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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Pronounced on: 29.08.2018

+ RC REV.50/2016

KAMLA SHARMA

...Petitioner

Through Mr.Ajay Kumar, Adv.

Versus

RAHUL GUPTA

...Respondent

Through Mr.Vishesh Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This revision petition is filed under section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) seeking to impugn the order dated 15.7.2015 by which the Additional Rent Controller (hereinafter referred to as the ARC) allowed the application of the respondent/tenant granting leave to defend. The petitioner/landlord has filed the present Eviction Petition for property being one room/godown on the ground floor in the property being No.116-A, Kamla Nagar, Delhi-110007. It is the contention of the petitioner that she is the owner/landlord of the said one room/godown on the ground floor which was let out 15 years back by Smt.Vishnu Devi, the mother in law of the petitioner. The petitioner is said to be living on the first floor in two rooms (with latrine, kitchen and bathroom) alongwith her son and daughter in law. The ground floor is said to comprise of one room/godown which is tenanted with the respondent. In

second room another tenant Shri Pawan Kumar Gupta is in occupation. One room is in the basement where the third tenant Shri Varun Gupta is using it as a store. It is urged that the petitioner is 63 years old senior citizen and is finding it difficult to run her livelihood. The son of the petitioner is doing a private job and does not pay her money. The petitioner does stitching work in the open space available to her in the property. The petitioner is said to require the tenanted room on the ground floor for opening a tailoring/stitching shop. The petitioner and her family also require 5 rooms i.e. one for the petitioner, one for the son and daughter in law, one drawing room, one store room and one puja room for the petitioner. Hence, the eviction petition.

2. The ARC by the impugned order noted the submissions raised by the respondent in the leave to defend application as follows:-

a) That the petitioner has failed to implead all the LRs of the original owner Late Smt.Vishnu Devi.

b) That the petitioner has possession of two additional rooms on the first floor.

c) That the petitioner's son and daughter in law are both working and fetching handsome salary. Therefore, the contention of the petitioner that she is running a tailoring shop is hard to believe.

b) Before disposal of the application for leave to defend the respondent also moved an application under section 151 CPC for bringing on record subsequent events stating that the petitioner has constructed and covered the verandah of the first floor in the property in question after filing of the eviction petition. It also stated that the petitioner is having one room shop at Shakti Nagar and one residential property at Kamla Nagar.

3. The ARC by the impugned order noted that the relationship of landlord and tenant is not disputed by the respondent. The only contention raised was that the other LRs of Late Smt.Vishnu Devi had not been impleaded. It was noted that the plea is misconceived as the petitioner being a co-owner would be entitled to file an eviction petition.

On the issue of bona fide requirement the impugned order noted that as per the petitioner she is living in two rooms on the first floor. The order notes that the petitioner has not mentioned about presence of a kolki in the eviction petition though this has been accepted later in her reply to the leave to defend application. Further, the impugned order notes that the petitioner though in her reply to the leave to defend application has denied that she is in possession of two additional rooms on the first floor but has not denied the existence of the said two rooms in addition to the two rooms which she admits are in her possession on the first floor. The impugned order concludes that there are four rooms in the property of the petitioner. In addition, the open area has been converted into a room (covered verandah). Hence, a triable issue has been raised about existence of the two rooms in addition to the admitted two rooms on the first floor.

The contention of the respondent that the petitioner is having another property at Kamla Nagar and Shakti Nagar was held to be not justified as no address or details have been filed. Based on the above findings the impugned order allowed the application for leave to defend of the respondent and placed the matter for evidence.

4. I have heard learned counsel for the parties. Learned counsel for the petitioner has vehemently denied that there are four rooms on the first floor. He submits that there are only two rooms and a verandah on the first floor

which are depicted in the map filed by the petitioner. It is admitted that the property is a composite property which is now divided between some of the legal representatives of the original owner.

5. Learned counsel for the respondent has submitted as follows:-

(i) that the tenancy is in the name of the respondent Shri Rahul Gupta and the property is being used by the father of the respondent. At the time when the tenancy took place the respondent was only 13 years old. Hence, the father of the respondent is a necessary party.

(ii) Area of the property is 480 sq.yards. The respondent denies the site plan filed by the petitioner. It is reiterated that the petitioner has four rooms on the first floor with her.

(iii) It is urged that as is apparent from the photographs placed on record that the petitioner has now covered the verandah and hence, she has additional space available which is sufficient for the petitioner.

(iv) The landlord is 68 years old and cannot run a tailoring shop and there is no such requirement at all.

