

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

% **Date of decision: 1st September, 2017**

+ **RC.REV. No.408/2017**

SATYA PRAKASH

.... Petitioner

Through: Mr. O.P. Faizi, Adv.

Versus

AMIT JAIN & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.31863/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

RC.REV. 408/2017 & CM No.31863/2017 (for stay)

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 20th May, 2017 in Eviction Petition No.253/2017 (Old No.) / 293/2017 (New No.) of the Court of Additional Rent Controller (ARC), Pilot Court (Central), Tis Hazari Courts, Delhi] of dismissal of the application filed by the petitioner for leave to defend the petition for eviction under Section 14 (1)(e) of the Act filed by the respondents and the consequent order of eviction of the petitioner from residential flat No.2, First Floor of Property No.1416, Kucha Ustad Hira, Gali Guliyar, Dariba Kalan, Delhi.
4. The counsel for the petitioner has been heard.
5. The contention of the counsel for the petitioner is that as per the Rent Note filed by the respondents themselves, besides the petitioner, Sh. Ved

Prakash, brother of the petitioner is also a tenant in the premises but the petition for eviction was filed against:

“Sh. Satya Prakash Ved Prakash
Son of Late Sh. Ram Swaroop,
Flat No.2, First Floor, 1416, Kucha Ustad Hira,
Gali Guliyani, Dariba Kalan, Delhi-110006.”

It is contended that the petition for eviction against the petitioner Satya Prakash alone, without impleading Ved Prakash is bad and the petitioner ought to have been granted leave to defend on the said ground.

6. I have enquired from the counsel for the petitioner as to on what basis it is contended that the petition for eviction was against the petitioner Satya Prakash only when it clearly also mentions the name of Ved Prakash. It has further been enquired, whether there are any differences between the petitioner and his brother Ved Prakash.

7. The counsel for the petitioner states that there are no differences between the petitioner and Ved Prakash and that though the petition has been filed against “Sh. Satya Prakash Ved Prakash” as aforesaid but only one summon in the name of “Satya Prakash Ved Prakash” was received and it is only the petitioner Satya Prakash who has been appearing. It is further contended that the petition for eviction was filed, as if against a “firm”.

8. Significantly, the petition for eviction, while describing the respondent, does not use/mention the word ‘M/s’ as is often used before describing a firm’s name. It is thus only the view of the petitioner that the respondents have sued in the firm name or have sued only Satya Prakash. The summons served being in the name of “Satya Prakash Ved Prakash”, even if only one and not separately in the name of Satya Prakash and Ved

Prakash, if Ved Prakash has chosen not to file leave to defend, he has to suffer the consequences thereof and it cannot be said that the petition is bad for non-joinder of necessary parties or that leave to defend ought to have been granted on this ground. Even otherwise, once the interest of the petitioner and his brother Ved Prakash is common and the same and it is not the case that there is any collusion between the petitioner on the one hand and the respondents on the other hand, the argument of the petition having not been filed against Ved Prakash, even if was to be accepted, does not entitle the petitioner to leave to defend. Reference in this regard may be made to the dicta of the Supreme Court in *Surayya Begum Vs. Mohd. Usman* (1991) 3 SCC 114. There is thus no merit in the said ground urged which is rejected.

10. The counsel for the petitioner has next contended that as per averments of the respondents in para 18(a) of the petition for eviction i) Narender Kumar Jain, Sushma Jain, Amit Jain and Arhant Jain had 25% share each in the property No.1416, Kucha Ustad Hira, Gali Guliyan, Dariba Kalan, Delhi-110006; ii) Narender Kumar Jain expired on 3rd January, 2001 and his wife Sushma Jain expired on 25th May, 2006 leaving Amit Jain and Arhant Jain and two daughters viz. Anubha Jain and Anjana Jain as their only legal heirs; iii) Anubha Jain and Anjana Jain released / relinquished their undivided share in the said property in favour of the respondent no.1 Amit Jain; and, iv) Arhant Jain, vide registered Sale Deed dated 31st January, 2013, sold his 1/4th undivided share in the property to the respondent no.2 Nidhi Jain who is the wife of respondent no.1 Amit Jain.

11. It is argued that the respondent no.2 Nidhi Jain having acquired title to the property only on 31st January, 2013, could not have instituted the petition

for eviction under Section 14(1)(e) of the Act before five years from expiry thereof i.e. before 31st January, 2018 and the petition for eviction from which this petition arises was premature.

