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

+ **RC. REV. 155/2021 & CM Nos. 36609/2021, 45785/2022**

MOHD SALIM

..... Petitioner

Through : Mr Shadman Ali, Advocate along
with petitioner in person.

versus

MOHD NABI

..... Respondent

Through : Mr Abhay Kumar, Mr Faraz Nabi, Mr
Shagun Ruhil, Advocates.

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Date of Decision: 7th December, 2022

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (Oral):

1. The present revision petition has been filed by the Petitioner, tenant, assailing the order dated 7th April, 2021, passed by the Additional Rent Controller (South East), Delhi ('Rent Controller') whereby the eviction order was passed in favour of the Respondent and the application seeking leave to defend filed by the Petitioner was rejected.

2. The facts of the case relevant for deciding the present revision petition are as follows:

2.1. The Respondent filed the eviction petition before the Rent Controller under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 ('DRC Act') for a corner shop private no. 4,

ground floor in premises no. 23–A/14, Gali no. 14, Zakir Nagar, New Delhi (‘the tenanted premises’).

- 2.2. The Respondent contended before the Rent Controller that he is a practicing advocate with his son as well having graduated with a degree in LLB. He stated that he does not have an office to attend his clients and therefore requires the tenanted premises in question for his own use to set up an office.
- 2.3. The Petitioner filed the application for leave to defend under Section 25B(4) of the DRC Act, on the ground that the Respondent herein is neither the owner nor the landlord of the tenanted premises.
- 2.4. The Petitioner also sought to set up an independent right and interest by alleging that, “*Smt. Mehmooda Begum has taken hefty amount from the Respondent with the condition that the said shop has been permanently given to the Respondent and she will have no claim in the said shop.*”
- 2.5. There was no challenge by the Petitioner to the pleas of *bona fide* requirement by the Respondent and there was no averment with respect to the availability of alternative accommodation, raised by the Petitioner in the application for leave to defend. There was thus, no arguments raised in the present proceedings as well on the said issues.
3. The submissions of the learned counsel for the Petitioner in the present proceedings is limited to the plea raising a challenge to the claim of ownership of the Respondent over the tenanted premises. He states that Petitioner has been regularly paying rent to Mehmooda Begum but not the Respondent herein. He states that Respondent is claiming to be the owner of the tenanted premises on the basis of a registered General Power of Attorney

(‘GPA’) executed on 26th December, 2006 by Mehmooda Begum in favour of the Respondent, whereas the Petitioner was never informed of the same. He states that there has never been any relationship of landlord-tenant between the Petitioner and the Respondent and that he has till date not paid rent to the Respondent.

3.1. The learned counsel for the Petitioner disputes the veracity of the receipts filed by the Respondent on record purportedly executed by the Petitioner. He, therefore, contends that the issue whether the Respondent is the owner/landlord of the tenanted premises is a triable issue and therefore, the application seeking leave to defend should have been allowed by the Rent Controller.

3.2. Petitioner states that in the year 2006 the Petitioner had paid a hefty amount to Mehmooda Begum on the condition that the said shop has been permanently given to the Respondent and Mehmooda Begum is left with no claim in the said shop. He admits that there is no document executed between the Petitioner and Mehmooda Begum with respect to the aforesaid understanding.

4. In reply, the learned counsel for the Respondent states that the tenanted premises were admittedly let out to the Petitioner in 1985 by the original owner Mehmooda Begum. He states that the Petitioner paid a monthly rent of Rs.150/- until 2006 to Mehmooda Begum. He states that on 21st December, 2006, the Respondent herein had purchased the tenanted premises from Mehmooda Begum and thereafter the Petitioner became the tenant of the Respondent.

4.1. He relied upon the registered GPA, executed in favour of the Respondent which was executed for valuable consideration recorded in the

said GPA. The learned counsel for the Respondent states that the Petitioner does not dispute the genuineness of the registered GPA executed by Mehmooda Begum in favour of the Respondent herein. He states that the Respondent is entitled to maintain the eviction petition on the basis of the registered GPA.

5. This Court has heard the learned counsel for the parties and perused the paper book. In order to succeed in a petition for eviction filed under Section 14(1)(e) of the DRC Act, the landlord must establish that:

- (i) he is the owner or landlord in respect of the tenanted premises;
- (ii) he requires the premises *bona fide* for himself or for any members of his family who are dependent upon him;
- (iii) he has no other reasonable, alternate, suitable accommodation other than the tenanted premises;

6. The Respondent has asserted that he has purchased property bearing number 23-A/14, Zakir Nagar, New Delhi – 110025 which consists of ground floor, first floor and second floor (excluding two middle shops at the ground floor), ('the property') on 21st December, 2006, from its erstwhile owner Mehmooda Begum through registered title documents for valuable consideration. It is stated that the tenanted premises is one shop in the said property.

