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

Date of decision: 29th November, 2019

+ **CM(M) 1696/2019 & CM APPLS. 51369/2019, 51370/2019, 51371/2019**

KISHAN GUPTA & ORS

..... Petitioners

Through: Ms. Nandani Sahwney & Mr. Gaurav Mahajan, Advocates (M-9811688721)

versus

CHANDER PRABHA

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(oral)

1. The present petition has been filed challenging the impugned order dated 26th November, 2019 by which the Id. Appellate Court hearing an appeal against the decree of eviction dated 21st October, 2019, has refused to grant stay of the operation of the eviction. The submission of Ms. Nandni Sahwney, Id. counsel appearing for the Petitioners/tenants (*hereinafter 'tenants'*) is that the tenants have been in lawful possession since 1957 and have a strong case on merits. It is her submission that the Trial Court has erred in the manner in which the evidence has been appreciated. She submits that the rent was being paid to the various predecessors-in-interest and lastly to Mrs. Tripat Kaur by the father of the tenants. The tenants run a shop from where vegetables/eggs etc. are being sold in property no.6/10, West Patel Nagar, New Delhi. She submits that the Trial Court's order decreeing the eviction petition failed to consider the various contradictions in the evidence

of the Respondent/landlord (*hereinafter* 'landlord'). The legal notice and the oral evidence showed factual inconsistencies and these facts ought to be considered by the Id. Appellate Court. The rejection of stay at this stage would result in the decree being executed while the appeal remains pending.

2. She relies upon ***Gangubai Bablya Chaudhary and Ors. v. Sitaram Bhalchandra Sukhtankar and Ors., (1983) 4 SCC 31*** to assert that once a tenant is in settled possession, he cannot be disturbed except in accordance with law.

3. She further relies on ***Subhash Chand Chhabra, Shyam Chhabra both S/o U.M Chhabra v. Radhey Govind Rohatgi S/o B.K.D Rohatgi, 2016 (227) DLT 51*** to submit that no notice of termination of tenancy was given in the present suit by the landlord though she was fully aware of the shop was being run in the suit premises.

4. The Court has perused the impugned order dated 26th November, 2019. The Id. Appellate Court has given detailed reasoning as to why the stay ought not to be granted and the same reads as under:

“

In the present appeal, Id. Trial Court has decreed the suit in favour of respondents. Suit was filed seeking recovery of possession and arrears of rent stating that appellant was inducted as tenant in the shop situated in property bearing no.6/10, West Patel Nagar, New Delhi. During the course of arguments, it is stated on behalf of appellant that he is in possession of the suit property as tenant and was also inducted as tenant in the year 1957 by erstwhile owner. Defence taken by appellant is that respondent are not the landlord. After hearing submission, prima facie, I do not find any ground to stay operation of the impugned order. As per Section 116 of the Evidence Act, in a landlord

tenant relation, tenant cannot dispute the ownership of landlord. During the arguments, counsel was asked that if respondent is not landlord or owner then who is the landlord, to which he stated that one Smt. Tripat Kaur is landlord/owner of the suit property but neither she nor legal heirs was examined before the ld. Trial Court nor any ownership document has been placed on record. Admittedly, appellant has not examined any erstwhile owner.

Counsel for the plaintiff has pointed out the contradiction in the content of the legal notice and in cross examination of PW-1. However, at this stage, as this is a prayer for interim order, this court is refraining from giving any detail observation whether said contradictions are material or not and whether same goes to the root of the case of respondent or not. I do not find any justified ground to stay the operation of the impugned order. Hence, matter be listed for arguments on the appeal.

Counsel for the respondent submits that he does not want to file written reply to the appeal. Hence, be listed for arguments on the appeal on 11.12.2019. Copy of the order be given dasti to the appellant as prayed.”

5. The grounds given by the ld. Appellate Court for non-grant of stay is that the landlord-tenant relationship has been established on record inasmuch as the tenants admitted that the Petitioner in the eviction petition was the landlord. In fact, a perusal of the cross-examination of DW-1 i.e. the Petitioner No.1 herein – Mr. Kishan Gupta shows that he categorically admits that as per the documents of title placed on record by the landlord, the landlord is the owner of the suit property. The extract of his cross examination reads:

“I have seen the title deeds of the plaintiff filed in this suit. We have not challenged those documents nor gave

any notice to Narayan Dass. It is correct that as per the said documents, plaintiff is the owner of the suit property.”

He further admits that rent has been paid till 2008. However, no documents could be shown to this effect. Further, DW-1 admits in his cross-examination that he has not seen any title documents in favour of Mrs. Tripat Kaur. Thus, it is clear that even if it is taken that some rent was being tendered to Mrs. Tripat Kaur, in what capacity, is not clear. The Id. Appellate Court records that neither Mrs. Tripat Kaur nor any of her legal heirs were examined. In response to this finding of the Id. Appellate Court, Ms. Sahwney submits that though the affidavit of Mrs. Tripat Kaur was filed, by the time the stage of evidence arose, she had passed away and died issueless. In any event, it is not in dispute that no other family member of Mrs. Tripat Kaur was examined by the tenants in order to prove as to in what manner she claimed to be the landlord or as to in what capacity, the rent was being accepted by her.

6. The further submission that there has been no attornment by the tenants in favour of the landlord who filed the petition is liable to be rejected inasmuch as during the cross-examination after accepting ownership, the fact that the rent is not paid would itself be a ground to seek eviction from the suit property. The equities in this case are completely in favour of the landlord inasmuch as the tenants have been in possession of the suit property since 1957. Admittedly, the amount of rent initially being paid was Rs.530/- per month which was increased to Rs.1,650/- per month. The suit premises is in a posh locality in Delhi and is a commercial shop as per the tenants themselves. Thus, in the overall facts, no ground for stay is made out. The

tenants are however permitted to seek early hearing of the appeal.

7. The tenants are present in Court and wish to approach the landlord for a settlement. The parties are permitted to explore amicable resolution of disputes if possible.

8. Ms. Sahwney, at this stage, submits that her clients are willing to pay a sum of Rs.15,000/- per month as *mesne profits* as demanded by the landlord. The said offer be made to the landlord directly.

9. With these observations the petition is dismissed. All pending applications are also disposed of.

10. A copy of this order be given *dasti* under signatures of the Court Master.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 29, 2019

Rahul