6. Scope to interfere in the impugned order is limited. The Supreme Court in *Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta, (1999) 6 SCC 222* described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of

Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law". For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available..."

7. The essential ingredients which a landlord/petitioner is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

8. This court in the case of *Sarwan Dass Bange vs. Ram Prakash*, **MANU/DE/0204/2010** noted as follows:-

“7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition.

However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.”

9. Similarly, this court in *Deepak Gupta vs. Sushma Aggarwal, 2013 202 DLT 121* held as follows:-

“24.From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of Precision Steels (supra), it is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the question as to grant or not grant of the leave to defend but the real question is tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of the grant of the leave to defend by going into the complicated

questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of Charan Dass (supra) and Precision Steel (supra) are holding the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of Inderjit Kaur vs. Nirpal Singh, : 2001 (1) R.C.R. 33 and Tarun Pahwa vs. Pradeep Makin, : 2013 (1) CLJ 801 Del.)”

10. Reference may also be had to the latest judgment of the Supreme Court in *Vijay Kumar Ahluwalia and Ors. vs. Bishan Chand Maheshwari and Ors.*, AIR 2017 SC 792 where the Supreme Court held as follows:-

“21. It is a settled principle of law that while considering the grant of leave to contest the eviction proceedings under the Rent Laws, the Authority/Court is not expected to examine the merits and demerits of the grounds raised in the application for grant of leave to contest and if the Authority/Court finds that the grounds raised prima facie disclose a defence which, if accepted, may result in non-suiting the landlord from claiming eviction, the tenant is entitled to obtain leave to contest the eviction proceedings on merits. In this case, we find that the Appellants-tenant have made out such grounds and are, therefore, entitled for grant of leave to contest the eviction proceedings filed by Respondent No. 1 against them on merits.”

11. Hence, the impugned order has to be tested to see as to whether the respondent has given any facts/particulars which require to be established by evidence and if established would disentitle the landlord from an order of eviction. Every plea which is disputed by the tenant would not ipso facto imply that leave to defend has to be granted to the tenant. If the ARC finds that the grounds raised prima facie disclose a defence which if accepted may

result in disentitling the landlord, the tenant is entitled to obtain leave to contest the eviction proceedings.

12. In the present case the only issue in the impugned order based on which leave to defend was granted to the respondent is the averment made by the petitioner in her eviction petition that she is in occupation of two rooms and a latrine, kitchen, bathroom on the first floor. The respondent pleads that there are actually four rooms and a covered verandah.

13. The respondent pleaded as follows in his application for leave to defend:-

“8. That the petitioner has not come before this court with clean hands as petitioner has suppressed the material facts that along with two rooms (with latrine, bathroom and kitchen) the petitioner is also having possession of two other rooms on first floor where she resides. That she is under possession of one room adjacent to stairs in between ground floor and first floor (which they have marked as kolki in Map) and other Mezzanine floor with dimension of 9 x 6 (approx) on first floors. That the map placed by the petitioner on record is absolutely wrong and disputed. It is placed in order to mislead this Hon’ble court.”

14. The reply of the petitioner/landlord to the above averment of the respondent is as follows:-

“8. That the contents of this para are absolutely wrong and denied. It is denied that the petitioner has not come to the court with the clean hands and has suppressed the material facts from this Hon’ble court. It is denied that the petitioner is having the possession of other two rooms on the first floor where petitioner resides. It is denied that the petitioner is in possession of the other rooms adjacent to stairs in between the ground floor, first floor and the mezzanine floor which has been shown as the Kolki in the Map. It is denied that the map filed by the petitioner is absolutely false. It is submitted that the petitioner is in possession of only two rooms as

stated in the main petition except one small kolki measuring '3x5' at mezzanine floor, which is not habitable. That all the facts stated by the respondent in this para are not supported by any proof by the respondent and only stated to obtain the leave to defend application allowed by stating the false and the fabricated facts as stated in this para."

15. Based on these averments, the ARC has concluded as follows:-

"13.....The petitioner has nowhere mentioned about presence of Kolki in the eviction petition which she later accepted in her reply to leave to defend application. Further, in her reply to leave to defend application, it is stated by the petitioner that she is not in possession of other two rooms on the first floor but has not nowhere denied the existence of two rooms in addition to two rooms specified by the petitioner in the original eviction petition, meaning thereby that it is admitted by the petitioner that there are total four rooms in the suit property. The respondent has also filed the photographs of the suit property to show that the petitioner has covered the open area after filing of the present eviction petition and has converted the same into rooms."

