

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

Reserved on: 22.01.2021

Date of Decision: 05.02.2021

+ **RC.REV. 155/2020**

M/S J S SHARMA & SONS & ORS.

..... Petitioners

Through: Mr.Kirti Uppal, Sr. Adv. with Mr.
Rajiv Kumar Ghawana and
Mr.Neelaksh Sharma, Advs.

versus

SHIV DEVI MEENA

..... Respondent

Through: Mr.Rakesh Kakkar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed challenging the order dated 23.05.2020 passed by the learned Additional Rent Controller (South), Saket Courts, New Delhi in Eviction Petition No.5966/2016 titled ***Smt. Shiv Devi vs. M/s J.S. Sharma & Sons (through its Proprietor Sh. J.S. Sharma)***, dismissing the application filed by the petitioners herein seeking leave to defend the eviction petition filed by the respondent under Section 14D of The Delhi Rent Control Act, 1958 (hereinafter referred to as the Act).

2. The respondent had filed the eviction petition against M/s J.S. Sharma and sons claiming it to be a proprietorship concern of Late Sh. J.S. Sharma, who was then alive, with respect to shop No.1 to 3 in property No.1/17526, Ground Floor, Yusuf Sarai, Gautam Nagar Road, New Delhi-110016 (hereinafter referred to as the tenanted premises).

3. In the Eviction Petition, it was stated that the tenanted premises is being used for running a jewellery shop. In the petition, it was further averred as under:

"2. That the Shops Private No. 1 and 3 in Property No. 1/17526, Ground Floor, Yusuf Sarai, Gautam Nagar Road, New Delhi were initially let out to the respondent by the deceased husband of the petitioner Sh. Suresh Chandra Meena in the year 1985. Thereafter the shop private No.2 on the ground floor of the above said property was also vacated by the tenant Sh. Om Prakash and the shop No.2 was also let out to the respondent on 18.01.1997 vide a written agreement by the late husband of the petitioner. Vide this agreement, permission was given to the respondent to join the three shops and it was further agreed that from that day onwards it will be treated as single tenancy for all the three shops and a consolidated monthly rent of Rs.2000/- was agreed to be paid for all the three shops. Since then the respondent has been making the payment of monthly rent @Rs.2000/- exclusive of electricity and water charges and a single rent receipt is being issued to the respondent.

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8. That the petitioner is suffering from Chronic Osteo Arthritis in both knees and is being treated by AIIMS Hospital. Because of her medical condition she has been advised to avoid stairs. The petitioner is unable to walk without support and uses a walker for walking. She requires a full time attendant. She is also a patient of Hyper Tension and Diabetes, which has further made her weak.

9. That the petitioner is unable to use stairs without help. Thus, every time the petitioner is to be taken to the hospital or for her physiotherapy sessions, she is made to sit in a chair and with the help of two or three persons, she can be taken up and down the stairs. Thus, in case of an emergency it is very difficult to bring her down if there are no male members present in the house. The task of moving, the petitioner down stairs is extremely strenuous and can cause injury to the petitioner.

10. That the petitioner is living like a prisoner, confined to her room. This confinement is affecting her mental and physical health. The petitioner wants to visit the nearby park and her family members or the female attendant can take her to the park, if she shifts to ground floor, so that she can enjoy nature and can get fresh air."

4. An application seeking leave to defend was filed on behalf of the petitioner M/s J.S. Sharma & Sons through its partner Mr. Mukesh Sharma. The same has come to be dismissed by the Impugned Order.

5. The learned senior counsel for the petitioner has submitted that the Impugned Order is liable to be set aside on the following grounds:

(a) That the petition was filed claiming M/s J.S. Sharma & Sons to be proprietorship concern of Sh. J.S. Sharma, however, in paragraph 3(b) of the eviction petition itself, M/s J.S. Sharma & Sons was shown to be the proprietorship concern of Mr. Mukesh Sharma, the son of Sh. J.S. Sharma. He submits that in fact, the lessee of the tenanted premises is M/s J.S. Sharma & Sons, which is a partnership concern of Late Mr. J.S. Sharma and his two sons namely Mr. Dinesh Sharma and Mr. Mukesh Sharma. He submits that therefore, the eviction petition itself was liable to be dismissed for non-joinder of necessary parties.

