



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

Date of decision: 25th MAY, 2022

IN THE MATTER OF:

+ **RC.REV. 99/2018 & CM APPL. 4605/2022**

DEPARTMENT OF POSTS & ORS

..... Petitioners

Through: Ms. Anju Gupta, Mr. Roshan Lal
Goel, Advocates

versus

SURINDER BABU JAIN

..... Respondent

Through: Mr. Ajay Gupta, Ms. Surbhi Gupta,
Mr. Aishwary Jain, Mr. Anant Gupta,
Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. Aggrieved by order dated 23.11.2017 passed by the learned Additional Rent Controller, Tis Hazari Courts in Case No. E-726/2017 rejecting the leave to defend application filed by the Petitioner herein (*hereinafter referred to as 'the Tenant'*) and resultantly allowing the eviction petition filed by the Respondent herein (*hereinafter referred to as 'the Landlord'*). The Tenant has come up to this Court by filing the instant revision petition.

2. Shorn of details, the facts leading to this petition are as under:-

- i. An Eviction Petition, being Eviction Petition No. E-726/2017, was filed by the Landlord for evicting the Tenant from the tenanted premises, being half portion of the First Floor towards the Northern side of the property bearing Municipal No.94,



Dariba Kalan, Delhi-110006 (*hereinafter referred to as the 'premises in question'*). In the said eviction petition, an application for leave to defend was filed by the Tenant.

- ii. The case of the Land-lord is that the he is the owner/landlord of the tenanted premises. It is stated that the 2nd, 3rd and 4th floor portion of the premises is being used by the Landlord for running his hotel under the name 'Hotel Meru'.
- iii. It is stated that the premises in question is required by the daughter-in-law of the Land-lord for doing her business from the premises in question. It is stated that the daughter-in-law of the Land-lord is a fashion designer, who wants to run her own boutique and requires a separate place for tailoring/stitching. It is also stated that she requires a separate area for a changing room and a separate area for the purpose of taking measurements of the clients who are ladies. Apart from this, a separate waiting area and a separate WC facility for the customers is also required.
- iv. It is stated that the property in question is in Chandni Chowk, which is a well known market area and the most ideal for the daughter-in-law of the Land-lord to start her business. It is stated that the landlord does not have any reasonable and suitable accommodation with him for the purposes of starting business for his daughter-in-law, who is dependent on him for the purposes of this accommodation.
- v. It is further stated that the same portion of the premises in question is also required by the landlord for having a reception of his hotel which is being run from the upper floors of the



premises bearing Municipal No.94, Dariba Kalan, Delhi-110006. It is stated that various customers do not come to the hotel because even for going to the reception of the hotel, they have to climb up to the second floor which they find to be difficult. On the said grounds the eviction petition was filed.

- vi. It is stated in the eviction petition that the tenant is the Department of Posts, which is running a Post Office from the premises in question. The tenant filed an application for leave to defend stating that the Dariba Post Office in the premises in question has been functioning since long at the rent of Rs.400/- per month *vis-a-vis* the erstwhile landlord of the premises i.e. Late Gulzari Lal Jain who was accepting the rent till his death in the year 1995. It is stated wife of Late Gulzari Lal Jain i.e. Smt. Indrawati Jain inherited the property and the rent was being paid to her. It is stated that since Smt. Indrawati Jain passed away in the year 2002, the Respondent herein claimed rent of the premises on the basis of a Will and, accordingly, the rent is being paid to the present Land-lord.
- vii. It is stated that the Post Office is serving the masses for a long period of time and the Department of Posts is not in a position to vacate the premises. It is stated by the tenant in his leave to defend application that the landlord is not the actual owner of the premises in question and the Land-lord has not filed any legal ownership documents to prove that he is the actual owner of the property.
- viii. The leave to defend application of the Tenant also states that the premises bearing Municipal No.94, Dariba Kalan, Delhi-



110006 consists of Ground Floor area admeasuring 1161sq. ft., 1st Floor area admeasuring 1324 sq. ft., 2nd Floor area 1324 sq. ft., 3rd Floor 1149 sq. ft., 4th Floor 1149 sq. ft. and there is sufficient accommodation available for the landlord to start the business of running a boutique for his daughter-in-law.

