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

Date of Decision: 18th September, 2019

+ **CM (M) 1376/2019**

KASHI RAM & ORS. Petitioners
Through: Ms. Praveena Gautam, Ms. Anusueya
and Mr. Pawan Kumar Shukla,
Advocates. (M:9810243904)

versus

ANITA GARG Respondent
Through: Mr. Balaji Subramanian, Mr. Kabeer
Srivastava and Ms. Ishani Banerjee,
Advocates. (M:9731821307)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CAV 926/2019

1. Caveat is discharged as the Caveator has appeared.

CM APPL. 41665/2019

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

CM (M) 1376/2019 & CM APPL. 41666/2019

3. The suit property is shop bearing No.69B, Khan Market, New Delhi, which is a commercial property. The Respondent/Landlady (*hereinafter, "Landlady"*) has filed an eviction petition on the ground of *bonafide* requirement under Section 14(1)(e) of the Delhi Rent Control Act, 1958. The leave to defend was granted to the Petitioner/Tenant (*hereinafter, "Tenant"*) and the recordal of evidence has now commenced. During the time of recordal of evidence, the Landlady sought to amend the petition to bring on record subsequent facts including the fact that her son wishes to

join her business of fabric and tailoring. The amendment was allowed vide order dated 31st January, 2019 by the Id. Additional Rent Controller. The said order was challenged before the Rent Control Tribunal and vide the impugned order dated 18th July, 2019, the same has been rejected by the Tribunal in the following terms: -

“7. I have given my thoughtful consideration to the arguments / submissions made by learned counsel for both the parties. Perusal of the record reveals that the main case before the Trial Court was at the stage of petitioner's evidence. Vide order dt. 31.01.2019, the amendment sought by the petitioner-therein in the eviction petition was allowed subject to cost of Rs.5,000/- which was also deposited with Prime Minister's Relief Fund. The respondent-therein-was given an opportunity to file amended WS as per order dt.07.03.2019 of the Ld. ARC/ACJ/CCJ/ND. The respondent therein was also directed to come prepared for cross-examination of PW2. In my opinion, no prejudice would be caused to the respondents- therein/ appellants-herein as the case is at the stage of evidence of the petitioner and the petitioner's evidence in the eviction petition has not been completed so far. Further, the petitioner, in the eviction petition, has also been burdened with heavy cost for allowing the amendment application. Therefore, I do not find any infirmity or illegality in the impugned order dt.31.01.2019 passed by the Ld. Trial Court. The aforesaid judgments relied upon by the appellants are distinguishable from the facts & circumstances of the present case. Accordingly, this appeal is dismissed. Trial Court record along with copy of this Judgment be sent back to the Trial Court. The parties are directed to appear before the Ld. Trial Court on the date already fixed on 01.08.2019. File of appeal be consigned to Record Room.”

4. Ld. counsel for the Tenant submits that the addition of these facts, in fact, constitutes a new cause of action which falls outside the scope of the original petition filed by the Landlady. She has taken the Court through the eviction petition wherein the Landlady has claimed that she requires the premises for her own business. She submits that the addition of a cause of action is not permissible in a petition under Section 14(1)(e) of the Act.

5. On the other hand, ld. counsel for the Landlady submits that these are events which have taken place subsequent to the filing of the petition and bringing on record of the same is necessary for the adjudication of the petition itself. He relies upon the judgment of this Court in **Gurcharan Singh v. R. N. Chaudhary, (1982) 21 DLT 477** to argue that taking subsequent facts on record is permissible to support the *bona fide* requirement.

6. Ld. Counsel for the parties have been heard. A perusal of the eviction petition shows that the Landlady has claimed that she runs the business of fabric and tailoring and that she herself is using shop bearing No.66B in the neighbouring area as a licensee, the space in which is insufficient. In the amendment sought, the Landlady seeks addition of the fact that her son has now graduated and she expects that he would be supporting her in her business. This fact strengthens her case for *bona fide* requirement under Section 14(1)(e).

