

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

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Reserved on 12.11.2018.

Date of Judgment: 26.11.2018

+ **CM (M) No.1191/2018 & C.M. Nos.40664/2018**

ARVIND KUMAR JAIN

..... Petitioner

Through: Dr.Sarbjit Sharma, Advocate
and Ms.Yamini Nijhawan and
Ms.Leeza Taneja, Advocates.

Versus

JAGDISH LAL KHANIJO

.... Respondent

Through: Mr.Arvind Dhingra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

CM (M) No.1191/2018 & C.M. Nos.40664/2018

1. The impugned order dated 27.07.2018 passed by the Pilot Court (Central), Tis Hazari Court, Delhi (RC) declining the request of the petitioner/tenant to take on record the documents along with the rejoinder, is the subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

2. The respondent/landlord has sought ejectment of the petitioner from the shop in question, under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (DRC Act), on *bona fide* requirement of his daughter-in-law Ms. Sakshi to use and establish her own independent business so as to earn her livelihood from the tenanted premises. The

petitioner filed an application for leave to defend under Section 25B (4) of DRC Act along with his affidavit in which he, *inter alia*, pleaded that “*the daughter-in-law of the petitioner is not dependent on the petitioner as the son of the petitioner, namely, Sh. Kapil Khanijo is a big/renowned industrialist/businessman and he is running number of companies including the company by the name of J.J. Fab Tex Pvt. Ltd., who is having the 50% of the share holding of the said company and he is also one of the Directors of the said company and the turn over of the said company is approx. Rs.20 Crores per year.*” This ground was specifically denied in his reply by the respondent. The petitioner filed a rejoinder to the reply filed by the respondent to his leave to defend, which was taken on record by the impugned order.

3. The learned counsel for the petitioner contended that along with the rejoinder, the petitioner wanted to file two documents which was declined by the learned RC by placing reliance upon a judgment of the Hon’ble Supreme Court in **Prithipal Singh v. Satpal Singh (Dead) through his LR’s, (2010) 2 SCC 15**. He argued that there is no such bar to file documents in support of application for leave to defend under Section 25B (4) of the DRC Act or in the judgment of the Hon’ble Supreme Court in **Prithipal Singh (supra)**. He urged that since he has already pleaded in his application for leave to defend that the daughter-in-law of the respondent is not dependent upon the respondent as the son of the respondent Sh. Kapil Khanijo has been running number of companies including M/s J.J. Fab Tex Pvt. Ltd., having 50% share holding therein.

4. *Per contra*, it is submitted by the learned counsel for the respondent that there is no illegality or infirmity in the impugned order and the request of the petitioner to place two documents on record was rightly declined in view of the spirit of the judgment of **Prithipal Singh** (*supra*).

5. Here it will not be out of place to mention sub section (4) of Section 25B of the DRC Act which reads as under:-

25B. Special Procedure for the disposal of applications for eviction on the ground of *bona-fide* requirement- (1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14A Or under Section 14B or under Section 14C or under Section 14D shall be dealt with in accordance with the procedure specified in this section.

2. The Controller shall issue summons, in relation to every application referred to in sub-section (1), in the form specified in the Third Schedule.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

6. As per schedule III to the DRC Act, prescribing the format of summon, such time to file leave to defend is mentioned as '*within fifteen days of the service hereof and to obtain the leave of the Controller to contest the application for eviction on the ground aforesaid; in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said premises.*'

7. This provision and the schedule prescribing the period of limitation for filing leave to defend within fifteen days came up for consideration before the Hon'ble Supreme Court in **Prithipal Singh (supra)** and para No.15 and 16 reads as under:-

15. Next comes the very important provision in Section 25-B of the Rent Act i.e. sub-section (4) of the same. It clearly provides that a tenant on whom the summons is duly served in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller, as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

16. From a careful perusal of sub-section (4) of Section 25-B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. This section also clearly indicates that in default of his appearance in compliance with the

summons or his obtaining such leave, the statement made by the landlord in the eviction proceedings shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition. At this stage, we may also note that in sub-section (4) of Section 25-B of the Rent Act read with the Third Schedule, it has been made clear by the legislature that if the summons of the proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceedings within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.

8. It is made clear by the Hon'ble Supreme Court in **Prithipal Singh (supra)** that after the service of the summons, the tenant is required to appear and file an application for leave to defend within fifteen days from the date of service of notice upon him and if he fails to do so, automatically an order of eviction shall follow against him on *bona-fide* requirement.

9. A learned Single Judge of this Court in **Mirajuddin vs. Mohammad Habib & Ors. 2014 SCC Online Del 3803** while referring to **Prithipal Singh (supra)** has held "*once the period of 15 days is sacrosanct, it is not permissible to a tenant after the period of 15 days to keep on filing affidavits or documents to urge grounds for seeking leave to defend, and which if permitted to be done, will be violative of the ratio of the judgment of the Supreme Court in the case of Prithipal Singh (supra) that 15 days period for filing of leave to defend application is non-flexible and a fixed period, and every aspect for seeking leave to defend has to be stated within 15 days only and*

not thereafter. Therefore, the so called subsequent events which are sought to be urged cannot be urged on behalf of the petitioner”. Similar view was taken by the learned Single Judge of this Court in **Mohd. Burhan v. Triloki Nath Nirmal 2014 SCC Online Del 4320** and **Sanjeev Gupta & Ors. Vs. Sh. Subhash Kumar Gupta & Anr. 2014 SCC Online Del 4369**. It is noticed that question of filing documents before RC subsequent to stage of filing of leave to defend was never the issue in all these three cases.

10. Facts of the present case are however, distinguishable. The petitioner/defendant had pleaded in his application for leave to defend that the daughter-in-law of the respondent is not dependent upon the respondent as the son of the respondent Sh. Kapil Khanijo has been running number of companies including M/s J.J. Fab Tex Pvt. Ltd. wherein he has a 50% share holding. The respondent has denied this fact, which the petitioner never expected him to deny. This led the petitioner to place on record two documents in question pertaining to the said M/s J.J. Fab Pvt. Ltd. wherein Kapil Khanijo son of respondent and his brother Manoj Kumar Khanijo are partners with a share holding of 50% each. These documents have been obtained by the petitioner from the official website of the Registrar of Companies (‘ROC’). The learned RC has already permitted the petitioner to place on record the rejoinder to the reply of his application for leave to defend by impugned order. **Prithipal Singh’s case (supra)** also does not bar filing of document after filing leave to defend. The respondent/plaintiff cannot be prejudiced if in these peculiar

circumstances of the case, these two documents allowed to be taken on record.

11. In the circumstances, the petition is allowed. The impugned order dated 27.07.2018, is hereby, set aside. The learned RC shall take both these documents filed by the petitioner on the record to consider his application for leave to defend in accordance with law. Nothing said and observed in this order shall tantamount to an opinion on merits of the case.

12. In view of the above, the application, being C.M. Nos.40664/2018, stands disposed of.

NOVEMBER 26, 2018
“sandeep”

VINOD GOEL, J.