

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

% **Date of decision: 24th August, 2017**

+ **RC.REV. No.568/2015 & CM No.24067/2015 (for stay)**

**KRISHNA DEVI SHARMA
(SINCE DECEASED) THR LRS & ANR Petitioners**

Through: Mr. Suhail Khan, Adv.

Versus

YADUKUL GUGLANI & ORS Respondents

Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Amit Sethi, Mr. Sachin Jain, Ishan Khanna and Ms. Mallika Bhatia, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 23rd April, 2015 in E.No.24/10 of the Court of Additional Rent Controller, Patiala House Court, New Delhi) dismissing the application of the two petitioners namely Krishna Devi Sharma and Raj Gupta and another application of the respondent no.3 Neeta Sharma and respondent no.4 Varun Sharma, both for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondents no.1&2 / landlords namely Yadukul Guglani and Vipin Guglani and the consequent order of eviction of the two petitioners and the respondents no.3 to 5 from Shop No.8/1 below staircase no.3 situated on the ground floor in Regal Building, Parliament Street, Connaught Place, New Delhi.

2. The petition was entertained and notice thereof issued.

3. The senior counsel for the respondents no.1&2 / landlords appearing on advance notice on 19th October, 2015 assured that the order of eviction shall not be executed. Vide subsequent order dated 29th March, 2016, continuation of the stay of the order of eviction impugned in the petition was made subject to the petitioners paying use and occupation charges @ Rs.15,000/- per month to the respondents no.1&2 / landlords. Vide yet subsequent order dated 27th April, 2016, the rate of use and occupation charges was reduced to Rs.10,000/- per month.

4. The counsels have been heard.

5. The first contention of the counsel for the petitioners is that the respondents no.1&2 / landlords in some other proceedings had claimed the petitioners to be trespassers in the premises aforesaid and thus the petition for eviction under the Rent Act is not maintainable. However on enquiry as to what is the stand of the petitioners i.e. whether they are in possession of the premises as tenants or in any other capacity, the counsel for the petitioners states that the petitioners had come into possession of the premises as tenants under the earlier owner thereof. On being prodded further as to the status of the petitioners in the premises today, the counsel states that today also, the petitioners are tenants. On further enquiry as to whether the petition for eviction from which this petition arises was instituted by the respondents no.1&2 / landlords pleading the petitioners to be trespassers or tenants, it is stated that the petition for eviction was filed claiming the petitioners to be tenants. Once that is so, then the argument urged is misconceived. Once the position is that according to the respondents no.1&2 / landlords as well as according to the petitioners also the petitioners

are tenants in the premises, merely because the respondents no.1&2 / landlords may have at earlier stage claimed the petitioners to be trespassers, would not prevent the respondents no.1&2 / landlords from accepting the petitioners, who have always been claiming themselves to be tenants, as tenants and instituting the petition for eviction.

6. The next argument of the counsel for the petitioners / tenants is that the respondents no.1&2 / landlords are not the owners of the premises in the tenancy of the petitioners and thus were not entitled to maintain the petition for eviction under Section 14(1)(e) of the Act. It is argued that though the respondents no.1&2 / landlords along with the petition for eviction did not file any documents of their title to the premises in the tenancy of the petitioners but produced the same at the fag-end of arguments of the leave to defend i.e. after the filing of the application for leave to defend by the petitioners / tenants and the petitioners / tenants thus did not have any opportunity to take pleas with respect to the said documents in the application for leave to defend.

7. In this context, it has emerged that the petition for eviction was filed in the year 2010 and the title documents are claimed to have been filed by the respondents no.1&2 / landlords on 12th November, 2013. Leave to defend as was dismissed on 23rd April, 2015.

8. Before proceeding further, I am constrained to observe that it is unfortunate that the petition for eviction on the ground under Section 14(1)(e) and for which the legislature, by providing a period of 15 days only from service of the summons for filing leave to defend, has indicated an element of urgency, has remained pending for nearly five years at the stage

of consideration of leave to defend and in which time, the petition for eviction after trial also should have been over.

