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

+ **C.R.P. 2/2021 & CM APPL. Nos. 715-16/2021**

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Decided on: 11.01.2021

HARPREET SINGH

....Petitioner

Through : Mr. Pulkit Thareja, Adv.

versus

VIMAL KUMAR PATHAK

....Respondent

Through : Mr. Rakesh Agarwal with Mr. Pulkit
Agarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

[Court hearing convened *via* video-conferencing on account of COVID-19]

1. The captioned civil revision petition is directed against the order dated 07.10.2020, passed by the Additional Senior Civil Judge, Small Causes Court-cum-Guardian Judge, North District, Rohini, Delhi in the matter of 'Vimal Kumar Pathak vs. Harpreet Singh' bearing no. CS No. 1453/2018.

1.1 The impugned order was passed on an application preferred by the defendant, that is, the petitioner in the instant matter, under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 [in short "CPC"].

1.2. The application was pivoted on two grounds:

- a) First, that the petitioner/defendant was protected under the provisions of the Delhi Rent Control Act, 1958 [in short "DRC Act"]. In

nutshell, the jurisdiction of the trial court was put under challenge by taking recourse to Section 50 of the DRC Act.

b) Second, that the underlying suit for possession preferred by the plaintiff, that is, the respondent in the instant matter, had not been appropriately valued both, for the purposes of pecuniary jurisdiction and affixation of requisite court-fee.

2. Pertinently, when the matter came up for hearing on 08.01.2021, Mr. Pulkit Thareja, who appears for the petitioner/defendant, confined the challenge *qua* the impugned order assailed in the instant civil revision petition to the first ground i.e. the purported lack of jurisdiction of the trial court to deal with the suit. I must indicate herein that Mr. Thareja, in respect of the second issue, concerning valuation of the suit, had not brought up the aspect of pecuniary jurisdiction. He had indicated that the second issue was confined to payment of requisite court-fee. That being said, at the hearing held today, Mr. Thareja limited his submission, as on the first date of hearing i.e. 08.01.2021, to the first issue i.e. subject-matter jurisdiction.

3. Thus, the submission of Mr. Thareja, in respect of this aspect of the matter, veers around the interpretation placed by him on the provisions of Section 2(1) of the DRC Act.

3.1. According to Mr. Thareja, the petitioner/defendant being the legal heir of the original tenant, who was none other than his father i.e. Mr. Kripal Singh, would also fall under the category of a “statutory tenant” and therefore, a civil suit for possession and mesne profits could not have been entertained by the trial court.

3.2. As noted above, in this behalf, reference is made to Section 50 of the DRC Act. Mr. Thareja, in support of his submissions, has relied upon the

judgement of a coordinate Bench of this Court dated 22.07.2014, passed in CM(M) No.686/2014, titled **Balbir Singh Kohli vs. Suman Verma**.

3.3. It is the contention of Mr. Thareja that the trial court has committed an error by placing the petitioner/defendant in the “second category” when there are no categories under the relevant provisions of the DRC Act, that is, Section 2(1).

3.4. On the other hand, Mr. Rakesh Agarwal, who appears on behalf of the respondent/plaintiff, has contended that a bare reading of Section 2(1) would show that the protection conferred on a statutory tenant *qua* residential premises is governed by the provisions of Section 2(1) of the DRC Act.

3.5. In support of this plea, Mr. Agarwal both, on the previous date as well as today relied upon the judgement of the Supreme Court rendered in **Gian Devi Anand vs. Jeevan Kumar and Ors.**, (1985) 2 SCC 683. Furthermore, at the hearing held today, Mr. Agarwal has also placed reliance on the judgement of a coordinate Bench of this Court rendered in **Capt. Praveen Davar (Retd.) & Anr. vs. Harvansh Kumari & Ors.**, 2010 (119) DRJ 560.

4. I have perused the record and heard the counsels for the parties in some detail. Having considered the matter, I am of the view that Mr. Agarwal is correct in his contention that the heritable rights of the statutory tenant *qua* residential premises are governed by the provisions of Section 2(1) of the DRC Act. This is evident upon a plain reading of Section 2(1) of the DRC Act which is extracted hereafter:

“2. Definitions. - In this Act, unless the context otherwise requires, -

....(1) "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes -

(i) a sub-tenant;

(ii) any person continuing in possession after the termination of his tenancy; and

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's --

(a) spouse,

(b) son or daughter, or, where there are both son and daughter, both of them,

(c) parents,

(d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include,

(A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);

(B) any person to whom a licence, as defined by section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted.

Explanation I. - The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows: -

(a) firstly, his surviving spouse;

(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death;

(c) thirdly, his parents, if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and

(d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.

