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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 24th February, 2020
+ **CM (M) 1298/2019 & CM APPL. 39325/2019 (stay)**
QAMRUDDIN Petitioner
Through: Mr. Sahil Garg, Advocate.
versus

ZIAUDDIN Respondent
Through: Mr. A. C. Bhasin and Mr. Amit
Bhasin, Advocates. (M:9810160437)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition challenges the order dated 3rd May, 2019 passed by the Id. Additional Rent Controller (*hereinafter*, “ARC”) by which the application filed by the Petitioner/Tenant (*hereinafter*, “Tenant”) for placing on record additional documents, has been rejected by the ARC.
2. The Respondent/Landlord (*hereinafter*, “Landlord”) had filed an eviction petition against the Tenant in respect of property No. 2670, Gali Sher-e-Afghan, Chhoti Baradari, Ballimaran, Delhi-110006 (*hereinafter*, “suit property”) under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (*hereinafter*, “DRC Act”). The said petition was filed on 13th February, 2014. On 18th March, 2014, the leave to defend application was filed by the Tenant. The pleadings are stated to have been completed in the leave to defend application.
3. The present application for additional documents was moved by the Tenant in November, 2015 on the ground that the suit property is actually vested with the Custodian. Reliance was placed on two documents i.e., notices dated 1st April, 2015 and 9th July, 2015 issued by the Custodian to

argue that these documents are relevant and material and ought to be taken into consideration for decision in the leave to defend.

4. The ARC has rejected the said application on the ground that the leave to defend having been filed, no documents beyond the 15 days' period can be taken into consideration unless they bring to light subsequent facts which *transpired* after the expiry of the 15 days' period and not subsequent facts which came to the Respondent's *knowledge* after the expiry of the 15 days' period.

5. Mr. Sahil Garg, ld. counsel for the Tenant, submits that the judgment of *Prithipal Singh v. Satpal Singh*, (2010) 2 SCC 15 has later been considered in two further judgments of this Court in *Smt. Shakuntala & Ors. v. Smt. Kanti Devi & Anr.* [RC. Rev. No. 352/2012, decided on 31st July, 2014] and *Arvind Kumar Jain v. Jagdish Lal Khanijo* [CM (M) No. 1191/2018, decided on 26th November, 2018] wherein additional facts/documents have been allowed to be pleaded/filed even after the completion of the 15-day period for filing the leave to defend. He submits that knowledge of the suit property vesting with the Custodian was acquired by the Tenant only in April and July, 2015. Hence, at the time when the leave to defend application was filed, the Tenant could not have filed these documents. The same being relevant, the Court ought to have considered the said documents.

6. On the other hand, ld. counsel for the Landlord submits that for the last more than 5 years, the leave to defend application has been pending and on one pretext or the other the Tenant is delaying the proceedings. It is submitted that the Landlord is entitled to expeditious disposal of the eviction petition. It is further submitted that in the leave to defend application, the

Tenant has admitted that the predecessor of the Respondent i.e., Ms. Usha Rani, was the Landlord of the suit property. Thus, the application for filing additional documents is nothing but an attempt to resile from the admission made in the leave to defend application.

7. There is no doubt that the adjudication of the leave to defend application has been delayed by more than 5 years. Such delay in a summary proceeding ought not to be permitted. The ARC ought to have heard the matter expeditiously and decided the same.

8. This Court has considered *Prithipal Singh (Supra)* in *Romy Kohli & Anr. v. Maha Singh & Ors.* [CM(M) 835/2019, Order dated 11th December, 2019] wherein documents filed after the 15-day period for filing the leave to defend have been allowed to be taken on record. The Court had in the said case, permitted certain photographs filed after the leave to defend application was filed to be taken on record. This Court had observed as under:

*“1. The short question in this case is whether the Petitioners are permitted to place on record photographs of the premises, along with the rejoinder which was filed in the leave to defendant application.
2. The ld. Trial Court, vide the impugned order dated 16th January, 2019, has held that since the statutory period of 15 days for filing the leave to defend has expired, no fresh document can be taken on record and only the rejoinder can be taken. The operative portion of the trial court order reads as under:*