7. The Respondent placed on record a duly GPA executed in his favour by Mehmooda Begum executed for a consideration of Rs. 4 lakhs. The possession of the property was also handed over to the Respondent by Mehmooda Begum on the execution of the registered GPA. As per the registered GPA, the Respondent was granted specific powers *to deal with the tenant(s) in any lawful manner*. The relevant terms and conditions of the

registered GPA read as under:

“The Executant received a sum of Rs. 4,00,000/- by the Attorney and Executant do hereby authorised and empower the said attorney to the do the following acts deeds and things in my name on my behalf in respect of my above said property.

xxx xxx xxx

8). To let out the above said property in full or in part to any intended tenant(s) to receive rents in his/her own name, issue receipt thereof, under his/her own signatures and deal with the tenant(s) in any lawful manner.”

8. The Petitioner has not disputed the genuineness and the validity of the said registered GPA either in his pleading or during arguments. It is clear from the terms as laid down in the registered GPA that the Respondent herein had the sufficient right to deal with the Petitioner, in accordance with law.

9. In view of the execution of the aforesaid undisputed registered GPA which was for valuable consideration, the Rent Controller concluded that the Respondent has acquired proprietary rights under Section 53A of the Transfer of Property Act, 1882 and therefore, the Petitioner cannot raise a plea that the Respondent does not have the right, title or interest in the property in question. The said conclusion of the Rent Controller based on Section 53A of the Transfer of Property Act, 1882 read with Section 17 of the Registration Act, 1908 is correct and does not warrant interference. A registered GPA executed for consideration is duly recognised under Section 202 of the Contract Act, 1872 and is irrevocable event at the instance of the executor. [***Hardip Kaur v. Kailash & Anr. : 2012 SCC OnLine Del 2937***].

10. The Rent Controller has rightly concluded that the Petitioner cannot

deny the claim of the Respondent to recover the premises since admittedly the Respondent holds a registered GPA executed by the landlady Mehmooda Begum in Respondent's favour for a valuable consideration. The deliberation of the Rent Controller at paragraph nos. 13, 14, 15 & 16 is as under:-

"13. Even if, for the sake of arguments, the Petitioner herein is presumed to not have a complete title/ownership rights in the property in question, this court cannot lose sight of the fact that admittedly Respondent entered in the property in as a tenant only. He cannot avoid handing over of the property on the ground that petitioner is not the owner of the property. One of the documents placed on record by the petitioner is a General power of attorney executed by the said Mehmooda Begum (who as per the respondent herein is his landlady) in December 2006 in favour of the Petitioner wherein she has been given sweeping powers qua the property in question including the power to let out the property in question [see clause 8 of the GPA executed in December 2006 by Mehmooda Begum in favour of petitioner]. The said document is a duly registered document and has been executed by Mehmooda Begum in favour of petitioner for a /consideration of Rs.4 lakhs. Thus, sweeping powers under the said document have been given by Mehmooda Begum in favour of the petitioner including power to let out the property in question and also "to deal with the tenant(s) in any lawful manner".

*14. Now if the power to let out the property in question is with the Petitioner including the power **"to deal with the tenant(s) in any lawful manner"** as per the aforesaid GPA, in my humble opinion, it shall include, the power to even take back possession/seek eviction from the property, if let out either by the said Mehmooda Begum or the Petitioner. This is presuming, only for the sake of argument, that Mehmooda Begum is to be taken as the owner of the property (as being claimed by the respondent before this court) and Petitioner is to be taken only as her attorney.*

15. Now, even if Petitioner is only an attorney holder of Mehmooda Begum, and is acting for and on behalf of Mehmooda Begum, still, in law, he can seek eviction of the Respondent for and on behalf of his principal i.e. Mehmooda Begum on the strength of said GP A. It may be noted that it is not claimed by the respondent herein that the said document i.e. GPA was never executed by

Mehmooda Begum in favour of the petitioner against consideration. He simply claims that petitioner is not the landlord of the respondent and it is Mebmooda Begum under whom he entered the property as a tenant. Thus, even if, petitioner herein is treated, only for the sake of argument, to not have a complete title over the property in question, still, in his capacity as an agent of the original owner of the property [i.e. Mehmooda Begum], the Petitioner herein is within his right to seek eviction of the Respondent herein and the Respondent cannot deny handing over of possession of the property in question to the Petitioner. At the same time, it is to be noted that the GPA being relied upon by the petitioner herein is against consideration with physical possession of the property being given to the petitioner by the executant of the attorney i.e. Mehmooda Begum. As already noted, the said document is a registered document. Thus, under section 53A of the Transfer of Property Act certain rights are vested in the petitioner herein which he can exercise even against Mehmooda Begum. In other words, it cannot be said that the petitioner herein has no right title or interest in the property in question. If that be the case, in my opinion, the plea of lack of relationship of landlord and tenant between the parties, as raised by the respondent is a frivolous plea in as much as, in my opinion, on his own strength petitioner herein is entitled to possess the property in question on the strength of the registered GPA in his favour placed on record.

