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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM (M) 433/2022 & CM APPL. 22442/2022, CM APPL. 22443/2022

RAMBIR SINGH Petitioner
Through: Mr. Bahar U. Barqui, Adv.

versus

SH AMIT KUMAR & ORS. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT(ORAL)

% **02.06.2022**

CM APPL. 22443/2022 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The applications stand disposed of.

CM(M) 433/2022 & CM APPL. 22442/2022 (stay)

3. This petition, under Article 227 of the Constitution of India, assails an order dated 8th April, 2022, passed by the learned ACJ/CCJ/ARC ("the learned ARC"), in an application under Order VI Rule 16 of the Code of Civil Procedure, 1908 (CPC) preferred, by the respondents in the present case, who were the petitioners in the aforesaid Eviction Petition.

4. Eviction Petition 6326/2016 was filed by the respondents,



seeking eviction of the petitioner under Clause (e) of the proviso to Section 14(1) of the Delhi Rent Control Act, 1958 (“the DRC Act”). An application was filed, by the petitioner, as the respondent in eviction petition, under sub sections (4) and (5) of Section 25B of the DRC Act, seeking leave to defend and contest the Eviction Petition.

5. The application for leave to defend Eviction Petition was disposed of, by the learned ARC, *vide* order dated 31st May, 2019.

6. The petitioner had, in his application for leave to defend, questioned the relationship of landlord and tenant between the respondents and petitioner and had also questioned the ownership of the respondents over the premises in issue. Additionally, he disputed the plea of respondents that they were in *bonafide* need of the premises, so as to justify the invocation of Clause (e) of proviso to Section 14(1) of the DRC Act.

7. The learned ARC, in para 17 of his order held that, to succeed in the petition under Clause (e) of the proviso to Section 14(1) of the DRC Act, the following essential ingredients were required to be cumulatively satisfied:

“(I) That petition is the owner and landlord in respect of the tenanted premises;

(II) That he requires the premises bonafide for himself or for any member of his family dependent upon him;

(III) That he has no other reasonably suitable accommodation.”



8. Addressing the issue of existence of each of these ingredients, the learned ARC held, *qua* the first ingredient, i.e. the aspect of ownership of the respondents and relationship of the petitioner vis-a-vis as the tenant, thus:

“In the leave to defend application, the tenancy between the parties have not been disputed and rather it is mentioned that the suit premises was given by the petitioners. In regard to ownership, it is nowhere disputed in the leave to defend application that petitioners are not the owners of the suit premises. The only objection raised is that all the owners of the premises have not been joined as petitioners and the daughters of late Shri Mool Chand and of Late Shri Ram Mehar have been excluded from the array of parties and thus, suit is bad for non-joinder of parties. However, it has been held by Hon'ble Supreme Court of India in *M/s India Umbrella Manufacturing Co. V Bhajabandei Aggarwalla*¹ that even a co-owner can file an eviction petition against the tenant and all the co-owners are not required to be joined as a party. Though, in the rejoinder to the counter affidavit of petition, the respondent has taken a plea that premises is situated in a land owned by DDA, however, as per the judgment of Hon'ble Supreme Court of India in *Prithi Pal Singh V. Satpal Singh (deceased through LRs)*², the respondent has to bring forth all his defences in the leave to defend application within the statutory period of 15 days. Any new pleading by way of amendment or otherwise cannot be considered once the period of 15 days has lapsed from the date of service. Accordingly, the plea in rejoinder being filed beyond 15 days period cannot be considered for the purpose of considering the leave to defend application. Therefore, no triable issue has been raised in regard to first requirement of section 14(1) (e) of the Delhi Rent Control Act.”

9. However, having thus held that no triable issue arose on the

¹ 2004 (3) SCC 178

² 2009 Law Suit (SC) 1989



aspect whether the respondents were landlords of the petitioner or the owners of the premises in question, the learned ARC went on to hold that triable issues did rise on the second requirement of Clause (e) of Section 14(1) of DRC Act i.e. as to whether the respondents were in *bonafide* need of the premises and whether the respondents had suitable alternative accommodation. The concluding paragraph of the order dated 31st May, 2019, of the learned ARC, on the petitioner's application for leave to defend, reads thus:

“The next question is whether leave to defend can be allowed partly. The same has been held in affirmative by Hon'ble High Court of Delhi in ***Tagore Education Society Registered V. Kamla Tandon & Anr. RCR 31/2009 and CM 6929/2009***. Accordingly, leave to defend application is partly allowed *on issues other than tenancy between parties and ownership of petitioner* and respondent is given 30 days time to file WS.”

