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

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Judgment delivered on: 05.12.2019

+ RC.REV. 104/2017 & CM APP Nos.8481/2017, 10904/2018

M/S CHET RAM SANJAY KUMAR

..... Petitioner

versus

RAJENDER PRAKASH GUPTA

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. D.K. Rustagi, Ms. Vidhi Nigam and Mr. Vipul Sharma, Advocates.

For the Respondent:

Mr. Ravi Gupta, Sr. Adv. with Mr. Lalit Gupta, Mr. Siddharth and Mr. Sachin Jain, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns orders dated 01.04.2016 as also order dated 25.01.2017. By order dated 01.04.2016, the leave to defend application of the petitioner has been dismissed and an eviction order passed. By order dated 25.01.2017, review petition filed by the petitioner seeking review of order dated 01.04.2016 has also dismissed.

2. Respondent has filed the subject eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to

as the Rent Act) seeking eviction of the petitioner from portion of property bearing No.2763 Qutub Road, Sadar Bazar, Delhi more particularly, as shown red in colour in the Site Plan annexed to the eviction petition.

3. Respondent filed the subject eviction petition contending that the tenancy was originally created with the partner of the firm M/s. Chet Ram Sanjay Kumar by late Sh. Tara Chand, who was the absolute owner thereof. Sh. Tara Chand expired in the year 1991 and left the property to his only son, the eviction petitioner (respondent) herein.

4. It is contended that the petitioners were inducted as tenant in the year 1975 by late Sh. Tara Chand and shop admeasuring 7x13 feet on the ground floor was let out at a monthly rent of Rs.100/-.

5. It is contended that in 1989, rent receipts were duly issued to the petitioner and thereafter petitioner has paid rent at the rate of Rs. Rs.100/- per month till 2009 by way of cheques and after 2009, rent was enhanced by Rs.50/- and petitioner has cleared the rent up till October, 2015 by issuing the cheque of Rs.1800/-.

6. It is contended that the respondent is in *bona fide* need of the property for which the tenancy was created as the need of the respondent is growing with the growth of his family members. The respondent further stated that he has three sons, who were then aged 40, 38 and 36 respectively. The eldest son was constrained to work in

a private firm because of lack of space and other amenities whereas the other two sons were working with the respondent.

7. It was further stated that the family business of the respondent was not enough to sustain the growing need of the family of the respondent. It is in these circumstances; subject eviction petition was filed.

8. Petitioner filed its leave to defend application, which was refused to the petitioner by order dated 01.04.2016 impugned herein.

9. Petitioner thereafter approached this Court by filing RC. Rev. 448/2016 which was disposed of by order dated 20.09.2016.

10. The order of this Court dated 20.09.2016 notes that three contentions were raised by the petitioner in his leave to defend application, (i) that the petitioner had attained the status of permanent tenant inasmuch as pursuant to the dissolution deed, he has carried out construction of walls and other steps have been taken, (ii) that the respondent was in occupation of the entire larger shop whereas the petitioner has only one third share of the shop as a tenant and being a case of additional accommodation, it required evidence to be led and (iii) that the eviction petition was *mala fide* because the respondent has commenced business in competition with the business of the petitioner and intention was to oust petitioner from the tenanted premises.

11. Noticing that the above three contentions of the petitioner had not been dealt with by the Rent Controller, the Court by its order dated 20.09.2016 permitted the petitioner to withdraw the petition and file a review petition before the Rent Controller.