Explanation II. - If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

Explanation III. - For the removal of doubts, it is hereby declared that,

(a) where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories, as the case may be;

(b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs;”

4.1. A perusal of Section 2(1) would show that the definition of the tenant, *inter alia*, includes any person continuing in possession after the termination of his tenancy [See: subclause (ii) of Clause (1) of Section 2].

4.2. Furthermore, subclause (iii) of clause (1) of Section 2 includes, in the definition of a tenant, the heir of the person who continues in possession

after the termination of the tenancy, *albeit*, as per the order of succession provided in the said provision. The order of succession, as provided in subclause (iii) of Clause (1) of Section 2, includes the following:

- (a) spouse;
- (b) son or daughter, or, where there are both son and daughter, both of them;
- (c) parents;
- (d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death.

4.3. Before proceeding further, I may indicate that I will advert to and elaborate on only those provisions which are necessary for my discussion having regard to the fact, in the instant case, we are dealing with the successor, who is the son of the person continuing in the possession after termination of the tenancy who, as per the trial court, fell in Clause (b) of Explanation I.

4.4. Continuing with my discussion, Explanation I to Section 2(1) of the DRC Act states that the order of succession, in the event of the death of a person continuing in possession, after the termination of the tenancy, shall be as follows:

- (a) Firstly, his surviving spouse;
- (b) Secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not, ordinarily, live with the deceased person as a member of his family up to the date of his death.

4.5. As indicated above, I need not discuss clauses (c) and (d) of Explanation I as the same are not relevant for the purposes of the

adjudication of the instant petition. Likewise, Explanation II is also not relevant as it relates to a person, who succeeds the deceased person who had a right to continue in possession after the termination of the tenancy, and that person was not financially dependent on the deceased person on the date of his death. The successor, in such circumstance, acquires a right or protection under the DRC Act for a limited period i.e. one year.

4.6. Explanation III, however, has a bearing on the instant case. This is an explanation that has been put in by the legislature for removal of doubts. Clause (a) of Explanation III states that where the right of any successor to continue in possession, after the termination of the tenancy becomes extinguished, such extinguishment shall not affect the right of any other successor falling in the “same category” to continue in possession after the termination of the tenancy. However, if there is no other successor of the same category, the right to continue in possession, after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories, as the case may be. Clause (b) of Explanation III states that the right of every successor referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be “personal” to him and shall not, on the death of such successor, devolve on any of his heirs.

4.7. The width and amplitude of Section 2(l) of the DRC Act came up for scrutiny in the judgement of the Supreme Court in ***Gian Devi’s*** case. The Supreme Court, while rendering a judgement in the said case, expounded that the fact that the protection granted under the DRC Act to a heir of tenant continuing in possession after the termination of his tenancy is personal to him, is an aspect, which is confined to residential premises and that no such

restriction operated *qua* commercial premises.

5. Thus, where a person continues in possession after the termination of his tenancy, then, upon the death of the said person, the rights in the tenanted property will devolve on his successors only in the manner provided in the in Section 2(l) of the DRC Act.

5.1. Therefore, since there is an order of succession provided in the said provision, which is, evident upon a plain reading of subclause (iii) of clause (l) of Section 2 along with Explanation I the rights in the tenanted property can only flow in favour of heirs referred to therein and in the order of succession prescribed therein.

5.2. Mr. Thareja's argument that the trial court has confined, so to say, the petitioner/defendant to the "second category", when there are no categories provided in Section 2(l) of the DRC Act, insofar as the legal heirs are concerned, is misconceived, as the provision does refer to categories; inking *qua* the same is provided in clause (a) of Explanation III.

5.3. Furthermore, clause (b) of Explanation III makes it abundantly clear that the right of every successor to continue in possession after the termination of tenancy is personal to him/her and does not devolve on the death of such a successor on any of his/her heirs.

6. In the facts of the instant case, what is not disputed is that the petitioner's/defendant's father one, Mr. Kirpal Singh, was the tenant of the suit property. Mr. Kirpal Singh had been inducted as a tenant by the father of the respondent/plaintiff. The father of the respondent/plaintiff died on 03.02.2006. Since Mr. Kirpal Singh had, purportedly, defaulted in the payment of rent, the tenancy was terminated *via* notice dated 06.12.2007. Mr. Kirpal Singh expired on 13.02.2011, whereupon, his wife one, Ms.

Kamaljit Kaur, stepped into his shoes. Mr. Kirpal Singh passed, away on 02.10.2018.

6.1. It is in this background that the son [i.e. the petitioner/defendant] claims that the statutory protection, his mother had, should continue *qua* him as well.