(Emphasis Supplied)

10. Clearly, therefore, the aspect of tenancy of the petitioner in the premises in issue, and of ownership of the respondents, of the premises in issue, were held not to be triable issues. No leave was granted to the petitioner to defend the Eviction Petition on these issues. Leave was granted to the petitioner, to defend the Eviction Petition of the respondents, on issues other than tenancy between the parties and ownership of the respondents.

11. Consequent to grant of leave to defend the manner as aforesaid, the petitioner proceeded to file his written statement, in reply to the Eviction Petition. Paras, 3, 5, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17 and 19 of the written statement, read thus:



“3. That the Petitioner has concealed the true and material facts and placed on record total misleading statement before the Hon'ble Court. It is submitted that Respondent under the tenancy of petitioners in property bearing No.1/17532 and paying the regular rent without any default. It is further submitted that respondent is not concerned with the property bearing No 1/17527, Khasra No. 140/129/49, hence the petitioners is not clear about the factual position regarding the respondent is tenant in which property which was owned by the father of petitioners.

5. That the Khasra/Girdawari which has been filed by the petitioners along with dimension of Property is clearly reflected about the property which is situated at South Area of Khasra No. 49 and five shops which has been let out to various tenants but name of the Respondent or his deceased father has not been mentioned in the Municipal Record which has been obtained by the Respondent from the Concerned Department.

6. That the Area which has mention in the petition is not a part of property bearing No. 1/17527 but it is part of property bearing No. 1/17535, which is owned by the Respondent and it is coming and it is reflected in ZAMABANDI in the year 1951-52 in Khasra No. 306/141/129/49 and adjacent to the property bearing No V-1, Green Park Extension, New Delhi, and north Side there is a Boundary wall of Safdarjung Hospital and East side property bearing No. 1/17527, and south side property bearing No. 1/17532. It is pertinent to mention here that in property bearing No. 1/17532, Respondent is a Tenant but the petitioner has not incited eviction petition in which the Respondent is tenant. It is further pertinent as per the Municipal Record Pundit Pyare Lal and Chaudhary Pyare Lal both are tenant in property bearing No. 1/17532, hence Respondent has to do nothing with present proceeding hence the present petition is liable to the dismiss.

8. That the entire claim of the petition are bogus and misleading without any proof and records petitioner



deliberately mixing the another property along with their property. It is submitted that property bearing no 306/141/129/49 is purchase by the urban improvement housing construction Co. Ltd still its name is reflected in ZAMABANDI, however respondent has purchase the property bearing No V-1, Green Park Extension and occupied property bearing No. 1/17535.

10. That it is always remained in the mind of the respondent that neither his father nor the Respondent remained or remains tenant in respect of property No. 1/17527 comprises in Khasra No. 140/129/49 at any point of time.

11. That. as a matter of fact, the property of which the Respondent and his father remained occupant is 1/17535 situate at village: Yusuf Sarai Jat, however, Corporation used to record and recognize the property occupied by the father of the Respondent and the Respondent as 1/17535. It is clarified that neither the Respondent nor his father nor the Corporation has any concern with property No. 1/17527.

12. That even Khasra No. Mentioned by the Petitioners as 140 is also absolutely wrong as the Respondent and his father remains in occupation of Khasra No. 141. It is clarified that there is Khasra No. 49 which got splitted into Khasra No.140&141.

13. That it is further clarified that neither the Respondent nor his father even tender or pays rent in respect of property No. 1/17527. Neither all the Petitioners nor any person receive any rent in respect of property bearing No.1/17535 but for Property No.1/ 17532 for which respondent is paying regular rent, It is further clarified at the Cost of repetition that the .Respondent is not in occupation or even tenancy of property No. 1/17527 allegedly claimed by the Petitioners.