12. The Rent Controller by order dated 25.01.2017 has rejected the review petition filed by the petitioner.

13. During submission, learned counsel for the petitioner has not restricted his grounds to the ones earlier raised but has raised the five following pleas. (i) First of all, it is contended by learned counsel for the petitioner that petition has been filed by the respondent in an incorrect name and the petition has been filed in the trade name of the petitioner and not in the name of tenant. (ii) The eviction petition does not disclose any cause of action and does not state the requisite particulars as required under Section 14(1)(e). (iii) That the eviction petition has not been filed by the respondent but by the son of the respondent through a Power of Attorney and the Power of Attorney states that it is an irrevocable power of attorney thereby implying that there is a transfer of title in favour of the son of the respondent and as such, the eviction petition is not maintainable. (iv) That since it is a case of additional accommodation, leave to defend ought to be granted. Reliance is placed on the judgment of the Supreme Court in *Santosh Devi Soni v. Chand Kiran 2011 (1) SCC 255*. (v) That there was no tenancy created in favour of the petitioner. Since petitioner was a partner with the respondent and the alleged tenancy was created

by the deed of dissolution of partnership, it was a camouflage and it actually created a permanent arrangement.

14. It may be noted that though the High Court, in the earlier revision petition filed by the petitioner impugning the order declining leave to defend (also impugned herein) granted liberty to the petitioner to file a review petition limited to the three points which are noticed hereinabove, learned counsel for the petitioner has raised five grounds, some of which are in addition or at variance from the earlier three grounds.

15. Even though, no right was given to the petitioner to raise additional grounds, learned counsel for the petitioner has been heard even on the additional grounds raised by the petitioner.

16. The first ground raised by learned counsel for the petitioner is that the petition has been filed in a trade name M/s Chet Ram Sanjay Kumar and not in the name of the tenant.

17. Perusal of the affidavit filed in support of the leave to defend application shows that the petitioner has not raised this specific plea in the affidavit in support of the leave to defend application. On the contrary, ground taken by the petitioner in the affidavit is that the eviction petition has been filed in the name of M/s. Chet Ram Sanjay Kumar without any description of its constitution.

18. In the affidavit in support of the leave to defend application, the

deponent Sanjay Kumar Garg has stated that he is in occupation and is also the sole proprietor of M/s Chet Ram Sanjay Kumar. He further states that it is out of the account of this firm that the payment of the rent was being made. Further in para 8 of the affidavit, it is stated that initial payments of rent were made from the account of M/s Chet Ram Sanjay Kumar of which Sh. Chet Ram Sanjay Kumar was the sole proprietor and thereafter on his demise on 20.04.1980, payments were being made from the account of M/s. Chet Ram Sanjay Kumar, sole proprietor of Smt. Sushila Garg, wife of Sh. Ram Kumar Garg for the period 1980-84. Thereafter payment of rent was made from the account of M/s Chet Ram Sanjay Kumar proprietor Sh. Sanjay Kumar Garg dependent and the deponent is the sole legal heirs of Smt. Sushila Garg.

19. Perusal of the leave to defend clearly shows that the case of the petitioner himself is that there is an entity by the name of M/s. Chet Ram Sanjay Kumar, which is a sole proprietorship concern initially of Shri Chet Ram, then of Smt. Sushila Gard and now of the dependent Sh. Sanjay Kumar.

20. The consistent case of the petitioner is that rent from 1975 till date has been paid from the account of M/s Chet Ram Sanjay Kumar. A landlord is not supposed to know what is the internal arrangement of the family of the tenant. Admittedly, the rent was paid from the account of the concern M/s. Chet Ram Sanjay Kumar and has consistently been paid from 1995 under the said name, which clearly

establishes that there is an entity by the name of M/s Chet Ram Sanjay Kumar. Further the contention of learned counsel for the petitioner that M/s. Chet Ram Sanjay Kumar is only a trade name and not an entity is not believable in view the fact that there is admittedly a bank account in the name of M/s. Chet Ram Sanjay Kumar as the cheques are being issued from the said name and the contention of the petitioner himself is that the payment is made from the account of M/s. Chet Ram Sanjay Kumar. Accordingly, the contention on behalf of the petitioner that the petition has not filed in the correct name does not have any merit.

21. In any event, petitioner claims to be the sole proprietor of M/s. Chet Ram Sanjay Kumar and the grandson of Sh. Chet Ram and claims to be in exclusive possession. No prejudice is caused to the petitioner. Petitioner has filed leave to defend application, which has been considered by the Rent Controller and even by this Court on merit and as such no prejudice is caused to the petitioner.

