

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

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

+ **RC.REV. No.410/2017 & CM No.31872/2017 (for stay).**

DEVENDER KUMAR SHARMA & ANR Petitioners

Through: Mr. Manu Sishodia and Mr.
Hitesh Saini, Advs.

versus

KUSHAL KISHORE AGGARWAL Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.31873/2017 (for exemption).

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

RC.REV. No.410/2017 & CM No.31872/2017 (for stay).

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 4th May, 2017 in E.No.215/17 (New No.236/17) of the Pilot Court (Central), Tis Hazari Courts, Delhi) of dismissal of the application filed by the petitioners / tenants for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent / landlord and the consequent order of eviction of the petitioners / tenants from one room / garage opening in the rear lane along with the use of bathroom and toilet in the staircase, in property no.4-UB, Bunglow Road, Jawahar Nagar, Delhi – 110 007.

4. The counsel for the petitioners / tenants has been heard and the copies of the Trial Court record filed, perused.

5. The counsel for the petitioners / tenants has begun his arguments by contending that the respondent / landlord is not the owner of the premises in the tenancy of the petitioners and there is no relationship of landlord and tenant between the parties.

6. On enquiry as to who is the owner and landlord, if not the respondent, it is stated that the mother of the petitioners / tenants was a tenant under one Smt. Radha Rani since the year 1978 at a rent of Rs.20/- per month.

7. On further enquiry as to whether the petitioners / tenants are still paying the rent to Smt. Radha Rani, it is stated that Smt. Radha Rani has died and the petitioners / tenants have not paid the rent to anyone since 1979 and nobody has claimed any rent from the petitioners / tenants since then.

8. The counsel for the petitioners / tenants however during the course of hearing has stated that the respondent / landlord has produced before the Additional Rent Controller a registered Sale deed in favour of his father with respect to the property. On enquiry, whether not by virtue of the said Sale deed the respondent is the owner and landlord irrespective of whether any rent was ever claimed by the father of the respondent / landlord or the respondent / landlord, it is contended that the father of the respondent / landlord, besides the respondent / landlord has left other legal heirs also. However it is not disputed that save for the respondent / landlord, none of the other legal heirs is in possession of any part of the property.

9. The aforesaid admissions of the petitioners / tenants in the arguments of their counsel constitute the respondent / landlord as, if not

the absolute owner, at least one of the co-owners and who as per the dicta in (i) ***Kanta Goel Vs. B.P. Pathak*** (1977) 2 SCC 814; (ii) ***Pal Singh Vs. Sunder Singh*** (1989) 1 SCC 444; (iii) ***Dhannalal Vs. Kalawatibai*** (2002) 6 SCC 16; (iv) ***Indian Umbrella Manufacturing Co. Vs. Bhagabandei Agarwalla*** (2004) 3 SCC 178; and, (vi) ***Mohinder Prasad Jain Vs. Manohar Lal Jain*** (2006) 2 SCC 724 is entitled to maintain a petition for eviction under Section 14(1)(e) of the Act.

10. It is also the contention of the counsel for the petitioners / tenants, that the respondent / landlord, prior to filing the petition for eviction under Section 14(1)(e) of the Act had also filed a petition for eviction under Section 14(1)(a),(d)&(h) of the Act for eviction of the petitioners / tenants and in which an issue of ownership had been framed. However, on enquiry as to how Section 14(1)(a),(d)&(h) require the ownership to be proved or pleaded for filing a petition for eviction thereunder and that how issues were framed in the petition for eviction under the Rent Act when the procedure to be followed by the Rent Controller for adjudicating the petition for eviction is of a summary suit, it is contended that the petitioners / tenants in their written statement to that petition had taken a stand that the respondent / landlord is not the owner.

11. In the facts aforesaid, there is no merit in the argument, of the respondent being not the owner or there being no relationship of landlord and tenant and no case for grant of leave to defend on the said ground is made out.

12. The only other argument of the counsel for the petitioners is, of the respondent / landlord not requiring the premises.

13. The respondent / landlord has instituted the petition for eviction pleading (i) that he and his wife are 78 and 75 years of age and have kept full time servants for their assistance; (ii) that one of the grandsons of the respondent / landlord residing in the premises, as part of the family of the respondent / landlord, also suffers from muscular dystrophy and is unable to do his daily activities without assistance and requires full-time help to reside in the house; (iii) that the respondent / landlord also keeps a full-time maid and driver who also reside in the house; and, (iv) that the one room shown in the site plan as garage / for parking, in the tenancy and occupation of the petitioners / tenants, is required by the respondent / landlord for residence of his servants and drivers for full- time help/assistance.

14. The contention of the counsel for the petitioners / tenants is (i) that on the terrace floor above the second floor of the house also is a room for servants which has been wrongly shown in the site plan filed by respondent as a store; (ii) that the petitioners / tenants have filed their own site plan showing the said space as a room; and, (iii) that the respondent / landlord has available to him the said one room on the terrace and two other garages / parking spaces and which are sufficient to meet the requirement of the respondent / landlord.

15. The learned Additional Rent Controller, in the impugned order, has recorded and on perusal of the site plan filed by respondent/landlord and the site plan filed by petitioners/tenants it is confirmed that the site plan filed by the respondent / landlord and by the petitioners / tenants are identical in dimensions. I have perused the two site plans. The only difference is that while the accommodation on the terrace floor is

described in the site plan filed by the respondent / landlord as a store, in the site plan filed by the petitioners / tenants, it is described as a room. However there is no discrepancy in the dimensions of the said space in the two site plans and as per which the said size thereof, whether it be a store or a room, is less than 100 sq. ft., which is the minimum habitable area prescribed in the Building Bye laws applicable to Delhi. The Building Bye laws do not make any differentiation between what is habitable for the owner of the house and what is habitable for domestic help/employee. Thus the space on the terrace floor cannot be treated as habitable for the purpose for which requirement is pleaded. Reference if any required may be made to *Subhash Chander Marwah Vs. Jagjit Singh Sood* (1988) 35 DLT 258.

16. There is another factor which lends me to not allow the said room / store on the terrace floor for the requirement pleaded of the domestic help. The house is constructed with a central open courtyard open to the sky till the terrace. From the opening of the courtyard on the terrace, the entire first floor and second floor can be seen and if domestic helps are permitted to occupy the said room/store on the terrace, the same would lead to loss of privacy of the residents of the first floor and the second floor.

17. The counsel for the petitioners / tenants on enquiry states that the petitioners / tenants also are using the premises in their tenancy for residential purposes and in both the site plans, toilets are shown on the ground floor adjacent to the three garages / parking spaces which are admittedly being used as accommodation for the domestic help by the respondent / landlord and are also being used so by the petitioners /

tenants. The use of the said garages/parking spaces allow the domestic help independent access without disturbing the privacy of the family members of respondent/landlord residing on the first and second floors.

18. The respondent / landlord has pleaded the need for a full-time domestic help, driver and a maid to assist the wife of the respondent / landlord and which, considering the locality and considering the financial status of the respondent / landlord which is not controverted, cannot be said to be far-fetched or whimsical.

19. Supreme Court in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 has held that once the requirement pleaded is found to be sincere and genuine, it is not for the Court to interfere therein or to impose its own standards to judge the same. Reference may also be made to Section 19(2) of the Rent Act which permits the tenant to, even after eviction, if finds the owner to be not putting the premises, possession of which has been recovered for self-use, apply for re-possession.

20. No error is thus found in the order of the learned Additional Rent Controller impugned in this petition and which is found to be in accordance with law.

21. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 01, 2017

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