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

Reserved on: 3rd March, 2020
Date of Decision: 27th April, 2020

+ **CM (M) 748/2018 & CM APPL. 26848/2018**

MOHD BURHAN Petitioner

Through: Mr. Manu Nayar, Mr. Maitreyee Joshi
& Ms. Samvartika Pathak, Advocates.
(M: 9891001999)

versus

TRILOKI NATH NIRMAL Respondent

Through: Mr. S.S. Bhatia & Mr. Naveen Arya,
Advocates. (M: 9899919222)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

Brief Facts

1. The present petition challenges the order dated 9th February, 2018 by which the Id. Additional Rent Controller (*hereinafter*, “ARC”) has curtailed the right of the Petitioner/Tenant (*hereinafter*, “Tenant”) to cross-examine the Respondent/Landlord (*hereinafter*, “Landlord”) in respect of Will dated 17th November, 1995. The petition also challenges the order dated 11th May, 2018 by which the application seeking review of order dated 9th February, 2018 has been dismissed.
2. In April, 2012, the Landlord had filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (*hereinafter*, “DRC Act”) against the Tenant in respect of property bearing no. E-45/1, Ground

Floor, Main Market, Hauz Khas, New Delhi – 110016 (*hereinafter, “tenanted premises”*). Initially, leave to defend was not granted to the Tenant and a decree of eviction was passed on 18th February, 2013. The revision petition challenging the said order dated 18th February, 2013 was dismissed on 25th August, 2014. The said matter, however, finally culminated with the order of the Supreme Court on 18th April, 2017 by which the leave to defend was granted and expeditious disposal was directed. The order of the Supreme Court reads as under:

“IA no. 3/2017 is filed by the applicant-respondent with the prayer as follows:-

“Under the facts and circumstances stated hereinabove, it is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

(i) allow the present application filed by the respondent-landlord

(ii) allow Civil Appeal No. 4738 of 2016 and remand the matter to the Court of the Additional Rent Controller (South), Saket Courts, New Delhi for disposal of the Eviction Petition in accordance with law.

(iii) expedite the adjudication of the Eviction Petition before the Court of the Additional Rent Controller (South), Saket Courts, New Delhi pursuant to order of remand passed by this Hon'ble Court.

(iv) pass such other and further order/s as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

Heard learned counsel for the applicant who is the respondent in the Civil Appeal.

In view of the request made by the applicant-respondent, the appeal is disposed of with the

direction as prayed for in prayer (iii) of the application.

IA no. 3/2017 also stand disposed of.”

3. Thereafter, the matter has proceeded before the ARC. The Tenant filed his written statement and once the pleadings were complete, the matter was listed for Landlord’s evidence. On 14th September, 2017, the Landlord tendered his affidavit-in-evidence and was examined-in-chief. The cross-examination commenced on 12th December, 2017. However, the Court at that stage was of the opinion that the Tenant could not cross-examine the Landlord in respect of the Will and the question as to whether the Tenant can challenge the Will was left to be decided as a legal issue before further cross-examination could continue. The order dated 12th December, 2017 reads:

“At this stage, counsel for respondent has offered to the petitioner to compromise the petition by taking market rent from respondent but petitioner has refused to compromise.

PW1 Triloki Nath Nirmal is present. He is further partly cross examined and further cross examination deferred.

During cross examination, counsel for respondent had been cross examining the witness qua one Will alleging that the same was forged and fabricated. He further stated that in a eviction petition for bonafide requirement if the landlord is relying on a Will, the same has to be proved as per section 63 of the Indian Succession Act. This submission is however, disputed by counsel for petitioner.

Considering the legal issue, it would be appropriate if this legal question is firstly decided and thereafter further cross examination be conducted.

Accordingly, put up for arguments qua the same on 15.01.2018.”

4. Thereafter, the ARC has heard the matter on the legal issue and held vide the impugned order dated 9th February, 2018 that no cross-examination can be permitted in respect of the Will. The operative portion of the order reads as under:

“19. With these observations, respondents herein are estopped from denying the ownership of petitioner and from challenging the Will which confers title upon petitioner. Hence no cross examination of petitioner can be conducted on the said aspect.”

