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

+ RC.REV. 488/2017 & CM No.38909/2017 (for stay)

MANMOHAN MALHOTRA Petitioner

Through: Mr. Sunil Singh Gurjar, Adv.

Versus

KRISHAN LAL & ANR Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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30.10.2017

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 7th July, 2017 in ARC No.25969/2016 of the Court of Additional Rent Controller (ARC) (West), 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 one shop measuring 13 ft. X 9 ft. on the ground floor of property No.A-46, Rajouri Garden, New Delhi.

2. The counsel for the petitioner has been heard.

3. The counsel for the petitioner has raised three contentions. Firstly, that the petitioner had become owner by adverse possession of the shop with respect to which the petition for eviction was filed. Secondly, that it was the plea of the petitioner in the application for leave to defend that another shop was available to the respondents and which plea has not been considered in the impugned order. Lastly, reliance is place on ***Precision***

Steel Engineering Works Vs. Prema Deva Niranjana Deva Tayal (1982) 3 SCC 270 and it is contended that the impugned order is contrary thereto inasmuch as the learned ARC has asked the petitioner to furnish proof and which is not within the ambit of the stage of consideration of the application for leave to defend.

4. I have enquired from the counsel for the petitioner, as to how the petitioner came in possession of the aforesaid shop.

5. The counsel for the petitioner states that the petitioner had initially, in the year 1976, come in possession of the shop on friendly terms with the respondents and had also paid some amount to the respondents for allowing the petitioner use of the shop and the possession of the petitioner, with effect from the year 1990 became adverse to the respondents and thus the petitioner is now the owner of the shop and not liable to be evicted.

6. The petitioner, in the application for leave to defend, has nowhere given the particulars of any assertion made of title adverse or hostile to the respondents, through whom the petitioner admittedly came into possession of the premises.

7. It is the plea in the petition for eviction, that the petitioner/tenant is not even using the said shop and the same is lying locked and without electricity and the petitioner is now carrying on his business from another shop in the same locality.

8. The counsel for the petitioner, on enquiry, admits that the petitioner is not carrying on any retail activity from the said shop and the shop is without electricity and the electricity connection to the shop has been

disconnected. It is however stated that the petitioner is using the said shop as a warehouse and for which no electricity is required.

9. The subject shop is on part of the ground floor of property No.A-46, Rajouri Garden, New Delhi. The rest of the property is admittedly in ownership and possession of the respondents along with their other co-owners. The petitioner does not claim to have become owner by adverse possession of the entire property. The argument is, of having become owner by adverse possession of only the shop in the property. Notwithstanding there being no plea in the leave to defend application, I have enquired from the counsel for the petitioner, whether the petitioner has before any authority declared himself as owner of the shop in the property or exercised any right as owner of the shop.

10. The answer is in the negative.

11. The same shows the *mala fides* of the plea, of having become owner of the shop by adverse possession. It is the settled principle of law that the person who comes into occupation under a lawful title, cannot set up the plea of adverse possession, without first stepping out of the possession under the relationship under which he was put in possession.

12. Supreme Court, in ***Sant Lal Jain Vs. Avtar Singh*** (1985) 2 SCC 332 held that a licensee must be deemed to be always a licensee and it is not open to him, during the subsistence of licence or in the suit for recovery of possession of the property, instituted after the revocation of licence to set up title to the property in himself or anyone else; it is his plain duty to surrender possession as a licensee and seek his remedy separately in case

he has acquired title to the property subsequently. In *Annasaheb Babusaheb Patil Vs. Balwant Alias Balasaheb Babusaheb Patil* (1995) 2 SCC 543 it was held that where possession can be referred to a lawful title, it will not be considered to be adverse and that one who holds possession on behalf of another, does not by mere denial of that other's title, make his possession adverse, so as to give himself the benefit of the statute of limitation. It was further held that the person who enters into possession having a lawful title cannot divest another of that title by pretending that he had no title at all. Again, in *T. Anjanappa Vs. Somalingappa* (2006) 7 SCC 570, it was reiterated that one who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation and that a person who enters into possession having a lawful title, cannot divest another of that title by pretending he had no title at all. It has been held in *Atyam Veerraju Vs. Pechetti Venkanna* AIR 1966 SC 629 and *D. Satyanarayana Vs. P. Jagadish* (1987) 4 SCC 424 that during the continuance of the tenancy, the tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion of such right to the knowledge of the landlord.

