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

+ RC.REV. 363/2017 & CM No.28258/2017 (for stay)

HARISH KUMAR Petitioner

Through: Petitioner in person.

Versus

SAVITRI DEVI Respondent

Through: None.

AND

+ CM(M) 431/2015 & CM No.8116/2015 (for stay)

HARISH KUMAR Petitioner

Through: Petitioner in person.

Versus

SAVITRI DEVI Respondent

Through: None.

AND

+ CM(M) 931/2015 & CM No.22361/2015 (for stay)

HARISH KUMAR Petitioner

Through: Petitioner in person.

Versus

SAVITRI DEVI Respondent

Through: None.

AND

+ CM(M) 1194/2015 & CM No.29474/2015 (for stay)

HARISH KUMAR Petitioner

Through: Petitioner in person.

Versus

SAVITRI DEVI Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.08.2017

CM No.28260/2017 (for exemption) and CM No.28261/2017 (exemption from filing Trial Court record).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

RC.REV. No.363/2017 & CMs No.28258/2017 (for stay) & 28259/2017 (for condonation of 76 days delay in filing)

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 4th February, 2017 in RC/ARC No.135/16 of the Court of ACJ-CCJ-ARC (East), Karkardooma 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 / landlady and the consequent order of eviction of the petitioner from the shop no.2 situated in house no.U-53A/2 Upadhyay Block, Highway Road, Shakarpur, Delhi – 110 092.

4. The petitioner / tenant appearing in person has been heard.
5. The respondent / landlady filed the petition for eviction from which this petition has arisen pleading, (i) that the petitioner was inducted as a tenant in the shop on 1st May, 1980 at a rent of Rs.200/- per month and was then paying rent of Rs.330/- per month; (ii) that the shop in the tenancy of the petitioner was required by the respondent / landlady for settling her son Ajay Goel aged about 36 years, who is deaf and dumb and whose wife is also deaf and dumb; (iii) that the said son of the respondent / landlady was running his business in the name and style of Hot & Spicy to provide maggi noodles, popcorn, sweet corn & kulfi in a shop as licensee at Cross-River

Mall under STC Developers Pvt. Ltd. but which licence had been terminated in March, 2009 and since then the said son of the respondent / landlady has no business or vocation; (iv) that the shop in the tenancy of the petitioner, located in centre of the market, is suitable for the son of the respondent / landlady to carry on the same business; (v) the respondent / landlady and her son have no alternate suitable accommodation; (vi) that the respondent / landlady and her son are residing in house no.145, J&K Block, Laxmi Nagar, Delhi situated in a residential locality and from where it is not possible to carry on the said business; and, (vii) that the husband of the respondent / landlady is carrying on his business as a property broker from a small shop at D-2A, Vikas Marg near Shiv Mandir, Laxmi Nagar, Delhi – 110 092 and an adjoining small area thereto had been given to the bank for ATM and in the upper floors of the said building, another son of the respondent / landlady is practising as an Advocate.

6. The petitioner / tenant sought leave to defend pleading (i) that no notice under Section 106 of the Transfer of Property Act, 1881 of termination of tenancy had been served on him; (ii) that the petitioner continued to be a tenant @ Rs.200/- per month and denying that the rent at the time of filing of the petition for eviction was Rs.330/- per month; (iii) that the petitioner / tenant had got electricity connection in the shop in his own name; (iv) that the respondent / landlady had earlier filed petitions for eviction against the petitioner / tenant on the ground of non-payment of rent but had not pursued the said petitions; (v) that no document of termination of license of the deaf and dumb son of the respondent / landlady had been produced; (vi) that the documents produced showed the license to be in the name of Hot & Spicy and not in the name of the deaf and dumb son of the

respondent / landlady; (vii) that the Disability Certificate of the son was valid for three years only i.e. till 17th May, 2007 and no fresh Disability Certificate had been filed; (viii) that the respondent / landlady was also the owner of property no.U-52, Upadhyay Block, Shakarpur, Delhi *ad measuring* 180 sq. yds. and which had been concealed and of which property, one shop had been sold some years back and another shop had been let-out in the year 2002 and the third shop was in possession of the respondent / landlady; (ix) that the deaf and dumb son of the respondent / landlady could also carry on his business from the house where he was residing with the respondent / landlady; (x) that the respondent / landlady had raised unauthorised construction in the property in which the petitioner was a tenant; and, (xi) that the petition for eviction was to harass the petitioner / tenant.

