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

Date of Decision: 12th December, 2019

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CM (M) 1016/2019

NAUSHAD KHAN

..... Petitioner

Through: Mr. S. N. Mehrotra and Ms. Sandhya
Chaturvedi, Advocates. (M:
9810157069 & 8989216024)

versus

SIR SOBHA SINGH & SONS (P) LTD & ANR. Respondents

Through: Mr. Anand Singh, Advocate for R-1.
(M: 9868347568)
Mr. Dennis T. Panmei, Mr. Navin
Kumar and Mr. Nikhil Fernandes,
Advocates for R-2. (M: 9971502992)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 30407/2019 (delay in refiling)

1. For the reasons stated in the application, the delay in refiling the petition is condoned. Application is disposed of.

CM APPL. 30406/2019 (exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 1016/2019 & CM APPL. 30403/2019 (stay)

3. Respondent No.1 – Sir Sobha Singh & Sons Pvt. Ltd. (*hereinafter*, “*Landlord*”) filed an eviction petition under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (*hereinafter*, “*DRC Act*”) against Respondent No.2 – Ms. Tahira Begum (*hereinafter*, “*Original Tenant*”), in respect of Servant Quarter No. M-1, First Floor, Sujan Singh Park, New Delhi – 110003 (*hereinafter*, “*suit premises*”).

4. The Original Tenant shifted to the United States sometime in 1997. After her departure to the United States, the Petitioner – Mr. Naushad Khan, i.e., her son (*hereinafter*, “son”), started occupying the suit premises. He sought impleadment in the eviction proceedings, which was allowed on 3rd March, 2015. Thereafter, the Original Tenant appeared before the Id. Rent Controller and made a statement that she is willing to give up the tenancy. In view of this, the Landlord filed an application under Order XII Rule 6 CPC, in reply to which the Original Tenant categorically asserted that her son was illegally occupying the suit premises without her consent and approval. After taking the stand of the Original Tenant into consideration, the Id. Rent Controller came to the conclusion that there was no landlord-tenant relationship between the Landlord and the Original Tenant’s son, and in any event, since the Original Tenant had not paid the arrears of rent, an eviction order was liable to be passed.

5. Accordingly, the eviction order was passed on 17th October 2016, under Section 14(1)(a) of the DRC Act, after allowing the Landlord’s application under Order XII Rule 6 CPC. The relevant portion of the said order reads:

“4. It is stated in the instant application under Order XII Rule 6 of CPC that the respondent no. 2 in his reply dated 06.04.2015 admitted that the tenanted premises was let out to respondent no. 1 and he is the occupant of the tenanted premises, being the son of the respondent no. 1. It is also stated/admitted by the respondent no. 2 in his reply that he has been paying the arrears on behalf of the respondent no. 1 and rent receipts are given in the name of the respondent no. 1. Respondent no. 2 also did not dispute the service of Demand notice dated 26.12.2013. It is further stated

that in the reply filed by respondent no. 1 on 20.04.2016 she has clearly stated that respondent no. 2 is occupying the tenanted premises without any approval of the respondent no. 1 who is the actual tenant in respect of the tenanted premises. Further, the respondent no. 1 has pleaded in her reply that she is ready to surrender the tenancy. So, it is stated by the applicant/petitioner that in the light of the clear, specific and unambiguous admission on part of respondent no. 1 &2, the present eviction petition is liable to be allowed and eviction order is liable to be passed even without any requirement to adjudicate upon entitlement of the tenant to the benefit of Section of 14(2) of the DRC Act. It is further stated that the respondent no. 2 has no independent locus standi in the respect of the tenanted premises and as such is bound by the stand taken by respondent no. 1.

...

