

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

% **Date of decision: 2<sup>nd</sup> February, 2018**

+ **RC.REV. 6/2017**

**KAILASH KUMARI & ANR** ..... **Petitioners**

Through: Ms. Ritu Jain, Adv.

Versus

**SHAKUNTLA** ..... **Respondent**

Through: Mr. Devinder Singh Khatana and  
Mr. Sagar Lal, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the judgment [dated 16<sup>th</sup> July, 2016 in E.No.15/12 (Unique Case ID No.02406C0031342012) of the Court of Rent Controller (South), Saket Courts, New Delhi] dismissing the application of the two petitioners for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the sole respondent and the consequent order of eviction of the petitioners from Shop No.7 on ground floor of property no.67, Village Garhi, Main Market, East of Kailash, New Delhi as shown in red colour in the site plan filed with the petition for eviction.

2. This petition came up first before this Court on 6<sup>th</sup> January, 2017, when, after some hearing, further hearing was adjourned. On 15<sup>th</sup> February, 2017, on the contention of the counsel for the petitioners / tenants that in the property in question i.e. property no.67, Main Market,

Village Garhi, East of Kailash, New Delhi, the respondent / landlady has 13 shops out of which shops no.4,5,6&13 are available with the respondent / landlady and her sons are carrying on business therefrom and that the respondent / landlady though in the reply to the application for leave to defend has denied the said plea in the leave to defend application of the petitioners / tenants and stated that the said four shops are tenanted but had not placed anything on record to show the said four shops to be tenanted, notice of the petition was ordered to be issued and the execution of the order of eviction stayed. On 26<sup>th</sup> October, 2017, when the petition listed, the counsel for the petitioners / tenants sought adjournment. Observing that the petitioners / tenants, after obtaining interim order could not seek adjournments, interim order was vacated subject to the final outcome of the petition. The counsel for the petitioners / tenants then stated that she will argue the matter and the counsels were heard. During the hearing it was noticed that there was some discrepancy as to the documents filed with the leave to defend application. Accordingly, the Trial Court records were ordered to be requisitioned and orders in the petition reserved.

3. The Trial Court record has been received and has been perused.

4. The counsel for the petitioners, during the hearing, on enquiry, stated that the petitioners do not dispute that the respondent / landlady is the owner and landlord of the shop in the tenancy of the petitioners. Thus the discussion hereafter will only be on the aspect of *bona fide* requirement of and availability of alternate suitable accommodation to, the respondent/ landlady.

5. The respondent / landlady instituted the petition for eviction under Section 14(1)(e) of the Act, from which this Revision Petition arises, pleading (i) that the husband of the respondent / landlady was the owner and landlord of the said Shop no.7 and had let-out the same to the petitioners / tenants in January, 2001; (ii) that the husband of the respondent / landlady died on 19<sup>th</sup> October, 2007 and thereafter the respondent / landlady became the owner of the shop and the petitioners / tenants started paying monthly rent to the respondent / landlady; (iii) that the respondent / landlady has five sons namely, (a) Devender aged 30 years; (b) Joginder aged 26 years; (c) Virender aged 22 years; (d) Sumit aged 20 years; and, (e) Ajay aged 16 years; (iv) that Devender is running a Gym from a rented accommodation and Joginder is unemployed; the other sons of the respondent / landlady are studying; (v) that the respondent / landlady requires the shop in the tenancy of the petitioners for setting up a shop for her unemployed son Joginder so that he can earn his livelihood; and, (vi) that the respondent / landlady has no vacant shop.

6. The petitioners / tenants applied for leave to defend, pleading (a) that they, at the time of taking the shop on rent had paid security deposit of Rs.2,10,000/- in the nature of *Pagri* to the husband of the respondent/landlady; (b) that there are 13 shops on the ground floor of property No.67, Village Garhi and one of the said shops had been let out for a food outlet just six months prior to the filing of the petition for eviction; (c) that of the said 13 shops, the sons of the respondent/landlady were carrying on business of CDs and electronic items from shop No.6, of sale of stationary from shop No.5 and of sale of school bags from shop No.4; (d) that another shop had recently been constructed under the stairs

