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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 11th January, 2018

+ RC.REV. 102/2017 & CM No. 8422/2017

BHARAT DEEP SETHI

..... Petitioner

Through: Mr. Rajiv Garg with Ms.Pankhi
Harmilapi, Advs.

versus

SONIA TAKKAR

..... Respondent

Through: Mr. D.K. Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The respondent had instituted a case (E-146/16) seeking an order of eviction against the petitioner on the ground of *bonafide* need against the petitioner invoking Section 14 (1) (e) of Delhi Rent Control Act, 1958 in respect of commercial premises described as Shop Private No. 1 forming part of property bearing Municipal No. 2/9, Roop Nagar, Delhi-110007.

2. It is undisputed case that the property of which demised premises forms a part was earlier owned by Shri Umrao Singh Maheshwari Aushadhalya Trust. The respondent claims to have purchased from the erstwhile owner the said property by Sale Deed dated 07.02.2011 registered in the office of Sub-Registrar, Delhi. She instituted the case for eviction on 08.06.2016 on the ground that she requires vacant possession of the demised premises for purposes of her

son who wanted to establish himself in the business of car accessories and for such purposes she did not have suitable alternative accommodation. It may be added here that as per the site plan (at page 74 of the paper book), the property in question (at the ground floor) comprises of large space including one portion described as private shop no.2. The said private shop no.2 is stated by the respondent to be in tenancy and occupation of her husband Dinesh Kumar, he having also been inducted by the erstwhile owner.

3. On being served with the notice under Section 25B of Delhi Rent Control Act, 1958, the petitioner submitted an application seeking leave to defend, *inter alia*, denying the existence of landlord-tenant relationship between the parties, disputing the grounds on which the bonafide requirement has been pleaded stating, *inter alia*, that the respondent had deliberately concealed the fact that she was the owner in possession of the first and second floor of property bearing no.2/9, Roop Nagar, Delhi, a number of portions whereof being commercial in nature were lying vacant. Pertinently, he denied the claim of the respondent as to she being the owner of the subject property referring in this context to the challenge to the legality and validity of the sale deed dated 07.02.2011 by civil suit instituted under Section 92 of the Code of Civil Procedure, 1908 (CPC).

4. The Additional Rent Controller considered the afore-said application for leave to contest but rejected it, by her order dated 07.12.2016 and, in the consequence, passed an eviction order allowing the petition of the respondent.

5. The revision petition at hand challenges the correctness and propriety of the order dated 07.12.2016 whereby the leave to contest has been declined to the petitioner, the prime focus of the petitioner being on the contention that the respondent is not the lawful owner of the subject property, the sale deed dated 07.02.2011 on the strength of which she asserts the said title having been brought in question through the civil suit filed by the petitioner.

6. The learned counsel on both sides have been heard and record perused with their respective assistance.

7. It appears the Additional Rent Controller has short shrifted the issue regarding the validity of the sale deed dated 07.02.2011 by referring to order dated 01.08.2016 of the Rent Control Tribunal sitting in appeal against an order under Section 15(1) of Delhi Rent Control Act, 1958 in eviction proceedings on grounds under Section 14(1)(b) taken out by the respondent against the petitioner earlier. She inferred initiation of the said earlier eviction case as constructive notice of purchase of the property by the respondent and attornment of tenancy by the petitioner. The reasoning applied and the inference drawn is apparently flawed. The filing of the eviction case on the ground of sub-letting may be construed as a constructive notice of purchase of the property but it cannot lead to the inference that, by answering to the said eviction case, the tenant in occupation has attorned in favour of the person who claims to have purchased the property from the original landlord.

8. The Additional Rent Controller rejected the contention of the petitioner about the invalidity of the sale deed dated 07.02.2011 on

the reasoning that no previous owner or any of the trustees or beneficiaries of the trust which hold the property had challenged the validity of the sale deed, the petitioner herein being a stranger having no right to initiate any such proceedings. The counsel for the petitioner has placed before this court copy of the order dated 19.04.2017 passed by the court of Additional District Judge, Central District on the file of civil suit no.40/16 instituted by the petitioner, *inter alia*, against the trust which was the owner of the subject property prior to its purported purchase by the respondent through the sale deed dated 07.02.2011. The petitioner by the said civil suit invoking Section 92 CPC has raised the issue that since the trust in question was a public charitable trust, the asset thereof could not have been transferred by way of the sale deed dated 07.02.2011. Concededly, by order dated 19.04.2017 of the Additional District Judge, the petitioner herein has been granted leave to institute the said suit to challenge the validity of the sale deed dated 07.02.2011. It was admitted at the hearing by the counsel for the respondent that she (the respondent) is a party to the said civil suit and that the order dated 19.04.2017 granting leave under Section 92 CPC has not been challenged by way of any petition till date. Thus, the order dated 19.04.2017 continues to operate and it can be clearly concluded from this background that there is a cloud on the title of the respondent vis-a-vis the subject property.

9. The reliance on *B.S. Adityan and Ors. Vs. B. Ramachandran Adityan and Ors.*, (2004) 9 SCC 720, and the two decisions of learned single Judges of this court in *Mohd. Imtiyaz Vs.*

Mohd. Naseem, RC Rev. 594/2012, decided on 03.09.2014 and *Ram Prasad & Ors. Vs. Musarrat Begum, RC Rev. 447/2016*, decided on 20.09.2016 in support of argument to the contrary is misplaced. While it is true that mere grant of the leave under Section 92 does not determine the rights of the parties, the fact remains that such leave against the above backdrop of facts does support the case that the petitioner has raised the issues which are triable which cannot be ignored.

10. In the above facts and circumstances, the impugned order declining leave to contest to the petitioner cannot be sustained. It is set aside. Consequently, the eviction order passed against the petitioner on 07.12.2016 is also vacated. The eviction case is restored on the file of the Additional Rent Controller who is directed to proceed further by first giving an opportunity to the petitioner to submit written statement in answer to the eviction petition.

11. The petition and the applications filed therewith stand disposed of in above terms.

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R.K.GAUBA, J

JANUARY 11, 2018

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