He submits that the respondent had placed reliance on an agreement dated 18.01.1997 executed by her husband, which showed that the tenanted premises was, in fact, let out to Late Mr. J.S. Sharma and his sons in their individual capacity, and therefore, the eviction petition filed without impleading the necessary parties was liable to be dismissed.;

(b) He further submits that the eviction petition was with respect to three separate shops which were let out to the petitioners on different dates at different rates of rent. In the agreement dated 18.01.1997, though permission had been granted to the petitioners to break the partition walls between the three shops, the character of three separate tenancies still remained and therefore, a common petition with respect to three different tenancies was not maintainable.

(c) He further submits that the eviction petition had been filed under Section 14D of the Act, while it was an admitted case that the respondent was in occupation of her own residential accommodation on the upper floors of the same building.

He submits that even otherwise, the necessity set out by the respondent was not *bona fide*. He submits that just a few months prior to filing of the eviction petition, the respondent had got possession of another shop from another tenant, however, had put it to commercial use of her son. This showed that the need set out by the respondent was not bonafide. He submits that even though the respondent claims in the eviction petition to be requiring the tenanted premises as she is suffering from Osteoarthritis in both knees and is unable to walk without support, there are photographs placed on record showing her walking in the market without any support. Further, the above plea of the respondent was sought to be justified merely on the basis of an OPD receipt and prescription as also an X-ray report, without any other document or evidence, and the same, in absence of any other supporting document or evidence, could not have been accepted.

(d) He submits that the street on which the tenanted premises is situated has been declared as a 'Commercial Street' under the Master Plan of Delhi and cannot therefore, be used for residential purposes. He submits that even otherwise, where a person claims the necessity of using a lucrative commercial property for residential purpose, the same itself raises a suspicion enough to grant leave to defend in favour of the tenant.

6. In support of his submission, the learned senior counsel for the petitioner has placed reliance on the judgments of this Court in ***Saraswati Dalmia vs. Bennett Coleman & Company Ltd.***, (1992) 46 DLT 191; ***Niranjan Lal Sharma (Deceased) through his LRs vs. Ved Kumari & Anr.***, (2002) 98 DLT 464; and ***Rani Sethi vs. Amarjeet Singh***, 2018 SCC OnLine Del 8889.

7. On the other hand, the learned counsel for the respondent has placed reliance on the judgment of the Supreme Court in ***J. Chatterjee vs. Mohinder Kaur Uppal & Anr.***, AIR 2000 SC 3076, to submit that Section 14D of the Act is a special provision granting benefit to a widow landlady and effectuates Article 15(3) of the Constitution of India and therefore, should not be frustrated by granting leave to tenant unless a real and substantial case is made out on the averments made in the affidavit filed by the tenant in support of his application seeking leave to defend. In this regard, he also places reliance on the judgment of this Court in ***Gurcharan Singh vs. Saraswati Devi***, (2009) 157 DLT 743, wherein this Court further held that letting of premises for commercial use is irrelevant for determining the claim of the landlady under Section 14D of the Act.

8. As far as the plea of M/s J.S. Sharma & Sons being a partnership concern or the plea of the tenancy being in favour of Mr. J.S. Sharma and his sons in their individual capacity, the learned counsel for the respondent, while refuting such claims, submits that not only were all the parties represented in the eviction petition upon the death of Mr. J.S. Sharma, but also that the application seeking leave to defend was filed by Mr. Mukesh Sharma as a partner of M/s J.S. Sharma & Sons. He submits that therefore, no prejudice was caused to the petitioners due to some misdescription of the petitioners, if at all. Placing reliance on the judgment of Madras High Court (Madurai Bench) in ***Milan Readymade Shop vs. S.P.S. Selvaraj*** in C.R.P. (MD) No. 2128/2015, he submits that at best this will be a case of misdescription, which cannot result in rejection of the eviction petition or can be used as a ground to obtain leave to defend.

9. As far as there being three separate tenancies, he submits that on and after 18.01.1997, the three tenancies were merged into one. He submits that even otherwise, a single petition for separate tenancies is maintainable, as has been held by this Court in ***Puran Chand Aggarwal vs. Lekh Raj***, 2014 SCC OnLine Del 1506.

10. I have considered the submissions made by the learned counsels for the parties.

11. Section 14D of the Act creates a special right to seek eviction in favour of a widow. It reads as under:

"14D. Right to recover immediate possession of premises to accrue to a widow. – (1) Where the landlord is a widow and the premises let out by her, or by her husband, are required by her for her own residence, she may apply to the Controller for recovering the immediate possession of such premises.