5. Order dated 9th February, 2018 was initially challenged before this Court. Vide order dated 16th March, 2018, the petition was withdrawn with liberty to approach the ARC by way of a review application. Vide the second impugned order dated 11th May, 2018, the ARC, held that there is no new fact or error apparent on the face of the record. The review was dismissed on the following terms:

31. It is apparent that the present review application has been filed on the basis of misstatements and misinterpretations and allegations beyond pleadings. Further the application is false and frivolous and is moved only with an intent to delay the proceedings of this case which are being expedited by this court in view of directions of Hon’ble Supreme Court and thereby respondent has been showing utter disregard and contempt for Hon’ble Supreme Court. The Review application stands dismissed with directions to Respondent to remain diligent in the future.”

Submissions

6. The contention of ld. counsel for the Tenant is that in a petition under Section 14(1)(e) of the DRC Act, the ownership of the Landlord has to be established. Though the landlord-tenant relationship is not denied in this matter, what is denied is the exclusive ownership of the Landlord. It is the submission of the Tenant that the Will is a sham document and that even in the written statement it has been clearly pleaded that the Will is fabricated.

7. Ld. counsel for the Tenant further submits that there are various other owners of this property who have not been impleaded. Thus, the Tenant ought to be permitted to question the Landlord in respect of the forged and fabricated nature of the Will. It is submitted that the ARC's order refusing to permit the tenant to cross-examine the Landlord on these aspects is completely erroneous. Reliance is placed on the following two judgments:

- ***Devi Dass v. Mohan Lal, AIR 1982 SC 1213;***
- ***Ishwar Dass Rajput v. Chaman Parkash Pun, (1992) 46 DLT 619***

8. Ld. counsel for the Tenant relies on ***Ishwar Dass Rajput (supra)*** to submit that it is not an absolute rule that in a petition under Section 14(1)(e) of the DRC Act, cross-examination of the landlord in respect of a Will cannot be permitted. He submits that it would depend on the facts and circumstances of each case. Even in this case a ld. Single Judge of this Court held that the Will can be questioned, as the title of the landlord has to be established in an eviction proceeding. Reliance is placed on paragraph 14 of the said judgment.

9. Ld. counsel for the Landlord, on the other hand, relies upon the lease deed dated 3rd April, 2001 wherein the predecessors of the Tenant have

admitted that the Landlord is the absolute owner in respect of the tenanted premises. He thus submits that the Tenant is estopped from raising any challenge to the ownership of the Landlord.

Analysis and Findings

10. The short issue in this petition is whether the Tenant ought to be permitted to cross-examine the Landlord with respect to the Will on the basis of which the Landlord claims ownership over the tenanted premises.

11. A perusal of the eviction petition under Section 14(1)(e) of the DRC Act shows that the same relates to a commercial shop in the busy and posh Hauz Khas market located in South Delhi. The Landlord first relies upon the lease deed dated 3rd April, 2001 to establish his title over the tenanted premises. Secondly, the Landlord claims rights in the tenanted premises by virtue of a Will dated 17th November, 1995 executed in his favour by his mother - Ms. Surajwati. The Landlord has also placed on record house tax receipts showing payment of house tax by him.

12. A perusal of the lease deed shows that the same is purported to have been executed on 3rd April, 2001, between the erstwhile Landlord and Late Mohd. Zikria i.e., the father of the Petitioner-Tenant. The agreed rent was Rs.300/- per month. Eviction has been sought on the ground of *bona fide* necessity.

13. In the written statement, the Tenant claims that negotiations had taken place between the parties for execution of a fresh lease deed. A draft lease deed was also prepared and, as per the negotiations, the agreed rent was to be Rs.10,000/- per month. It is claimed that since the negotiations failed, the eviction petition was filed. The Tenant thereafter challenges the *bona fide*

requirement of the Landlord. In response to paragraph 19 of the eviction petition, there is also a brief challenge to the Will as being forged and fabricated.