7. The respondent / landlady in her reply to the application for leave to defend denied that she or any of her family members were the owners of property no.U-52, Upadhyay Block, Shakarpur, Delhi or that any portion of the said property was available to her. It was further stated that Ganga Devi, wife of Ram Prakash, being the mother-in-law of the respondent / landlady was the owner of the said property and after the demise of Ganga Devi the said property was inherited by the husband of the respondent / landlady and his brother in equal share and one of the shops therein was sold by the brother of the husband of the respondent / landlady before the year 2001 and another shop was let out by the husband of the respondent / landlady on 24th November, 2002 to Kailash Chand son of late Amar Singh and to whom the said shop was ultimately sold by the husband of the respondent / landlady; the third shop was in possession of the widow of the brother of the husband

of the respondent / landlady. It was thus stated that no shop in property no.U-52, Upadhyay Block, Shakarpur, Delhi was available to the respondent / landlady to be made available to her deaf and dumb son.

8. The learned Additional Rent Controller has in the impugned order reasoned (i) that the petitioner / tenant had not disputed that the respondent / landlady was the owner of the shop in his tenancy and the existence of the relationship of landlord and tenant; and, (ii) that none of the other grounds taken were such which disentitled the respondent / landlady to the order of eviction under Section 14(1)(e) of the Act.

9. The petitioner / tenant appearing in person has firstly contended that the impugned order is passed by the Civil Court whose jurisdiction is barred by Section 50 of the Rent Act.

10. The order of eviction is of the Court of “ACG-CCJ-ARC (East), Karkardoom Courts Delhi” i.e. ‘Additional Civil Judge – cum – Commercial Civil Judge – cum – Additional Rent Controller (East), Karkardooma Courts, Delhi’. Merely because the Court conferred with powers under Section 36 of the Rent Act to function as the Additional Rent Controller is also exercising jurisdiction of Additional Civil Judge and Commercial Civil Judge would not mean that the order of eviction of the petitioner / tenant has been passed by the Civil Court. The argument is totally misconceived.

11. The petitioner / tenant has next argued that the petitioner / tenant had applied for amendment of the application for leave to defend and had filed another application under Order IX Rule 8 of the Code of Civil Procedure, 1908 (CPC) and without deciding which, the order of eviction has been passed.

12. Before dealing with the aforesaid contention, I may state that the

petition for eviction from which this petition arises was filed as far back as on 13th August, 2014 and a perusal of the narrative in the memorandum of this petition and the annexures filed therewith discloses that the petitioner / tenant has successfully delayed the disposal of the application for leave to defend by nearly three years and within which time ordinarily the trial, even if leave to defend were to be granted, gets over. The legislature, by requiring the leave to defend application to be filed within 15 days of service of the summons of the petition for eviction on the ground of requirement of the premises for self use by the landlord, has indicated the urgency with which the petition for eviction on such ground is to be considered. The petitioner / tenant is however found to have been filing one application after another before the Additional Rent Controller and all of which applications are found to be misconceived and against which appeals / revisions were preferred to this Court.

13. As far as the applications aforesaid and which are stated to have been not decided are concerned, this Court in *Madhu Gupta Vs. Gardenia Estates (P) Ltd.* 184 (2011) DLT 103, relying on *Prithipal Singh Vs. Satpal Singh* (2010) 2 SCC 15 has held that the legislature having provided for the time of 15 days for applying for leave to defend, no amendment thereof thereafter is permissible.

14. Be that as it may, a perusal of the application for amendment of leave to defend shows that the petitioner / tenant therein wanted to take the pleas of (i) the shops in property no. U-53A/2 Upadhyay Block, Highway Road, Shakarpur, Delhi also having been sold “some years ago” and other shops in the said property having been let-out “some years ago” (ii) that the petition for eviction in the Court of the Civil Judge being not maintainable; (iii) that

the respondent / landlady having filed a wrong site plan; and, (iv) the respondent / landlady having not filed original documents before the Court. Not only did the application for amendment of application for leave to defend not lie but the amendments sought are also found to be vague and without any particulars. No particulars were given of the shops in property no.U-53A/2 Upadhyay Block, Highway Road, Shakarpur, Delhi which were alleged to have been sold out or let-out. No date of sale / letting out was given and it was merely stated that it was “some years ago”. The respondent / landlady in the petition for eviction had pleaded that the requirement of the premises in tenancy of petitioner/tenant had accrued in the year 2013 on the licence of the premises from which her deaf and dumb son was earlier carrying on business was terminated. It was not even pleaded in the application for amendment that the alleged sale / letting out was of a date after 2013. The other plea sought to be taken, of the petition for eviction being before a Civil Judge is misconceived as already discussed above. Further, merely stating that a wrong site plan has been filed also was not a plea on which leave to defend could have been granted. There is no requirement to file original of the documents copies of which had been filed and which copies in any case were not controverted. Thus the non-decision if any by the learned Additional Rent Controller of the application for amendment is of no avail.

