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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. No.415/2017 & CM No.32107/2017 (for stay).**
MANJEET SINGH KANG Petitioner
Through: Mr. Anurag Abhishek, Mr. Mohit
Sharma and Ms. Deepa Sinha, Advs.
versus
ARUNA KAPOOR Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.09.2017

CM No.32108/2017 (for exemption).

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

RC.REV. No.415/2017 & CM No.32107/2017 (for stay).

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 15th April, 2017 in E.No.81/15 (New E.No.5504/16 of the Court of Additional Rent Controller (North-West), Rohini 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 petitioner from property no.KP-322, Pitampura, New Delhi – 110 034 disclosed to be residential premises.
4. Need to record the facts or to deal with the impugned order is not felt as the counsel for the petitioner / tenant without wasting time has fairly stated that it is only a legal argument which is to be considered in the present case. It is stated that the respondent claims to have become the owner /

landlady of the premises in the tenancy of the petitioner / tenant on the basis of a Gift Deed executed in her favour by the deceased sister of the respondent / landlady; that another sister of the respondent / landlady is challenging the said Gift Deed by filing a suit for partition of the property and which is pending in the Court. The argument is that since the title of the respondent / owner / landlady on the basis of the Gift Deed is under a cloud, the respondent / landlady cannot maintain a petition for eviction under Section 14(1)(e) of the Act till her title is so cleared. It is also suggested that the principle reiterated in *Ujagar Singh Kakkar Vs. Chander Mohan* 1987 (31) DLT 108 that though a co-owner is entitled to maintain a petition for eviction under Section 14(1)(e) of the Act but not if the other co-owner is objecting thereto, would apply. It is also contended that if the sister of the respondent / landlady who is challenging the Gift Deed in favour of the respondent / landlady were to succeed, then the respondent / landlady would not be entitled to possession sought to be recovered from the petitioner / tenant.

5. The principle of one co-owner being not entitled to maintain a petition for eviction under Section 14(1)(e) of the Act if objected to by the other co-owner is not so wide as appears to be the impression. Merely because the petition for eviction under Section 14(1)(e) of the Act has been filed by a co-owner is not a ground for dismissal of the petition for eviction. Only if the tenant is able to show that the other co-owner is interested in the tenant continuing and has also extended the lease, would the question arise and that too only if it is found that co-ownership is admitted.

6. I do not understand how in the facts of the present case the said principle is being invoked. In view of a registered Gift Deed in favour of the respondent / landlady by the deceased sister in the lifetime of the deceased sister, the said property ceased to be the property of the deceased sister and would not form part of her estate for any share therein to be inherited by the sister who has filed the suit. Only if the said Gift Deed is set aside, would the question of the respondent / landlady being a co-owner along with her living sister would arise. It is not the argument that the said Gift Deed has been set aside. At best, the argument is of challenge thereto.

7. Thus, as long as the registered Gift Deed stands, the respondent is the owner and landlady.

8. The counsel for the petitioner / tenant at this stage has contended that though the Gift Deed records that possession of the property gifted had been delivered but the petitioner is tenant in the property from before and continues as a tenant and rent receipt continued to be issued by the deceased sister of the respondent / landlady.

9. It is not for a tenant to challenge the Gift Deed in favour of the respondent, as has been held in (i) *Sardarni Kirpal Kaur Vs. Bhagwant Rai* 1962 SCC OnLine P&H 57; (ii) *Krishan Lal Vs. Rajan Chand Khanna* AIR 1993 Del 1; and, (iii) *Hari Shankar Vs. Madan Mohan Gupta* ILR (2004) 1 Delhi 398. It is also not the argument that the petitioner / tenant has instituted any proceedings for having the said Gift Deed set aside and / or has any locus therefor.

10. As far as the only other argument of the petitioner / tenant, of the living sister of the respondent / landlady who has challenged the Gift Deed,

in the event of the respondent / landlady recovering possession being deprived of possession is concerned, it is always open to the living sister of the respondent / landlady to, in the suit claimed to have been instituted, seek appropriate orders with respect to the premises after the petitioner / tenant has been evicted therefrom.

11. There is thus no merit in the only argument urged.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 04, 2017

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