

\$~34.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. No.443/2017 and CM No.34870/2017 (for stay).
GOPAL KISHAN Petitioner
Through: Ms. Deepika, Adv.
versus
RAM SAROOP Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.09.2017**

CM No.34871/2017 (for exemption).

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

RC.REV. No.443/2017 and CM No.34870/2017 (for stay).

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 17th May, 2017 in E.No.5520/16 (Old E.No.41/15) of the Court of Rent Controller (North-West), District, Rohini 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 respondent and the consequent order of eviction of the petitioner from property no.A-19, Harijan Colony, Sawan Park, Ashok Vihar-III, Delhi – 110 052.
4. The manner in which the counsel for the petitioner / tenant has argued, does not require this Court to, in this order, deal with the contents of the petition for eviction, leave to defend and reply thereto.

5. The first contention of the counsel for the petitioner / tenant is that the respondent / landlord has never demanded rent from the petitioner / tenant and the petitioner / tenant has never paid rent to the respondent / landlord and the respondent / landlord was thus not entitled to maintain the petition for eviction under Section 14(1)(e) of the Act.

6. On enquiry, as to in what capacity the petitioner / tenant is in occupation of the property, the counsel for the petitioner / tenant states that though the petitioner is in possession as tenant but under Roshni Devi who sold the property in the tenancy of the petitioner and the property, after change of several hands, has now been acquired by the respondent / landlord vide Sale Deed dated 16th December, 2010 but the respondent / landlord after acquiring the property vide the said Sale Deed did not give any notice to the petitioner / tenant to pay rent as he should have.

7. I have enquired from the counsel for the petitioner / tenant, under which provision is a purchaser of immovable property required to demand rent and if does not do so, loses the right to evict the tenant therefrom.

8. No answer has been forthcoming. In this regard it may be noted that the petitioner / tenant is an old tenant in the premises and the counsel for the petitioner / tenant is not even able to tell the rate of rent which was earlier being paid by the petitioner / tenant.

9. When the rent paid by such an old tenant is miniscule and when the expense in collection thereof is more, the landlords of such properties are often found to be not taking steps to demand or recover rent. However the said fact would not disentitle them from seeking eviction on the ground of their

requirement for the premises. Even otherwise, it is the settled position in law (See *Sanjay Singh Vs. M/s. Corporate Warranties Pvt. Ltd.* (2013) 204 DLT 12; *Harvinder Singh Vs. M/s. Paradise Tower Pvt. Ltd.* (2013) 199 DLT (CN) 25; *Ambica Prasad Vs. Mohd. Alam* (2015) 13 SCC 13 and judgment dated 6th September, 2017 in RC. Rev. No.422/2017 titled *Vijay Sharma Vs. Namita Aggarwal*) that attornment is under the law and no act of attornment is required.

10. The counsel for the petitioner / tenant has then contended that in the Sale Deed in favour of the respondent / landlord also, the petitioner / tenant is not shown as a tenant.

11. I have however enquired from the counsel for the petitioner / tenant, whether the petitioner / tenant claims himself to be a tenant in the property purchased by respondent, or not.

12. The answer is in the affirmative.

13. Once that is so, non-mention even if any of the name of the petitioner as tenant in the Sale deed vide which the respondent / landlord has purchased the property will not be of any avail.

14. There is thus no merit in the contention, of the respondent being not landlord, to be entitled to invoke Section 14(1)(e).

15. The next contention of the counsel for the petitioner / tenant, is that the petitioner / tenant in his leave to defend application gave particulars of a large number of properties available with the respondent / landlord and the respondent / landlord has merely pleaded that in a Family Settlement the said properties have gone to the share of other family members. The argument of the

counsel for the petitioner / tenant is that the said Settlement is not registered and has been fabricated only to create paucity of accommodation.

16. A Family Settlement, it was held as far back as in ***Kale Vs. Deputy Director of Consolidation*** (1976) 3 SCC 119, is to be viewed without the technicalities of law and to be honoured.

17. Thus, there is no merit in the plea of the same being not registered. It has been held expressly in (i) ***Satya Pal Gupta Vs. Sudhir Kumar Gupta*** (2016) 230 DLT 73 (DB), ***Vikram Singh Vs. Ajit Inder Singh*** (2014) 3 High Court Cases (Del) 627 (DB) and ***B.S. Goel Vs. The Registrar, High Court of Delhi*** AIR 2007 Del 72 (DB) that a family settlement, even if unregistered, affects the property settled thereby.

18. The counsel for the petitioner / tenant has next contended that the respondent / landlord on the one hand has taken the plea of an oral family settlement and on the other hand produced the copy of a Memorandum of Family Settlement.

19. If the document recording division of properties is not a record or memorandum of an earlier oral Family Settlement, it would take the colours of a Partition Deed and require stamping and registration, putting a substantial financial burden on the family members. There is thus a widespread practise to record oral Family Settlement in a Memorandum. There is thus no inconsistency in the stand of the respondent / landlord, as argued.

20. It is not the case of the petitioner / tenant that the persons who have executed the Memorandum of Family Settlement are not members of the family of the respondent / landlord or do not exist. Once that is so, it is not the locus of

the petitioner / tenant to challenge the Family Settlement arrived at between the members of the family of the respondent / landlord. Reliance in this regard may be placed on *A.K. Nayar Vs. Mahesh Prasad* (2008) 153 DLT 423 and *Ashok Kumar Vs. Harish Chander Sahni* 2014 SCC OnLine Del 6647.

21. I have recently in order dated 20.9.2017 in RC. Rev. No.439/2017 titled “*Sushma Khanna Vs. Rajwant Kaur*” held that though in certain circumstances a petition for eviction under Section 14(1)(e) can be defeated if it is demonstrated that the landlord has created artificial paucity of accommodation but the facts pleaded in the leave to defend this case do not fall in the said category.

22. Similar is the contention of the counsel for the petitioner / tenant with respect to the dissolution of partnership business earlier being carried on by the respondent / landlord and his brother. It is contended that the dissolution has also been created only for the purposes of affecting the petitioner / tenant.

23. The petitioner / tenant has not pleaded anything to show that the Dissolution Deed is a sham.

24. The aforesaid pleas also do not entitle the petitioner / tenant to any right to trial.

25. The last contention of the counsel for the petitioner / tenant is, that if the respondent / landlord were to come in the witness box, the petitioner / tenant would have an opportunity to cross-examine.

26. The legislative intent behind Section 25B of the Act being to provide a prescribed summary procedure for petitions for eviction on the ground of self requirement of the premises, the same parameters as of a written statement

cannot apply and the tenant cannot be granted leave to defend for the asking and without the tenant placing before the Rent Controller even a semblance of proof of what is pleaded, leave to defend cannot be granted.

27. I have in judgment dated 24th July, 2017 in RC.Rev.No.112/2016 titled ***Ram Saroop Vs. Viney Kumar Mahajan***, on the basis of past precedents, dealt in detail on the pleas which entitle the tenant to grant of leave to defend and need to reiterate the same herein is not felt.

28. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 22, 2017

‘pp’..

(Corrected and released on 4th October, 2017).