16. It is manifest that there is complete misreading by the ARC in the impugned order of the above pleadings of the parties. In the eviction petition, the petitioner has pointed out that the property i.e. 116A, Kamla Nagar, Delhi-110007 comprises two rooms with latrine, kitchen and bathroom on the first floor, two rooms on the ground floor of which one room is being used by the tenant as a godown and another room is being used by another tenant. There is one room in the basement which has been let out to a third tenant. The petitioner has also filed a map showing the area in her occupation.

From a perusal of the above averments in the application for leave to defend filed by the respondent and the reply filed by the petitioner no

conclusion follows that there are four rooms in the property of the petitioner on the first floor.

17. In fact a closer look shows that the respondent is deliberately misreading the site plan filed by the petitioner. The site plan shows a kitchen of '9.0 x 6.1'. This has been wrongly/mischievously described by the respondent as an additional room in occupation of the petitioner.

Further the site plan shows a kolki. However, the dimensions of the kolki are not stated. It has been clarified that the kolki measures only '3 x 5' and cannot be termed to be a room or used as a room. This kolki is mentioned in the site plan. The fact that it was not mentioned in the eviction petition cannot non-suit the petitioner. This court has held that concealment of innocuous accommodation which cannot be used as a regular room will not result in dismissal of the claim. In the case of ***Sushil Mittal vs. Arun Kumar***, MANU/DE/1789/2012, this court held as follows:-

"10. A Bench of this Court in 1988 (2) RCJ 179 R.D. Aggarwal Vs. Smt. Arjan Kaur in this context has held as under:-

"In an eviction petition on the ground of bona fide requirement it is only where a particular landlord intentionally conceals the residential accommodation available to him from the court that he/she can be non-suited on this ground. Concealment of innocuous accommodation which cannot be used as a regular room should not result in dismissal of her/his claim for more accommodation."

18. Clearly the allegation of existence of two additional rooms in occupation of the petitioner is entirely mischievous and is based on misinterpretation of the site plan filed by the petitioner. In fact the respondent has not filed any site plan or photograph or any other document

to show the existence of four rooms in occupation of the petitioner. On the face of pleadings/documents no worthwhile defence is raised let alone a prima facie defence.

19. Other aspects relate to the coverage of an open space, namely, the verandah. A perusal of the photograph would show that the said verandah appears to have been covered by glazing. However, this cannot be termed to be a substitute for a room. Even if it is taken to be a room at best it can be said that the petitioner has in her occupation three rooms. This would not be sufficient accommodation for a family comprising of herself and her son and daughter in law.

20. I may now deal with the other submissions of the respondent. It has first been argued that the respondent was only 13 years old when the tenancy took place. It has been pleaded that his father is the actual tenant. However, at one place, the respondent accepts that he has been regularly paying rent and has paid rent up to 30.11.2014. This argument is of no consequence as admittedly the respondent has been paying rent to the petitioner and has accepted the petitioner as the landlord.

21. It has further been submitted by the respondent that the area of the plot is 480 sq. yards. It is admitted that such a plea has not been raised in the application for leave to defend. Hence, in terms of the judgment of the Supreme Court in *Prithipal Singh vs. Satpal Singh (dead) through LRs, (2009) 2 SCC 15*, this plea is not available to the respondent. In fact as pointed out by the petitioner it is a composite property which has now been divided between different legal heirs. The petitioner is not in possession of the entire 480 sq. yards.

22. Regarding plea of the respondent that the petitioner is 68 years old and hence cannot start a tailoring shop the plea is wholly misconceived. The age cannot be a bar for a person to remain professionally occupied and active. The pleas raised by the respondent are without any merits.

23. It is manifest that the respondent has failed to plead facts which if allowed to be pressed would disentitle the petitioner to an eviction order. The respondent has only tried to misinterpret and misread the site plan filed by the petitioner. The impugned order has completely misread the averments of the respondent. The conclusions in the impugned order are wholly unsustainable and this is apparent from a mere reading of the relevant material on record. The said order suffers from material illegality.

24. I accordingly set aside the impugned order and dismiss the application of the respondent seeking leave to defend. An eviction order is passed in favour of the petitioner. However, the order shall not in terms of section 15(7) of the DRC Act be executed only after six months from today. Petition stands disposed of. All pending applications, if any, also stand disposed of.

(JAYANT NATH)
JUDGE

AUGUST 29, 2018/n