15. Even prior to the dicta of the Supreme Court in *Prithipal Singh* supra, this Court in *Vinod Industries (P) Ltd. Vs. Suraj Kumari* MANU/DE/0725/1993 held that an application under Section 25B of the Rent Act for leave to defend cannot be permitted to be amended, though subsequent events can be taken into consideration. The same view was

reiterated in judgment dated 7th August, 2009 in CM(M) No.759/2009 titled ***Ved Prakash Vs. Om Prakash Jain***. The pleas, as discussed above, sought to be taken by way of amendment of the application for leave to defend, can by no stretch of imagination qualify as subsequent events and were pleas which were available to the petitioner/tenant even at the time of filing the application for leave to defend and which were not taken.

16. As far as the other application under Order IX Rule 8 of the CPC filed by the petitioner / tenant is concerned, the same is found to be only seeking disposal first of the application for leave to defend aforesaid, before consideration of the application for leave to defend.

17. I have already hereinabove discussed the position of the application for amendment.

18. The plea of the petitioner/tenant in the application for leave to defend, of the respondent/landlady being not entitled to maintain a petition for eviction without serving a notice of termination of tenancy of the petitioner under Section 106 of the Transfer of Property Act, is equally misconceived in law. As far back as in ***V. Dhanapal Chettiar Vs. Yesodai Ammal*** (1979) 4 SCC 214 it was held that a notice to quit under Section 106 of the Transfer of Property Act is not a necessary prerequisite for an eviction petition under any of the State Rent Acts. The other pleas taken in the application for leave to defend qua the rate of rent, the petitioner/tenant having got electricity connection in the shop in his own name, the respondent/landlady having earlier filed petitions for eviction of the petitioner/tenant on the ground of non-payment of rent and having not pursued the same are not relevant for the purpose of adjudication of the application for leave to defend. The other plea in the application for leave to defend, of document of termination of

licence having not been produced is contradictory to the subsequent plea, of the licence which was in the name of Hot & Spicy, which was the trade name in which the deaf and dumb son of the respondent/landlady was carrying on business and not his personal name, is equally of no relevance. What is significant is that the petitioner/tenant in the application for leave to defend did not state that the son of the respondent/landlady was continuing to carry on business from Cross-River Mall or from any other place or that the deaf and dumb son of the respondent/landlady was earlier not carrying on business from Cross-River Mall. Yet further, the plea of the Disability Certificate being valid for only three years is again of no avail, inasmuch as it was not the plea of the petitioner/tenant in the application for leave to defend that the son of the respondent/landlady was not deaf or dumb or that he was earlier deaf and dumb but had been cured.

19. The other plea in the application for leave to defend, of the respondent/landlady being owner of property No.U-52, Upadhyay Block, Shakarpur, Delhi was without any particulars. The respondent/landlady in her reply has explained the position with respect to the said property and this Court, at the stage of leave to defend, is required to take a *prima facie* view of the matter and does not find the said plea to be disclosing any fact which would disentitle the respondent/landlady from an order of eviction under Section 14(1)(e) of the Act. Moreover, the respondent/landlady cannot be compelled to make her deaf and dumb son commence business from a property jointly owned by the husband of the respondent/landlady with his other family members, even if any space were to be available therein, as the same can lead to uncertainties and the business being required to be closed at any time. It is settled principle of law that the landlord in this respect has

an absolute discretion and the tenant cannot dictate the choice of the landlord.

20. The only other plea in the application for leave to defend, of the respondent/landlady having raised unauthorised construction in the property in which the petitioner was a tenant, is again of no avail in adjudication of the application for leave to defend.

21. The only other argument of the counsel for the petitioner / tenant is of CM(M) No.431/2015, CM(M) No.931/2015 & CM(M) No.1194/2015 arising out of the same proceedings for eviction still pending consideration before this Court. On enquiry, they are informed to be listed next on 4th December, 2017. The files of CM (M) No.431/2015, CM(M) No.931/2015 & CM(M) No.1194/2015 have been requisitioned and the same have also been got listed today.

CM(M) No.431/2015, CM(M) No.931/2015 & CM(M) No.1194/2015

22. The files of the aforesaid petitions have been perused. CM(M) No.431/2015 impugns the order dated 14th August, 2014 of the Additional Rent Controller (ARC) as well as the order dated 20th February, 2015 of the Rent Control Tribunal (RCT) (East), Karkardooma Courts, Delhi.

