



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

Date of decision: 03rd JUNE, 2022

IN THE MATTER OF:

+ **RC.REV. 575/2019 & CM APPL. 12406/2022**

SHAHEEN BEGUM

..... Petitioner

Through: Mr. Dalip Mishra, Advocate.

versus

SAIRO BANO

..... Respondent

Through: Mr. Nasir Aziz, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant revision petition under Section 25-B (8) of the Delhi Rent Control Act is directed against the Order dated 24.07.2019, passed by the learned A.R.C. (Central), Tis Hazari Courts, Delhi, in Eviction Petition, being E.No.461/2018, dismissing the application filed by the Petitioner/Tenant for leave to defend and evicting the Petitioner herein/Tenant from the property bearing No. No. T-428, Pahar Wali, Qasabpura, Sadar Bazar, Delhi (*hereinafter referred to as 'the tenanted premises'*).

2. The facts, in brief, leading to the instant petition are as under:-

- i. It is stated that the tenanted premises was purchased by late Hameeda Begum, sister-in-law of the Respondent herein/Landlady in the year 1995 *vide* a transfer-cum-sale deed, including registered Power of Attorney.



- ii. It is stated that *vide* a rent note dated 01.10.2001, entered into between the Petitioner herein/Tenant and Hameeda Begum for a sum of Rs.50,000/-, one room on the second floor of the tenanted premises was let out to the Petitioner herein/Tenant. It is pertinent to mention here that the said rent agreement was to be valid till 31.07.2003.
- iii. It is stated that Hameeda Begum died in 2001 intestate and as she was issueless and her husband had passed away before her death, tenanted premises devolved upon her three brothers namely Mohd. Shakir (husband of the Respondent herein/Landlady), Mohd. Zahid & Mohd. Shahid.
- iv. It is stated that on 18.07.2003, a rent agreement was entered into between the husband of the Respondent herein/Landlady and the Petitioner herein/Tenant at a monthly rent of Rs.700/- and since then the Petitioner/Tenant is occupying the tenanted premises.
- v. It is stated that the husband of the Respondent herein/Land-lady passed away on 24.10.2003 and after the death of Respondent's husband, the Respondent herein and her two daughters along with Mohd. Zahid & Mohd. Shahid got the ownership rights of the tenanted premises. It is stated that Mohd. Zahid & Mohd. Shahid relinquished all their rights in the property and, *vide* settlement deed dated 10.10.2017 and relinquishment deed dated 10.10.2017, made the Respondent herein/Landlady the sole owner of the tenanted premises.
- vi. It is stated that the Respondent herein/Landlady, along with her two daughters, namely Uzma & Muneeza, are residing at the



tenanted premises on the first floor and they have kept one room on the second floor to themselves.

- vii. It is stated that the room in the possession of the Respondent herein/Landlady on the second floor is hardly used by her as the Petitioner herein/Tenant locks the main entrance to the second floor which causes great hardship and difficulty for the Respondent herein/Landlady. It is stated that the Respondent herein/Landlady is a chronic skin disease patient and doctors have advised her to go in open air as much as possible as this is an essential requirement for her health. It is further stated that the Respondent's/Landlady's daughters have both grown up and the accommodation available to the Respondent/Landlady is not enough for her to live comfortably. Contending that the Respondent herein/Landlady does not have any other alternative accommodation apart from the tenanted premises where she can live with her daughters, Eviction Petition, being E.No.461/2018, was filed by the Respondent/Landlady.
- viii. It is stated that the Petitioner herein/Tenant filed an application for leave to defend, alongwith an affidavit stating that the Respondent/Landlady has no *bonafide* requirement of the tenanted premises nor there is any paucity of space. It is further stated in the application for leave to defend that apart from the tenanted premises, the Respondent/Landlady has another property, bearing no. 6069, Gali Nawabwali, Sadar Bazar, Delhi-06. It is further submitted that apart from a room on the second floor of the tenanted premises, the entire property was vacant from 2001, i.e. the date on which the Petitioner



herein/Tenant started residing on the second floor, until February 2018 when the Respondent herein/Landlady shifted to the first floor of the property from her earlier accommodation at 6069, Gali Nawabwali, Sadar Bazar, Delhi-06. It is further stated that the portion claimed to be in possession of the Respondent herein/Landlady on the second floor of the tenanted premises has never been used by the Respondent/Landlady for the past several years and is, therefore, lying vacant and locked. It is further stated that the eviction petition is not maintainable as there is no relationship of landlord and tenant between the Petitioner and the Respondent.

