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

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Date of decision 02.02.2018

+ RC.REV. 73/2017 & CM APPL. 6048/2017

DHARAM PAL Petitioner

Through Mr.A.K.Mishra, Adv.

versus

RANBIR SINGH Respondent

Through Mr.Kapil Kr.Dagar and Mr.Prikshit
Chaudhary, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This revision petition is filed under section 25-B(8) of the Delhi Rent Control Act, 1956 (*hereinafter referred to as the DRC Act*) seeking to impugn the eviction order dated 27.08.2016. The respondent/landlord has filed the eviction petition under Section 14 (1) (e) read with Section 25(B) of the DRC Act for a property bearing No.C-60, Vijay Vihar, Phase-II, Delhi. In the eviction petition, it has been pleaded that the petitioner requires the suit property for his bona fide needs as he wants to open a mobile shop for his son Bhushan Vashisht who is presently unemployed.
2. It is also pleaded that the respondent has no other commercial or suitable premises to start any business/shop except the suit premises.
3. The petitioner filed his application for leave to defend. The Additional

Rent Controller (*in short the 'ARC'*) by the impugned order dismissed the said application for leave to defend and has passed the eviction order.

4. I may note that the present petition came up for hearing on 15.02.2017. This court heard the arguments on behalf of learned counsel for the petitioner. After making arguments, learned counsel for the petitioner had sought an opportunity to consult his client as to whether the matter could be settled in case some time was granted to the petitioner by the respondent to vacate the premises. On the next date i.e. 22.02.2017, learned counsel for the petitioner submitted that he has taken instruction from the petitioner and the petitioner has agreed to settle the dispute with the respondent if some time is granted to the petitioner to vacate the suit premises. The court noted the submission of the learned counsel for the petitioner and limited to the said submission of the learned counsel for the petitioner notice was issued to the respondent. A stay was passed restraining the respondent from executing the eviction order.

5. Thereafter, the respondent has appeared. For the one reason or the other, the matter has continued to remain pending.

6. The petitioner in view of the stay of the execution of the impugned order has already spent almost one year in the suit property since the eviction order was passed. Today, the learned counsel for the parties are unable to settle the period in which the petitioner should vacate the suit premises. Learned counsel for the petitioner had initially asked for two more years to vacate the suit property. Subsequently, he has requested for one year. Learned counsel for the respondent on instructions from the respondent is willing to give only six months' time to vacate the suit premises. A settlement is not possible. In view of the fact that notice was issued to the

respondent on the limited submission that the petitioner would like to settle the matter with the respondent if some time was granted to vacate the premises, in my opinion, the present petition is liable to be dismissed. This is so as already a year has passed since the petitioner had sought time to settle the matter for vacation of the suit premises.

7. However, in the interest of justice, I may deal with the contentions of the learned counsel for the petitioner. Learned counsel for the petitioner on 15.02.2017 had pleaded as follows:

- (i) The respondent is not the absolute owner of the suit property. The land actually belongs to DDA and the respondent is only a land grabber and hence cannot be treated as a landlord.
- (ii) It has been pleaded that on account of the threats meted by the respondent, the petitioner had filed a suit for permanent injunction against the respondent. During pendency of the said suit the respondent made a statement on oath that he will not dispossess the petitioner from the tenanted premises without following the due process of law. It is pleaded that the present petition is hence mischievous.
- (iii) It is further pleaded that the son of the landlord has an another property available from where he is running a garage. This garage is near the tenanted premises. The said property has a separate electricity connection. Hence, it is pleaded that there is no bona fide requirement.

8. As far as the title of the property is concerned it is on record that the petitioner has regularly been paying rent of Rs.510/- per month to the respondent. There is obviously no dispute regarding the relationship of landlord and tenant. The plea that is now sought to be raised about the respondent being a land grabber is a misplaced plea. No such plea appears to

have been made before the ARC. Even otherwise, the petitioner is estopped in terms of under section 116 of the Evidence Act from raising the present plea.

9. Reference may be had to the judgment of the Supreme Court in *Sri Ram Pasricha v. Jagannath & Ors.*, (1976) 4 SCC 184, where the court held as follows:

“14. ... The tenant in such a suit is stopped from questioning the title of the landlord under section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such.”

10. Similarly, the Supreme Court in *D.Satyanarayana v. P.Jagdish*, (1987) 4 SCC 424, held as follows:

“3. Section 116 of the Evidence Act provides that no tenant of immoveable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. The words “during the continuance of the tenancy” have been interpreted to mean during the continuance of the possession that was received under the tenancy in question, and the courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession, however defective it may be, so long as he has not openly surrendered possession, cannot dispute the title of the landlord at the commencement of the tenancy.”

11. Similarly, the Supreme Court in *Vashu Dev v. Bal Kishan*, AIR 2002 SC 569, held as follows:

“6. ... Section 116 of the Evidence Act, which codifies the common law rule of estoppels between landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immovable property.

The rule of estoppel so enacted has three main features: (i) the tenant is estoppel from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppels continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; (iii) Section 116 of the Evidence Act is not the whole law of estoppel between landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case.”

Clearly in view of the above legal position the plea of the petitioner about the respondent being a land grabber is a misplaced contention that cannot be accepted.

12. I may now deal with the next contention of the learned counsel for the petitioner. The reliance on the proceedings before the Civil Court has no bearing on the present proceedings. The undertaking given by the respondent in the civil court not to dispossess the petitioner except by due process of law cannot and does not debar the respondent from commencing the present proceedings.

13. Coming to the last plea of the learned counsel for the petitioner it has been pleaded that the respondent's son has an alternative accommodation

available where he is gainfully employed and is running a garage.

14. Regarding the electricity bill the ARC noted that apart from the electricity bill nothing else has been placed on record by the petitioner to show that the son of the respondent is running a garage. In any case, the ARC by the impugned order has noted that the electricity bill reflects only 56 units' have been consumed in one month. Hence, the ARC noted that it cannot be concluded that the same is being used for the commercial purposes. The order also notes that the no photograph has been furnished by the petitioner to suggest that the respondent's son is encouraged in the said business.

15. Even otherwise, the plea of the petitioner that the son of the respondent is running a garage from another premises is of no relevance. The son cannot be expected to sit idle and await the outcome of the present eviction petition before starting his business. Hence, even otherwise there is no merit in the plea of the petitioner.

16. Hence, there is no merit in the plea of the petitioner. Accordingly, the present petition stands dismissed. Interim orders also stand vacated.

17. At this stage, after the order has been dictated in court learned counsel for the petitioner prays that at least nine months' time may be granted to the petitioner to vacate the tenanted premises. In the eventuality that the petitioner files an undertaking within three weeks from release of this order to vacate the premises on or before nine months from the date of release of this order the execution of the present eviction order shall stand stayed for the said period of nine months. In the said affidavit the petitioner will also undertake to pay the agreed monthly rent of Rs.510/- per month. He will also undertake to pay necessary electricity and water dues of the premises and not

to cause any damage to the premises or induct any third party in the premises. He will also undertake not to seek any further extension for vacation of the property.

Dasti.

JAYANT NATH, J

FEBRUARY 02, 2018
Rk

Corrected and released on 12.6.2018

