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

Date of decision: 28th November, 2019

\+ **CM (M) 736/2018 & CM APPL. 26464/2018**

SUSHIL KUMAR JAIN ..... Petitioner

Through: Mr. Girish Chandra, Advocate along with Petitioner present in person (M-9971707539)

versus

RAJ RANI & ANR ..... Respondents

Through: Mr. Dhruv Madan, Advocate for R-1 (M-9873767313)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(oral)

1. The present petition has been filed challenging the impugned order dated 9th May, 2018, passed by the ld. Rent Control Tribunal, dismissing the appeal filed by the Petitioner. The appeal arose out of an order passed by the ld. Rent Controller dated 2nd February, 2018, rejecting the application under Order 1 Rule 10 CPC filed by the Petitioner.

2. The brief background is that an eviction petition was filed by Respondent No.1 – Ms. Raj Rani, a 92 year old widow, in the year 2011 against Respondent No.2 - M/s Sultan Singh Vinod Kumar through its proprietor Mr. Vinod Kumar, in respect of Shop No.2, Property No. R-4, Green Park, New Delhi-110016 *(hereinafter, "tenanted premises").* At the time when evidence had commenced in the petition, an application for impleadment was moved by the Petitioner - Mr. Sushil Kumar Jain, who claimed to be the son of Mr. Sultan Singh and the brother of Mr. Vinod Kumar, on the ground that he had inherited the tenancy of his father and

hence, he is a relevant and necessary party to the eviction petition.

3. In the said application, it was claimed that the two brothers were not on good terms and hence, the Petitioner was not fully aware of the filing of the eviction petition. The explanation for the delay was also that the Petitioner was never informed of the pendency of the eviction petition. The said application was dismissed by the ld. Rent Controller. The finding of the ld. Rent Controller was assailed in the appeal before the ld. Rent Control Tribunal, which appeal has been dismissed.

4. Ld. counsel appearing for the Petitioner submits that the Petitioner is a proper and necessary party to the eviction petition as the original tenancy was in favour of a partnership firm. At the time of dissolution of the partnership, due to the death of the father, the brother, though he may be running the business, does not automatically inherit the tenancy. The submission is that the Petitioner, being a son, is entitled to inherit the tenancy and hence, establish independent title to the tenanted premises. It is further submitted that during the pendency of this petition, an MOU has been entered into between Respondent No.1/Landlord and his brother i.e., Respondent No.2, by which the Landlord has paid to the brother a sum of Rs.10 lakhs to relinquish the tenancy and the same is contrary to Section 5(3) of the Delhi Rent Control Act, 1958. In support of the contention that Section 5(3) is being violated in the present case, ld. counsel relies upon the following judgments of the Allahabad High Court and the Hon'ble Supreme Court:

- ***Sanjay Bhardwaj @ Bablu & Anr. v. Dinesh Chandra Gupta & Ors. [W.P.(C) 5646/2019, decided on 23rd July, 2019]***
- ***Dr. R.S. Grewal v. Chander Parkash Soni [Civil Appeal No.***

11086/2018, decided on 16th April, 2019]

5. Ld. counsel further submits that as per the settled law, whenever such a situation arises, the tenancy ought to be considered to be a tenancy-in-common and not a joint-tenancy, unless it is proved to the contrary. Reliance is placed on judgments of the Supreme Court and various High Courts to argue that the tenancy was not terminated in accordance with law, as no notice was served upon the Petitioner and hence, the eviction petition itself was not maintainable.

6. The issue raised in the present petition is as to whether the MOU entered into between the Landlord and the Tenant i.e., the brother of the Petitioner, is hit by Section 5(3) of the Delhi Rent Control Act, 1958. Reference is made to the MOU entered into between the parties, which shows that a sum of Rs.10 lakhs has been paid as a "goodwill gesture". Ld. counsel for the Petitioner submits that this amount is nothing but an amount paid for relinquishment of the tenancy, in which the Petitioner also has a right, and is thus, contrary to Section 5(3) of the Delhi Rent Control Act, 1958.