23. The order dated 14th August, 2014 of the ARC is of issuance of the notice to the petitioner/tenant of the petition for eviction under Section 14(1)(e) of the Act filed by the respondent/landlady. The only challenge thereto is found to be on the ground of the Court issuing the notice being of “ACJ-cum-CCJ-cum-ARC (East)” and which has been dealt with hereinabove.

24. The order dated 20th February, 2015 of the RCT (East) also impugned in CM(M) No.431/2015 is in MCA No.01/2015 preferred by the

petitioner/tenant, of dismissal of the application filed by the petitioner/tenant under Order VIII Rule 10 of CPC. Further discussion with respect thereto will be done hereunder, inasmuch as CM(M) No.931/2015 is also found to be arising from orders in MCA No.01/2015.

25. CM(M) No.931/2015 impugns the order dated 23rd September, 2015 of the RCT (East) of dismissal of the application filed by the petitioner/tenant for condonation of delay in filing MCA No.01/2015 supra and the subsequent dismissal of the said appeal.

26. MCA No.01/2015 has been found to be preferred by the petitioner/tenant against the order dated 14th August, 2015 of the ARC of issuance of notice to the petitioner/tenant in the form specified in the III Schedule of the Rent Act of the petition for eviction filed by the respondent/landlady under Section 14(1)(e) of the Act. The application under Order VIII Rule 10 of CPC therein was filed for non-filing of the reply to MCA No.01/2015 by the respondent/landlady.

27. I have already hereinabove dealt with the objection to the order dated 14th August, 2015. It is rather unfortunate that the RCT (East) entertained the appeal of the nature preferred, issued notice thereof, dismissed application under Order VIII Rule 10 of CPC filed therein and considered the application for condonation of delay in preferring the appeal and dismissed the appeal being MCA No.01/2015 as a consequence of dismissal of the application for condonation of delay. The appeal being MCA No.01/2015 was misconceived and ought to have been rejected at the threshold.

28. There is thus no merit in CM(M) No.431/2015 and CM(M) No.931/2015 which are dismissed.

29. CM(M) No.1194/2015 impugns the order dated 23rd September, 2015 of the RCT (East) of dismissal of the application for condonation of delay in filing MCA No.05/2015 and consequently dismissing MCA No.05/2015.

30. MCA No.05/2015 is found to have been preferred impugning the orders dated 5th January, 2015 and 6th January, 2015 of the ARC rejecting the plea of the petitioner/tenant that the Court of Senior Civil Judge which had assigned the petition for eviction under Section 14(1)(e) of the Act to the Court of ARC was not entitled to do so as well as of dismissal of the application of the petitioner/tenant for stay of proceedings in the petition for eviction under Section 14(1)(e) of the Act on the ground of having preferred MCA No.01/2015 supra.

31. The ARC in the order dated 6th January, 2015 has recorded that the Senior Civil Judge who has assigned the petition for eviction under Section 14(1)(e) of the Act was also exercising the power of the Rent Controller and that the pendency of MCA No.01/2015 before the Tribunal did not require the proceedings before the ARC to be stayed.

32. I have hereinabove already discussed the position with respect to the proceeding before this Court vested with powers under Section 36 of the Rent Act. There was thus no merit in the plea, of the Senior Civil Judge exercising power as the Rent Controller having no jurisdiction to assign the petition for eviction.

33. The other plea of the petitioner/tenant for stay of proceedings before the Rent Controller was also misconceived and dilatory. Once the RCT had not stayed the proceedings before the ARC, the question of ARC, owing to pendency of MCA No.01/2015, not proceeding further with the petition for eviction did not arise. However, the said argument of the counsel for the

petitioner/tenant demonstrates the harm which the action of the RCT (East) of entertaining MCA No.01/2015 which ought to have been dismissed/rejected at the threshold, is capable of causing.

34. There is thus no merit in CM(M) No.1194/2015 either.

35. CM(M) Nos.431/2015, 931/2015 & 1194/2105 are accordingly dismissed.

36. Coming back to RC.REV. No.363/2017, no other argument has been urged.

37. There is no merit in RC.REV. No.363/2017 also which is dismissed.

However, no costs.

38. The date of 4th December, 2017 in CM(M) No.431/2015, CM(M) No.931/2015 & CM (M) No.1194/2015 is cancelled.

P.S: Though the files of CM(M) No.431/2015, CM(M) No.931/2015 & CM (M) No.1194/2015 were called on 8th August, 2017 but while correcting the order on 18th August, 2017 it was found that the Court Master forgot to have the same listed on 8th August, 2017 and accordingly, the said petitions were got listed on 18th August, 2017.

RAJIV SAHAI ENDLAW, J.

AUGUST 08, 2017

‘pp/bs’

(corrected & released on 22nd August, 2017)