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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 18th December, 2019
+ **CM (M) 482/2018, CM APPLs. 16521/2018 & 15804/2019**

MUSTAQIM

..... Petitioner

Through: Ms. Jyoti Dutt Sharma, Mr. Ajay
Kumar and Mr. C. K. Bhatt,
Advocates.

versus

RAMESH KUMAR SAINI & ANR.

..... Respondents

Through: Mr. Tanmaya Mehta, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition challenges the impugned order dated 20th March, 2018 passed by the Executing Court.
2. The brief background is that the Petitioner/Tenant – Mustaqim (*hereinafter 'Petitioner'*) has filed the present petition seeking stay of the impugned order dated 20th March, 2018 passed by the Id. Rent Control Tribunal ('RCT'). The disputes between the parties is in respect of shop called 'Tehelka Sarees'/'New Look', bearing No.C-305, Main Market, Bhajanpura, Delhi where the Petitioner herein is stated to be the Tenant. He had initially preferred a suit for permanent injunction against Shri Shish Ram and Smt. Rohini Devi @ Resha Devi. In the said suit being no.01/2005 an order was passed after recording the statement of Defendant No.1 – Shish Ram therein, that the Petitioner would not be dispossessed except in accordance with law.
3. Thereafter, an eviction petition under Section 14(1)(b) of the Delhi

Rent Control Act, 1958 was filed on behalf of the Landlord by Shri Ramesh Kumar Saini ('Respondent'), who claimed that he was authorized by the Landlady i.e. Smt. Rohini Devi @ Resha Devi to seek eviction of the tenant therein i.e. Mr. Yograj on the ground that he had sub-let the premises to the Petitioner herein without the prior written consent of the landlord. The said eviction petition was decreed by the Id. ARC vide order dated 1st July, 2006 passed under Order XII Rule 6 CPC, in the following terms.

“14. Therefore, keeping in view all such facts and circumstances the application of the petitioner has to be allowed. The same is accordingly accepted. Since the application under Order 12 Rule 6 CPC has been allowed, petitioner has been able to prove the ingredients of Section 14(1)(b) of DRC Act. Accordingly, eviction order is hereby passed in favour of the petitioner and against the respondents in respect of the suit premises i.e. Shop no.4 in property bearing no. C-305, New Market Bhajanpura, Delhi. As shown red in the site plan filed by the petitioner. No order as to cost. File be consigned to Record Room.”

4. The Respondent No.1 herein then filed an execution petition before the Executing Court. The Petitioner then preferred objections and argued before the Executing Court that he was not impleaded as a party in the original suit and that he was a valid Tenant, who was put in possession by the original owner. In the said objection petition, statements of various parties were recorded and evidence was led. One of the witnesses, who deposed in the said petition, was the original owner namely Smt. Rohini Devi @ Resha Devi. In her statement, she stated before the Court that she had authorized Shri Ramesh Kumar Saini – Respondent No.1 herein to take action on her behalf. Her testimony is very crucial and is set out herein

below:

“Statement of Smt. Resha Devi, w/o Sh. Shish Ram Singh, R/o H.No. 1822, Outram Lane, Kingsway Camp, Delhi (Identity of the witness not disputed by both the parties)

ON SA

I am the owner of the property bearing no. shop no. 4, situated in property no. C-305, khasra no.374, Village Ghonda Gujran Khadar, Block-C, Gali no. 14, Bhajanpura, Delhi. I have brought the original title deed of the aforesaid property. Photocopy of the same is EX.P1 (running into 6 pages)(colly.)(OSR). I had purchased the said property in August 1996 in a total consideration amount of Rs.75,000/-. I have a friend namely Raj Kumari for the last 29 years and Ramesh Kumar Saini is the brother-in-law (devar) of Smt. Raj Kumari. I have never inducted any of the tenant in the aforesaid shop. I had given the key of the shop after purchasing of the same to Sh. Ramesh Kumar Saini for the purpose to let out the same to any one at his risk. I have not known to any of the person by the name of Mustkeem Ahmad (witness failed to identify the objector Mustkeem Ahmad who is present in the court). Ramesh Kumar Saini used to give the rent of the shop to me after letting out of the premises and collecting from the tenant. I never gone to the shop at any time after the date of its purchase.

xxxxx by Sh. Lalit Anand, Ld. Counsel for objector.

The name of the seller is very much written in EX.P1 but I can tell the same after seeing the same. It is correct that I have purchased the said property from Saroj Devi. It is wrong to suggest that Sh. Mustkeem Ahmad ever paid me the rent of Rs.500/- p.m. from 1996 to Nov. 2004 in cash. vol. I have never inducted any tenant in the suit premises. It is correct that the objector Mustkeem has filed a petition of rent deposit

vide DR No. 49/05 against Smt. Rohini Devi @ Resha. The same was decided without the prejudice of right and contention of both the parties. I have filed the objection duly signed by me which is on record. The said property was given to Sh. Ramesh Kumar Saini to let out the same and I am not aware about any of the tenant. I have not sold out the property to Sh. Ramesh Kumar Saini but I have given the said property to let out to someone at his risk. It is correct that a suit for permanent injunction was filed against me and my husband in the year January 2005. It is correct that we have filed the WS in the said suit. It is correct that my counsel on behalf of me and my husband stated that we will not forcibly dispossess the objector from the suit premises and will file the petition for eviction against the plaintiff therein. It is correct that I have given the authority to Sh. Ramesh Kumar Saini to file the suit against the objector. I have signed the stamp paper but I cannot tell the amount of the stamp paper as I am not well qualified. I do not know whether Ramesh Kumar Saini filed any of the document in my name and on my behalf in the court for eviction of objector.