by demolition of the common urinal and let out to the food outlet aforesaid; (e) that shop No.3 was let out recently to a tailor; (f) that shop No.1 stood let out to Rajput Jeweller and shop No.2 to Classic Music Center; (g) that shops No.9 to 12 also stood let out to different persons; (h) that the husband of the respondent/landlady had taken *Pagri* for letting out of shops No.1,2,7,9,10&11; (h) that the three sons of the respondent/landlady are running their business from the three shops aforesaid; (i) that first floor of the property was let out for residential purpose to students and the second, third and fourth floors were being used by the family of the respondent/landlady and her sons Devender, Joginder, Virender, Bille, Sumit, Ajay, Baleshwar, Mahesh and Suresh; (j) that the respondent/landlady was also the owner of property No.A-59, Shera Mohalla, Garhi, East of Kailash, Delhi and which had been let out by the sons of the respondent/landlady; (k) that the respondent/landlady and her sons are also the owner of another property No.67B, Amrit Puri, Garhi, New Delhi and which had also been let out; (l) that the respondent/landlady and her sons were also the owners of property No.59A/1, Amrit Puri Garhi, East of Kailash, New Delhi from which Devender and Joginder, sons of respondent/landlady were running a Gym and other parts of the said property were let out; (m) that the respondent/landlady and her sons were also the owners of property No.1747, Mam Raj Mohalla, Garhi, New Delhi which had also been let out; (n) that the respondent/landlady and her sons were also the owners of property No.76, Main Market, Garhi, New Delhi which had also been let out.

7. The respondent/landlady filed a reply to the application for leave to defend, (i) denying that any security/*Pagri* was received from the petitioners/tenants at the time of letting; (ii) denying that any new shop had been constructed in the property at the place where earlier the common urinal existed; (iii) denying that any shop had been let out six months prior to the filing of petition for eviction for a food outlet; (iv) pleading that there are only 12 shops on the ground floor and out of which one was sold by the husband of the respondent/landlady 15 years back and the other shops are in occupation of old tenants; (v) pleading that shop No.6 is in possession of Suresh son of Selak Ram, brother of the husband of the respondent/landlady and who the petitioners/tenants in their application for leave to defend had pleaded to be also the owner of the property; (vi) pleading that shop No.5 is in possession of one Jitender who is running his book depot in the name and style of 'Amit Book Depot' therefrom; (vii) pleading that shop No.4 is in possession of one Narender who is running the business of sale of bags therefrom; (viii) pleading that no new tenant had been inducted in any of the shops for four years preceding the filing of the petition for eviction; (ix) pleading that Baleshwar, Mahesh and Suresh are not the sons of the respondent/landlady but are sons of Selak Ram; (x) pleading that Joginder son of the respondent/landlady is unemployed; (xi) denying that the respondent/landlady was the owner of property No.A-59, Shera Mohalla, East of Kailash and pleading that Selak Ram is the owner of property No.A-59, Shera Mohalla, Garhi, East of Kailash; (xii) denying that the respondent/landlady is the owner of property No.67B/67, Shera Mohalla, Jharia Maria Amrit Puri and pleading that Selak Ram was the owner of

the said property; (xiii) denying that the respondent/landlady or her sons are the owners of property No.59A/1, Amrit Puri, Garhi, East of Kailash or that Joginder, son of the respondent/landlady is running his Gym therefrom and pleading that Mam Raj, another brother of the husband of the respondent/landlady is the owner of the said property and that it is Devender, the elder son of the respondent/landlady who is running his Gym from the said property by taking a portion thereof on rent from Mam Raj (xiv) denying that the respondent/landlady was the owner of property No.1747, Mam Raj Mohalla, Garhi and pleading that Mam Raj, brother of the husband of the respondent/landlady was owner thereof and residing therein; (xv) denying that the respondent/landlady or her sons had any concern with property No.76, Main Market, Garhi, New Delhi and pleading that the respondent/landlady also did not know who was the owner thereof or whether such a property exist.

8. In the aforesaid state of pleadings, the learned Additional Rent Controller (ARC) has found the petitioners/tenants to be not entitled to leave to defend the petition for eviction and has passed the order of their eviction, reasoning that the pleas taken by the petitioners/tenants in their application for leave to defend, of other properties owned by the respondent/landlady and her sons, were vague and the respondent/landlady on the other hand had in her reply denied any ownership of the said properties by herself and her sons and given particulars of the owners of the said properties and on such vague pleas leave to defend could not be granted.

9. Perhaps for this reason only, the counsel for the petitioners/tenants also, during the hearing before this Court on 15<sup>th</sup> February, 2017, confined his argument to availability of four shops in property No.67, Main Market, Village Garhi, East of Kailash, New Delhi, in another shop wherein, the petitioners are tenants to the respondent/landlady or her sons.

