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

Date of Decision: 17th January, 2020

+ **CM (M) 745/2019 & CM APPL. 22844/2019 (stay)**

RAJIV PURI

..... Petitioner

Through: Mr. Sudhanshu Batra, Senior Advocate with Mr. Amit Sanduja and Mr. Aditya Mishra, Advocate with Petitioner in person. (M:9810954389)

versus

JAGDISH KUMAR (SINCE DECEASED)

THR LRS & ORS.

..... Respondents

Through: Ms. Arti Bansal, Advocate for R-1(IV), 2, 4 & 6. (M:9999442349)
Mr. Saurabh Jainth, Proxy counsel for Mr. Sanjay Kumar, Advocate for R-3. (M:9716668788)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The grievance of the Petitioner in the present petition is that the application seeking amendment of the leave to defend application has been rejected by the impugned order dated 16th November, 2018. The dispute has arisen out of an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (*hereafter 'the Act'*) in respect of the shop bearing No.G-18A, South Extension Market, Part-I, New Delhi (*hereinafter "tenanted premises"*). The Petitioner, who is the alleged Tenant, filed the leave to defend application under Section 25B (4) of the Act and the same is pending adjudication before the Id. Additional Rent Controller ('ARC').
2. During the pendency of the petition, the Tenant moved two applications under Order VI Rule 17 CPC, which were both considered

together by the impugned order dated 16th November, 2018. The ARC has rejected the applications. The contention of Mr. Sudhanshu Batra, Id. Senior Counsel appearing for the Tenant is that these amendments were necessitated for the following reasons:

- i. There were various litigations pending between the Landlords in the eviction petition, which were subsequent to the filing of the leave to defend.
- ii. Further, there were certain sale deeds, which were executed, by which certain undivided interests in the property were transferred to one of the Landlords. Though the sale deeds were executed on 22nd November 2011, the same were disclosed to the Tenant subsequently.
- iii. It is further submitted that the guest house license, which was one of the reasons for *bonafide* need, has itself not been renewed after 1st April, 2015. This was also subsequent to the filing of the leave to defend and further, certain facts in relation to the electricity connection, were also sought to be added in the leave to defend.

He further submits that these amendments were necessitated as a result of knowledge that was acquired subsequently or events that have taken place subsequent to the filing of the leave to defend and thus, the same ought to be allowed to be relied upon as part of the leave to defend.

3. On the other hand, Ms. Arti Bansal, Id. counsel appearing for the Respondent Nos.1, 2, 4 & 6 submits that the entire intention of the Tenant is to hold on to valuable commercial property in South Extension Part-I, which may fetch a monthly rent of Rs.4 Lakhs. The Tenants are merely paying approximately a sum of Rs.1,000/- per month, which is also not being deposited by the Tenant. She submits that repeated applications are being filed by the Tenant including applications under Order VII Rule 11 CPC,

Section 340 Cr.P.C. and three applications under Order VI Rule 17 CPC. Thus, though the leave to defend was filed in 2013, the Tenant is continuing to delay the proceedings for the last 6 to 7 years. Ms. Bansal, thus, submits that the facts, which are sought to be included, are not relevant for the purpose of adjudication of the leave to defend as most of the facts pleaded by the Tenant, have already been admitted by the Tenant.

4. A perusal of the impugned order shows that the ARC has arrived at the conclusion that the facts, which are sought to be pleaded, are irrelevant and in any event, the amendment of the leave to defend cannot be allowed at this stage. The ARC has, in respect of the amendment sought, observed as under:

“Therefore, in a nutshell, amendment of leave to defend can be allowed if two conditions are satisfied:-

1. That the event is subsequent to filing of leave to defend application i.e. the pre-existent events which were not earlier known to respondent cannot be introduced even if respondent gains the knowledge of same subsequently. Only the events which has occurred subsequently could be brought forth in the amendment.

2. The subsequent event shall be of such nature that it shall show that landlord's requirement is wholly satisfied after such event.

Accordingly, the proposed amendments are to be scrutinized on the basis of above-mentioned principles. Though two applications have been filed, however, the Counsel for respondent no.1 and 2 has submitted that the second application is inclusive of the subsequent events mentioned in the first application and if the same is allowed it will subsume the prayer of first application also.

The scrutiny of the application filed on 05.04.2017 shows that there are four proposed amendments which are mentioned in brief as follows:-

A. That there is a civil litigation pending between the petitioners regarding the suit property itself.

B. That the LRs of petitioner no.1 i.e. Smt. Suman, petitioner no.2, 4, 5 and 6 have filed a criminal complaint against petitioner no.3 alleging that petitioner no.3 has got installed separate electricity connection by forgery.

C. That respondent no.4 and 5 have been mentioned as co-owners of the suit property where demised premises is located but petitioners have themselves disclosed in their reply to the application under order 11 rule 12 and 14 CPC that said respondents have executed sale deeds dated 22.11.2011 in respect of 1/72 share in the property in favour of petitioner no. 4.

D. That through RTI replies it has come to the knowledge of respondents that the license for operating the guest house at the first and second floor of the suit property has not been renewed since 01.04.2015.

Accordingly, it is submitted that the facts mentioned in A and B above show that the alleged cause of action for filing the eviction petition for joint business of petitioner no.3 and son of petitioner no.1 is non extinct as there is no harmony in the family and consequently no cause for starting a joint business. It is submitted that facts mentioned in C above show that petition for eviction filed by petitioners as framed is not maintainable as the respondent no. 4 and 5 are not the co-owners. It is submitted that the facts mentioned in the point D above show that the first floor portion of the property is not being used as a guest house and hence is available to petitioners for carrying on any other business if they had any desire to do so.