- ix. After going through the material on record, the learned ARC declined to grant leave to defend to the Petitioner herein/Tenant contending that no triable issue had been raised by the Petitioner/Tenant. The learned ARC also held that the Respondent herein/Landlord is entitled to recover the possession of the tenanted premises, i.e. one room on the second floor of the property bearing No. T-428, Gali Pahar Wali, Qasabpura, Sadar Bazar, Delhi-06, and directed the Petitioner herein/Tenant to vacate the tenanted premises within two months from the date of that Order, i.e. 24.07.2019.
- x. It is this Order dated 24.07.2019 against which the Petitioner herein/Tenant has approached this Court by filing the instant petition.

2. Mr. Dalip Mishra, learned Counsel for the Petitioner/Tenant, submits that there is no relationship between the Petitioner and the Respondent as Tenant and Landlady and, therefore, the Respondent/Landlady could not



have instituted the eviction petition under Section 14-D of the Delhi Rent Control Act, 1958 (*hereinafter referred to as 'the Act'*). He relies on the judgment of the Supreme Court in Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271, to contend that to institute an eviction petition under Section 14-D of the Act, two conditions need to be satisfied — (a) that the landlady is a widow, and (b) the premises are required by her for her own residence. He states that in the said judgment, the Apex Court has held that the premises had to be let out by either the deceased husband of the landlady or the widow herself for an eviction petition under Section 14-D of the Act to be maintainable. He submits that in the present case, the tenancy is pre-existing and the widow or her late husband, who acquired the tenanted premises by sale or transfer, cannot invoke the provisions of Section 14-D of the Act to evict a pre-existing tenant.

3. Mr. Mishra further submits that the learned Rent Controller has not taken into account the fact that the rent agreement which had been arrived at between the deceased husband of the Respondent herein/landlady and the Petitioner/Tenant took place before the conclusion of the first rent agreement between the Petitioner/Tenant and Hameeda Begum and, therefore, it was evident from the face of it that the second rent agreement entered into between the deceased husband of the Respondent herein/landlady and the Petitioner herein/tenant was forged and fabricated.

4. Mr. Mishra also submits that the Respondent/landlady has failed to establish any *bona fide* need for the tenanted premises and that she has access to an alternate accommodation and, therefore, there is no need for her to seek eviction of the Petitioner from the tenanted premises. He further submits that as per Section 25 of the Act, after an eviction order is passed, six months should be given to the Petitioner/Tenant for evicting the tenanted



premises. He states that in the Order dated 24.07.2019, passed by the learned A.R.C. (Central), Tis Hazari Courts, Delhi, in Eviction Petition E.No.461/2018, only two months have been granted to the Petitioner/Tenant for vacating the tenanted premises. He, therefore, submits that the eviction order violates Section 25C of the Act. He further submits that the impugned order suffers from legal infirmities and does not consider the triable issues that have been clearly raised by the Petitioner/Tenant in her leave to defend application and, therefore, the eviction order is liable to be set aside.

5. Heard Mr. Dalip Mishra, learned Counsel for the Petitioner, Mr. Nasir Aziz, learned Counsel for the Respondent, and perused the material on record.

6. A perusal of the material on record indicates that in order to establish the disputed relationship between the landlady and tenant, certain documents had been filed before the Trial Court to establish the ownership of the landlady over the tenanted premises which have been considered in the eviction order. Material on record further discloses that the GPA, SPA, Agreement to Sell in favour of Hameeda Begum, relinquishment deed executed by the brothers of the deceased husband of the Respondent/Landlady, had also been placed on record. Furthermore, the rent agreement dated 18.07.2003 that had been executed between the deceased husband of the Respondent herein/Landlady and the Petitioner herein/Tenant was also on record and the same has also not been disputed by the Petitioner herein/Tenant. Furthermore, the submission of the learned Counsel for the Petitioner that the second rent agreement was executed before the expiry of the first rent agreement is irrelevant for the purposes of discerning the authenticity of the second rent agreement. Therefore, there can be no question about the relationship between the Petitioner herein/Tenant and the



Landlady.