10. A perusal of the Trial Court record, which was requisitioned, shows the respondent/landlady to have also filed the documents to show ownership of the other properties which the petitioners/tenants averred that the respondent/landlady and her sons owned and qua which the respondent/landlady in her reply to the application for leave to defend pleaded that the same were owned by the brother/s of the husband of the respondent/landlady. I may in this regard notice that the petitioners/tenants in their application for leave to defend had also taken the plea of respondent/landlady being only a co-owner of the property, in a shop wherein the petitioners are tenants, along with the brothers of the deceased husband of the respondent/landlady. However before this Court, the ownership of the respondent/landlady and the existence of relationship of landlord and tenant was not disputed.

11. Though a perusal of the Trial Court file does not show the respondent/landlady to have placed on record the documents of letting out of the shops which the petitioners/tenants alleged were in possession of the sons of the respondent/landlady but the respondent/landlady is found to have filed a site plan showing the occupation of each of the 12 shops on the ground floor of the property.

12. The petitioner/tenants have merely taken vague pleas with respect to the availability of alternate accommodation with the respondent/landlady and of the business being run by her sons therefrom.

13. It was for the petitioners/tenants to place before this Court photographs or other material with respect to the business claimed to be run by the sons of the respondent/landlady from the said shops. No such effort has been made.

14. The petitioners/tenants are only found to have filed a site plan of the shops but in which site plan also, it is merely mentioned that from one of the shops claimed to be in possession of respondent/landlady and her sons, business of bags, from another business of books and from another business of CDs, was being run.

15. As would be evident from the narration above, the petitioners in the leave to defend application, except for making vague pleas have not disclosed any facts of their own which would disentitle the respondent/landlady from obtaining an order of eviction under Section 14(1) (e) within the meaning of Section 25 (B)(5) of the Act. If it were to be held that a tenant, in the application for leave to defend, merely by denying the averments in the petition for eviction or making vague pleas, without any basis and without disclosing the requisite particulars, or producing any material, is entitled to leave to defend, then the same would defeat the legislative intent in providing for summary procedure with respect to petitions for eviction on the ground of personal requirement of the landlord, as then in all cases leave to defend will have to be granted and the stage of leave to defend would merely serve the

purpose of delaying the filing of the written statement by the tenant and the trial to follow, thereby making the procedure for eviction on the ground of requirement of self use longer than the procedure prescribed for adjudication of the petitions for eviction on other grounds of eviction prescribed in the Act. I have in **Ram Saroop Vs. Viney Kumar Mahajan** MANU/DE/3530/2017 on the said aspect held as under:-

*“18. If leave to defend were to be granted on such vague pleas, the same would defeat the legislative intent of inserting Section 25B in the Rent Act as summary procedure for dealing with petitions for eviction on the ground of requirement of the premises by the landlord for his own use. A tenant, to be entitled to leave to defend has to disclose facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. It is only such facts which when proved would so disentitle the landlord which can entitle the tenant to leave to defend. Evidence in proof of such facts has to be confined to the pleas and cannot be beyond the pleas. If the tenant is unable to make specific pleas, the Court cannot grant leave to defend on the premise that he will improve his case during trial. Leave to defend is not to be granted to allow to the tenant time to improve his case.*

*19. Supreme Court in **Baldev Singh Bajwa Vs. Monish Saini** (2005) 12 SCC 778, in the context of summary procedure under the East Punjab Urban Rent Restriction Act, 1949 held that a heavy burden lies on the tenant and the tenant is called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant was held to be not sufficient. Similarly, in **Rajender Kumar Sharma Vs.***

*Leela Wati* (2008) 155 DLT 383 it was held that Section 25B was inserted as a special provision for eviction of the tenants in respect of specified category of cases as provided therein; where a landlord seeks eviction on the basis of bona fide necessity, a summary procedure is provided and the tenant has to seek leave to defend disclosing such facts which disentitle the landlord from seeking eviction; where a tenant, in leave to defend, pleads preposterous propositions and makes such averments which are palpably false and the landlord in his reply to leave to defend is able to show the said falsity, the Controller is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it. Again, in **Ramesh Chand Vs. Uganti Devi** (2009) 157 DLT 450, it was held that mere assertions do not raise any triable issue and if these bald assertions were entertained, then every tenant would get away with leave to defend, defeating the intent of legislature. It was further held that only in those cases leave to defend can be granted where Controller finds some substance in the issues raised by the tenant. I have also taken the same view in **Sarwan Das Bange Vs. Ram Prakash** (2010) 167 DLT 80.