22. The second contention that the eviction petition is liable to be dismissed as it does not disclose any cause of action and does not state the basic particulars for eviction, is also not sustainable inasmuch as in paragraph 18(4) and (5) of the eviction petition, amongst other, eviction petitioner has stated the requisite ingredients required to be established.

23. Paragraphs 18(4) and 18(5) of the eviction petition read as

under:-

“18.(a)4. That the petitioner is in bona fide need of the property for which the tenancy was created as the needs of the petitioner is growing with the growth of his family members.

18.(a)5. That the petitioner further states that the petitioner has three sons namely Sh. Deepak Mittal aged about 40 years, Sh. Manish Mittal aged about 38 years and Sh. Anuj Mittal aged about 36 years. It is submitted that Sh. Deepak Mittal the eldest son of the petitioner is constrained to work in a private firm only because of the lack of space and other amenities where as Sh. Manish Mittal and Anuj Mittal are working with the petitioner herein. It is further stated that the family business of the petitioner is not enough to sustain the growing need of the family of the petitioner.”

24. Perusal of the paragraphs extracted hereinabove, as also the other paragraph in eviction petition clearly show that petition does disclose a cause of action and respondent has stated the necessary ingredients as required to be established to seek an eviction under Section 14(1)(e) on the ground of *bona fide* necessity. This submission also does not hold any merit.

25. The next contention raised by learned counsel for the petitioner, that the eviction petition is liable to be dismissed as it has not been filed by the respondent but by his attorney, is also not sustainable.

26. The eviction petition clearly states that it is filed by Sh. Rajender Prakash Gupta through his attorney Mr. Manish Mittal, who

is the son of Sh. Rajender Prakash Gupta.

27. Merely because an eviction petition is filed through the son holding a Special Power of Attorney and it states that the Power of Attorney is irrevocable does not imply that any rights have been created in favour of the Attorney holder. The Special Power of Attorney, copy of which has been placed on record, shows that the same has been executed solely for the purposes of litigation. The Special Power of Attorney does not authorise the attorney holder to sell, dispose of or create any third party rights in the subject property even otherwise, the Special Power of Attorney is only notarised and not registered and as such also cannot create any right, title or interest in favour of the attorney holder except for the purposes mentioned therein which is limited to prosecuting subject petition under Section 14(1)(e) of the Rent Act and other litigations. This contention also does not have any merit.

28. Further contention of learned counsel for the petitioner that since this is a case of additional accommodation, leave to defend ought to be granted and nothing further is required to be examined also does not hold any merit.

29. The reliance placed by learned counsel for the petitioner on the judgment of the Supreme Court in *Santosh Devi Soni (supra)* is misplaced. The Supreme Court in the said judgment has not laid down as a proposition of law that in all cases of additional accommodation

leave to defend has to be granted. In the facts and circumstances of the case Supreme Court has held that leave to defend should be granted.

30. Supreme Court has not laid down as a principle of law that in all cases of additional accommodation, leave has to be granted by the Rent Controller.

31. Rent Controller has to consider the facts and circumstances of each case and to ascertain whether the grounds raised in leave to defend application raise such pleas which if proved would disentitle the respondent landlord from an order of eviction. Merely because it is a case of additional accommodation, does not imply that leave to defend has to be granted, without any further examination.

32. Fifth contention raised by learned counsel for the petitioner is that no tenancy was created by the dissolution deed and in fact the dissolution deed was a camouflage to create permanent arrangement.

33. This contention also does not hold any merit. The admitted position is that the predecessor of the petitioner Shri Chet Ram, Shri Tara Chand (grandfather of the respondent) and Shri Hukum Chand were the partners carrying on business under the name & style of M/s Santal Tara Chand from the subject property which was exclusively owned by Sh. Tara Chand.

