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

+ **RC.REV. 492/2017**

MOOL CHAND SHARMA

..... Petitioner

Through: Mr. Rajat Aneja and Ms. Nisha
Sharma, Advs.

Versus

DELHI PRANTIYA RAIGAR MANDIR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.11.2017**

CM No.39079/2017 (for exemption)

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

RC.REV. 492/2017 & CM No.39078/2017 (for stay)

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 19th September, 2017 in Case No.637/2017 (U.ID No.737/2017) of the Pilot Court (Central), Tis Hazari Courts, Delhi] of eviction with respect to premises No.53/4505-09, Reghar Pura, Karol Bagh, New Delhi.
4. The counsel for the petitioner has been heard and the paper book perused.
5. The respondent instituted the petition for eviction, from which this petition arises, under Section 14(1)(e) of the Act, against “Kanahiya Lal Chunni Lal”. Summons of the said petition for eviction were ordered to be issued. The impugned order records that the respondent “Kanahiya Lal Chunni Lal” was duly served with the summons of the petition for eviction on 25th August, 2017 but failed to file application for leave to defend the

petition for eviction. Axiomatically, in accordance with Section 25B(4) of the Act, the order of eviction was passed.

6. The petitioner Mool Chand Sharma has filed this petition averring (i) that his paternal grandfather Kanahiya Lal had taken on rent the premises with respect to which order of eviction has been passed and after his death, the father of the petitioner namely Chunni Lal became the tenant in the premises and after the death of his father Chunni Lal, he has become the tenant in the premises and has been paying the rent of the premises; (ii) that summons of the petition for eviction were received by an employee of the petitioner Mool Chand Sharma; (iii) that Himanshu Sharma, son of the petitioner Mool Chand Sharma appeared and apprised the Additional Rent Controller about the death of both Kanahiya Lal and Chunni Lal but the Court said that since no application for leave to defend has been filed, the Court was obliged to pass an order; (iv) that this petition has been preferred on the grounds that the order of eviction has been obtained against dead persons.

7. Being curious, as to why the respondent would file the petition for eviction, not individually against Kanahiya Lal or against Chunni Lal or against the petitioner herein, if they were the tenants but against ‘Kanahiya Lal Chunni Lal’, I have enquired from the counsel for the petitioner, whether the respondent along with the petition for eviction filed any rent receipts.

8. The counsel for the petitioner states that rent receipts were filed and has in Court handed over a bunch of documents containing rent receipts and which indeed show issuance of rent receipts by the respondent for the subject premises in the name of “Kanahiya Lal Chunni Lal”, including for

the period after the death of Kanahiya Lal as well as Chunni Lal.

9. It was the duty of the petitioner, to before invoking the jurisdiction of this Court, either make a clean disclosure of all facts, by placing the entire record of the learned ARC before this Court or at least to make a disclosure in the petition under Section 25B(8) of the Act of the reason which prevailed with the respondent to file the petition for eviction in the name of “Kanahiya Lal Chunni Lal” and/or then render explanation thereof.

10. The counsel for the petitioner however chose to selectively disclose to this Court, documents on the record of the ARC, not disclosing the documents which were not in favour of the petitioner and not making any disclosure of the said fact in the petition for eviction.

11. The same, in my view, is an abuse of the process of the Court and attempting to take an advantage of issuance of notice of this petition and grant of *ex-parte* stay of the order of eviction.

12. The petitioner is liable to be non-suited on this ground alone.

13. Moreover, there is no explanation as to why the petitioner, after the admitted service of summons of the petition for eviction at the premises claimed by the petitioner to be now in his tenancy, did not file the application for leave to defend within the prescribed time.

14. It appears that the petitioner was trying to delay the proceedings, by first taking the said plea. It also appears that had the respondent filed the petition for eviction in the name of the petitioner, the petitioner would have then taken the plea that the rent receipts being in the name of “Kanahiya Lal Chunni Lal”, the filing of the petition for eviction in the name of the petitioner is misconceived.