(2) Where the landlord referred to in sub-section (1) has let out more than one premises, it shall be open to her to make an application under that sub-section in respect of any one of the premises chosen by her."

12. The Supreme Court in ***J. Chatterjee*** (supra) has held that this provision is intended to serve the social need to help a widow in getting possession of the premises required for her personal occupation. While granting leave to defend to a tenant, the Rent Controller should therefore, keep in mind that the special provision is not frustrated by granting leave unless a real and substantial case is made out by the tenant.

13. In the peculiar facts of the present case, the plea of the petitioner based on the status of M/s J.S. Sharma & Sons to be a partnership concern, cannot be a ground to grant leave to defend the petition to the petitioners. As noted hereinabove, the application seeking leave to defend and the affidavit in support thereof was filed by Mr. Mukesh Sharma as a partner of M/s J.S. Sharma & Sons. It is therefore, not the case of the petitioners that by the misdescription of the tenant in the eviction petition, any prejudice has been caused to the petitioner in defending the case. In fact, during the course of arguments, the learned senior counsel for the petitioner sought to urge that the tenants were in fact Mr. J.S. Sharma and his sons in individual capacity. For this purpose, he placed

reliance on the purported agreement dated 18.01.1997, which is in Hindi and reads as under:

“समझौता नामा (Agreement)

आज तारीख 18/01/1997 को श्री सुरेशचन्द्र पुत्र श्री स्वर्गीय प्रभुदयाल मीणा साकिन न.17526 गौतम नगर रोड, युसफु सराय, नई दिल्ली - 16 मालिक दुकान न. 17526/2 Ground Floor गौतम नगर रोड युसफु सराय, नई दिल्ली, ने आज यह दुकान श्री जे. एस. शर्मा और उनके पुत्रों को किराये पर दे दी और वायदा करता हूँ अब तीनों दुकान न.17526/1, 17526/2, 17526/3, जो उनके कब्जे में हैं उन तीनों दुकानों को एक करले और नीच का partition हटा कर जैसा Fixture Fitting कर ले और किसी समय फिर से इन तीनों दुकानों में partition करना चाहे तो कर ले मुझे और मेरे परिवार वालों को कोई एतराज़ नहीं होगा।

जितनी दुकान पहले से मौजूद है उतने में कुछ भी कर सकते हैं।”

(Emphasis supplied)

14. This plea of the petitioners not only contradicts the above plea of the tenant being the partnership concern, but it is also evident that the petitioner is trying to take advantage of the vernacular language while raising this plea, which on the face of it is an afterthought.

15. As far as there being three separate tenancies for which reason the eviction petition was not maintainable, the learned senior counsel for the petitioner has placed reliance on the order dated 06.06.2017 (passed by the Additional Rent Controller in DR Petition no.53 to 55/2017), 15.01.2018 (passed by the learned Rent Controller Tribunal in CIS-RCT ARCT 46/2017) and the order dated 09.04.2018 of this Court in CM(M)

No.402/2018, to submit that in these orders, the factum of three separate tenancies had been accepted by the Courts. He submits that in the order dated 09.04.2018 passed in a petition filed by the respondent before this Court, the factum of three different tenancies was left open to be adjudicated in appropriate proceedings. He submits that therefore, this question could have been adjudicated only upon grant of leave to defend to the petitioners.

16. I do not find any merit in the submission of the learned senior counsel for the petitioner. This Court in **Puran Chand Aggarwal** (supra), had rejected a similar plea placing reliance on the earlier judgments, observing as under:

"29. Learned counsel appearing on behalf of the petitioner, during the course of hearing, has also made his submissions that the three shops were let out to the petitioner from time to time as mentioned above and a single petition for eviction was not maintainable. On the other hand, the argument of the learned counsel for the respondent is that in fact 'two' shops were let out and not 'three' as stated by the petitioner who has demolished the partition wall and joined two shops into one shop. It is a single tenancy. The petitioner has been paying the rent for single tenancy @ Rs. 1500/- per month. The counsel further states that the single petition for eviction is maintainable. She further states that it is immaterial even if there were three shops let out to the petitioner at different points of time in the same suit property.

