



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

Date of decision: 13th APRIL, 2022

IN THE MATTER OF:

+ **RC.REV. 70/2022 & CM APPL. 18365/2022 & CM APPL. 18362/2022**

PANKAJ PAL

..... Petitioner

Through: Mr. D.K. Sabat, Advocate

versus

KIRAN GOEL

..... Respondent

Through: Mr. Shiv Charan Garg, Mr. Imran Khan and Ms. Pooja Bansal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

CM APPLs. 18363-64/2022 (Exemption)

Allowed, subject to all just exceptions.

RC.REV. 70/2022 & CM APPL. 18361/2022 (Stay)

1. The instant revision petition is directed against the order dated 11.10.2021, passed by the learned Additional Rent Controller, ACJ/CCJ/ARC (South), Saket Courts, New Delhi, in Eviction Petition No.25/2019.

2. Facts, in brief, leading to the instant petition are as follows:

- a) It is stated that father of the Respondent herein - Laxman Dass Makkar was the owner of property bearing No. A-204,



admeasuring 14' X 15', out of Khasra No. 80 situated at Arjun Nagar, New Delhi (*hereinafter referred to as 'the property in question'*). It is stated that after the death of the father of the Respondent herein, the mother of the Respondent herein let out the property in question to the father of the Petitioner herein. It is stated that after the death of the mother of the Respondent herein, the Respondent and her sister became the owners of the property in question and the father of the Petitioner herein started depositing a rent of Rs.700/- per month inclusive of all other charges in the favour of the Respondent herein and her sister. It is stated that the sister of the Respondent relinquished her share of the property in favour of the Respondent herein and the Respondent herein became the absolute owner of the property in question.

- b) It is stated that the father of the Petitioner passed away in 2019 thereby leaving the Petitioner herein as his legal heir. It is stated that on account of wanting to start her own business of eatable items, the Respondent herein required the property in question to be vacated. Accordingly, Eviction Petition No.25/2019 was filed by the Respondent herein under Section 14 (1) (e) of The Delhi Rent Control Act, 1958.
- c) After considering the application for leave to defend application filed by the Petitioner herein, the learned Additional Rent Controller, ACJ/CCJ/ARC (South), Saket Courts, New Delhi, vide order dated 11.10.2021, dismissed the said application and passed an eviction order in favour of the Respondent herein



with respect to the property in question.

- d) Aggrieved by the said order the Petitioner has approached this Court by filing the instant revision petition.

3. Mr. D. K. Sabat, learned counsel for the Petitioner, has raised the following arguments to support his contention regarding setting aside the impugned judgment dated 11.10.2021:

- i. Mr. Sabat submits that the Respondent has no bona fide requirement as stipulated under Section 14 (1) (e) of The Delhi Rent Control Act, 1958, as the Respondent resides at house No.115, Roop Nagar, Delhi, i.e. her matrimonial house, and that she is not living at the property in question. He states that the Respondent is currently employed in Gurugram and there is no logic as to her wanting to open up an eatery at a location which is far away from where she resides.
- ii. The learned counsel for the Petitioner further states that there is no scope for an eatery being opened at the property in question as the locality, i.e. Arjun Nagar, is not conducive for running a business wherein eatable items could be sold.
- iii. Mr. Sabat further submits that the Respondent has access to an alternate accommodation on the ground floor of the property in question which consists of a shop being run by the uncle of the Respondent.
- iv. Learned counsel for the Petitioner also submits that the Respondent is a wife of a Chartered Accountant and, therefore, it cannot be said that opening an eatery at the property in question is a necessity and that she needs to work for her



survival.

- v. Mr. Sabat submits that the Petitioner and his family are running a tailor shop at the property in question under the name and style of M/s Pal and Sons Drapers for more than two decades. He states that the Petitioner's father passed away in 2019 and that the Respondent has intentionally and deliberately not made all the legal heirs of the Petitioner's father as parties in the eviction petition and, therefore, the same is liable to be dismissed solely on this ground.

4. Heard Mr. D. K. Sabat, learned counsel for the Petitioner and Mr. Shiv Charan Garg, learned counsel for the Respondent, and perused the material on record.

5. A reading of the impugned judgment dated 11.10.2021 indicates that the grounds which have been raised before this Court have been astutely considered by the learned Trial Court before dismissing the application for leave to defend filed by the Petitioner herein. The contention which has been raised by the Petitioner with regard to the Respondent residing in Roop Nagar but wanting to start her business in Arjun Nagar does not hold any water as it is not the prerogative of the tenant to dictate where the land-lord can or cannot start his business.

6. With regard to the contention that the Respondent has access to an alternate accommodation in the form of a shop on the ground floor of the property in question, it is an admitted position by the Petitioner himself in his leave to defend application that the said shop is being run by the uncle of the Respondent. Therefore, the question of the Respondent having an alternative accommodation does not arise.



7. The Petitioner has also raised the argument that Eviction Petition No. No.25/2019 is liable to be dismissed on the ground that all the legal heirs of the late Rakesh Pal (Father of the Petitioner) have not been made parties to the said petition. The Court does not find any weight in this submission. In H.C. Pandey v. G.C. Paul, (1989) 3 SCC 77, the Supreme Court observed that on the death of the original tenant, the tenancy rights devolves on the heirs and there is no division of premises. Therefore, notice one successor tenant is sufficient and there is no necessity to issue notice to all successor tenants as they are all joint tenants. The relevant portion is reproduced as under:

"4. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefor. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. In the present case it appears that the respondent acted on behalf of the tenants, that he paid rent on behalf of all and he accepted notice also on behalf of all. In the circumstances, the notice served on the respondent was sufficient. It seems to us that the view taken in Ramesh Chand Bose [AIR 1977 All 38 : 1976 AWC 301 : 1976 Ren CJ 380 : (1976) 2 ALR 711] is erroneous where the High Court lays down that the heirs of the deceased tenant succeed as tenants in common. In our opinion, the notice under Section 106 of the Transfer of Property Act served by the appellant on the respondent is a valid notice and therefore the suit must succeed."



8. While adjudicating an application for leave to defend though the tenant has only to state the facts which leads to triable issue but there has to be some material that is presented to the Court which ought lead to the said triable issue. Further, the High Court, before adjudicating the leave to defend application, has only to see as to whether the leave to defend application is *bona fide* or is a mere pretence.

9. In light of the above, this Court is of the view that the Petitioner has failed to present any triable issue before this Court that may substantiate his contention that the Respondent has no *bona fide* requirement for utilisation of the property in question and, therefore, the instant revision petition is liable to be dismissed.

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

SUBRAMONIUM PRASAD, J.

APRIL 13, 2022

Rahul