15. The petitioner, in this petition, though has not disclosed rent receipts

to have been issued in the name of 'Kanahiya Lal Chunni Lal', has admitted that his father Chunni Lal was carrying on business from the said shop in the name and style of 'Kanahiya Lal Chunni Lal'. Though it is also pleaded that now the petitioner is carrying on business from the said shop but it is neither pleaded that the business in the name of "Kanahiya Lal Chunni Lal" which the father of the petitioner was carrying on from the said shop was shut down nor is the name and style in which the petitioner is carrying on business, disclosed. The inference is that the petitioner is carrying on business in the name of 'Kanahiya Lal Chunni Lal' and in which name petition for eviction was also filed.

16. It cannot be lost sight of that the petitioner, as per own claims also, is a third generation tenant at a meagre rent of Rs.125/- per month, cost of collection whereof is more than the rent itself. A landlord of such a tenant cannot be faulted with filing petition for eviction in the name in which tenancy is taken and in which business from tenancy premises is being carried on.

17. In these circumstances, no error is found in the respondent / landlord filing the petition for eviction against "Kanahiya Lal Chunni Lal", which was / is shown as tenant in the premises and in which name business is being carried on from the subject shop. In these circumstances, it also cannot be said that the petition for eviction was filed against a dead person or that the order of eviction is nullity for this reason. Rather, the petitioner is found to be misrepresenting facts in this regard also, again to gain advantage in an *ex parte* hearing.

18. Though the counsel for the petitioner has referred to ***Subhash Anand Vs. Krishan Lal*** AIR 1985 Delhi 350 and ***Devender Nath Vs. Mohd. Asim***

204 (2013) DLT 141 but I have enquired from the counsel for the petitioner, that the petitioner having chosen to leave an employee in the premises to carry on business, why should the said employee be not deemed to be empowered to also receive letters/summons received at the said premises in the name of “Kanahiya Lal Chunni Lal”. It is not as if the said employee refused to receive the summons stating that he was not authorised.

19. A tenant cannot be allowed to play such cat and mouse game, by on the one hand, leaving agents in the premises to carry on business in the premises and also allow such agents to receive summons/notices on their behalf and on the other hand taking such specious pleas, of service on such agent not being service on tenant. Here, the counsel states that in pursuance to such service, son of petitioner Himanshu Sharma did appear before the Court. The purpose of serving summon / notice of a Court proceeding is to notify such person of claim filed in Court against him, to enable the person to defend the same. The petitioner here, is found to have been duly served and to have failed to file leave to defend in pursuance thereto and has offered no explanation for the same. The plea now being taken could have been taken in the leave to defend application. In the absence of leave to defend application, no error is found in the order of the learned Additional Rent Controller allowing the petition for eviction, deeming the statements made by respondent / landlord in petition for eviction to be admitted by tenant in accordance with Section 25B(4).

20. As far as the judgments cited are concerned, Supreme Court in ***Nidhi Vs. Ram Kripal Sharma*** (2017) 5 SCC 640 and in ***Dina Nath Vs. Subhash Chand Saini*** (2014) 11 SCC 20 has held that though in the yester-years Rent Laws were being interpreted with bias in favour of the tenant but there

has been a shift in recent years and which requires the said laws to be interpreted without any bias, neither in favour of the landlord nor the tenant and keeping in mind the fact that the landlord is after all the owner of the property and fully entitled to exercise rights as owner with the property. Moreover in the facts of the present case, the tenant as described in the rent receipts and in which name business was / is being carried on from tenancy premises, is found to be duly served. If a person chooses to take on rent premises not in his own name but in an assumed name, he cannot be heard to complain against landlord suing him in such assumed name. The facts, in which the view relied upon was taken in the judgments cited, were different.

21. Thus, on merits also, petitioner / tenant has no case.

Dismissed.

I refrain from imposing costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 01, 2017

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(Corrected and released on 30th November, 2017).