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

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Date of decision: 17.01.2017

+ RC REV.1/2017 and CM Nos.51-52/2017

MUKESH ARORA

..... Petitioner

Through Mr.Sacchin Puri,Sr.Adv. with
Mr.Mayank Wadhwa, Advocate

versus

DINESH KUMAR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This revision petition is filed under section 25(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as The DRC Act) seeking to impugn the eviction order dated 12.8.2016 by which the application filed by the petitioner seeking leave to defend was dismissed and an eviction order was passed under section 14(1)(e) of the DRC Act.

2. The respondent/landlord filed the Eviction Petition against the petitioner stating that the property being House No.219-220 Gali Loharan, Ajmeri Gate, Delhi being a godown was let out @ Rs.250 per month. On the

issue of the contention of the respondent of being the landlord it is the case of the respondent that the property was purchased by late Shri Jai Dayal Mal (grandfather of the respondent) and by Late Shri Naut Ram. Subsequent to a registered partition deed the properties in question fell to the share of Late Shri Jai Dayal Mal. Late Shri Jai Dayal had four sons and two daughters. The property is not divided/partitioned among the son/daughters/LRs of the said late Shri Jai Dayal Mal. The respondent is said to be the LR of Late Shri Gopal Singh, one of the sons of late Shri Jai Dayal Mal. Hence, it is stated that the respondent is the owner/co-owner and is entitled to file the present eviction petition.

3. On the issue of bona fide requirement it was pleaded that the premises is required by the respondent for running his business of repairing electricity motors for himself and for his family members dependent upon him. It was urged that respondent has 15 years' experience and wants to start his own business. It is further stated that the respondent has no other suitable accommodation with him to run his business.

4. The petitioner filed the application seeking leave to defend. The only worthwhile plea raised in the application was that the respondent is neither the owner nor the landlord of the premises. It was claimed that the petitioner is in possession for the last 25 years and has paid substantial amount at the time of taking the premises and was paying rent of Rs.250 per month without any default. It was further urged that the petitioner has been paying rent to one Late Shri Nathi Lal and never had any dealings with the respondent.

5. The ARC by his impugned order noted that the leave to defend is sought merely on the said ground, namely, that the respondent is not the

owner/landlord of the premises though the petitioners do not deny that they are the tenants of the property. Relying on a catena of judgments in this regard the said contention of the petitioner was rejected holding that there exists a relationship of landlord and tenant between the parties. The application of the petitioner seeking leave to defend was accordingly dismissed. An eviction order was passed in favour of the respondent.

6. I have heard learned senior counsel for the petitioner. Learned senior counsel has vehemently relied upon an averment made in an application filed under section 340 Cr.PC where it is claimed that the respondent had filed a suit for partition, separate possession, rendition of accounts and permanent injunction regarding the suit property on 15.1.2007 titled *Dinesh Kumar & ors. vs. Nathi Lal & Others* which fact came to the knowledge of the petitioner only after filing the application for leave to defend. It is stated in the application that the case was amicably settled and a compromise was arrived at. It is also urged that the said suit titled in *Dinesh Kumar & ors. vs. Nathi Lal & Others* the respondent in his cross-examination has said that he is doing service in the recovery department in Delhi. Based on this it was argued that the respondent is not the landlord/owner of the premises.

7. This court in exercise of its revisionary powers is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.

8. Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

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(e) that the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation.”

9. In view of the judgment of the Supreme Court in the case of *Satyawati Sharma (dead) by LRs vs. Union of India & Anr., AIR 2008 SC 3148* the aforesaid provision is also now made applicable to commercial properties.

10. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

11. In the present case the trial court declined to grant leave to defend to the petitioner. The parameters for granting leave to defend are well known.

12. This court in the case of *Sarwan Dass Bange vs. Ram Prakash, MANU/DE/0204/2010* noted as follows:-

“7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant

approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition. However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.”

13. Similarly, this court in *Deepak Gupta vs. Sushma Aggarwal, 2013 202 DLT 121* held as follows:-

“24.From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of Precision Steels (supra), it is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the question as to grant or not grant of the leave to defend but the real question is tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of

the grant of the leave to defend by going into the complicated questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of Charan Dass (supra) and Precision Steel (supra) are holding the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of Inderjit Kaur vs. Nirpal Singh, : 2001 (1) R.C.R. 33 and Tarun Pahwa vs. Pradeep Makin, : 2013 (1) CLJ 801 Del.)”

I may hence test the findings recorded by the ARC on the touchstone of the requirement of the parameters stated above for determining as to whether the trial court rightly refused the leave to defend to the petitioners.