9. Coming back to the arguments of the counsel for the petitioners / tenants, I have enquired from the counsel for the petitioners / tenants as to who is the owner of the premises in the tenancy of the petitioners according to the petitioners and to whom they have been paying rent.

10. The counsel for the petitioners / tenants states that Mr. Sandeep Sethi was the owner of the premises and the petitioners / tenants were paying rent to him and have paid rent to him till 2003 since whereafter the respondents no.1&2 / landlords have been claiming rent. However at the stage when the order is being dictated, the counsel for the petitioners / tenants states that Sandeep Sethi did not claim rent after 2003 and on the petitioners / tenants making enquires, Sandeep Sethi informed them to pay rent to M/s. K.N. Financial Services and the respondents no.1&2 / landlords have been claiming rent since August, 2010.

11. On further enquiry, whether anyone else has claimed rent of the premises from the petitioners / tenants, the counsel for the petitioners / tenants replies in the negative.

12. The counsel for the petitioners / tenants has also contended that even the documents of title subsequently submitted by the respondents no.1&2/ landlords / tenants are defective and there is a discrepancy therein. It is stated that though in the documents of title in favour of the respondents no.1&2/ landlords / tenants there is a mention of the premises in the tenancy of the petitioners / tenants but in the documents in support of the chain of title, in an earlier document, there is no mention of the premises in the tenancy of the

petitioners. It is also stated that the petitioners / tenants have been depositing the rent in the Court.

13. Per contra, the senior counsel for the respondents no.1&2 / landlords in this regard has contended (i) that one Pandit Jagdish Ram was the tenant in the subject premises; (ii) the petitioner no.1 (since deceased) is the widow of the said Pandit Jagdish Ram and the petitioner no.2 is the daughter of Pandit Jagdish Ram; (iii) that Pandit Jagdish Ram, besides the widow and daughter, also had a son and two more daughters and which son has also since died and whose wife and son were the respondents no.2&3 in the petition for eviction filed; (iv) that though the said wife and son of the said son of Pandit Jagdish Ram had also contested the petition for eviction filed by the respondents no.1&2 / landlords by filing an application for leave to defend and which has also been dismissed but have not challenged the order of eviction; (v) that after the death of Pandit Jagdish Ram it was the said son of Pandit Jagdish Ram only who was carrying on the business earlier being carried on by Pandit Jagdish Ram therefrom; (vi) that the respondents no.1&2 / landlords had got issued a Notice (at page 239 of the paper book) to the said son of Pandit Jagdish Ram and he had give a reply thereto (at page 245 of the paper book) and in which reply he had (at page 247 of the paper book) admitted the ownership of the respondents no.1&2 / landlords and also tendered rent to the respondents no.1&2 / landlords; (vii) that after the demise of the said son, his wife and son had also tendered rent to the respondents no.1&2 / landlords (vide letter at page 262 of the paper book); (viii) that the petitioners / tenants in the petitions filed by them under Section 27 of the Rent Act have been impleading the respondents no.1&2 / landlords as parties thereto; (ix) that there is thus an admission by the person who after

Pandit Jagdish Ram was in occupation of the tenanted premises, of ownership of the respondents no.1&2 / landlords and atonement in favour of respondents no.1&2 / landlords and the petitioners / tenants who are carrying on the business in the shop after the demise of the said son and after reaching a settlement with the wife and son of the son of Pandit Jagdish Ram cannot wriggle out of the said admissions; and, (x) that there is no inconsistency or discrepancy in the title documents.