11. (a) In the present case, the relationship of landlord and tenant between the petitioner and respondent No.1 is not in dispute. The respondent no.2 in para 5 of the reply to eviction petition has categorically admitted that he is paying the arrears of rent to the petitioner on behalf of the respondent no.1. The rent receipts are also given in the name of respondent no.1. It is not at all the case of respondent no.2 that the rent of the tenanted premises was paid by him as a tenant of tenanted premises or any receipt was issued in his name. So it is admitted by the respondent no.2 that he was paying the rent of the tenanted premises on behalf of the respondent no.1 and was merely acting as an agent only. The respondent no.2 is thus presently occupying and in possession of the tenanted premises on behalf of respondent no.1. So there is no relationship of landlord and tenant between the petitioner and respondent no.2."

6. Thereafter, the ld. Rent Controller considered the benefit to be given

to the Original Tenant under Section 14(2) of the DRC Act. Vide orders dated 28th January, 2017 and 16th February, 2018, the Id. Rent Controller directed the Original Tenant to pay the arrears of rent. The said orders, along with the eviction order dated 17th October, 2016, were appealed by her son. Vide order dated 11th February, 2019, the Id. ADJ dismissed the appeal of the son and, in effect, upheld the decree for eviction. The said judgment is impugned before this Court.

7. Mr. Mehrotra, Id. counsel appearing for the son, submits that the Original Tenant is no longer living in India and the son was always paying rent on her behalf during the time he was occupying the suit premises. It is submitted that both, the Id. Rent Controller and the Id. ADJ, have erroneously come to the conclusion that the son has no locus to enjoy the suit premises.

8. On the other hand, Id. counsel for the Landlord submits that possession of the suit premises has already been handed over to the Original Tenant by an order of the Deputy Commissioner, passed under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Thus, the son is no longer in possession of the suit premises. The Original Tenant, having been given the benefit under Section 14(2) of the DRC Act, the son, who is neither the tenant nor acts on behalf of the tenant, has no right in law to occupy the suit premises or seek reversal of the impugned order.

9. This Court has perused the orders. The clear stand in the reply filed by the Original Tenant is that her son has illegally come into possession of the suit premises. She does not support her son's case that he was tendering rent on her behalf. The reply of the Original Tenant reads:

1. ... Respondent is an old lady aged about 70 years

and is a tenant of Sir Sobha Singh & Sons Pvt. Ltd.

...

*2. ... the **husband of the Respondent**, namely Shakil Khan is a kidney patient ... He was/ is **undergoing treatment regarding kidney problems and heart problems, including dialysis since long ...***

*3. ... **In absence of Respondent, her son Naushad Khan entered into the tenanted house, at the back of Respondent without her consent.***

4. That the said fact came to the knowledge of the Respondent when the Respondent was in USA and when the Respondent contacted her said son over phone, he abused the Respondent and her husband and also gave threat.....

5. That since the Petitioner has filed the present case against the Respondent, the Respondent has come to India on 12.04.2016 alongwith her husband. When the Respondent tried to enter the property M-1, First Floor, Sujan Singh Park (North), New Delhi, the said son Naushad Khan resisted her entry and gave very filthy and abusive language.

6. ... The Respondent has already filed a complaint with the Police on 26.04.2016.

7. That in 2008 also, the Respondent made complaint against said son and even made newspaper publication to debar him from property of the Respondent somewhere in 1993-1994 ... Otherwise the Respondent never authorised or gave any consent for the said Naushad Ali to occupy the tenanted property for/or on her behalf.

8. Given the aforesaid facts, where the Respondent is unable to utilise the tenanted property for her own residence and purposes, the Respondent is not liable to pay any rent to the Petitioner and, thus, the present Petition is liable to be dismissed."

10. When this is the position, benefit of being the tenant cannot be extended to the son, who is only the son of the Original Tenant. The

Original Tenant herself was given benefit of Section 14(2) of the DRC Act.