16. It was argued before this court that the respondent has never paid any rent to the petitioner and therefore, he is not tenant of the petitioner. I have already reached the conclusion that either as an attorney holder of Mehmooda Begum or on his own account, petitioner is entitled to possess the property in question and also seek eviction. If, it is presumed that respondent has never paid any rent to the petitioner, he has not shown any reason for non payment of rent to Mehmooda Begum (who as per respondent is the landlord of respondent). The plea of payment of "hefty amount" to her is dealt with in the following paragraphs and in my opinion, the said plea is not available to the respondent in law. The said reasons recorded in the following paragraphs qua the said plea are not repeated herein to avoid prolixity. But, if the said plea of "hefty amount" being paid to Mehmooda Begum is not available to the respondent, then he was required in law to pay her or her attorney or the petitioner herein the rent of the property. His failure to pay the rent shall not extinguish the relationship of landlord tenant between respondent and Mehmooda Begum initially and thereafter, between the respondent and the petitioner. In my opinion, the plea of the respondent qua absence of landlord tenant relationship between the



parties before this court is a hollow plea with no legal or factual backing.”

11. The Petitioner herein admits the relationship of landlord and tenant with Mehmooda Begum. The Respondent is the successor in interest of Mehmooda Begum and asserted his proprietary rights on the basis of registered GPA executed in his favour by the landlady Mehmooda Begum. Even assuming that a registered GPA cannot be equated with a sale deed, the fact remains that by virtue of the registered GPA itself and the powers delegated by Mehmooda Begum, the Respondent can maintain the eviction petition under DRC Act. Mehmooda Begum has not disputed the filing of the eviction petition and in the opinion of this Court, the Petitioner cannot challenge the authority of the Respondent to institute these proceedings by virtue of the irrevocable agency created in favour of the Respondent.

12. The *alternate plea* raised by the Petitioner that he paid a hefty amount to Mehmooda Begum for acquiring permanent rights in the said shop is a bald assertion, unsubstantiated by any documents and without any details. In this regard, the Rent Controller has dealt with the said assertion in detail at paragraph nos. 19, 20, 21 and 22 which reads as follows:-

“19. As far as the second contention of the Respondent is concerned, Respondent claims to have given a purported "hefty sum" to Mehmooda Begum: Neither the amount, date of payment, mode of payment, place of payment etc. are disclosed by the respondent qua the said payment in his leave to defend application. Thus, a bald and vague assertion is made by the respondent qua an alleged payment made to Mehmooda Begum and on the said bald assertion, it is claimed that the petitioner cannot evict the respondent since the said Mehmooda Begum had agreed to have no claim on the property in question in consideration of the said payment.

20. In my opinion, a bald assertion with no details of payment being disclosed by the respondent is sufficient to show that the said

assertion of the respondent is completely baseless and has been taken to make out a triable issue in this case. The same cannot be allowed.

21. Even otherwise, even if it is presumed that such a payment was actually made by respondent to Mehmooda Begum, no document whatsoever has been placed on record to show such an interest exists in the said property in favour of the respondent. It is settled law that for creating any right or interest in an immovable property, a registered document is necessary to be executed by one party in favour of the other. As already noted, respondent herein claims that in lieu of the payment received by Mehmooda Begum, she agreed that in the shop in question, she will have no claim. It means, as per the respondent, a perpetual interest in the nature of title exists in favour of the respondent. If that be the case, such perpetual interest could have been created only by a registered written document as mandated u/s. 17 of the Registration Act, 1908. But, there is no such written document in this case and infact, what money was actually paid by respondent to Mehmooda Begum is not even stated by the respondent in his leave to defend application. In my opinion, a mere assertion of an undisclosed sum and claim of perpetual interest in the property is a hollow plea which cannot form basis of granting any leave to defend to the respondent.

22. Even otherwise, it is now settled law that any "hefty amount" or any "pagri" or "premium" paid by the tenant to the landlord does not vest any right or title in the tenant qua the property in question. U/s. 13 of the Act, if a landlord has illegally received any monies from the tenant, then within 01 year of making payment, the tenant can seek recovery of same and not thereafter. Thus, even if, it is presumed for the sake of argument, that any money was paid by tenant/ respondent in this case to Mehmooda Begum, still, the said tenant / respondent can be evicted if there is a bonafide need for the tenanted premises."