12. A petition for eviction under Section 14(1)(e) of the Rent Act can be instituted by one of the co-owners /co-landlords also as has been consistently held by the Supreme Court in *Sri Ram Pasricha Vs. Jagannath* (1976) 4 SCC 184, *Kanta Goel Vs. B.P. Pathak* (1977) 2 SCC 814, *Pal Singh Vs. Sunder Singh* (1989) 1 SCC 444, *Dhannalal Vs. Kalawatibai* (2002) 6 SCC 16, *Indian Umbrella Manufacturing Co. Vs. Bhagabandei Agarwalla* (2004) 3 SCC 178 & *Mohinder Prasad Jain Vs. Manohar Lal Jain* (2006) 2 SCC 724.

13. The bar of Section 14(6) admittedly does not apply to the respondent no.1 Amit Jain. Amit Jain could have alone filed the petition for eviction and the same would have been maintainable. Merely because he has, along with himself, also impleaded his wife Nidhi Jain qua whom the bar of Section 14(6) is invoked, would not make the petition for eviction not maintainable or entitle the petitioner to leave to defend. It is not as if separate requirements of Amit Jain and Nidhi Jain have been pleaded or that the petition for eviction against the petitioner is only for the requirement of Nidhi Jain to whom the bar of Section 14(6) applies.

14. The two respondents as aforesaid are husband and wife and the requirement pleading which the petition for eviction has been filed is their joint requirement and even if the petition of respondent no.1 Amit Jain alone was to be considered, the requirement of his wife Nidhi Jain as a member of his family would be implicit therein.

14. There is no merit in the said contention also which is rejected.

15. The third and last contention of the counsel for the petitioner is i) that the subject property comprised of ground floor, first floor (in tenancy and occupation of the petitioner) second floor and terrace floor; ii) that the respondents were earlier residing on the second floor of the said property; iii) that the respondents have admittedly sold the ground floor, second floor and terrace floor of the property between the years 2014 and 2016; iv) that the requirement pleaded of the first floor in the tenancy/occupation of the petitioner is self-created; v) that the plea of the respondents of now living as a tenant at a rent of Rs.16,000/- per month in property no.1337 Krishna Gali, Gali Gulliyani, Dariba Kalan, Delhi-110006 is false and the rent note filed in support thereof is on a plain paper, not notarized and is undated and without any witnesses.

16. The respondents, in para 18(a) of the petition for eviction, have pleaded that the respondent no.1 suffered heavy losses in business and got into debts and to liquidate the debts was constrained to sell one godown on ground floor and also second floor in the year 2014 and the third floor in July 2016 and has taken the premises aforesaid on rent from May, 2016 while the petitioner is now, after statutory enhancement under Section 6A of the Rent Act, paying rent of Rs.310/- per month only.

17. A perusal of the affidavit accompanying the application for leave to defend shows the petitioner to have not controverted that the respondent no.1 was carrying on business or had suffered losses therein; though it is pleaded that the respondent no.1 is a habitual drunkard.

18. Though the petitioner in the leave to defend application denied that the respondents are living on rent at the rate of Rs. 16,000/- per month but have not pleaded that the respondents are not residing at the address given or

in any other capacity. It is not even the plea that the respondents have any right to the other property where they claim to be residing as tenants.

19. Further though it is argued that the respondents were earlier residing on the second floor but it is not so stated in the leave to defend application also. Rather, the leave to defend application is found to have been drafted like a written statement denying all the contents of the petition for eviction and putting the respondents to proof thereof.

20. The aforesaid does not constitute disclosing facts as would disentitle the landlord from an order of eviction under Section 14 (1)(e) of the Act, within the meaning of Section 25B(5) of the Act. In fact, on an entire reading of the application for leave to defend, no facts which would disentitle the respondents from obtaining an order of eviction under Section 14(1)(e) of the Act, are found to be disclosed. Else, vide Section 25B (4) of the Act, the petitioner is deemed to have admitted what is pleaded in the petition for eviction and the respondents therefore become entitled to the order of eviction.

21. The debts for which the respondents have pleaded to have sold the ground floor, second floor and third floor of the property on the first floor whereof the petitioner is a tenant are also not found to have been disputed and the same would deemed to have been admitted. Once that is so, then the sale by the respondents of the other portions of the property to pay off the debts cannot be said to be a self-created paucity of accommodation for which it can be said that the petition for eviction can be dismissed. The landlord is always entitled to, as per his/her requirement, deal with his property and unless anything else is disclosed to show self-created paucity of accommodation, no leave to defend can be granted on such grounds.

22. There is thus no merit in the petition and it cannot be said that the order of learned ARC impugned in this petition is not in accordance with the law.

Dismissed.

No order as to costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 01, 2017

‘gsr’

(Corrected & released on 3rd October, 2017)

