner of the tenancy premises and the petitioner / tenant in her application for leave to defend disputed that the respondent is the owner and inspite of such disputed fact having been raised in the application for leave to defend the learned Additional Rent Controller has erred in refusing leave to defend; reliance is placed on ***Kalyan Singh Vs. J.P. Gupta*** 1977 Rajdhani Law Reporter 242 laying down that if serious question of facts are disputed, then leave to defend should be given; (ii) that the petitioner was inducted as a tenant in the premises by one Sunita wife of Gaje Singh; (iii) that the respondent / landlord claims to have become the owner of the property by virtue of General Power of Attorney (GPA), Agreement to Sell, affidavit, receipt and possession letter, all dated 24th September, 2001; (iv) that the respondent / landlord by virtue of GPA, Agreement to Sell, affidavit, receipt and possession letter does not become the owner of the property; reliance is placed on ***Beetashok Chatterjee Vs. Lovely Chandra*** 214 (2014) DLT 328 particularly to para 11 thereof where relying upon ***State of Rajasthan Vs. Basant Nehata*** 2005 (12) SCC 77 it has been held that the Power of Attorney cannot be used for own benefit of the attorney; and, (v) that the GPA, Agreement to Sell, affidavit, receipt and possession letter by which the respondent claims to have become the owner of the property have been executed by Gaje Singh and not by Sunita aforesaid and that Gaje Singh

being not the owner of the property could not have even by executing GPA, Agreement to Sell, affidavit, receipt and possession letter vested any title in the property in favour of the respondent.

8. No merit is found in the aforesaid contentions.

9. Though undoubtedly GPA, Agreement to Sell, affidavit, receipt and possession letter executed with respect to immoveable property do not, within the meaning of Transfer of Property Act, 1882 constitute the person in whose favour the said documents are executed as the absolute owner of the property, but Supreme Court as far back as in *Shanti Sharma Vs. Ved Prabha* AIR 1987 SC 2028, and which judgment has been consistently followed in different facts, has held that the word ‘owner’ used in Section 14(1)(e) of the Act does not require absolute ownership and that ownership within the meaning of Section 14(1)(e) of the Act comprises of a title better than that of the tenant. Applying the said dicta, GPA, Agreement to Sell, affidavit, receipt and possession letter in favour of the respondent with respect to the premises in the tenancy of the petitioner would constitute the respondent owner of the property entitling the respondent to maintain a petition for eviction under Section 14(1)(e) of the Act.

10. I have enquired from the counsel for the petitioner, to whom was the petitioner paying the rent of the premises and till when.

11. The counsel for the petitioner states that though the premises were let out to the petitioner by Sunita but the petitioner was paying rent to Gaje Singh and has so paid the rent till the year 2006. He has further contended that though GPA, Agreement to Sell, affidavit, receipt and possession letter in favour of the petitioner are dated 24th September, 2001 but Gaje Singh

continued to receive the rent from the petitioner even thereafter till the year 2006.

12. The counsel for the petitioner however on enquiry states that no rent receipts were issued by Gaje Singh between the years 2001 – 2006 (in fact never) and thus the petitioner has no proof of payment of rent to Gaje Singh; it is rather contended that once the petitioner has taken such a plea, it was incumbent upon the learned Additional Rent Controller to grant leave to defend since disputed question had been raised.

13. I am again unable to agree.

14. Reliance sought to be placed on judgments of 1970s or for that matter even of 1980s pertaining to the Rent Act is itself misconceived inasmuch as the law as has been enunciated by the Courts thereafter particularly since the year 1990s is entirely different and this Court cannot in 2017, following the judgments of 1970s and ignoring the judgments subsequent thereto decide the issues urged before it. In fact it is the duty of the counsels also to place before the Court the version of law as is currently in vogue and not to place judgments which today are no longer good law.

15. It was open to the petitioner to along with the application for leave to defend file the affidavit of Gaje Singh or of Sunita and which has not been done. From the very contention of the counsel for the petitioner that at least since 2006 i.e. prior to the institution of the petition for eviction, from which this petition arises, in the year 2014, none-else besides the respondent had been claiming to be the owner and landlord of the premises in the tenancy of the petitioner. The said factum in itself was enough for the learned Additional Rent Controller to conclude that the challenge by the petitioner to

the title of the respondent is not such which required trial for which leave to defend ought to have been granted. The stand of the counsel for the petitioner also is that since 2006 even Gaje Singh has not demanded rent from the petitioner.

16. The counsel for the respondent in this regard has stated that the respondent has placed on the Trial Court record the copy of the petition filed by the petitioner under Section 27 of the Delhi Rent Control Act as well as the copy of the petition filed by the petitioner under Section 45 of the Delhi Rent Control Act impleading the respondent alone as respondent and not impleading Sunita or Gaje Singh and claiming the respondent to be the landlord of the premises in the tenancy of the petitioner. It is further stated that the petitioner has also been sending Money Orders of the amount of rent to the respondent.

17. The counsel for the petitioner on enquiry, whether petitions under Sections 27 and 45 of the Delhi Rent Control Act were filed impleading the respondent as landlord, states that though such petitions were filed but not by him but by some other Advocate.

18. Once the petitioner in petitions filed by her under Sections 27 and 45 of the Act has admitted the respondent to be the landlady, the petitioner, in the petition for her eviction filed by the respondent, take a contrary stand and which is evidently *mala fide*. It matters not that some other Advocate filed those petitions.