20. Supreme Court in **Busching Schmitz Private Limited Vs. P.T. Menghani** (1977) 2 SCC 835 held that Controller's power to give leave to contest is cribbed by the condition that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in Section 14(1)(e) of the Act; disclosure of facts is a sine qua non for grant of leave. It was further held in **Kewal Singh Vs. Lajwanti** (1980) 1 SCC 290 that it is a salutary provision in order to prevent frivolous pleas taken by the tenants to avoid eviction. In **Precision Steel & Engineering Works Vs. Prem Deva Niranjana Deva Tayal** (1982) 3 SCC 270 it was further expanded that while browsing through the affidavit, if there emerges averment of facts which on a

*trial, if believed, would non-suit the landlord, leave ought to be granted; however leave to contest should not be granted unless the affidavit discloses such facts. Ultimately in **Prithipal Singh Vs. Satpal Singh** (2010) 2 SCC 15 it was held that the dominant object of insertion of Section 25B is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated inter alia by Section 14(1)(e) and for avoiding unusual dilatory process provided otherwise by the Rent Act and the application of Order XXXVII Rule 4 of the Code of Civil Procedure, 1908 (CPC) to Section 25B in force till prior thereto, was held to be bad.*

*21. I am afraid making of vague pleas in the application for leave to defend and affidavit accompanying the same, without giving any particulars, cannot be said to be disclosing facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act.”*

16. Again, in judgment dated 2<sup>nd</sup> August, 2017 in RCR No.352/2017 titled **Lalta Prasad Gupta Vs. Sita Ram** it was held as under:

*“17. The word “discloses” in Section 25 B (5) of the Rent Act has to be understood as disclosing facts which if proved would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e). Unless the words “discloses such facts” in Section 25B(5) are understood and interpreted as placing before the Rent Controller facts which when proved will result in dismissal of petition for eviction, the Rent Controller will be unable to apply summary procedure prescribed in Section 25B for such petitions for eviction. If it were to be held that every plea in the application for leave to defend, howsoever vague and without particulars and without anything in support thereof, should be permitted to be proved, the advocates for tenants, with their astute drafting skills, will not allow*

*the summary procedure, prescribed by legislature to be followed for petitions for eviction of tenants on the ground of requirement of the landlord of the tenancy premises for self use, to be followed in any case and leave to defend will have to be granted and each case put to trial.*

*18. Thus, if the tenant seeks leave to defend controverting the requirement pleaded by landlord on the ground of the landlord, though at the time of requirement having alternate premises, having not used the same and instead having commercially exploited the same, the tenant must plead (a) the particulars of such premises; (b) the right / title of the landlord to the same; (c) that the said premises were vacant and available for use at the time of the pleaded requirement of landlord; (d) how the said premises were suitable for the pleaded requirement; and, (e) how the landlord has deprived himself thereof i.e. by sale or letting and support the said pleas with material on the basis whereof such pleas will be proved. I say that it is essential to place such material before the Rent Controller because the purpose of trial, resulting from grant of leave to defend, is to prove the said pleas and if the tenant has nothing from which he can possibly prove the said pleas, the trial also will not result in the landlord being “disentitled from obtaining an order for recovery of possession of premises on the ground specified in Clause (e) of proviso to sub Section (1) of Section 14” of the Act, within the meaning of Section 25B(5) supra. This is not to say that the tenant should file fool proof documentary evidence at the stage of leave to defend. However there must be placed on record all the requisite particulars. The onus on the tenant, at the stage of seeking leave to defend, is thus somewhere in between fool proof documentary evidence and a totally vague, bereft of any particulars plea. Where, in between the said onus lies, depends on facts of each case.”*

17. The application filed by the petitioners for leave to defend is not found to be disclosing any facts which would disentitle the respondent/landlord from obtaining an order of eviction under Section 14(1)(e) of the Act.

18. In the light of aforesaid, the order impugned does not require interference by this Court in exercise of revisional jurisdiction under Section 25B(8) of the Act as interpreted by the Supreme Court in *Shiv Sarup Gupta Vs. Dr Mahesh Chand Gupta* (1999) 6 SCC 222 and *Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh* (2014) 9 SCC 78.

19. There is no merit in this petition. Dismissed.

**FEBRUARY 02, 2018**

‘pp/bs’..

**RAJIV SAHAI ENDLAW, J.**