ix. It is further stated that no documents/degree of the daughter-in-law has been produced by the Land-lord to substantiate that she can start a boutique or that she is a fashion designer. It is stated in the application for leave to defend that the Land-lord and other legal heirs are the owners of various properties which have been described in the application for leave to defend as under:-

- 1) H. NO.89 to 95, Dariba Kalan, Chandni Chowk, Delhi-110006.
- 2) 1/6th share in House No.88, Chandni Chowk, Delhi-110006.
- 3) House No. X-2505, Gali No.8, Raghbar Pura No.2, Gandhi Nagar, Delhi.
- 4) 1/5th share in House no. 62, Gali Khazanchi, Dariba Kalan, Chandni Chowk, Delhi.
- 5) 1/6th undivided share in premises No.82G, Kotla Mubarakpur, New Delhi.
- 6) One office, one store, pantry, lavatory-bathroom measuring 700 sq. ft. at 17/90, Phoolwali Road, Baghichi Chetan Das, Red Fort, Delhi-110006 and it is rented out to M/s Indo American at a monthly rental of Rs.5,000/-.
- 7) One kothi measuring 200 sq. yds., situated in front of



Digamer Jain Mandir, Hastinapur, Distt. Meerut (U.P.).

- x. A reply to the leave to defend application has been filed where the Land-lord has denied all the claims made by the Tenant. It is stated that no suitable alternate accommodation is available to the landlord for his daughter-in-law to start her business. Regarding the properties which were mentioned in the application for leave to defend, the Land-lord in his reply stated as under:-

"i. It is specifically denied that Petitioner owns property No.89 to 95, Dariba Kalan, Chandni Chowk, Delhi-6. It is submitted that whatsoever property was received by the petitioner through Will (executed by the predecessor of the petitioner and the copy of the same filed by the respondent along with the leave application), the same has clearly been shown in second para of page no. 4 of the Will annexed by the respondent along with the leave application. It is submitted that only one shop bearing no. 95, Dariba Kalan, Chandni Chowk, Delhi-6 is owned by the petitioner through Will and the same is occupied by tenant Sh. Pramod Shanker as referred to in-Will (executed by the predecessor of the petitioner and the copy of the same filed by the respondent along with the leave application) and the rent receipt to this effect is also enclosed as Annexure-A1. The property no.94, Dariba Kalan, Chandni Chowk, Delhi-6 consists of first, second, third and fourth floor and from second floor onwards the petitioner is running a Hotel. It is submitted that Petitioner has no concern with property) no.89 to 93 in any manner.

ii. It is specifically denied that petitioner owned property. no.88, Dariba Kalan, Chandni Chowk, Delhi-6. It is Court submitted that Petitioner has



no concern with property no.89 to 93 in any manner.

iii. It is specifically denied that petitioner owned property no.X- 2505, Gali no. 8, Raghbarpura no. 2, Gandhi Nagar, Delhi. It is submitted that Petitioner has no concern with the said property in any manner. It is submitted that as per page no. 5 of the Will (executed by the predecessor of the petitioner and the copy of the same filed by the respondent along with the leave application) the said property was bequeathed to Smt. Pushpa and Smt. Rattan.

iv. It is specifically denied that petitioner owned property no.62, Dariba Kalan, Chandni Chowk, Delhi-6. It is submitted that Petitioner has no concern with the said property in any manner. It is submitted that as per page nos.3 and 4 of the Will (executed by the predecessor of the petitioner and the copy of the same filed by the respondent along with the leave application) the said property was bequeathed to Smt.Nirmala, Smt.Bimla and Smt. Sudha. It is submitted that although one small room situated at mezzanine floor has also been bequeathed to the petitioner but the same is of no use in any manner. It is submitted that it has already been held that Mezzanine room is not a room vide judgment Bulaqi Ram Vs. Suraj Bhan 1982 RLR 93.

v. It is submitted that the property mentioned in para under reply was residential property, fully occupied by various tenants and therefore the said property was sold long ago with joint consent of all the owners who are 66 in number and the consideration thereof was divided amongst all the persons concerned in their respective ratio. The copy of the document to this effect is enclosed as Annexure-A2.



vi. It is specifically denied that petitioner owned property no.17/290, Phool Wali Road, Red Fort, Delhi. It is submitted that Petitioner has no concern with the said property in any manner. It is submitted that as per page no.4 of the Will (executed by the predecessor of the petitioner and the copy of the same filed by the respondent along with the leave application) the said property was bequeathed to Smt. Sudha."