“Rejoinder with documents has been filed by the respondent on 14.01.2019. However, no new documents can be taken on record at this stage as it is a well settled law that in an eviction petition filed u/s 14 (1)(e) of the DRC Act, whatever the

respondent/tenant wants to plead or file, he should plead or file the same within the statutory time period of 15 days from the date of his service along with the leave to defend application. Reliance in this regard is placed upon the case-law titled as **Prithipal Singh v. Satpal Singh (Dead) through his LR's, (2010) 2 SCC 15**, wherein it has been held by the Hon'ble Apex Court that the statutory time period of 15 days for filing of leave to defend application is inflexible and whatever has to be stated in the leave to defend application with respect to the facts and events, which have happened prior to 15 days period, must be stated in the leave to defend application itself and not by way of subsequent affidavit or documents. Hence, the rejoinder is taken on record, while the documents sought to be filed by the respondent alongwith the rejoinder cannot be considered or taken on record at this stage.”

3. A perusal of the documents filed with the rejoinder shows that they are only photographs of the premises of which eviction has been sought. The ld. Trial Court cannot adopt a hyper-technical approach in rejecting these documents. In any event, these documents would also be necessary to decide the leave to defend application, as the stand of the Petitioner/tenant is that the premises is an undivided one and is not divisible in 50%. This issue would have to be looked into by the trial court. The photographs are accordingly permitted to be taken on record.

4. The costs as per the last date are stated to have already been tendered. The leave to defend application shall now be heard by the ld. Trial Court, in accordance with law. 5. With these observations

the matter and all pending applications are disposed of.”

9. Recently, in ***Rajiv Puri v. Jagdish Kumar (since deceased) thr LRs & Ors*** [CM(M) 745/2019, decided on 17th January, 2020] this Court has permitted additional facts, which came into the knowledge of the tenant subsequent to the filing of the leave to defend, to be brought on record by means of an affidavit. The relevant portion of ***Rajiv Puri (Supra)*** is extracted below:

*“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.”

Thus, the opinion of this Court was that a hyper-technical approach need not be taken while considering whether or not to permit additional documents/pleadings concerning subsequent developments, including facts of which knowledge was acquired subsequently. Keeping in mind the fact that in practice leave to defend proceedings remain pending for long, it was observed that the eviction proceedings would be rendered entirely meaningless if practical facts as they exist on the date when the leave to defend is being heard, are not taken into consideration.

10. Insofar as the application for additional documents is concerned, the notices dated 1st April, 2015 and 9th July, 2015 of the Custodian, being subsequent events, may have relevance with respect to the issue of whether the Landlord has title to the suit property or not. The admission by the Tenant in respect of the rights of Ms. Usha Rani that he was put in possession by Ms. Usha Rani would in effect establish the existence of landlord-tenant relationship between him and Ms. Usha Rani. The question as to whether, as per the notices issued by the Custodian, the suit property

actually vested with the Custodian or not and if so, what would be the effect of the same, would have to be considered by the ARC at a later stage.

11. However, at present, the ARC is directed to first take up the leave to defend application and decide the same as per the pleadings of the parties. Once the ARC decides the leave to defend application, notice be issued to the Custodian to ascertain whether the property vests with the Custodian and thereafter, appropriate orders in accordance with law can be passed. In this petition, the ARC is not to decide the title to the suit property but merely the question as to whether the landlord-tenant relationship is admitted or not. Accordingly, the documents filed by the Tenant shall be retained on record for the purpose of passing further appropriate orders after the decision in the leave to defend application. If the leave to defend is rejected, and the Custodian does assert title to the suit property, then the Landlord would have to assert his title against the Custodian in appropriate proceedings. Alternatively, if the leave to defend is granted, the Tenant would file the written statement and at that stage, the court may call upon the Custodian to make submissions. Either way, the documents need not hold up the decision in the leave to defend application.

12. With these observations, the petition is disposed of. All pending applications are also disposed of. The costs as imposed by the order of this Court dated 6th December, 2019 have been paid today in Court.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 24, 2020

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(Corrected & released on 4th March, 2020)