I do not know any person in the name of Yograj.

Sh. Ramesh Chand Saini used to pay me the rent sometime for two months and sometime for four months likewise for one month. Sh. Ramesh Chand Saini started paying me the rent after four months of the handing over the key to me in the year 1996. The rate of rent of the said premises was fixed Rs.2,500/-nearabout per month. Sh. Ramesh Chand Saini stopped paying the rent for the last about 10 to 11 years. I received the summons of the court and I came to know that some suit was pending against me and my husband that is why Sh. Ramesh Chand Saini stopped the payment of rent.

I have resided at 325/1, C-Block, Bhajanpura till 2003. My house was at some distance from the shop.

It is correct that Sh. Ramesh Chand Saini has filed

WS on my behalf in the injunction suit filed against me and my husband duly signed by me. It is correct that I have met first time with my counsel Sh. Raj Kumar in the court today. It is wrong to suggest that Sh. Raj Kumar my counsel has ever authorized by me to contest my case which were filed against me and my husband at any time. It is wrong to suggest that I have ever given the shop no.4 in property no. C-305, khasra no. 374, Village Ghonda Gujran Khadar, Block-C, Gali no. 14, Bhajanpura, Delhi to Sh. Mustkeem Ahmad. It is wrong to suggest that I have ever received any rent from Sh. Mustkeem Ahmad. It is wrong to suggest that I have never signed any authority to Sh. Ramesh Chand Saini for filing the suit for eviction against the objector in my name and on my behalf as well as on behalf of my husband or on behalf of anybody else. It is wrong to suggest that I am deposing falsely”

5. On the basis of her statement and on the basis of the other evidence led before the Court, the executing court decided the objections on 5th August, 2017. The Court found that the objector failed to prove any independent title to the suit property. Once the Landlord - Smt. Rohini Devi made a statement before the Court that she had properly authorised the Respondent No.1 to file the eviction petition, the objections were not tenable. The observations of the executing Court are set out herein below:

“13. This brings me to the testimony of objector. At the very outset, I found that in his evidence by way of affidavit Ex.Ow1/A, he had deposed that he was a tenant with respect to the shop no. 1 forming the part of suit shop in question, which was contrary to the suggestion given by him to Rohini Devi wherein, he had suggested that he was a tenant with respect to shop no. 4 of suit shop in question. It was not cleared as to which shop, objector was referring himself to be

a tenant of Rohini Devi, based on said different claims. Moving further, he failed to place on record any documentary proof regarding him being a tenant of Rohini Devi in suit property in question. He did not give any explanation as to why he did not sent any legal notice to Rohini Devi asking her rent receipt in his favour. He failed to place on record any proof regarding payment of electricity bill w.e.f. 1996, since when he was claiming himself to be a person occupying the shop in question. He did not place on record any proof regarding him occupying shop in question. Coupled with the same, he did not explain as to why he did not file any suit for declaration to the effect that he be declared as tenant of Rohini Devi. All in all, on one hand, his testimony revealed that he had not placed on record regarding him being a tenant of Rohini Devi and on the other hand, it indicated that he never made any endeavour for the purpose of recognising the relationship of tenant and landlord between him and Rohini Devi since 1996. His said conduct of not trying to get recognize his relationship with Rohini Devi since 1996 improbablized his version in totality. As a reasonable prudent person, every tenant will not sit idle in tenanted premises in any tenanted premises. Such a reasonable prudent tenant will do something to show that he is occupying the said premises in the capacity of tenant under the landlordship of a particular person. Objector in this case, did not do so for the reasons best known to him and that improbablized his objections. The only pillar of arguments to which objector stuck was his claim that since he had deposited rent U/Sec. 27 of DRC Act by arraying Rohini Devi as landlord, so that deposition of rent in the Court proved that he was a tenant under Rohini Devi. That claim of objector was not a tenable claim as mere existence of rent by a landlord did not tentamount to creation of tenancy. Law requires that parties must be ad-idem with respect to creation of

relationship of landlord and tenant. Payment of rent does not amount to any right or title to possession. Reliance in this regard is placed on Ram Saran Vs. Pyare Lai (1996) 11 SCC 726, AIR 954 SC 758.

14. The net result of aforesaid appreciation of evidence of objector is that objector failed to prove his independent title of being a tenant of Rohini Devi in suit property in question. His objections have no merits. Record of previous litigations between the parties relied by objector as such, did not grant independent title of being a tenant to objector. So, those documents are discarded by me as they have no relevance.”