This Court does not find any infirmity in the aforesaid reasoning of the Rent Controller. The said plea of payment of 'hefty sum' is shorn of any details and is a textbook illustration of a moonshine defence. Such a plea cannot give rise to a triable issue and has been duly dealt with by the Rent Controller.

13. The Hon'ble Supreme Court in the case of *Abid-ul-Islam v. Inder Sain Dua*, (2022) 6 SCC 30, has reiterated that this Court exercises jurisdiction

which is essential revisional in character as opposed to the powers wielded by a Court while exercising appellate powers, in the following terms:-

“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.”

14. This, Court is, therefore, of the considered opinion that the challenge laid by the Petitioner with respect to the title of the Respondent over the tenant premises is without any merit.

15. The learned counsel for the Petitioner during the arguments also raised the issue of the non-genuineness of the rent receipts filed by the Petitioner. He contended that the said receipts purported to be in the handwriting of the Petitioner are not admitted and therefore it raises a triable issue. Even without accepting or relying the rent receipts relied upon by the Respondent, this Court is satisfied with the finding of the Rent Controller that the Respondent is entitled to maintain the eviction petition on the basis of the registered GPA.

16. It is pertinent to note that it is the admitted case of the Petitioner that he has not paid any rent since 2006 and has remained in occupation of the tenant premises till date without payment of a single rupee. In this regard, the ground (a) of the Revision Petition reads as under:-

“Because the respondent is claiming himself to be the owner of the

suit shop on the basis of a general power of attorney allegedly executed by the erstwhile owner Mehmooda Begum on 26.12.2006 who never informed the petitioner that the said shop or the interest therein has been transferred to the respondent herein. There has never been any relationship of landlord and tenant between the petitioner and the respondent nor even a single penny was ever paid to the respondent towards the rent but the petitioner has regularly been paying rent to Mehmooda Begum and not to the respondent. Even in the records of the competent authorities the name of Mehmooda Begum continues to be as Assessee for the text purposes. It has been held in catena of judgments that, " the power of attorney is simply a creation of agency whereby the executant authorizes the attorney to do the acts specified therein on behalf of the executant, which will be binding on the Guarantor as if done by him. A GPA transaction does nor convey any title nor create any interest In an immovable property. Even if the attorney (respondent/petitioner) was authorized to do some specified jobs then the petition before the Ld. Trial Court should have been filed in the name of the original owner through the attorney i.e. the respondent herein."

17. A perusal of the order sheets dated 18th April, 2022, 28th July, 2022 and 20th October, 2022 passed by this Court reveal the Petitioner had considerably argued the present petition on various pretexts. As per order dated 18th April, 2022, the Petitioner was given liberty to place relevant statutory provisions to make good his submission that it is the owner of the property, who could maintain a petition under Section 14 of DRC Act. On 28th July, 2022, the Petitioner was directed to place on record the registered GPA. The order dated 20th October, 2022 reveals that the learned counsel for the Petitioner sought time to take instructions as to whether the Petitioner is aggregable to vacate the premises in question within a reasonable period of time. Even after arguing the matter on the said date, the learned counsel for the Petitioner, thereafter upon a change of the Roster, withdrew from the said statement and thereby prolonging the judicial proceedings to the advantage of the Petitioner and to the disadvantage of the Respondent.



18. The present revision petition has been argued considerably before various predecessor benches, resulting in prolonging the precious judicial time. In this context, I may refer to the observation of the Hon'ble Supreme Court in the case of *Indian Council for Enviro-Legal Action v. Union of India and Ors.*, (2011) 8 SCC 161, which is as follows:

“191. In consonance with the principles of equity, justice and good conscience Judges should ensure that the legal process is not abused by the litigants in any manner. The Court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorised or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

192. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.”

19. The current revision petition is an abuse of the process of law. This Court finds that the Petitioner has been enjoying the physical, peaceful possession of the tenanted premises since the year 2006, without even paying the admitted rent. In these circumstances, considering that the Petitioner has not made payment of rent since 2006 and the eviction order was passed on 17th April, 2021, this Court holds that the Petitioner is liable



to pay to the Respondent an amount of Rs. 5 lakhs which shall be inclusive of the following

- a) rent which is due, to be payable from the year 2006;
- b) user charges for the premises since 17th April 2021 and
- c) costs of these proceedings, within a period of four weeks from today.

20. Accordingly, the present petition and the pending applications, if any, are dismissed with costs.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 07, 2022

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