14. A perusal of the lease deed dated 3rd April, 2001 shows that the father of the Tenant clearly admitted the Landlord's absolute ownership of the tenanted premises. The relevant clauses of the lease deed read as under:

"This Deed of lease made at New Delhi on this 3rd day of April 2001 between Shri T.N. Nirmal S/o Late Shri Girwar Singh R/o E-45, Main Market, Hauz Khas, New Delhi hereinafter called the "LESSORS" which expression shall, wherever the context permits, be deemed to include their successors, legal representatives and assigns of the one part and Mohd. Zikria S/o Mohd Abdul Razzaq, E-45, Main Market, Hauz Khas, New Delhi (hereinafter called the "LESSEE") of the other part. This lease deed WITNESSETH as follows: - R/o 3847 SADAR BAZAR, N. DELHI. Sd/-

In consideration of the rent hereafter reserved and all the covenants and conditions hereinafter contained to be observed and performed on the part of the lessee, the Lessors do hereby grant, transfer, demise by way of Lease the Shop No.E-45/1 Hauz Khas Enclave, of which the Lessor is the absolute owner and entitled in law to execute this Deed, measuring an Area of 9'.6" x 12'.7½ i.e. 119.94 sq. ft. from 3rd April 2001, by paying upto the Lessor rent @ Rs.300/- (Three Hundred only) in advance by the 7th of each month."

15. A perusal of the pleadings and the lease deed dated 3rd April, 2001 shows that the Tenant does not raise a serious challenge to the ownership of the Landlord. In paragraphs 3 and 19 of the eviction petition, there is a detailed description of the Will. In response to paragraph 3, the Tenant merely pleads that the said paragraph needs no reply. In response to

paragraph 19, the Tenant makes an allegation to the following effect:-

“19. That the contents of para 19 of the petition is wrong and denied as the Will is a fabricated/created Will by virtue of which he is declaring himself be the owner of the suit shop. ... ”

16. The lease deed dated 3rd April, 2001 itself is clear to the effect that at the time of execution of the lease deed, which is the basis of the eviction petition, the licensee i.e., the Tenant, admitted two facts – the absolute ownership of the Landlord and his entitlement in law to execute the lease.

17. It is in this background that the question as to the extent of cross-examination to be permitted is required to be adjudicated.

18. The chronology of this petition shows that it was filed way back in 2012 and vide order dated 18th April, 2017, the adjudication of the eviction petition was expedited by the Supreme Court. Evidence was filed in 2017 itself and since then, the recording of the evidence has been delayed owing to objections being raised by the Tenant *qua* the Will.

19. In the first round of litigation, on 9th February, 2018, the ARC decided that no cross-examination can be conducted on the validity and legality of the Will. This order was challenged before this Court in CM (M) 315/2018, which was later withdrawn by the Tenant with liberty to approach the ARC by way of a review application. The review application was dismissed on 11th May, 2018. Both the orders, order dated 9th February, 2018 and order dated 11th May, 2018 are under challenge in this petition.

20. In a petition under Section 14(1)(e) of the DRC Act, there is no doubt that ownership needs to be established. However, it is the settled legal position that absolute ownership need not be established. The landlord

merely needs to show a better right than the tenant, as held in ***Vinod Kumar v. Manmohan Kumar Verma***, (2008) 148 DLT 580 and ***Madhu Sudan Kakkar v. Jawahar Lal*** [RC. REV. 18/2017, decision dated 8th February, 2017]. It is also the settled legal position that the production of a Will would discharge the burden of the landlord for proving ownership under Section 14(1)(e). This is clear from a reading of two judgments in ***Plasticchemicals Company v. Ashit Chadha & Anr.***, (2004) 114 DLT 408 and ***Bharat Bhushan Vij v. Arti Teckchandani***, 2008 (153) DLT 247. More recently, a Id. Single Judge of this Court in ***Sardar Mahinder Singh v. Sukhwant Kaur***, (2019) 258 DLT 605 has observed as follows:

“8. Admittedly in the previous litigation especially in the petition under Section 14(1)(a) of the DRC Act, the relationship of landlord and tenant between the parties stood decided vide judgment dated 11.09.2006 and the petitioners were given the benefit under Section 14(2) of the DRC Act. The non-disclosure of the previous eviction petitions under Section 14(1)(e) of the DRC Act or grant of benefit under Section 14(2) of the Act is not material enough to dislodge the claim of the respondent. Admittedly, the respondent claims her ownership by virtue of a Will dated 16.03.2020. It is a settled law in a petition under Section 14(1)(e) of the DRC Act a landlord is not supposed to prove the ownership as is required by the Transfer of Property Act.”

21. The Tenant has relied upon a judgment of a Id. Single Judge of this Court in ***Ishwar Dass Rajput*** (*supra*) to argue that the Will can be challenged by the Tenant.

22. The judgment in ***Ishwar Dass Rajput*** (*supra*) was rendered in 1992 and the subsequent view of this Court in ***Bharat Bhushan Vij*** (*supra*) and ***Plasticchemicals*** (*supra*) is clear that producing a Will is sufficient to discharge the landlord's burden in an eviction petition. Moreover, ***Ishwar***

Dass Rajput (supra) is distinguishable from the present case as, in the present case there is a clear covenant in the lease deed dated 3rd April, 2001 signed by the predecessor-in-interest of the Tenant that the Landlord is the absolute owner of the tenanted premises. This one fact alone is more than sufficient to prevent the Tenant from now challenging the Will. Furthermore, unlike the present case, in *Ishwar Dass Rajput (supra)* several reasons have been given by the tenant to argue that the Will is a sham document that has been produced with the objective of defeating the rights of the tenant.

23. The Supreme Court in its judgment in *Devi Dass (supra)*, which is relied upon by the Tenant, holds that a sale deed could be challenged by the tenant. It is relevant to point out that in the said judgment, the tenant raised an issue that there was no sale and the sale deed relied upon by the Landlord was a mere paper transaction entered into with the ulterior motive of evicting the tenant. This case is also clearly distinguishable from the facts of the present case wherein the Tenant has given no tenable reasons to substantiate the assertion that the Will is a sham document, nor has any argument been made to the effect that the Will has been forged in order to defeat the rights of the Tenant. Further, the covenant in the lease deed dated 3rd April, 2001 being unequivocal, no challenge can now be permitted in a circuitous manner, by permitting a challenge to the Will.

24. The question as to whether a review was maintainable or not has not been gone into, as vide order dated 16th March, 2018, the Tenant was given liberty to file a review and the merits of the order were not gone into in the earlier round.

25. A perusal of the findings of the ARC, in both the original eviction

order dated 9th February, 2018 and the order in review dated 11th May, 2018 shows that the ARC has considered the relevant facts and all the judgments cited on either side. The legal position as considered and held by the ARC is correct i.e., that the Tenant is bound by the covenant in the lease deed dated 3rd April, 2001; the Landlord is not expected to discharge a higher burden than furnishing the Will and finally, that the Tenant is estopped from challenging the title of the landlord as per Section 116 of the Indian Evidence Act, 1872.

26. The orders of the ARC do not warrant any interference. The question as to whether there were other legal heirs of the Landlord's mother who were co-owners of the tenanted premises has not been raised in the written statement and is clearly an afterthought intended to delay the execution of the eviction petition. Further, the admission in the lease deed clearly shows that the question of co-ownership of the other legal heirs was never an issue at the time of taking the premises on lease and hence, cannot now be raised as an issue.

27. Under these circumstances, the present petition is dismissed with costs of Rs. 10,000/- to be paid to the Landlord within a period of two weeks after lifting of lockdown. The stay order passed on 16th July, 2019 stands vacated. The ARC shall ensure that the Tenant does not delay the recording of evidence. The eviction petition shall now be disposed of within six months, after the lifting of the lock-down due to COVID-19. All pending applications also stand disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 27, 2020

DJ/T