30. A single eviction petition is maintainable as held in various cases in which the same aspect has been dealt with. The following are some of such judgments which are necessary to be referred:

(i) In Chander Parkash Chawla v. K.K.Kapoor & Ors., reported in 64(1996) DLT 614, an objection was raised by the petitioner that the first floor and the second floor premises were let

out by the petitioner separately at different points of time and were covered by two distinct tenancies - one relating to the first floor and the second relating to the second floor of the premises in dispute. The cause of action in respect of each tenancy was thus distinct and separate, and one could not be joined with the other in the same proceedings. Relying upon the provisions of Order II Rule 3, learned Single Judge of this Court held that assuming that the parties had treated the two lettings as separate tenancies, yet there were common questions of law and fact arising between the same parties and in respect of different portions of the same property, and, accordingly there would be nothing illegal in one eviction petition being entertained and tried in respect of the entire premises though different portions were let out at two different times. It was further observed that such an approach is in the interest of justice and has the effect of avoiding multiplicity of proceedings.

(ii) In the judgment of the Supreme Court in *S.M.Gopalakrishna Chetty vs. Ganeshan & Ors.*, AIR 1975 SC 1750, it was held in the context of the Madras Rent Legislation that a single petition with regard to two different tenancies in the same premises was maintainable even where one was for residential purpose and the other was for non-residential purpose. Learned Counsel also relied upon the judgment of the learned Single Judge of this Court in *Mohd. Yusuf v. Ram Nath*, 1972 RLR (N) 36. The case dealt with the factual matrix where there were two separate tenancies between the same landlord and tenant. It was held that a single petition could be filed if there is common question of law and fact. Two premises had been let out in the same building but separately in the said case.

(iii) In the case of *Gobind Ram vs. Godha Ram*, 1979 (2) RCR, the learned Single Judge of the Punjab and Haryana High Court held that even if two rooms had been let out to the tenant on two different dates and therefore there were two separate tenancies, a single petition for eviction of the tenant was competent and there was no legal bar on the landlord claiming eviction of the tenant from a totality of the premises irrespective of the fact that

whether there they had been rented out under one rent note or two rent notes.

(iv) In yet another case Jamiluddin vs. Shamsuddin, reported in AIR 1999 All 150, a Division Bench of the Allahabad High Court categorically held that sub-rule (1) of Rule 3 of Order II of the Code clearly permits a plaintiff to unite in the same suit more than one cause of action against the same different, or the same defendants jointly, and a suit cannot be dismissed for joinder in the same suit of several causes of action against the same defendant, or the same defendants jointly. Thus, for ejectment of the same tenant, or the same tenants jointly from two or more tenements, one suit by the landlord is legally permissible and such a suit cannot be dismissed for misjoinder of causes of action."

17. Therefore, the issue of three separate tenancies cannot come to the aid of the petitioners for obtaining leave to defend the eviction petition.

18. On the issue of *bona fide* necessity, the respondent has placed on record before the learned Additional Rent Controller, the prescription of OPD consultation from AIIMS as also the result of the X-ray which stated that she was suffering from Osteoarthritis. It was not denied by the learned senior counsel for the petitioner that the respondent is presently residing on the second floor of the property. If she wishes to occupy the ground floor of the property because of the above ailment, it cannot be said that her need is fanciful or is not *bona fide*. She has also placed on record the medical certificates for proving her medical need to shift. The respondent is under no obligation to file voluminous documents to support such plea.

19. The reliance of the petitioners on the photographs has already been adversely commented upon by this court in its **judgment dated 07.01.2020 passed in CM(M) 344/2019, J.S. Sharma & Sons v. Shiv Devi Meena**, observing as under:-

“14. Coming to the facts of the present case, the tenants are clearly conducting the business of Jewellery from the tenanted premises. The tenants have taken unreasonable pain in placing photographs of the landlady on record to show that she is taking a walk in the park. Such submissions ought not to be entertained by the Court, especially when it involves a widow and an illiterate lady. The medical documents which have been placed on record by the landlady clearly shows that she is suffering from old age problems and the same cannot be disputed as the prescription given by the AIIMS (OPD) is clear and categorical to this effect. Further, the case being one of eviction being sought against the tenants, by virtue of abatement and Order XXII CPC for non-impleadment of legal heirs, the landlady and her family cannot be deprived of their ownership rights of a shop located in a prime commercial area and the benefit to the tenant cannot be so disproportionate. In effect, if the petition stands abated, the landlady may be deprived of her right to seek eviction. That would not only be inequitable but would be unjust. This is not a case where the landlady has not availed of her remedies. Initially, an application under Order XXII Rule 4 CPC was filed followed by an application under Order XXII Rule 9 CPC. Even if it is taken that the abatement is automatic, Order XXII Rule 9 CPC is liberal and sufficient cause can be shown under Section 5 of the Limitation Act. This is not a case which the Court feels that there has been negligence or inaction