7. Ld. counsel for the Petitioner vehemently contends that the impleadment of the Petitioner was absolutely essential and the manner in which the filing of the petition has been set at naught, by entering into a compromise, shows the *mala fide* conduct of the Respondents. Ld. counsel for the Petitioner relies upon the following judgments of the Hon'ble Supreme Court and the Delhi High Court:

- ***Vidyawati v. Taken Dass, 1974 (1) ILR (Del) 835***
- ***Surayya Begum (Mst) v. Mohd. Usman & Ors., (1991) 3 SCC 114***
- ***Usha Bhasin v. Competent Authority, 17 (1980) DLT 353***

- ***Shri Narayan Shamnani v. Shri Rajender Prasad & Ors. [RSA No.39/2005, decided on 14th February, 2011]***
- ***Shkuntala Vasant Pahadi & Ors. v. Purushottam Vasant Pethe & Ors. [Civil Appeal No.3595/2000, decide on 27th September, 2006]***

8. On the other hand, ld. counsel for Respondent No.1 vehemently relies upon the finding of the ld. Rent Controller wherein the ld. Rent Controller has arrived at the conclusion that the Petitioner had never asserted his rights in the tenanted premises. It was admitted that the commercial establishment being run in the tenanted premises was being run solely by Respondent No.2 and the Petitioner was never involved in the said business. It is further submitted that the finding of the ld. Rent Controller is that there is litigation pending between the two brothers in respect of the tenanted premises and that the Petitioner has no independent title to the premises.

9. It is further asserted that the eviction petition was against the sole proprietary concern of Mr. Vinod Kumar and not against any partnership firm, and since 2011, the eviction petition is proceeding only against Mr. Vinod Kumar, who was the proprietor of the said sole proprietary concern. Ld. counsel submits that the Tenant i.e., for the purposes of Section 27 of the Delhi Rent Control Act, 1958, has also always been Mr. Vinod Kumar and never the Petitioner. It is further submitted that Section 5 of the Delhi Rent Control Act, 1958, is being misinterpreted by the ld. counsel for the Petitioner. While Section 5(1) operates against the Landlord, Section 5(3) operates against the Tenant, who is no longer appearing in the matter. Insofar as the Landlord is concerned, the bar of Section 5 does not apply.

10. After hearing ld. counsels for the parties and perusing the record, what is important to note is that the eviction petition was filed against the

firm – M/s Sultan Singh Vinod Kumar, through '*its'* proprietor - Mr. Vinod Kumar. At no point in time has there been any document which has been placed on record to show either that the firm was a partnership firm or that the Petitioner had any independent title to the tenanted premises. The finding of the ld. Rent Controller clearly was that such a document was not filed before the ld. Rent Controller and it was also admitted that the Petitioner himself was running a separate shop in Sadar Bazar since the time of his father.

11. These facts, having been arrived at by the ld. Rent Controller and having been upheld by the Rent Control Tribunal, constitute concurrent findings on fact. The findings of the ld. Rent Controller are extracted hereinbelow:

> *"7. It was further argued that the written statement already filed on record by respondent clearly reflects that respondent has admitted that after the death of Sh. Sultan Singh, he is the sole proprietor of the respondent, and he has not raised any objection that all the legal heirs of Sh. Sultan Singh were not made party. Ld. counsel has vehemently argued that the tenancy was not a tenancy-in-common, and rather it was joint tenancy of Sh. Sultan Singh and Sh. Vinod Kumar Jain and after the death of Sh. Sultan Singh, all the rights-in-tenancy devolved upon Sh. Vinod Kumar Jain, being proprietor of M/s Sultan Singh Vinod Kumar and no third person has any tenancy right in the shop.*
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> *...*
>
> *9. During arguments on the application, applicant appeared in Court and stated that he is running a separate shop in Sadar Bazar, Delhi Cantt since the time of his father. He admitted that he has not claimed any right in the tenanted shop after the death of his*

father Sh. Sultan Singh, who had expired on 23.08.1999.