14. In the aforesaid scenario, I am of the view that the respondents no.1&2 are the owners of the premises in the tenancy of the petitioners within the meaning of Section 14(1)(e) of the Rent Act and in terms of the judgment in *Smt. Shanti Sharma Vs. Smt. Ved Prabha* 1987 SCC (4) 193 where the Supreme Court has held that the concept of ownership in Section 14(1)(e) of the Rent Act is not of absolute ownership but merely of something more than the tenant. From the bare fact, that none-else besides the respondents no.1&2 has claimed to be owner or landlord of the premises in the tenancy of the petitioners for the last several years, it is evident that the respondents no.1&2 are the owners of the premises in tenancy of petitioners, for the purpose of Section 14(1)(e) of the Act. This court in *Milk Food Ltd. Vs. Kiran Khanna* 51 (1993) DLT 141 has held that when the person instituting the petition for eviction under Section 14(1)(e) of the Rent Act has been claiming to be the owner for a long number of years, the same is also ownership within the meaning of Section 14(1)(e) of the Act. There is thus no merit in the plea of the petitioners / tenants, of the respondents no.1&2 being not owners and it cannot be said that on such pleas the respondents no.1&2 / landlords can be disentitled from obtaining an order of eviction under Section 14(1)(e) of the Act.

15. The counsel for the petitioners / tenants has next argued that the eviction sought by the respondents no.1&2 / landlords of the petitioners / tenants and of respondents no.3 to 5 is for additional accommodation and “it is settled in law” that when the requirement is of additional accommodation, leave to defend has to be granted. Attention in this regard is invited to para 18 (a) of the petition for eviction where the respondents no.1&2 / landlords have pleaded that they are carrying on business of Travel Agents from a small portion of the property bearing no.8 adjoining to the premises in the tenancy of the petitioners, in the name and style of M/s. Joy Travels Pvt. Ltd. in which the respondent no.1 is the Managing Director and the respondent no.2 along with his daughter are the only other Directors and the premises in occupation of the respondents no.1&2 / landlords is small and all the employees of the said business of the respondents no.1&2 / landlords have to squeeze themselves in the small space available and the premises in the tenancy of the petitioners and respondents no.3 to 5 is required for expansion of the said business.

16. The senior counsel for the respondents no.1&2 / landlords has in this context referred to **Anil Bajaj Vs. Vinod Ahuja** 210 (2014) DLT 58 (SC) where it has *inter alia* been held that the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business and the grounds on which leave to defend was sought by the tenant and had been granted by this Court, run counter to the fundamental principles governing the right of a tenant to contest the claim of *bona fide* requirement under Section 14(1)(e) of the Rent Act. It was held that merely because the landlord is in occupation of other

premises, does not constitute a triable issue to entitle the tenant to grant of leave to defend.

17. It is evident from the aforesaid judgment that the contention of the counsel for the petitioners / tenants of “the settled position of law”, without citing any judgment, is not correct and the Supreme Court in any case has held contrary thereto.

18. The senior counsel for the respondents no.1&2 / landlords has in this regard also drawn attention to the site plan at page 132 of the paper book and the photographs of the premises in the tenancy of the petitioners and the premises in occupation of the respondents no.1&2 / landlords at page 131 of the paper book and wherefrom it is evident that the juxtaposition of the premises in occupation of the respondents no.1&2 / landlords and the premises in the tenancy of the petitioners is such that the premises in the tenancy of the petitioners will merge with the existing accommodation in possession of the respondents no.1&2 / landlords.

19. The senior counsel for the respondents no.1&2 / landlords has also drawn attention to pages 64 & 65 of the paper book, being paras 21 and 22 of the impugned order where it is recorded that the petitioners / tenants who were respondents no.1&4 before the Additional Rent Controller did not even challenge the *bona fides* of the respondents no.1&2 / landlords as mentioned in the petition and did not dispute the fact that the respondents no.1&2 / landlords required the shop in question for expanding their own business of Travel Agency and did not dispute that the premises in occupation of the respondents no.1&2 / landlords were insufficient for the business of the respondents no.1&2 / landlords or that the respondents no.1&2 / landlords

have any other accommodation available to them for such expansion of their business.