14. That it is on record that the Petitioners have filed FARD in respect of Khasra No. 140 only while the Respondent is filing herewith a copy of FARD establishing that the Respondent is in occupation, Possession and enjoyment of Khasra No. 141.



15. That even the Petitioners have wrongly mentioned direction wise location of the Property have occupied by the Respondent. As a matter of fact the property occupied by the Respondent situate at North east which is being shown in the site plan while the said, plan/FARD filed by the Petitioners Shown that the property situate at South.

16. That the Respondent has moved on application on 6.04.2018 to SDM for giving status report about the property bearing No 1/17535, Yusuf Sarai, ,Jat, New Delhi. However, considering the require of Respondent SDM Deputed Halka Patwari who was given complete report with dimension of property in Tin shed is existing and rest of the property lying vacant . It is submitted that petitioners. has to do nothing with the property of Respondent even ZAMABANDHI issued by the revenue authority also mentioned about the property of petition in Khasra No.140/129/49 name of the occupant are also shown even lay out plan is close also very much clear that property of petitioners situated far away from the property of Respondent.

17. That the Respondent sought information of Under RTI Act name and ownership of property bearing No 1/17535. In Reply to me RTI Application MCD has clearly mentioned the Respondent is tax payer it is submitted dimension is also given about North, East, South and West.

19. That Respondent father had purchased the property bearing No V-1, Green Park Extension from Urban Improvement Company PVT. Ltd. in the year 1975 in which it is shown that in east of company land, wall of existing structure, hence petitioners is claiming their right in the property of Respondent by giving incorrect story.”

12. Objecting to the aforesaid written statement filed by the petitioner as travelling much beyond the restricted grounds on which leave had been granted to the petitioner to defend the Eviction Petition, the respondents moved an application under Order VI Rule 16 of the CPC, seeking that the written statement of the petitioner be



struck off. The said application stands allowed by the impugned order dated 8th April 2022 passed by the learned ARC, against which the aggrieved petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India.

13. The learned ARC has, in passing the impugned order, observed, *inter alia*, thus:

“As discussed above, restricted leave to defend was granted to the respondent only on the point of bonafide need and alternate accommodation, but in the written statement filed thereafter various objections have been taken by the respondent qua the landlord and tenant relationship and ownership of the petitioner. The respondent has even tried to create a doubt regarding the existence of the property by claiming that the respondent is in the possession of some other property bearing some different number and not in the suit property and the respondent is even claiming the ownership qua the said property which he is in possession of. But as discussed above, no such averment and defence was taken when the leave to defend application was filed by the respondent and even the plea taken by the respondent in his rejoinder as discussed above was rejected on the ground that the respondent was bound to take all his defences at the time of the filing of the leave to defend within the stipulated period of 15 days and not thereafter.

The averment that the Court has power to grant restricted leave to defend but the respondent is free to take all his defences in consequent written statement is not tenable as it would be in contradiction of the order of leave to defend and would render the same insignificant as the respondent has not complied with the same. Therefore, in my considered opinion once the restricted leave to defend has been granted in favour of the respondent, the respondent is bound by the order and can only file his written statement in consonance with the



leave to defend order and cannot be allowed to take other defences denied in the leave to defend order.”

14. I have heard Mr. Barqui, learned Counsel for petitioner at some length. Mr. Barqui submits that there is no proposition in law, to the effect that the pleas in the written statement are required to be restricted to the grounds on which leave was granted to defend the Eviction Petition. He submits that, no doubt, evidence could be led only on grounds which were found to be triable by granting the leave to defend; that, however, cannot be a ground to place a fetter on the pleas which could be urged by the petitioner in his written statement. To support his submission, Mr. Barqui relies on the judgment of the Supreme Court in *Precision Steel & Engineering Works and Anr. v. Prem Deva Niranjana Deva Tayal*³ and *Abdul Razak v. Mangesh Rajaram Wagle*.⁴

15. He cites, from these two decisions, the following passages, in support:

***Precision Steel*¹:**

“12. The manifest error committed in the procedure followed at present by the Controller under S. 25B may be pointed out. The tenant has to file an affidavit stating the grounds on which he seeks to contest the application. The Controller may accept an affidavit in reply if landlord chooses, to file one. So far there is no difficulty. There then follow affidavit in rejoinder and sur-rejoinder and the documents are produced and when this procession ends the Controller proceeds to examine the rival contentions as if evidence produced in the form of the affidavits untested by cross-examination and unproved documents are before him on the appreciation and evaluation of which he records an