34. The proprietorship firm was dissolved on 11.11.1975 and it is recorded in the dissolution deed that the accounts of the partnership

were checked, scrutinised and settled to the satisfaction of all the three partners. Sh. Chet Ram and Hukum Chand retired from the partnership firm and the respective amount which were due to them on retirement was also specified in the dissolution deed. Sh. Tara Chand took over all the assets and liabilities of the dissolved firm and also agreed to pay the amounts to the retiring partners.

35. Further, the predecessor of petitioner Mr. Chet Ram took over a debt receivable of a debtor and adjusted the receivable amount as against the amount receivable by him from the partnership.

36. It would be expedient to refer to paragraph 6 and 7 of the Dissolution Deed, which deals with the subject tenanted premises as under: -

“6. That the Business-premises i.e. Shop No. 2763 is owned by Shri Tara Chand, Party No. 1 to whom the partnership was paying its rent as a tenant. So the vacant possession of the shop has been given to Shri Tara Chand, its owner. The parties No. 2 & 3 have no right, interest, claim or objection over it.

7. That party No. 1, Shri Tara Chand has agreed to let out a part of the Shop No. 2763, (1/3rd of the front portion of Shop to Shri Chet Ram at a monthly rent of Rs. 1000/- p.e. (Portion to be let out having area measuring width 7', depth 13', Height 12')”

37. Perusal of paragraphs 6 and 7 of the dissolution deed clearly show that Sh. Tara Chand was the sole and absolute owner of the entire property which included the tenanted premises. The deed itself

records that the parties 2 and 3 i.e. Chet Ram (Predecessor) of the petitioner and Sh. Hukum Chand have no right, interest claim or objection over the property. Sh. Tara Chand agreed to let out the subject shop to Sh. Chet Ram at a monthly rent of Rs. 100/-.

38. It is further an admitted case of the petitioner that rent from 1975 till date has been regularly paid against duly issued rent receipts and also from the bank account of M/s. Chet Ram Sanjay Kumar.

39. Even in the affidavit in support of the leave to defend application, petitioner has contended that the rent all along has been paid. The plea now sought to be set up is that the dissolution deed was a mere camouflage to create a permanent arrangement.

40. Petitioner has not been able to specify as to what was the permanent arrangement and what rights were being conferred under the so-called permanent arrangement. It is not the case of the petitioner that any ownership rights were conveyed to the petitioner under the dissolution deed or were ever contemplated to be conveyed to the petitioner.

41. Since the petitioner has not been able to specify as to what is the nature of permanent arrangement, the contention of learned counsel for the petitioner is also sustainable.

42. Further Section 14 of the Rent Act begins with a non-obstante clause *“Notwithstanding anything to the contrary contained in any*

law or contract.....” shows that the said provision would override any contract to the contrary between the parties.

43. Further, petitioner has not been able to place on record any material to show that there was any contemplation between the parties to create any rights other than tenancy rights as specified in the dissolution deed.

44. The fact that the petitioner has paid regular monthly rent for over 41 years further negates the contention being raised on behalf of the petitioner.

45. No other contention has been raised before me by learned counsel for the petitioner.

46. On perusal of the affidavit in support of the leave to defend application as also the submissions made by learned counsel for the petitioner, I am of the view that there is no infirmity in the view taken by the Rent Controller that the affidavit in support of the leave to defend does not disclose any triable issue or raise any ground, which if proved, would disentitle the respondent landlord from an order of eviction.

47. There is no dispute that the respondent is the owner of the property. Petitioner has not been able to controvert that the need of the respondent is *bona fide* and further has not been able to show that respondent has any other alternative, suitable accommodation

available from which the need could be satisfied.

48. I am also of the view that the leave to defend application does not raise any triable issue or disclose any fact which, if proved, would disentitle the respondent landlord from an order of eviction.

49. I find no merit in the petition. The same is accordingly dismissed.

50. Order *dasti* under signatures of the Court Master.

DECEMBER 05, 2019
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SANJEEV SACHDEVA, J.