I have considered the proposed amendments. As far as the alleged civil dispute between the petitioners is concerned, the fact that they have filed a joint petition and are continuing with the same show their collective intention to get the respondents evicted. It is to be noted that respondents have stated that they do not know the exact nature of this litigation. Presuming worst, the same

may be for partition. However, it has been held in various judgments that even if the suit of partition is going or between the co-owners the tenant cannot take any advantage of the same in his eviction proceedings by one or all of his co-owners. Moreover, the second dispute is regarding an electricity connection only and it is nowhere mentioned that Darshan Singh, son of petitioner no.1 has also filed such complaint against petitioner no.3. Be that as it may, the family members having a joint property may have differences between them regarding the division of property or the manner of use of the same or incidental matters. Nonetheless, some of the members can still have collective desire to start a joint business. Moreover, none of the said events show that the requirement of landlord is wholly satisfied due to such events, which is an essential requirement for pleading subsequent events as mentioned earlier.

As far as the ownership of respondent no.4 and 5 is concerned (as referred in point C above) it is irrelevant whether they are or are not the owners in the suit property as all the co-owners are not the necessary party to an eviction petition and only a single co-owner can pursue the same against the tenant (**M/s. India Umbrella Manufacturing Company and Ors. v. Bhagabandel Aggarwalla (dead) by LRs & Ors AIR 2004 S. C. 1321**). Moreover, the alleged sale of 2011 cannot be said to be subsequent event in regard to petition which was filed in 2013 as the mere knowledge of the respondent of an earlier event does not qualify it as subsequent event as discussed earlier. Further, said ground also does not show that the requirement of petitioner is wholly satisfied by such event.

In regard to the last ground (point D) of non operation of the guest house at the first floor it is to be noted that a first floor property can never be compared with the ground floor property in regard to operation of a business as the ground floor property is always better suited having better visibility and better chances of

footfall. Hence, even said ground does not show that the requirement of petitioner can be wholly satisfied by alleged event i.e. availability of first floor premises.

Accordingly, none of the proposed amendments can be allowed. Hence, both applications filed under order 6 rule 17 CPC are dismissed.”

5. This Court is of the opinion that since there is so much of time lapse between the filing of the leave to defend and the final adjudication of the said application, in these matters, there are several subsequent events and other facts, which come to the knowledge of the parties, which the parties wish to place before the Rent Control authority. Thus, the facts etc. cannot be completely ignored while deciding the leave to defend only due to time lapse. In ***Kashi Ram and Ors. vs. Anita Garg CM (M) 1376/2019 (Decided on 18th September, 2019)*** this Court held that even a petition can be permitted to be amended after leave to defend is granted. The Court has held as under:

*“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."

The above logic and rationale as applicable to eviction petitions, would also apply in respect of subsequent facts or knowledge acquired subsequently. A

short affidavit ought to be permitted to be filed, failing which the proceedings would be totally meaningless and the order passed would not take into consideration the practical facts as they exist. The permission to file the affidavit has to be scrutinised very strictly and the court has to ensure that the decision in the leave to defend is not protracted in any manner, as has happened here. In the present case, all the four subsequent facts and the further subsequent facts i.e. that one of the Landlord's sons, for whom *bonafide* need was being claimed, has allegedly settled abroad, would be events and facts which are not alien to the petition and the application under consideration. The leave to defend proceedings are in the nature of summary proceedings, however, usually it is seen that these applications continue to remain pending for a long period. Under such circumstances, instead of deciding as to whether the leave to defend can be amended or not and adjudication of the petition being delayed in this manner, an affidavit can be filed by the parties to bring these subsequent facts and events on record. It is for the Rent Controller to consider whether the said facts are relevant or not for the purpose of adjudication of the leave to defend, and then adjudicate the leave to defend expeditiously. Thus, even in the present case all the facts, which are sought to be added in the leave to defend, are not facts which can be ignored for the purpose of adjudication of the leave to defend. The Court has not opined on the merits as to whether these facts would have any bearing on the grant or non-grant of leave to defend, and the said issue would have to be decided after taking into consideration the facts that are sought to be pleaded.

6. Insofar as the civil litigation between the Landlords themselves is concerned, these are part of judicial records and the same can be considered

by the ARC for the purpose of deciding the leave to defend. Insofar as the other three facts, and the subsequent fact of one of the Landlord's sons being settled abroad is concerned, the same may be brought on record by means of an affidavit within a period of two weeks from today. The facts pleaded in the said affidavit, would not go beyond the three grounds, which have been extracted above and the subsequent fact that the son of one of the Landlords has settled abroad. These facts shall be considered in the leave to defend and comprehensive adjudication of the leave to defend shall be made by the ARC within a period of four months from today. The above permission for consideration of subsequent facts is being granted subject to payment of Rs.20,000/- as costs, inasmuch as the Tenant is running a garment outlet from a prime commercial area in South Extension and is enjoying the premises for a very meagre amount. No further application for amendment or the documents etc. shall be entertained. Upon the Tenant filing their affidavit pleading subsequent events, if the Landlords wish to file a brief response to the same, the same shall be permitted within a period of one week thereafter.

7. The petition along with pending application is disposed of in the above terms. *Dasti.*

PRATHIBA M. SINGH
JUDGE

JANUARY 17, 2020/dk