³ (1982) 3 SCC 270

⁴ (2010) 2 SCC 432



affirmative finding that the facts disclosed in the affidavit of tenant are not proved and therefore leave to contest should be refused. In our opinion, this is wholly impermissible. The regular trial required to be held by a Court of Small Causes as contemplated by Sub-sec. 6 read with Sub sec. 7 of Section 25B is not to be substituted by affidavits and counter affidavits at the stage of considering tenant's affidavit filed for obtaining leave to contest the petition under Sub-sec. 4. Sub-section 5 enjoins a duty on the Controller where leave is granted to the tenant to contest the application to commence the hearing of the petition as early as practicable and Sub-section 6 prescribes procedure to be followed as if the Controller is a Court of Small Causes. The Court of small Causes follows the Summary procedure in the adversary system where witnesses are examined and cross-examined and truth of averment is decided on the touchstone cross-examination 3. speedy trial not conforming to the well-recognised principle of arriving at truth by testing evidence on the touchstone-of cross-examination, should not be easily read into the provision at a Stage not contemplated by the provision unless the statute positively by a specific provision introduces the same. The scheme of Section 25B does not introduce a trial for arriving at the truth at the stage of proceeding contemplated by Sub-section (4) of Section 25B.”

Abdul Razak²:

17. Normally, a court cannot direct or dictate the parties as to what should be their pleading and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair trial of the suit or the court is satisfied that suit is an abuse of the process of the court. Since striking off the pleadings has serious adverse impact on the rights of the party concerned, the power to do so has to be exercised with great care and circumspection.



18. In *Knowles v. Roberts*⁵ Bowen, L.J. observed: (Ch D pp. 270-71)

“It seems to me that the rule that the court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right.”

It is a recognised principle that: “... a defendant may claim *ex debito justitiae* to have the plaintiff's case presented in an intelligible form, so that he may not be embarrassed in meeting it; and the court ought to be strict even to severity in taking care to prevent pleadings from degenerating into the old oppressive pleadings of the Court of Chancery.” [Ed.: As observed in *Davy v. Garrett*.⁶]

19. The above reproduced observations have been quoted with approval in *Sathi Vijay Kumar v. Tota Singh*⁷. In that case, the order passed by the High Court deleting paras 11, 12 and 13(a) from the election petition filed by the appellant was questioned before this Court on the ground that the case does not fall within the ambit of Order 6 Rule 16. This Court first held that the provisions of Order 6 Rule 16 CPC are applicable to the election petitions. The Court then referred to the earlier judgments in *Roop Lal Sathi v. Nachhattar Singh Gill*⁸, *K.K. Modi v. K.N. Modi*⁹ and *United Bank of India v. Naresh Kumar*¹⁰ and held that the power to strike out a pleading is extraordinary in nature and must be exercised by the court sparingly and with extreme care, caution and circumspection.

⁵ (1888) 38 Ch D 263 (CA)

⁶ (1878) 7 Ch D 473, p. 486

⁷ (2006) 13 SCC 353

⁸ (1982) 3 SCC 487

⁹ (1998) 3 SCC 573

¹⁰ (1996) 6 SCC 660



16. Section 25B of the DRC Act provides for a special dispensation in dealing with petitions for eviction under Clause (e) of the proviso to Section 14(1) of the DRC Act i.e. eviction on the ground of *bonafide* requirement.

17. Sub section (4) and (5) of Section 25B of the DRC Act read thus:

“(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files and affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (c) of the proviso to sub-section (1) of section 14, or under section 14A.”

18. The latitude available with the tenant to contest an application for eviction on the ground of *bonafide* requirement, under clause (e) of the proviso to Section 14(1) of the DRC Act is, therefore, not absolute but is constrained by the rigour of sub-sections (4) and (5) of Section 25B of the DRC Act. The application can be contested only on the grounds in respect of which the tenant obtains leave from the learned Rent Controller. Absent leave from the learned Rent Controller to



contest the eviction petition on any particular ground, that ground, therefore, stands foreclosed to the tenant as a plea on the basis of which the eviction petition can be resisted. Sub section (5) of the Section 25B of the DRC Act also places responsibility on the learned Rent Controller to grant leave to the tenant to contest the application for eviction only if the affidavit filed by the tenant discloses facts which would disentitle the landlord from obtaining an order for recovery of possession of the premises.