6. Thus, the objections were dismissed. This order was appealed by the Objector i.e. the Petitioner herein. Vide the impugned order dated 20th March, 2018 the appeal was also rejected.

7. The submission of Id. counsel for the Petitioner Ms. Sharma is that the Respondent No.1 had no authority to maintain the eviction petition itself. The original owner namely Smt. Rohini Devi @ Resha Devi had given an undertaking that she would not dispossess the Petitioner except in accordance with law. Despite giving the said undertaking, the same was violated by him/her in filing of the eviction petition without impleading the Petitioner. It is further submitted on behalf of the Petitioner that the Petitioner runs a small saree shop in the main market of Bhajanpura and has five children, accordingly, he needs the shops for maintaining his daily needs.

8. On the other hand, Id. counsel for the Respondent No.1 submits that the Landlady, who the Petitioner himself recognizes, having appeared before the Court and having stated that she has authorized the Respondent No.1 to

take action on her behalf, the Petitioner has no *locus* to challenge the Respondent No.1's standing. Further, it is submitted that the original Landlady has also made a statement that she does not even recognize the Petitioner. She, further, testified before the Court that her husband had appeared in the suit for injunction filed by the Petitioner and made a statement that the Petitioner would not be dispossessed except in accordance with law. He further submits that the Petitioner has been enjoying the premises without paying any rent. The objections having been dismissed and the same having been upheld by the Appellate Court and further because of the fact that no occupation charges are even being paid by the Petitioner, the petition is liable to be dismissed and the orders do not warrant any interference.

9. In rejoinder, Id. counsel for the Petitioner submits that the admitted rent of Rs.1,200/- is being deposited before the Trial Court by the Petitioner. It is further submitted that the admitted rent in the area is not very high and recently in a similarly situated property, the Id. Single Judge of this Court in RC Rev No.181/2018 has directed payment of Rs.2,500/- per month.

10. As against this, Id. counsel for Respondent No.1 submits that the shop is located in a prime commercial area and the rent which is being fetched by other properties in the area, is even to the tune of Rs.50,000/- per month. Id. counsel for the Petitioner submits that the average rent is much lower than what has been demanded by the Respondent No.1.

11. The Court has heard the Id. counsel for the parties. This Court is exercising jurisdiction under Article 227 of the Constitution of India, where the scope of interference is limited. The objections to the execution petition have been dismissed by the Executing Court, after recording detailed

evidence including that of the Landlady – Smt. Rohini Devi. The Id. ARC and Id. RCT have arrived at concurrent findings in respect of the ownership of the property and the Petitioner's right to remain in the property and all the other contentions raised on behalf of the Petitioner. What is also important is the fact that the Landlady has clearly made a statement that she had authorised the Respondent No.1 to give the shop on rent, to collect the rent and to prefer the eviction petition against the Petitioner. The main plank of the Petitioner's argument is that the Respondent No.1 is not authorised to maintain the eviction petition and this argument is completely defeated by the statement of the Landlady herself. No written authorization in favour of Respondent No.1 would be required when the person herself has appeared before the Court and has confirmed that she has authorised the Respondent No.1. The Petitioner, then, does not have any other valid legal basis to question the judgments of the Id. ARC and Id. RCT. The objections having been dismissed on merits after detailed evidence and the Id. RCT having upheld the said order, this Court is of the opinion that the same do not warrant any interference.

12. However, since the Petitioner has been in occupation of the shop for several years i.e., since 1996, it is deemed appropriate to grant him some time to vacate the suit property. However, the Petitioner is liable to pay use and occupation charges for the period. Insofar as the question as to what would be the amount payable for further use and occupation is concerned, firstly Id. counsel for the Petitioner submits that the Petitioner would require at least a period of two years to find a new premise for his business. This is seriously contested by the Respondent No.1.

13. Insofar as the order passed in RC Rev No.181/2018 is concerned, the

amount of Rs. 2,500/- was in respect of a protected Tenant, the said order may not be completely applicable in the case of Petitioner, who is an Objector. However, considering the fact that the shop is located in a prime commercial area, which is densely populated, this court is of the opinion that an amount of Rs.10,000/- would be a reasonable amount for payment to the Respondent No.1 for use and occupation.

14. On an overall conspectus of the facts in the present case and considering the Petitioner's personal circumstances, as also the fact that the Petitioner has been in occupation of this shop since 1996, this Court is of the opinion that a period of one year i.e. on or before 31st December, 2020 ought to be given to the Petitioner to hand over vacant and peaceful possession of the shop. For this period of one year, the Petitioner shall pay a sum of Rs.10,000/- per month for use and occupation of the shop to the Respondent No.1 on or before the 10th of every month. If there is any default in the payment, the Respondent No.1 would be entitled to seek immediate handing over of the possession of the shop. The Respondent shall intimate the bank account details in which the said amount is to be paid after obtaining the written consent from Smt. Rohini Devi @ Resha Devi. The said communication shall be issued to Id. counsel for the Petitioner within a period of 10 days from today.

15. The petition along with all the pending applications is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

DECEMBER 18, 2019
Dk/A.S.