13. As far as the argument, of having paid some money to the respondents at the time of having come into possession of the premises is concerned, there is no whisper thereof in the application for leave to defend and the answer of the counsel for the petitioner is the same, that only if leave to defend is granted will the petitioner say all these things and submit

proof.

14. What the counsel for the petitioner wants is for the provision of Section 25B of the Act to be deleted. The said provision has been inserted by the Legislature to provide summary procedure for disposal of petitions for eviction of tenant on the ground of personal requirement of the landlord and requires the tenant to file an application for leave to defend “disclosing facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act”. Thus, the requirement for drafting leave to defend application is materially different from the requirement in the Code of Civil Procedure, 1908 (CPC) for drafting a written statement. While for drafting a written statement specific denial is sufficient for putting the plaintiff to prove, disclosure of facts prescribed in Section 25B(5) of the Act requires the tenant to state material pleas which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. If the pleas disclosed are of bare denial or even on a reading thereof, do not constitute a defence, leave to defend cannot be granted. For instance in the present case, the plea of having become owner by adverse possession by admittedly lawfully entering the premises is something which does not require any trial and is no plea of adverse possession.

15. That brings me to the second argument of the counsel for the petitioner. The only plea in the leave to defend application in this regard is “the petitioner has another shop in the same building vide shop No.2, which is vacant from the last more than ten years”.

16. The counsel for the petitioner has not bothered to file before this Court the site plan which would have been filed by the respondents with the petition for eviction.

17. Though it is again not mentioned in the application for leave to defend that the petitioner had filed any site plan of his own but I have nevertheless enquired. The counsel for the petitioner states that the petitioner has not filed any site plan of his own.

18. The respondents, in the petition for eviction have pleaded (i) that the family of the two respondents comprise of themselves, their wives and two sons of each of the respondents; (ii) that the shop in the tenancy of the petitioner is required by the son namely Aman Juneja of the respondent No.2 Naresh Kumar; (iii) that the said Aman Juneja is a Chartered Accountant and has no alternative accommodation available for opening an office; (iv) that the shop in possession of the petitioner is situated in a locality where number of commercial offices and shops are situated and is as such suitable for opening office of a Chartered Accountant; (v) that another shop in the property is in the tenancy of Vadhana Gas Agency and has in any case fallen to the share of other co-owners of the property; (vi) that the middle portion is being used as a garage; (vii) that the rest of the portion is being used by the respondents and other co-owners for residence of themselves and their family members.

19. The counsel for the petitioners contends that the middle portion which has been pleaded as a garage is not a garage but is a shop. It is also stated that it is above the road height.

20. The same is however again not pleaded in the leave to defend application and has been urged before this Court verbally and which is not permissible. There is thus no merit in the second contention aforesaid either.

21. As far as the last of the argument is concerned, Supreme Court, in *Dina Nath (Dead) Vs. Subhash Chand Saini* (2014) 11 SCC 20 and *Nidhi Vs. Ram Kripal Sharma* (2017) 5 SCC 640 has noticed the shift in the interpretation of Rent Laws from that earlier prevalent, of in favour of the tenant, to that now prevalent of taking an unbiased view. It has been further held that the landlord is after all the owner of the property and has the first right to use of the property in whatsoever manner he may desire and only if the intention is not found to be genuine is the leave to defend to be granted. Reliance on *Precision Steel Engineering Works* supra is thus of no avail.

22. Here, the petitioner by taking pleas of adverse possession and by filing a vague leave to defend application, without any particulars and without any disclosure as required under Section 25B(5) of the Act, has not brought before this Court, any material to doubt the genuineness of the need and requirement of the respondents.

23. There is no merit in the petition.

24. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 30, 2017/bs..