7. Learned Counsel for the Petitioner/Tenant has relied on Nathi Devi (supra) to contend that a widow or her late husband who acquired the tenanted premises by sale or transfer cannot invoke Section 14D of the Act to evict a pre-existing Tenant. Section 14D of the Act is reproduced hereinunder for convenience:

“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.”

8. As per Section 14D of the Act, if the landlord is a widow and the premises have been let out by her or husband are needed by her for *bona fide* purposes, i.e. for her residence, then the widow may apply for immediate possession of such premises. The Supreme Court has interpreted the term 'let out' in the context of Section 14D of the Act in Nathi Devi (supra) and has arrived at a conclusion that the widow's right to recover immediate possession of the premises arises only if the premises were let out by her or by her husband, and not by anyone else. The relevant portion of Nathi Devi (supra) reads as under:



"28. The observations in the aforesaid judgments no doubt support the case of the appellant. This Court did clearly lay down that the expression "the premises let out by him" in Section 14-B of the Act did mean that it is he who has let out alone could evict, and in case the landlord had been killed in action, his dependant could seek immediate eviction of the premises let out by such person. It is noticeable that the expression "premises let out by him" is used in Sections 14-B and 14-C, but the expression in Section 14-D is "premises let out by her, or by her husband". Section 14-B contemplates two situations, firstly, where the landlord is a released or retired person from any armed forces and secondly, where he was killed in action. In case the landlord was killed in action, a right has been given to his dependant within one year of the death of the landlord, to apply to the Controller for recovering the immediate possession of the premises. Section 14-C confers a right on a retired employee of the Central Government or of the Delhi Administration who requires the premises let out by him for his own residence. Section 14-D confers a right on a widow of the landlord to seek immediate possession of the premises let out "by her, or by her husband". The scheme of these sections appears to be that where the landlord is alive and the premises have been let out by him, only he can make an application for immediate possession of the premises for his own use. Only in the case of his death his dependant under Section 14-A, and his widow under Section 14-D can seek immediate possession of the premises. The use of the expression "let out by him" in Sections 14-B and 14-C and the expression "let out by her, or by her husband" in Section 14-D have significance. If it was unnecessary in the scheme of these sections as to who had actually let out the premises, the legislature would not have used the term "let out by him" or "let out by her, or by her husband". In interpreting a provision one cannot assume that the words employed by the legislature are redundant. Section 14-D gives a right to file an application under that provision only to a



widow who had let out the premises or whose husband had let out the premises. Consequently, if the premises had been let out by someone else, Section 14-D will not apply. As pointed out in *Surjit Singh Kalra* [(1991) 2 SCC 87] the expression used in Section 14-B is “the premises let out by him”, unlike the expression used in Section 14(1)(e) where the legislature employed the expression “the premises let out for residential purposes”. Thus in the case of a landlord belonging to the general category it was immaterial whether the premises were let out by him or by someone else, as long as he was the landlord of the premises at the time of making an application seeking eviction of the tenant. But the expression “let out by her, or by her husband” conveys a different meaning altogether. The widow's right to recover immediate possession of the premises arises only if the premises were let out by her or by her husband, and not by anyone else. It appears to us that the legislature has purposely employed a different expression in Section 14-D as also in Sections 14-B and 14-C. We are here concerned with an application filed under Section 14-D which specifies in clear terms that a widow can invoke the provisions only if she has let out the premises, or if her husband had let out the premises. If, as observed in *Kanta Goel* [(1977) 2 SCC 814] the expression “the premises let out by him” has been used only to convey the idea that the premises must be owned by him directly and the lease must be under him directly, and not that he had himself let out the premises, the legislature would not have then used the expression “let out by her, or by her husband”. The very fact that the section specifies that the premises must be one which was let out by the widow or by her husband implies that the provision would not apply to a premises let out by any other person. If the intention of the legislature was to confer an unlimited right on a widow landlord, the use of the words “the premises let out by her, or by her husband” would have been unnecessary and the section would have simply read as follows:



“Where the landlord is a widow and the premises are required by her for her own residence, she may apply to the Controller for recovering the immediate possession of such premises.”