11. The appellate order specifically arrives at the conclusion that the son himself has stated in his pleadings that his mother, i.e., the Original Tenant, is the tenant in the suit premises and that all the amounts, which were to be paid by her, were paid by him on her behalf and not in his individual capacity. Relevant portions of the order passed by Id. ADJ are set out below:

*“6.2 Perusal of the record shows that the appellant herein, in para 2 of his application under Order 1 rule 10 CPC, himself has stated that **Ms. Tahira Begum/ his mother is the tenant of the suit premises**, which was let out to her about thirty years back. Further, in para 3 of his said application, he stated that **Ms. Tahira Begum is staying in the USA for medical treatment of her husband**. It is noteworthy that the appellant in paras 5 and 6 of his said application even stated that:*

*“5. ... Since **Ms. Tahira Begum**, the Respondent No.1 is in a state of trauma due to her husband's serious condition, it is difficult to apprise her about this case and get an authorization letter in the name of the Applicant.*

6. In the light of the aforesaid circumstance, if an order of eviction is passed against the Respondent No.1 due to her absence then it would be detrimental for her family including her son, his wife and children. If an order is passed, without hearing the rightful Occupant/Applicant then it will amount to a grave miscarriage of justice.”

*6.2.1 From the above, it is evident that the appellant has himself stated that **it is Smt. Tahira Begum who is the tenant in the suit premises**.*

6.3 Perusal of the appellant Naushad Khan's reply to Sobha Singh & Sons's petition under Section 14(1)(a) shows that in paras 5 and 7 of the same, he submitted as under:

*“5. ... Respondent No. 2 (appellant herein) **has been***

duly paying the arrears of rent to the petitioner on behalf of the Respondent No. 1 (tenant Tahira Begum).

*7. The Respondent No.2, on behalf of the Respondent No.1 being her son, **had deposited/ paid the rent** to the Petitioner ... A copy of rent receipt is enclosed herewith as **Annexure-I.**"*

*6.4 From the above, it is more than clear that **the appellant admitted that he was paying the rent on behalf of Smt. Tahira Begum.** It is not in dispute that even rent receipts were being issued in the name of Smt. Tahira Begum."*

12. Moreover, the order dated 3rd March 2015, disposing of the application under Order I Rule 10 CPC also specifically records that the relationship between the Landlord and the Original Tenant is not in dispute:

"03.03.2015

*... The tenanted premises is in his possession where he is living **being the son of respondent alongwith his family.** It is further stated that he has been duly **paying** the arrears of rent to petitioner **on behalf of his mother** and the petitioner had been accepting the rent from him personally for the last eight years. It is stated that he is in the possession of the tenanted premises at present **as his mother is at USA for temporary period for treatment** of her husband.*

... Heard counsel for petitioner and applicant and perused the complete record file.

*... **There is no dispute regarding the relationship of landlord and tenant between the petitioner and respondent Tahira Begum.** As per the petitioner himself, respondent is the tenant under oral tenancy since last 30 years. Applicant is the son of respondent and is in actual possession of the tenanted premises. The respondent at present is at USA.*

... The Delhi Rent Control Act is a beneficial legislation

... There are abundant authorities to show that the 'term'

family must always be liberally and broadly construed so as to include near relations of the head of the family. The applicant is in actual possession of the tenanted premises in the capacity of the son of respondent.

... Respondent no.2 is directed to furnish the address of USA of respondent no.1 Tahira Begum so that the service of the present petition can be effected upon her also ...”

13. Under these circumstances, no fault can be found, either in the original orders or the appellate order. The son of the Original Tenant has no legal status to enjoy possession of the suit property as there is no landlord-tenant relationship, he has not been authorised by the Original Tenant nor has the Landlord acquiesced his occupation. Thus, the challenge to the eviction order at his behest is not tenable.

14. Mr. Mehrotra, ld. counsel, further submits that in the proceedings before the SDM, the order for restoration of the petition has also been passed in favour of the son by the Deputy Commissioner. Ld. counsel for the Original Tenant submits that an appeal has been preferred against the order of the Deputy Commissioner.

15. This Court is not considering the disputes arising under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, except to note that possession has been handed over to the Original Tenant and is currently with her.

16. Under these circumstances, no interference is called for in the impugned order. Accordingly, the petition and all pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 12, 2019/dk