14. The petitioner admits himself to be a tenant of Late Shri Nathi Lal and states that he has been paying rent to Late Shri Nathi Lal. As per the facts on record the property originally belonged to Shri Jai Dayal Mal. Shri Jai Dayal Mal was survived by four sons and two daughters, late Shri Nathi Lal being one of the sons. The other three sons were late Shri Puran Chand, Late Shri Gopal Singh and Shri Bhagwan Ram and two daughters late Smt.Chand Devi and Late Smt. Munni Devi. The respondent is the son of late Shri Gopal Singh. There is no partition of the property and hence the respondent is a co-owner of the tenanted property. It is settled legal position that a co-owner is entitled to file an Eviction petition in his own right.

15. Reference in this context may be had to the judgment of the Supreme Court in the case of ***Boorugu Mahadev & Sons And Anr. v. Sirigiri Narasing Rao And Ors., (2016) 3 SCC 343*** where the Supreme Court held as follows:

“19. It is also now a settled principle of law that the concept of

ownership in a landlord-tenant litigation governed by rent control laws has to be distinguished from the one in a title suit. Indeed, ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to retain control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. (Vide *Sheela v. Firm Prahlad Rai Prem Prakash*)”

16. The above proposition has also been reiterated in the judgment of the Supreme Court in the case of *Kasthuri Radhakrishnan & Ors. v. M.Chinniyan & Anr., (supra)*.

17. Similarly, this court in the case of *Puran Chand Aggarwal vs. Lekh Raj, 210 (2014) DLT 131* held as follows:-

“34. It is settled law that in the context of the Act what appears to be the meaning of the term "owner" is that à the tenant the owner should be something more than the tenant. The position in law is that the "ownership" of the landlord for the purpose of maintaining a petition under Section 14(1)(e) of the Act is not required to be an absolute ownership of the property, and that it is sufficient if the landlord is a person who is collecting the rent on his own behalf. The imperfectness of the title of the premises can neither stand in the way of an eviction petition under Section 14(1)(e) of the Act, nor can the tenant be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying the rent to the landlord. The tenant inducted by landlord is estopped and cannot dispute the title of his landlord in view of the provisions of Section 116 of the Indian Evidence Act without there being any subsequent change in the situation. This aspect has been discussed in the following judgments:

- i. Shanti Sharma vs. Smt. Ved Prabha, AIR 1987 SC 2028
- ii. Zahid Hussain thr. LRS vs. Aenul Haq Qureshi thr. LRS, 2005 (1) RCR 323
- iii. Ram Chander vs. Ram Pyari, 109 (2004) DLT 388
- iv. Mukesh Kumar vs. Rishi Prakash, 174 (2010) DLT 64
- iv. Rajender Kumar Sharma & Ors. vs. Smt. Leela Wati & Ors., 155 (2008) DLT 383
- v. Meenakshi vs. Ramesh Khanna & Anr., 60 (1995) DLT 524
- vi. Tej Pal Gupta vs. Rattan Singh, 160 (2009) DLT 726
- vii. Kamla Rani & Ors. vs. Texmaco Ltd., 139 (2007) DLT 61
- ix. Keshar Lal H. Pardeshi vs. Vithal S. Patole, (2005) 10 SCC 249
- x. Ramesh Chand vs. Uganti Devi, 157 (2009) DLT 450
- xi. M.M. Quasim vs. Manohar Lal Sharma, (1981) 3 SCC 36
- xii. B.R. Anand vs. Prem Sagar, 2002 (1) RCR (Rent) 234
- xiii. D. Rani Puri vs. Chanan Lal, 65 (1997) DLT 313
- xiv. Shree Ram Sharma vs. Mohd. Sabr, 178 (2011) DLT 1
- xv. Bharat Bhushan Vij vs. Arti Teckchandani, 153 (2008) DLT 247
- xvi. Jiwan Lal vs. Gurdial Kaur & Ors., 57 (1995) DLT 262”

18. Hence, the respondent was not to establish his title in a manner he would do in a civil suit where a dispute of title would arise. The respondent is a landlord who is entitled to seek eviction of the petitioner. He has rights in the property as is manifest from the facts on record.

19. Reliance of learned senior counsel for the petitioner on the stated suit filed by the respondent against late Shri Nathi Lal in 2007 is misplaced. Even as per the petitioner the suit was compromised. The contents of the

compromise have not been placed on record. This plea was even otherwise not raised in the application for leave to defend. Nothing turns on the said fact.

20. There are no reasons made out to interfere in the impugned order. The petition is accordingly dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

JANUARY 17, 2017

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corrected and signed on 6.6.2017