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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.797/2015 & CM No.17353/2015 (for stay).
VINOD CHAUDHARY Petitioner

Through: Mr. V.K. Shukla, Adv.

versus

OM PRAKASH Respondent

Through: Mr. S.N. Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **05.07.2017**

1. This petition under Article 227 of the Constitution of India impugns the order dated 9th July, 2015 of the Additional Rent Controller of allowing the application of the respondent / tenant for leave to defend and granting leave to defend to the respondent / tenant to contest the petition for eviction filed by the petitioner / landlord under Section 14(1)(e) of the Delhi Rent Control Act, 1958.

2. Supreme Court as far back as in *Vinod Kumar Chowdhry Vs. Smt. Narain Devi Taneja* AIR 1980 SC 2012 held that even against an order of grant of leave to defend, a petition under Section 25B(8) of the Act lies. The Division Bench of this Court in *R.S. Bakshi Vs. H.K. Malhari* 2002 (62) DRJ 272 also has clarified so. Notwithstanding the same, the petitioner / landlord has chosen to prefer a petition under Article 227 of the Constitution of India.

3. Subject to payment of costs by the petitioner / landlord of Rs.10,000/- to the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi within two weeks of today, the petition is

nevertheless considered since it has been pending for the last two years. The petitioner / landlord to, on the next date of hearing before the Additional Rent Controller, furnish proof of payment of costs. If the costs are not paid, the petitioner / landlord shall not be entitled to pursue the petition for eviction.

4. Again, finding that the order of grant of leave to defend is nearly two years old, I have enquired from the counsel for the petitioner / landlord the present stage of the petition for eviction.

5. The counsel for the petitioner / landlord states that the petitioner / landlord has filed affidavit by way of his examination-in-chief but has not been cross-examined as yet.

6. Per contra, the counsel for the respondent / tenant states that after the grant of leave to defend on 9th July, 2015, the matter was posted before the Additional Rent Controller on 10th September, 2015 for evidence of the petitioner / landlord but the petitioner / landlord had not filed affidavit by way of examination-in-chief and took opportunities therefor even thereafter on 21st December, 2015, 17th March, 2015, 7th May, 2016 and 11th May, 2016 and filed affidavit by way of examination-in-chief only in August, 2016. The counsel for the respondent / tenant further states that the petitioner / landlord thereafter also did not submit himself for cross-examination on 24th September, 2016, 8th February, 2017 and 18th March, 2017.

7. The counsel for the petitioner / landlord states that since he does not have his Trial Court record, he is unable to confirm or deny the aforesaid facts.

8. However the counsel for the petitioner / landlord states that since this petition is pending, therefore dates were being taken.

9. A landlord who requires premises *bona fide* for his own use, even if pursuing the challenge to the grant of leave to defend, is not expected to simultaneously delay the eviction proceedings before the Trial Court. The conduct of the petitioner / landlord does not inspire confidence.

10. Irrespective of the same, I have also heard the counsels on merits of the impugned order granting leave to defend.

11. The learned Additional Rent Controller, in the impugned order, has held that as per the averments in the application for leave to defend the petitioner / landlord has several other alternate suitable premises available to him and the denial by the petitioner / landlord thereof raises disputed questions of fact and requires evidence. The learned Additional Rent Controller has in this regard, in the impugned order, in a tabulated form highlighted the versions of the petitioner / landlord and the respondent / tenant with respect to each of the six properties.

12. The counsel for the petitioner / landlord has argued that the learned Additional Rent Controller has erred in holding that the contradictory stands of the parties with respect to the six properties requires evidence / trial. It is stated that the petitioner / landlord in the reply to the application for leave to defend has given particulars for each of the properties i.e. the ownership and title thereof and the person in whose possession each of the said properties is and in the face of such specific pleadings, the learned Additional Rent Controller ought to have held the version of the respondent/tenant entitling the respondent/tenant to lead evidence.

13. Though at one stage the counsel for the petitioner / landlord has stated that the averments in the reply to the application for leave to defend are also supported by the documents but has during the hearing not been able to substantiate each of the documents.

14. Not only so, qua some of the documents which were referred to by the counsel for the petitioner / landlord, it is the contention of the counsel for the respondent / tenant that the same were not placed before the Trial Court at any point of time and have been filed before this Court at the present stage.

15. The counsel for the petitioner / landlord on being asked to respond thereto states that he was not the Advocate for the petitioner / landlord till the stage of grant of leave to defend and is thus not aware whether the said documents are on record of the Trial Court or not.

16. Such answer cannot be accepted.

17. The counsel who now admittedly represents the petitioner / landlord before the Additional Rent Controller also, ought to have taken a categorical stand whether all the documents filed before this Court were on the record of the Trial Court or not.

18. In this view of the matter, I am unable to hold the impugned order of the Additional Rent Controller to be not in accordance with law for this Court in exercise of powers under Section 25B(8) of the Act to interfere.

19. Not only so, the averments in the petition for eviction qua the requirement of the petitioner / landlord are also quite sketchy. What has been pleaded is (i) that the family of the petitioner / landlord comprises of his wife, two sons and a marriageable daughter; (ii) that now for higher education and other household expenses, the petitioner / landlord presently

has no source of income except some rental income which is not sufficient for the petitioner / landlord to make his both ends meet; (iii) that earlier the petitioner / landlord was able to meet all his expenses from the rental income but now since the prices of commodities have become very high including education of the two children, the petitioner / landlord is finding difficult to meet his both ends from the said rental income; the petitioner/landlord also has one daughter of marriageable age; and, (iv) that hence the petitioner / landlord requires the shop in the tenancy of the respondent / tenant for doing household plastic articles business and folding beds.

20. From the aforesaid averments it transpires that the petitioner / landlord till now has not been carrying on any business and is intending to commence the household plastic articles business and folding beds business after the eviction of the respondent / tenant from the subject shop.

21. It appears that if the petitioner / landlord had any intention or need to carry on household plastic articles business, the petitioner / landlord would have not waited for eviction order to commence the said business and would have commenced said business described as 'household' from his house only. Only in that event it could be said that the desire of the petitioner / landlord who admittedly till now, though stated to be now 47 years of age, has not carried on any business, is *bona fide*. For this reason also I am of the view that the order of grant of leave to defend does not call for any interference in exercise of jurisdiction under Section 25B(8).

23. Dismissed.

24. Though the counsel for the petitioner / landlord in his arguments had not referred to any judgments but has now referred to (i) ***Usha Devi Vs.***

Ranjeet Singh 2014 LawSuit (Del) 4323; and, (ii) ***Aero Traders Pvt. Ltd. Vs. Mohan Singh*** 207 (2014) DLT 202.

25. The counsel for the petitioner / landlord also at this stage hands over copies of (i) ***Babu Lal Vs. Atul Kumar*** ILR(2014)III Delhi 2047; and, (ii) ***Anil Bajaj Vs. Vinod Ahuja*** (2014) 15 SCC 610.

26. In view of above, need to deal with the judgments is not felt.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 05, 2017
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