By expressly providing that the premises must be one let out by her or by her husband, the legislature has clearly excluded from the purview of the said provision “premises let out by any other person” even if in course of time the widow may have become its landlord. We are obliged to read the provision as it is, and cannot give it a meaning by deleting an expression expressly employed by the legislature. The expression “let out by her, or by her husband” is not an expression which permits of any ambiguity. We must, therefore, give it its normal meaning. So understood the conclusion is inescapable that the legislative intent was only to confer a special right on a limited class of widows viz. the widow who let the premises or whose husband had let the premises before his death, and which premises the widow requires for her own use.”

9. In the instant case, the first rent agreement was executed between Hameeda Begum and the Petitioner herein/Tenant which was to expire on 31.07.2013. However, before the expiry of the first rent agreement, a second rent agreement dated 18.07.2003 was executed between the deceased husband of the Respondent herein/Landlady and the Petitioner/Tenant. It is pertinent to notice at this juncture that the second rent agreement was executed between the Petitioner herein/Tenant and the deceased husband of the Respondent herein/Landlady, who was the owner of the tenanted premises. Relevant portion of the rent agreement reads as under:

“I, Smt. Shaheen Begam W/o Shri Hasinuddin am resident, of 7246, Gali Garhaiya, Quresh Nagar Sadar Bazar, Delhi-110006.

Whereas I have taken on rent for residential purposes



one room on second floor for municipal No. T-428, Gali Paharwali, Ahata Kidara, Delhi-110006, for a monthly rent of Rs. 700/-(rupees seven hundred only) Including electricity and water charges from landlord of property Mohd Shakir s/o Mohd Yusuf R/o 6069, Gali Nawab Wali, Sadar Bazar Delhi- 110006, and I state and write as under:

I will pay the rent as per the English calendar. I will not demolish or construct or make any change in the said property. I will stay myself. I will not sublet the property or part of property to anyone else on rent or without rent. I will use the property for residential purpose only and will not use for any other purpose. That If I fail to pay the rent on monthly basis then the landlord has the right to take all the dues from me and also has the right to get the tenanted premises vacated from me.

That I will do the white wash and other repair work in the said premises from my own pocket and the repair work on large scale including house tax will be the responsibility of the landlord.

Whereas after the expiry of 22 months on 17.5.2005 I will vacate the tenanted premises and will remove all my belongings from the same without any objection or murmur.

Whereas the landlord has received Rs 60,000/- (Rs sixty thousand only) as security from the tenant which will remain with him till the delivery of vacant possession by the tenant and will be returned on delivery of vacant possession without any interest. If the landlord is not able to return the security amount, the tenant will have the right to continue to live in the tenanted premises without payment of any rent till such payment, is made .

To end the above tenancy before the due date, parties



will have to give one months notice to each other.

Hence this rent deed for the period of seven months is written which commences w.e.f. 18.07.2003 and will end on 17.05.2005.

Dated 18.07.2003 Friday, Delhi"

10. As per the interpretation of the Apex Court of Section 14D of the Act in Nathi Devi (supra), as the premises was let out by the deceased husband of the Respondent/Landlady herein, the Respondent herein/Landlady had the right to institute an eviction petition under Section 14D of the Act.

11. The Supreme Court has held that the benefit conferred on a widow under Section 14D of the Act is at par with the general benefit conferred on the landlord to seek for eviction on the ground of *bona fide* need (Refer to K.L. Malhotra v. Smt. Prakash Mehra, **AIR 1991 SC 99**). The purpose of Chapter IIIA of the Act is to ensure expeditious disposal of an eviction petition filed by the landlord on the ground that the premises are required for the landlord's residence. In these instances, the need of the landlord is presumed to be genuine. Keeping the summary procedure in mind, while filing an application seeking leave to defend, if a tenant makes averments intending to disentitle the landlord from invoking summary provisions, then such statements must be specific and must contain all particulars which would lead to a triable issue for the learned Rent Controller not to give the benefit of summary procedure to the landlord and, therefore, relegate the landlord to go through the usual procedure for evicting the tenant. Therefore, a tenant has to give all necessary facts supported by documentary material, if available, in the leave to defend application.