20. The counsel for the petitioners / tenants in rejoinder has argued that it is only the petitioner no.2 who is in possession of the premises after the demise of Pandit Jagdish Ram. However on enquiry whether Pandit Jagdish Ram has left any Will, the answer is in the negative. Once it is pleaded that Pandit Jagdish Ram was the tenant and proprietor of the business being carried on from the tenancy premises, on the demise of Pandit Jagdish Ram, the tenancy rights as well as the business would be succeeded by his widow, daughters and son and without any plea or proof that it was only the petitioner no.2 who was carrying on the business, no benefit can be availed thereof.

21. I can only observe that the counsel for the petitioners / tenants during his argument including in rejoinder did not urge anything on the said aspects though now while this order is being dictated states “that he has mentioned everything in his leave to defend application”.

22. The next argument of the counsel for the petitioners / tenants is that another tenant in the same property and against whom also the respondents no.1&2 / landlords had filed a petition for eviction was also refused leave to defend by the Rent Controller but vide order dated 3rd September, 2012 in RC.Rev. No.369/2012 the said other tenant was granted leave to defend. Attention is invited to the said order at page 525 of the paper book and to leave to defend filed by that tenant at page 535 of the paper book and it is contended that the pleas urged by the said other tenant in the leave to defend were the same as the pleas urged by the petitioners / tenants herein.

23. I have perused the order dated 3rd September, 2012 in RC. Rev. No.369/2012 and which is a two paragraphs order and I do not find the same to be discussing any facts or law. The order of Rent Controller was reversed after hearing the counsels and merely by observing that some of the pleas which were taken by the tenant regarding *bona fide* requirement of the respondents no.1&2 / landlords had not been dealt with by the Additional Rent Controller and some triable issues arose. The same cannot constitute a precedent to be followed qua petitioners / tenants also. In the present case, there is a finding of the petitioners / tenants having not challenged the *bona fides* of the respondents no.1&2 / landlords.

24. The last argument of the counsel for the petitioners / tenants is of the description of the premises in the tenancy of the petitioners in the petition for eviction being wrong. On enquiry, it is contended that even in the site plan filed with the petition for eviction the premises in the tenancy of the petitioners are not shown correctly. However on enquiry whether the petitioners / tenants filed any site plan of their own, the answer is in the negative and explanation is sought to be given that no documents were served with the summons of the petition for eviction.

25. As aforesaid, the application for eviction for leave to defend remained pending before the Additional Rent Controller for unduly long time of five years and as per settled practices, the petitioners / tenants, even if had not been served with the documents, ought to have inspected the Court file and thereafter filed the correct site plan and the same having not been done, such vague arguments cannot entitle the tenant to leave to defend.

26. No other argument has been urged.

27. None of the arguments urged by the counsel for the petitioners / tenants disclose any error requiring correction within the jurisdiction of Section 25B(8) in the impugned order or disclose any such facts which would disentitle the respondents no.1&2 / landlords from an order of eviction under Section 14(1)(e) of the Act.

28. There is thus no merit in the petition.

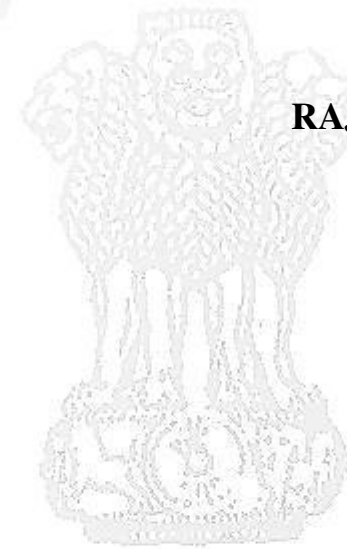
Dismissed.

No costs.

AUGUST 24, 2017

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RAJIV SAHAI ENDLAW, J.



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