19. The counsel for the petitioner has in this regard also contended that the learned Additional Rent Controller has erred in holding that the petitioner was estopped by Section 116 of the Indian Evidence Act, 1872

from challenging the title of the petitioner. Reliance in this regard is placed on ***Sambhunath Mitra Vs. Khaitan Consultant Ltd.*** AIR 2005 Calcutta 281 (para 50) to contend that the title of a person who claims to have derived title from the person who had inducted the tenant can be challenged by the tenant.

20. I am of the view that once it has been held that the challenge to the title itself has no merit, the need to go into the said aspect does not arise.

21. The counsel for the petitioner has next urged that the petition for eviction from which this petition arises ought not to have been entertained under Section 25B of the Delhi Rent Control Act as the petition for eviction was a composite petition not only under Section 14(1)(e) but also under Section 14(1)(a) of the Act. Attention in this regard is invited to para 18 (a) (iii) of the petition for eviction which is as under:-

“iii. It is pertinent to mention that the earlier the tenant was paying rent till the year 2003 at the aforesaid rate however the respondent completely stopped paying rent to the petitioner and thus she is in huge arrears of rent since the year 2003.”

22. Reliance in this regard is also placed on ***Kiran Dutta Vs. Moti Mahal Delux-II*** 2014 (2) RCR (Rent 23.

23. Though undoubtedly a composite petition for eviction on a ground of eviction covered by Section 25B and another ground not covered by Section 25B is not to be tried under Section 25B but on a reading of the petition for eviction I am unable to find the same to be a composite petition. A petition under the Delhi Rent Control Act, 1958 is to be filed in the format prescribed in the Delhi Rent Control Rules, 1958 and the subject petition

for eviction is in the prescribed format. In the title of the petition, where the ground of eviction under which the petition is filed is required to be stated, the ground is mentioned as “14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958” only and the ground of eviction under Section 14(1)(a) is not mentioned. As far as the reference to para 18(a)(iii) set-out hereinabove is concerned, the same would not convert a petition for eviction under Section 14(1)(e) into a composite petition also under Section 14(1)(a) of the Act. The mention of the factum of non-payment of rent by the petitioner is by way of recital only and not by way of a ground of eviction. Though undoubtedly the said recital ought to have been stated in para 19 i.e. under the head “Any other relevant information” but the said lacuna in the drafting of the eviction petition cannot be permitted to convert a petition for eviction only on a ground covered by Section 25B of the Act into a composite petition. Moreover the averments in para 18(a)(iii) even otherwise do not constitute a ground of eviction under Section 14(1)(a) which require it to be pleaded that the tenant, within two months of the notice of demand, has not paid the arrears of rent. There is no mention of any notice of demand of rent and in fact under para 18(b) titled “Whether notice required has been given and if so, particulars thereof” it is mentioned “there was no legal requirement of the Notice”.

24. There is thus no merit in the said ground either.

25. The counsel for the petitioner has next contended that as per the averments in the petition for eviction, the requirement of the respondent for residential accommodation is much more than the one room in the tenancy of the petitioner but the respondent has still filed the petition for eviction of

the petitioner from one room in the tenancy of the petitioner and from which the requirement of the respondent for residential accommodation cannot be satisfied. It is further contended that the room in the tenancy of the petitioner does not even have the amenities of toilet and is in a dilapidated condition. It is informed that the said room is in area of less than 100 sq. yds. and admeasures 11^{ft.} x 9^{ft.}.

26. There is no merit in the aforesaid contention also. Merely because the tenancy premises would not fully satisfy the requirement of the landlord for residential purpose does not prevent the landlord from seeking eviction from whatever additional accommodation can be availed of; rather I have put it to the counsel for the petitioner that if according to the petitioner the tenancy premises are not habitable and not fit for occupation, the petitioner ought to leave the premises and cannot on the one hand want to continue residing in the same and on the other hand contend that the landlord cannot reside in the same owing to the state thereof. Such contradictory stands cannot be taken.

27. The counsel for the petitioner has next referred to ***Devi Das Vs. Mohan Lal*** 1982(2) Rent Control Reporter 246 Supreme Court laying down that when the tenant contends that in reality there was no sale and it was only a paper sale to evict the tenant, the Court has to record a finding on the point of sale.

28. The said question does not arise in the present case where admittedly Gaje Singh to whom the petitioner was earlier paying the rent has not come forward to claim ownership or landlordship of the premises and the respondent alone at least since the year 2006 according to the petitioner also has been claiming to be the owner / landlord.

29. The counsel for the petitioner then contends that though the petitioner was admittedly paying rent to the respondent and was also sending Money Orders for the rent to the respondent but the same as per *Sambhunath Mitra* supra does not constitute an estoppel.

30. The aforesaid contentions do not cut any ice. As aforesaid the petitioner / tenant cannot, to suit her purpose take contradictory stand.

31. Else no, other argument has been raised.

32. It is not under challenge that the family of the respondent comprises of the members pleaded and that the respondent has no other accommodation besides that pleaded and which according to the counsel for the petitioner also is insufficient for the respondent.

33. There is thus no merit in the petition.

34. The petitioner has already enjoyed a period of over two years after the order of eviction and does not deserve any further time to be granted.

Dismissed.

RAJIV SAHAI ENDLAW, J.

JULY 04, 2017

‘pp’..