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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 146/2020 & CAV 114/2020, CM APPLs. 4785/2020, 4786/2020**

SUDARSHAN KUMAR

..... Petitioner

Through: Mr. Rambhakt Agrawal, Advocate
(M-9818107195)

versus

NAND LAL & ORS

..... Respondents

Through: Ms. Shalini Kapoor, Mr. Dikshant
Khanna, Ms. Bindita Chaturvedi &
Mr. Sangram Singh, Advocates (M-
94626845930)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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06.02.2020

1. The present petition has been filed challenging the impugned order dated 13th January, 2020 by which the application to place on record an affidavit with some additional facts was rejected by the Id. Additional Rent Controller ('ARC'). The Respondents/Landlords (*hereinafter*, "*Landlords*") filed a petition for eviction under Section 14(1)(e) read with Section 25(b) of the Delhi Rent Control Act in respect of property bearing no. 6450, Katra Baryan, Fatehpuri, Delhi-110006. The said petition was filed in September, 2016. The Tenant/Petitioner (*hereinafter*, "*Tenant*") filed an application for leave to defend on 28th October, 2016 and the said application is still pending for hearing.

2. During the pendency of the application for leave to defend, the Tenant moved an application seeking to place on record additional facts, with photographs as annexures, which were described as Annexures SE1, SE2, SE3 and SE 4. The said application was rejected by the ARC on the ground

that the facts alleged therein were neither subsequent nor relevant. In any case, the main pleading in respect of the very same shops had already been set out in the leave to defend application the present application was nothing but an attempt to delay the hearing in the leave to defend.

3. Ld. counsel for the Tenant submits that the subsequent events, which are sought to be placed on record by the application, are photographs which show that the Landlords are using some of the alternate premises owned by them for manufacturing, selling and storing, and that the Landlords have made a false statement in the reply to the leave to defend application. Reliance is placed on the photographs which are stated to have been clicked on 14th October, 2019 to show how the premises are being used. Reliance is placed on ***Hasmat Rai and Anr. v. Raghunath Prasad (1981) 3 SCC 103.***

4. On the other hand, ld. counsel for the Landlords submits that the very same properties in respect of which the photographs are sought to be placed on record have been pleaded in the leave to defend application and thus there is nothing new that is sought to be placed on record. She submits that the Tenant has filed various applications even in the past only to delay the matter and in fact in one such application, the matter had been considered by this Court and the CM(M) was disposed of on 4th November, 2019. She relies upon a judgment of the Supreme Court in ***Gaya Prasad v. Sh. Pradeep Srivastava (2001) 2 SCC 604*** to argue that the photographs do not constitute subsequent events. She also relies upon the judgment of a ld. Single Judge of this Court in ***Sh. Mukund Krishna Barman v. Sh. Surender Kumar Malhotra (Deceased) Through His Legal Heirs RC. Rev. No.266/2016 (Decided on 26th November, 2014).***

5. The Court has considered the pleadings and submissions of the

parties. The first and foremost fact is that the eviction petition was filed in 2016 and the leave to defend application has been pending since October, 2016 i.e. for more than three years. In the earlier round of litigation which had resulted in the order dated 4th November, 2019, the Tenant's application for taking on record a sale deed dated 28th March, 2018 was disposed of with the following order:

"CM APPL. 47777/2019 (exemption)

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

CM (M) 1581/2019 & CM APPL. 47778/2019 (stay)

Lawyers are abstaining from Court work.

The Petitioner/Tenant is aggrieved by the impugned order dated 25th July, 2019 by which the Tenant was not allowed to place on record certain additional facts in support of his leave to defend application. The said application seeking to place on record the additional facts has been dismissed.

The Court has perused the impugned order. The Tenant wishes to rely upon certain additional facts in respect of sale deed dated 28th March, 2018. The said sale deed shall be considered for the purpose of deciding the leave to defend. The relevance or otherwise of the sale deed on the merits of the leave to defend has not been examined by this Court in the present petition. The same is to be considered by the Trial Court.

The petition and pending application are disposed of in the above terms."

6. This is now the second round of litigation, in which further facts in the form of photographs are sought to be pleaded. A perusal of the application for leave to defend and the present application for bringing on record additional facts shows that there is actually nothing new that is

sought to be placed on record. The factum of the alternative premises being available has already been pleaded in paragraph 3 (a) of the accompanying affidavit to the leave to defend application, which reads as under:

“ ...

a) That the eviction petition filed by the petitioners is most mala fide in nature and is an abuse of process of law. The petitioners have not come before this Hon'ble court with clean hands. The petitioners intentionally and deliberately has not disclosed the entire accommodation available with them or their family members. The petitioners did not disclosed and have concealed the very material fact from this Hon'ble court that they have so many properties in the walled city where they can do their alleged business of selling and manufacturing sweets an catering (Halwai). It is submitted that at present the petitioners have following properties in their possession which are sufficient to do their alleged business. The details of the properties are given below;

i) 6452, Katra Baryan, Fatehpuri, Delhi-110006;

ii) 142, Gali Memwali, Katra Baryan, Fatehpuri, Delhi-6.

iii) 143, Gali Memwali, Katra Baryan, Fatehpuri, Delhi-6.

iv) 144, Gali Memwali Katra Baryan, Fatehpuri, Delhi-6.

v) 6398, First floor, Katra Baryan, Fatehpuri, Delhi-6.

Apart from the aforesaid properties, the petitioners are also having several commercial properties in their possession but they have deliberately not disclosed the details of the same.”

7. The photographs described as subsequent events relate to properties mentioned at (ii) and (iv) above. In the application, which was dismissed by the ARC, all that the Tenant is trying to show is that there is an activity going on in the premises in question, which the Landlords themselves admit in the

counter affidavit to the defend application in the following manner:

“...The petitioner owns one small shop on the ground floor of property no.143, Gali Maim wali, Katra Baryan, Fatehpuri, Delhi-110006 which is being used by the petitioner for manufacturing seasonal items. The property bearing one small room on first floor of property bearing no.144, Gali Maim wali, Katra Baryan, Fatehpuri, Delhi-110006 and the first floor of property no.6398, Katra Baryan, Fatehpuri, Delhi-110006 is being used by the petitioner as staff accommodation.”

8. Thus, the subsequent event is not of such a nature as to overwhelm or eclipse the facts already pleaded in the matter, as held in **Gaya Prasad (supra)** wherein the Supreme Court observed as under:

“ ...
13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three-Judge Bench of this Court in *Pasupuleti Venkateswarlu vs. Motor and General Traders*, (1975) 1 SCC 770 which pointed to the need for remoulding the reliefs on the strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then: (SCC pp. 772-73, para 4)
We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceedings provided the rules of fairness to both sides are scrupulously obeyed.
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15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

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17. Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact-finding courts.”

9. It appears to this Court that the attempt is clearly to delay the adjudication of the leave to defend application. The said application is stated to be listed on 8th February, 2020 for hearing. The Tenant is stated to be carrying on business of glue and resin from the tenanted premises. The same is a commercial property. The rent being paid by the Tenant is Rs.267/- per month. Thus, the delay continues to benefit the Tenant. In view of the above, the petition is dismissed with costs of Rs.10,000/- to be paid to the Landlords. The leave to defend application shall now be heard on 28th February, 2020 and the adjudication of the same shall be concluded within a period of three months from today. The costs shall be tendered on or before the next date of hearing before the Trial Court.

PRATHIBA M. SINGH, J

FEBRUARY 06, 2020

Rahul /Ragini