7. The facts sought to be brought on record do not, in fact, create a fresh cause of action but support the existing cause of action on the basis of which the original eviction petition has been filed. In rent control matters, where the leave to defend has been granted and the matter is pending, it is common for facts to arise during the pendency of the petition, which may strengthen

the already filed eviction petition in favour of the Landlord. Such facts cannot be relegated to fresh eviction petitions, leading to multiplicity of proceedings. So long as there is adequate notice of the facts sought to be pleaded in the amendment, subsequent events and facts ought to be permitted to be brought on record. In **Gurcharan Singh (supra)**, a similar situation had arisen wherein the Landlord had fallen ill during the pendency of the petition and this fact was permitted to be added. The Court observed:

“24. This was a subsequent development. It is true that the landlord could have amended eviction petition to plead his ill-health also as a ground for eviction of the tenant but the fact remains that these were developments during the pendency of the eviction proceedings of which the tenants had full notice.

.....

27. There can be no doubt that in cases of ejectment on the ground of bona fide requirement of the landlord, the Court is entitled to take into consideration the developments that may have taken place till the time of passing of order of ejectment in order to mould the relief. It is also true that cases of illness must be proved by best evidence. The subsequent developments should, however, relate to the requirement of the landlord. It is another thing as to how the subsequent developments should be pleaded and/ or proved. As I stated earlier the petition for ejectment can always be amended but failure to amend the petition does not mean that the subsequent events cannot be considered. Rules of natural justice require that the tenant should have full notice about it and should have time and opportunity to rebut it. In the present case, much before the evidence of the tenant commenced, the illness of the landlord was brought to the notice of the court as well as of the tenant and that is why the landlord was allowed to be examined on commission. The landlord even deposed about it in his testimony

and this was never challenged in cross-examination. Thus, no prejudice has been caused to the tenant by non-amendment of the ejectment application. In fact, when the evidence of the landlord was being recorded and he was deposing about his illness because of heart attack, no objection was taken on behalf of the tenant to the recording of such evidence. Nor was the fact of illness challenged, as stated earlier.”

8. Recently, this Court has considered a similar situation in ***Bhagwan Dass v. Usha Tyagi [CM(M) 1229/2019, decided on 23rd August, 2019]*** wherein subsequent facts were permitted to be brought on record by means of an affidavit. The relevant portion of the said order reads as under:

“7. The Court has perused the records and seen that since 2006, when leave to defend was granted to the tenant, no progress has been made in the main matter itself. On a query by this Court as to what is the stage of the proceedings in the main matter, ld. counsel for the Petitioner submits that case is listed for Petitioner’s evidence on 27th August, 2019. More than 13 years have passed since the leave to defend was granted, and it appears that the adjudication of the main petition has been delayed, on one ground or the other.

8. The initial order dated 13th September, 2007 was very clear. It allowed the tenant to incorporate subsequent events in the evidence by way of affidavit. The Court has clearly clarified that no amendment would be required in the written statement. This order did not brook any ambiguity. There was no need for the tenant to file subsequent applications for amendment of the written statement and review and thereafter an appeal. The filing of these applications, review and appeal shows that that substantial delays have been caused and such a course of action would not be permissible especially under the Rent Control Act where summary proceedings are being provided for.

Under these circumstances, this Court, while agreeing with the counsel that the reasoning given by the Trial Court was a misinterpretation of the order dated 13th September, 2007, is of the opinion that the present petition does not deserve to be entertained.

9. It is, however, made clear that if the tenant wishes to incorporate any subsequent events, the same may be done in terms of the order dated 13th September, 2007 in the evidence to be filed by the tenant by way of affidavit. No further applications for amending the written statement ought to be entertained by the Trial Court. The case is stated to be listed for CM(M) 1229/2019 Page 7 of 7 Petitioner's evidence dated 27th August, 2019. The Trial Court shall ensure that the Trial in the petition is concluded and the judgment be rendered within a period of nine months. Considering the age of the tenant, the costs are reduced to Rs. 8,000/-. The same shall be paid before the next date."

9. In view of the above legal position, this Court does not find any illegality and infirmity in the impugned order. The petition is therefore dismissed. Recordal of evidence shall continue and the ld. ARC shall endeavour to dispose of the petition expeditiously.

10. The petition and all pending applications are dismissed in the above terms.

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 18, 2019/dk