19. Clearly, therefore, the tenant is, under sub-sections (4) and (5) of Section 25B of the DRC Act, restricted *qua* the grounds on which he could oppose the eviction petition to such grounds with respect to which the learned Rent Controller grants leave under the said provisions.

20. Leave was granted, by the learned ARC to the petitioner, to contest the eviction petition filed by the respondents only on the ground of *bonafide* requirement of the respondents and availability, with the respondents, of suitable alternative accommodation. This order, I may note, was challenged by the petitioner before this Court by way of Rent Control Revision 555/2019, which was disposed of, by this Court *vide* order dated 18th September, 2019, which read thus:

“Learned counsel for the petitioner submits that though the leave to defend has been granted, a finding has been returned by the Rent Controller that the petitioner has not disputed the ownership and landlordship of the respondent.

Learned counsel for the petitioner submits that the



petitioner had not disputed the ownership and landlordship in respect of the tenanted premises, however, he had disputed the site plan and contended that the petition had been filed for incorrect premises. He seeks leave to withdraw the petition with liberty to raise an appropriate objection *qua* the extent of the tenanted premises in the written statement.

Petition is, accordingly, dismissed as withdrawn.”

21. A reading of the order dated 18th September, 2019 reveals that, though the petitioner sought leave to withdraw the petition with liberty to raise an objection *qua* the extent of the tenanted premise, in the written statement, the petition was, ultimately merely dismissed as withdrawn. It does not reserve any liberty to the petitioner.

22. Even otherwise, all that the learned ARC has done in the impugned order dated 8th April, 2022, is to strike off the written statement filed by the petitioner on the ground that it travels beyond the grounds on which leave was granted to the petitioner to defend the Eviction Petition filed by the respondents. Liberty has been reserved with the petitioner to file a fresh written statement, restricted to the grounds on which leave was granted to the petitioner to defend the Eviction Petition, i.e. the ground of *bonafide* requirement of the landlord and of the availability of suitable alternative accommodation to the landlord to relocate. No jurisdictional or other error can be said to exist in the decision of the learned ARC to restrict the petitioner’s written statement to the grounds on which leave to defend was granted, treating them as triable issues, and not to permit the petitioner to raise other issues on which no leave was granted to the petitioner to defend the eviction petition, specifically the issues relating to



ownership of the suit property in question by the respondents and the relationship of tenant and landlord between the petitioner and the respondents.

23. The two decisions on which Mr. Barqui places reliance, in fact, would militate against the stand being canvassed by him. Para 12 of *Precesion Steel*¹ specifically states that while a tenant could take all kinds of pleas in his defence, the whole object of Section 25 B (5) of the DRC Act was to prevent the taking of frivolous pleas by the tenants to protract the trial. Applying this ratio to the facts of the present case and to the order dated 31st May, 2019 by which leave to defend was granted to the petitioner, the pleas of tenancy and of ownership of the premises by the landlord are clearly frivolous pleas, even as understood by the Supreme Court in *Precision Steel*¹.

24. The decision in *Abdul Razak*², for its part, specifically states that “if the parties do not violate any statutory provision, they have the freedom to make appropriate averments and *raise arguable issues*”. The order dated 31st May, 2019, whereby leave to defend was granted to the petitioner, clearly holds that the issues regarding relationship of landlord and tenant between the respondents and the petitioner and of ownership by the respondents of the premises in question were not triable issues. Ergo, they could not be regarded as “arguable”, either, within the meaning of para 17 of *Abdul Razak*².

25. I am unable to agree with the contention of Mr. Barqui that, in so directing, the learned ARC committed any jurisdictional error.



26. Accordingly, the petition is dismissed *in limine*. Miscellaneous applications also stand disposed of.

C. HARI SHANKAR, J

JUNE 2, 2022

r.bararia