10. Perusal of documents filed with application reveal that they are copies of receipt of payment made by M/s Brijwasi Sweets to various authorities like Chief Inspector, Shops & Establishment; Indian Oil Corporation; and Green Park Extension Market Association. All the documents pertain to year 1992-93 i.e. much prior to the death of Sh. Sultan Singh. The suit property is a commercial establishment/shop and it was being run by Sh. Sultan Singh and Sh. Vinod Kumar Jain. There is no document on record to show that the applicant was also a partner in the business being run in suit shop. It is pertinent to mention here that cross-examination of respondent Sh. Vinod Kumar Jain as RW-1 (dated 02.06.2017) reveals that he has clearly stated that there is no litigation pending between himself and Sh. Sushil Kumar Jain. It is further clear that respondent as well as applicant are residing at the same address. Therefore, it is highly unbelievable that applicant could not have any knowledge of the pendency of this case since year 2011 till date. It seems that the application has been filed at this belated stage of respondent's evidence only to delay the proceedings of this case. Moreover, applicant has failed to show that he was carrying on business in the suit shop since the time of his father, till date as a partner in the business and he was also joint tenant with Sh. Vinod Kumar Jain in the suit shop. The applicant has also failed to show that tenancy was tenancy-in-common in which right survives in his favour and in favour of other legal heirs after the death of Sh. Sultan Singh. Therefore, there is no merit in the application. Application under Order 1 Rule 10 CPC stands dismissed."

12. The finding of the ld. Rent Control Tribunal in the appeal filed by the Petitioner is similar, to the effect that the ld. Tribunal holds that the tenancy

was a joint-tenancy and not a tenancy-in-common. The relevant finding of the Tribunal reads as under:

> "...
>
> *It was also observed in the facts of that case that intervention at the belated stage of execution proceedings seemed to be a deliberate attempt to nullify the decree passed in favour of the appellants.*
>
> *In the light of these observations, <u>it is clear that even if it was to be held that the appellant had also become a tenant upon demise of his father, it is clear that his right is only that of a joint tenant and not tenant-in-common</u>. In any case, it is clear even from the very documents of the appellant filed before this Court, as part of the appeal filed, that in the memo of parties in the suit for mandatory injunction filed by Sushil Kumar Jain against Vinod Kumar Jain, the additional address of Vinod Kumar Jain has been mentioned R-4/2, Green Park Main, near MCD office, which would indicate that the tenanted premises is in possession of the respondent no.2 and not in possession of the appellant. Therefore, the impleadment of one joint tenant is sufficient.*

13. This Court, in a petition under Article 227 of the Constitution of India, exercises limited jurisdiction. Factual findings cannot be disturbed, unless a question of law is raised.

14. None of the judgments cited by the Petitioner apply in the case of a sole proprietary concern against whom an eviction petition has been filed. A specific query was put to the ld. counsel for the Petitioner as to whether the Petitioner had asserted his tenancy against the landlord at any point of time between 1999, when the father passed away, till 2011, when the eviction petition was filed. It is clear that there is no satisfying answer forthcoming on this issue. The Petitioner himself having separated from the family

business, in whatever manner, as has been found by the ld. Rent Controller, cannot now seek to assert his rights, after a period of 20 years since the demise of his father. Much water has flown and Respondent No.2 appears to have been independently running the business as a sole proprietary concern.

15. Tenancy petitions of this nature continue to remain pending for several years. The present eviction petition was at the stage of recording of evidence when the application under Order I Rule 10 CPC came to be filed by the Petitioner. The ld. Rent Controller's finding is correct in observing that the Petitioner's lack of knowledge of the petition seems to be unbelievable. The belated stage at which the impleadment was sought was another reason why the ld. Rent Controller denied the impleadment request. This finding is reasonable and probable.

16. Moreover, in the cases which have been cited before this Court, the tenancy was of the individual father and not in the name of a sole proprietary firm of the brother/son. None of the cases therefore apply.

17. Insofar as the determination of the tenancy is concerned, notice would have to be given only if the Petitioner had independent title to the tenanted premises. In the absence of establishing even *prima facie* an independent title, no notice was liable to be given. Insofar as the acceptance of Rs.10 lakhs by the Tenant is concerned, the Petitioner may make any claims against Respondent No.2, if there are any proceedings against his brother, which are not the subject matter of this case. Remedies of the Petitioner are left open. However, insofar as the Landlord is concerned, the Tenant being a sole proprietary concern of the brother, no right of the Petitioner can be deemed to have been violated.

18. Accordingly, the present petition is dismissed, leaving open the

remedies of the Petitioner against his brother. All pending applications are also disposed of. No order as to costs.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 28, 2019
Rahul