by the Respondent - landlady. The tenants are clearly interested in retaining the premises for as long as they can inasmuch as they are conducting a flourishing business from the said shop for a mere payment of Rs.2,200/- per month, which is allegedly being deposited in the court. The landlady has in effect not earned a penny for several years from the shop owing to the pendency of the litigation. She has not gained any advantage by delaying the filing of the application either under Order XXII Rule 4 CPC or under Order XXII Rule 9 CPC. In cases of this nature, the Court definitely ought to adopt a liberal approach and a technical and blinkered approach cannot be taken by the Court.

15. Under these circumstances, this Court does not find any fault in the two impugned orders passed by the ARC and the RCT. The manner in which the tenants have completely ensured that the petition is not decided and the leave to defend is continuously delayed, makes the tenants liable to pay heavy costs to the Respondent - landlady. Further, the manner in which the photographs and videos have been placed on record of an elderly lady who may be hesitant to even go about her daily activities, owing to such conduct by the tenant, simply to allege that the Respondent is in good health, is in the opinion of this Court in bad taste.”

20. Similarly, the fact that the street has been declared as a commercial street, cannot come to any avail to the petitioners. It is not disputed by the learned senior counsel for the petitioner that the premises can be put to residential use upon taking permission from the Municipal Corporation of

Delhi. Therefore, it is not a case of total prohibition. In any case, this will be a matter between the MCD and the respondent and this court need not enter into this issue while considering the present petition.

21. The plea of the petitioner that the premises is a valuable commercial property which could not be put to residential use and that this somehow itself is a ground to grant leave to defend in favour of the petitioners, also cannot be accepted. It is not for the petitioners as tenants to dictate to the respondent/landlady as to how best to use or monetize her property. The judgment of *Saraswati Dalmia* (supra) relied upon by the petitioner is clearly distinguishable. In the said case, the tenant had pleaded specific fact of the landlady having entered into an agreement, received consideration as also deposited charges with the L&DO. In *Niranjan Lal Sharma* (supra), the tenanted premises were claimed for the purposes of using it as a kitchen, however, the Court found that the landlady had thereafter filed an application seeking amendment in the eviction petition to plead that the premises were required for running a shop by her son. The Court further found that an adjoining shop got vacated from another tenant had been put to commercial purpose around the time of filing of the eviction petition. It was in those circumstances that the Court held the eviction petition not to be *bona fide*.

22. In the present case, though the learned senior counsel for the petitioner has submitted that another shop was vacated in October, 2012, which is before the filing of the present petition in April, 2013, and put to commercial use by the son of the respondent, in my opinion, the said plea can also not raise any doubt on the *bona fide* necessity set up by the

respondent. The respondent has pleaded that her ailment was discovered only after the shop had been put to commercial use. Even otherwise, the said shop had also been vacated pursuant to an eviction order passed, wherein the husband of the respondent had pleaded the need of the said shop for his son to set up his business and the shop was eventually put to the said use prior to the filing of the present petition.

23. The plea of availability of alternate accommodation with the respondent, cannot also be accepted. Admittedly, the respondent presently is occupying the second floor of the building and wishes to come to the ground floor because of her ailment. Such need cannot be said to be fanciful. The respondent also cannot be insisted upon to stay with her sons or doubt her requirement only on this ground.

24. Before closing this judgment, I must also express my anguish on a practice adopted by the petitioner. After the oral arguments had been concluded and the judgment reserved, the learned counsel for the petitioner has handed over written submissions to the Court Master of this Court. In the said written submissions, various new pleas have been taken. As the respondent never had a chance of dealing with them, the written submissions have been ignored and the judgment has dealt with only the submissions which were made during the course of oral arguments.

25. In view of the above, I find no merit in the present petition, the same is dismissed. The petitioner shall pay cost of Rs.30,000/- to the respondent for the present petition.

NAVIN CHAWLA, J

FEBRUARY 05, 2021
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