6.2. To my mind, this submission advanced by Mr. Thareja, on behalf of the petitioner/defendant, is in the teeth of the provisions of Section 2(l) of the DRC Act. If there was any doubt, the same is put to rest if one has regard to the following explicit observations of the Supreme Court made in *Gian Devi (Supra)*. Case, to which, I made brief reference hereinabove.

“31. We now proceed to deal with the further argument advanced on behalf of the landlords that the amendment to the definition of “tenant” with retrospective effect introduced by the Delhi Rent Control Amendment Act (Act 18 of 1976) to give personal protection and personal right of continuing in possession to the heirs of the deceased statutory tenant in respect of residential premises only and not with regard to the heirs of the “so-called statutory tenant” in respect of commercial premises, indicates that the heirs of so-called statutory tenants, therefore, do not enjoy any protection under the Act. This argument proceeds on the basis that in the absence of any specific right created in favour of the “so-called statutory tenant” in respect of his tenancy, the heirs of the statutory tenant who do not acquire any interest or estate in the tenanted premises, become liable to be evicted as a matter of course. The very premise on the basis of which the argument is advanced, is, in our opinion, unsound. The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and, the tenant notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary. We have earlier noticed the decision of this Court in *Damadilal case* [(1976) 4 SCC 855 : (1976) Supp SCR 645] . This view has been taken by this Court in *Damadilal case* [(1976) 4 SCC 855 : (1976) Supp SCR 645] and in our opinion this decision represents the correct position in law. The observations of this Court in the decision of the seven Judge Bench in the case of *V. Dhanapal Chettiar v. Yesodai Ammal* [(1979) 4 SCC 214 : AIR 1979 SC 1745 : (1980) 1 SCR 334] which we have earlier quoted appear to conclude the question. **The amendment of the definition of tenant by the Act 18 of 1976**

introducing particularly Section 2(l)(iii) does not in any way mitigate against this view. The said sub-clause (iii) with all the three Explanations thereto is not in any way inconsistent with or contrary to sub-clause (ii) of Section 2(l) which unequivocally states that tenant includes any person continuing in possession after the termination of his tenancy. In the absence of the provision contained in Section 2(l)(iii), the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the “so-called statutory tenant” on his death and the heirs of such tenant would in law step into his position. This sub-clause (iii) of Section 2(l) seeks to restrict this right insofar as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in Section 2(l)(iii) and the heirs therein are entitled to remain in possession and to enjoy the protection under the Act in the manner and to the extent indicated in Section 2(l)(iii). The legislature, which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. Section 2(l)(iii) of the Act does not create any additional or special right in favour of the heirs of the “so-called statutory tenant” on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has created this right has thought it fit in the case of residential premises to limit the rights of the heirs in the manner and to the extent provided in Section 2(l)(iii). It appears that the Legislature has not thought it fit to put any such restrictions with regard to tenants in respect of commercial premises in this Act.”

[Emphasis is mine]

6.3. Furthermore, a coordinate Bench of this Court in *Capt. Praveen Davar (Retd.) (Supra)* has taken a similar view:

“54. A look now at the provisions of Section 2(1)(iii) of the Delhi Rent Control Act, 1958, which govern and circumscribe the nature and extent of the protection available on the death of a statutory tenant in respect of residential premises. The said Section runs as follows:

xxx

xxx

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55. A bare glance at the aforesaid Section shows that the position of law with regard to the heritability of residential premises in the case of a Statutory tenancy is that if

the tenant, at the time of his death, leaves behind a widow who was ordinarily residing with him at the time of his death, she alone will get a right to inherit the statutory tenancy to the exclusion of all other heirs, and that too for her own lifetime only. This right does not pass on to any other heir or legal representative of the deceased-tenant. In other words, the person mentioned in Category 'A' i.e. spouse living with the statutory tenant inherits the tenancy rights and upon his/her death they do not devolve on the next category, i.e., sons and daughters financially dependent on the statutory tenant and living with him in the demised premises.”

6.4. The reliance placed by Mr. Thareja on **Balbir Singh Kohli** case is misplaced. In paragraph 5 of the said judgement, the Court has noted the ratio of the judgement rendered in **Gian Devi's** case, which is, in accord with what has been articulated hereinabove. That being said, there is, not enough dilation of facts in the said judgement. Therefore, it would not be right to conclude, as suggested by Mr. Thareja, that **Balbir Singh Kohli** case holds that even in the case of the residential premises, the successors can claim rights other than those which are prescribed in Section 2(l) of the DRC Act.

7. Accordingly, I am of the view that the instant petition is misconceived and devoid of any merit. The same is, accordingly, dismissed.

7.1. The pending application(s) shall stand closed.

8. Needless to add, the observations made hereinabove will not impact the adjudication of the matter on merits.

RAJIV SHAKDHER, J

JANUARY 11, 2021

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[Click here to check corrigendum, if any](#)