12. It is well settled that mere assertions made by tenant with respect to



the landlord's ownership of other buildings and with respect to alternate accommodations are not to be considered sufficient for grant of leave to defend. The tenant cannot merely make allegations that the landlord has other premises that eviscerates his *bona fide* need without producing some material to substantiate the same. The Apex Court in Abid-ul-Islam v. Inder Sain Dua, **2022 SCC OnLine SC 419** has observed as under:-

"22. Learned Rent Controller passed a detailed speaking order. On undertaking such an exercise, he found that the bona fide need is satisfied; the averments of the respondent regarding alternative accommodation are vague; the title of the appellant cannot be questioned; and the embargo under the Enemy Property Act does not get attracted. Thus, having found that the defense set up by the respondent is only a moonshine, the application filed seeking leave to defend was accordingly rejected.

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24. The High Court, while ignoring the aforesaid conduct of the respondent, as noted by the learned Rent Controller, proceeded to allow the revision by treating it like an appeal. It did not even reverse the findings of the learned Rent Controller, but proceeded to hold that the denials of the appellant in his reply to the application seeking leave to defend are vague, qua the plea of alternative accommodation, notwithstanding the rejection of the contention of the respondent that he cannot question the title. This approach, in our considered view, cannot be sustained in the eye of law."

13. Furthermore, this Court in Rajender Kumar Sharma &Ors. v. Smt. Leela Wati&Ors., **MANU/DE/1386/2008**, has observed as under

"11. The tenant in this case denied relationship of landlord and tenant and the ownership of the landlady despite the fact that it had admitted this relationship by



*filing two petitions under Section 27 of Delhi Rent Control Act. Where a tenant denies ownership of landlord, he is obliged to disclose who was owner/landlord and to whom rent was being paid. The tenant made preposterous claims in respect of accommodation available with the landlady and included in this areas which were not owned and not in possession of the landlady. He included second floor of the property which was owned by some other person and was in possession of the other person. He included adjoining property which was not owned by landlady and was owned by landlady and was owned by other persons. Thus, the affidavit filed by the tenant was shown to be false by landlady on the basis of documents placed by it. No Rent Controller is supposed to grant leave to defend to the tenant on the basis of a false affidavit and false averments and assertions. Such affidavit should be outrightly rejected by the Rent Controller. Only those averments in the affidavit are to be considered by the Rent Controller which have same substance in it and are supported by some material. **Mere assertions made by a tenant in respect of the landlord's ownership of other buildings and in respect of alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed, the whole purpose of Section 25-B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence defeating the very purpose of the statute. The Rent Controller is thus not precluded from considering the material placed before it by the landlord in response to leave to defend to show that the tenant's assertions and averments were totally false.*** (emphasis supplied)

14. In the present case, the Petitioner herein/Tenant has failed to provide any supporting documents that can demonstrate that the Respondent/Landlady has access to alternate accommodation or that her



need for the tenanted premises is not *bona fide*. Furthermore, this Court does not deem it prudent, in consonance with settled law, to displace the needs of the Landlord with its own judgment of how the Landlord should utilise their premises. It is well settled that it is the landlord himself/herself is the best person to explain as to what is their *bona fide* necessity, and leave to defend cannot be granted to the tenant only on the basis of bald averments and assertions without any supporting material.

15. The fact that the Respondent/Landlady herein is a widow having two daughters has not been refuted by the Petitioner/Tenant, and it is stated that the Respondent/Landlady requires the premises in question in order to live comfortably with her grown-up daughters as well as in pursuance of medical advice due to her chronic skin condition. The learned Counsel for the Petitioner/Tenant has further failed to place on record any substantial material that can demonstrate that the Respondent/Landlady has access to an alternate accommodation, and merely placing on record two photographs and a site plan cannot be stated to be sufficient. The contention of the Petitioner/Tenant that the Respondent/Landlady is the owner of Property bearing no. 6069, Gali Nawabwali, Sadar Bazar, Delhi-110006, is also not supported by any document that may lead to the same becoming a triable issue.

16. In view of the fact that the Petitioner/Tenant has failed to raise any triable issues in their leave to defend application, the judgment of the learned Rent Controller that no triable issues have been raised by the Petitioner herein/Tenant cannot be said to be perverse and does not suffer from any legal infirmities. The said Order, therefore, does not warrant any interference of this Court and has been considered astutely by the learned Rent Controller.



17. Accordingly, the instant revision petition is dismissed, along with all the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

JUNE 03, 2022

Rahul