3. Heard Ms. Anju Gupta, Learned Counsel appearing for the Petitioner/Tenant, Mr. Ajay Gupta, learned Counsel appearing for the Respondent/Land-lord, and perused the material on record.

4. Chapter III of the Delhi Rent Controller Act, 1958, was introduced by Act 18 of 1976 for providing summary trial for eviction of tenants in certain cases. The dominant object of the amending Act was, therefore, to provide a speedy, expeditious and effective remedy for a class of landlords as provided for under Section 25B(1) of the Act and for avoiding unusual dilatory process provided otherwise by the Rent Act. It was felt that suits for eviction under the Delhi Rent Controller Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. It was noticed that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and if there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief which the Legislature intended to avoid by incorporating the new procedure in Chapter III-A (Refer: Ravi Datt Sharma v. Ratan Lal Bhargava, (1984) 2 SCC 75).



5. It is also well settled that a tenant may take all kinds of pleas in its application for leave to defend but the Rent Controller has to ensure that the purpose of Chapter III of the Rent Control Act is not defeated by granting leave to defend in every frivolous plea raised by the tenant which may result in protracting the case. Where the tenant seeks leave to contest the application for eviction, he must file an affidavit under sub-section (4) of Section 25-B raising his defence and this defence must be clear, specific and positive. Defences of negative character which are intended to put the landlord to proof or are vague, or are raised mala fide only to gain time and protract the proceedings, must not be taken into account by the Rent Controller and such applications must be rejected.

6. Keeping the above principles in mind, the short question which arises for consideration is whether the Tenant has raised such pleas which would entitle the Tenant to grant of leave to defend.

7. In the present case, the Tenant, i.e. Department of Posts, had itself produced the Will under which the Landlord had claimed rent and the Tenant started paying rent to the Landlord. After having started paying rent to the Landlord, it is now not open for the tenant to turn around and challenge the title of the landlord. It is well settled that Section 116 of the Indian Evidence Act as an estoppel on the Tenant to challenge the title of the Landlord during the continuation of the tenancy.

8. It is equally 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 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."

9. 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)

10. The Landlord in his reply to the leave to defend has categorically denied the allegations made by the Tenant and stated that he is in possession of the premises which is sufficient to take care of his needs. The Apex Court in Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, **1999 (6) SCC 222** has observed that the need of the landlord is an outcome of a sincere, honest desire in contradistinction with a mere pretence or pretext to evict the tenant,. The Apex Court further observed that the only way of peeping into the mind of the landlord is if the Judge places himself, in the armchair of the



landlord, and then poses a question to himself given the facts substantiated by the landlord that the need to occupy the premises can be said to be natural, real, sincere and honest. It is also well settled that at the time of filing an eviction petition the Landlord need not have a degree in the trade he/she wants to embark upon.

11. In the present case, the premises in question is situated in the heart of the commercial centre of Delhi i.e. Chandni Chowk. The Land-lord's daughter-in-law wants to start a boutique. It cannot be said that this place, where the Landlord's daughter-in-law wants to start a boutique, is not suitable for starting the business. In the reply, the landlord has provided sufficient material to show that none of the properties as mentioned by the Tenant i.e. Department of Posts are available to the landlord for the purpose of the daughter-in-law to start a boutique. 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 conduct its business or utilise their premises.

12. In view of the above, the judgment of the learned Rent Controller that no triable issues have been raised by the Tenant herein cannot be said to be perverse and the said order passed by the learned Rent Controller, after taking into account the entire gamut of facts available to the learned Rent Controller, suffers from no legal infirmities. In light of the above, the said order does not require any interference.

13. The petition is dismissed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J.

MAY 25, 2022

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