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

+ **RC.REV. 14/2023, CM APPLs. 2674-75/2023**

SARASWATHI KUMAR

..... Petitioner

Through: Mr. Gaurav Kochhar and Mr. Prateek
Mehta, Advocates.

versus

DR. RAKESH KALRA

..... Respondent

Through:

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Date of Decision: 20th, January, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 2675/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, this application stands disposed of.

RC.REV. 14/2023, CM APPLs. 2674/2023

1. The present petition has been filed by the Petitioner, tenant, assailing the order dated 05.11.2022, passed by the Senior Civil Judge acting as the Rent Controller, South East District, Saket Court, Delhi ('Trial Court'), in Eviction No. 25/2018, whereby the Petitioner's application seeking leave to defend has been dismissed and an eviction order has been passed in favour of the Respondent, landlord, with respect to the portion, facing temple, of property No. D-37, B.K. Dutt Colony, Lodhi Colony, New Delhi-110003

(‘tenanted premises’) as delineated in the site plan marked as Annexure P-14 to the revision petition.

2. The eviction petition was filed by the Respondent, under Section 14 (1)(e) of the Delhi Rent Control Act, 1958 (‘DRC Act’), for the *bona fide* need of opening a clinic for his son, who is a MBBS and MD. It was stated that the Respondent, landlord, himself is a practicing doctor in Ayurvedic medicine and that he does not have any alternate suitable accommodation for opening the clinic for his son. It was further stated in the eviction petition that the tenanted premises which comprises of one room along with a *verandah*, is lying locked and unused.

2.1 In the eviction petition, it was stated that the tenanted premises, situated in the residential property bearing no. D-37, B.K. Dutt Colony, Lodhi Colony, New Delhi – 110003 (‘the Property’), was let out for residential purposes by the grandfather of the Respondent i.e., late Sh. Ishwar Dass to the grandfather of the Petitioner herein i.e., late Sh. K.S. Dass.

2.2 The eviction petition was resisted by the Petitioner herein, by seeking a leave to defend on the limited ground that the Respondent herein is neither the owner nor the landlord of the tenanted premises. There was no dispute raised with respect to plea of *bona fide* need or the lack of alternative suitable accommodation.

2.3 The Trial Court in the impugned judgment after perusing the official record maintained by the statutory authorities concluded that the Respondent herein is the grandson of late Sh. Ishwar Dass. It also held that late Sh. Ishwar Dass is the recorded owner of the tenanted premises in the municipal records. The Trial Court held that the tenant does not dispute that his

predecessor was inducted as a tenant in the tenanted premises by late Sh. Ishwar Dass. In view of these findings, the Trial Court held that the tenant is estopped from challenging the title of the Respondent herein as per Section 116 of the Transfer of the Property Act, 1882.

3. Learned counsel for the Petitioner, tenant, states that the Respondent herein is not the grandson of late Shri Ishwar Dass. He states that the Trial Court has wrongly concluded that Respondent's father, Sh. Dhanraj Kalra was the son of late Sh. Ishwar Dass. In this regard, he places reliance on a letter dated 20.03.1964 issued by late Smt. Sarla Devi, wife of late Sh. Ishwar Dass, to the municipal authority, seeking mutation of the tenanted premises in her name. He states that since in the said letter, Smt. Sarla Devi makes no reference to any other legal heir, it gives rise to a presumption that late Sh. Ishwar Dass was issueless.

3.1 He states that the Trial Court erred in placing reliance on the death certificate dated 13.09.1976 for concluding that Sh. Dhanraj Kalra was the son of late Sh. Ishwar Dass. He states that death certificate records the name as 'Ishwar Dass Kalra', however, the erstwhile landlord, late Sh. Ishwar Dass, never used the surname 'Kalra', It was therefore his contention that the Respondent herein is not related to the landlord, late Sh. Ishwar Dass.

3.2 He states that rent was paid to Sh. Ishwar Dass and thereafter, to his wife Smt. Sarla Devi. He states that last payment of rent was made in 1970's. He states that thereafter, no person approached the Petitioner, tenant, herein for the payment of rent.

3.3 He also contended that it is evident from the site plan that half of the ground floor portion of the property is lying closed and unused, which is presumably under the control of the Respondent and therefore, it can be used

by the Respondent for setting up the clinic for his son. He states that the Trial Court failed to consider this fact which shows that the Respondent herein has alternate suitable accommodation in the same property. He fairly admits that no such plea of alternate accommodation was raised in the leave to defend or the rejoinder filed before the Trial Court.

4. This Court has heard the learned counsel for the Petitioner, tenant, and perused the paper book.

5. The Petitioner does not dispute that her predecessor i.e., her father, Sh. K.S. Dass, was inducted as a tenant by late Sh. Ishwar Dass and also the fact that late Sh. Ishwar Dass is the recorded owner of the property. The Petitioner further does not dispute that after the death of late Sh. Ishwar Dass, her predecessor attorned to Smt. Sarla Devi, wife of late Sh. Ishwar Dass.

6. The Respondent has placed on record a survey report of the New Delhi Municipal Council ('NDMC') for the year 1983-84 for the subject property, which duly records the name of the owner of the property as Sh. Ishwar Dass and records the occupation of Sh. K.S. Dass, the predecessor of the Petitioner herein, as a tenant.

7. The Respondent has averred that rent was paid until December 2011 and thereafter, there was default in payment of rent. He has also placed on record a money order for a sum total of Rs. 840/- as remittance of rent for the period January 2008 to December 2008 at Rs. 70/- per month; and similarly, another money order dated 23.01.2012 for a sum total of Rs. 840/- for twelve (12) months ending on December, 2011 at Rs. 70/- per month. The Respondent's averments with respect to the remittance of rent in his reply, at paragraphs 3, 4 and 5, to the application seeking leave to defend

was not rebutted in the rejoinder filed to the aforesaid reply to application seeking leave to defend.

8. In view of the aforesaid facts, this Court is of the opinion that the relationship of landlord–tenant stands proved on record.

9. There is no dispute that late Sh. Ishwar Dass is the recorded owner of the property. The Petitioner has, however, resisted the eviction petition on the plea that the Respondent herein is not the legal heir of late Sh. Ishwar Dass and therefore, not the owner or the landlord of the tenanted premises.

10. In this regard, the Respondent herein has asserted that he is the grandson of late Sh. Ishwar Dass and Smt. Sarla Devi. He has asserted that his father late Sh. Dhanraj Kalra was the son of late Sh. Ishwar Dass and Smt. Sarla Devi. He relied upon the death certificate dated 13.09.1976 of late Sh. Dhanraj Kalra, which duly records his father's name as late Sh. Ishwar Dass Kalra. The Respondent herein has also placed on record his PAN card and college graduation certificate, which records his father's name as Sh. Dhanraj Kalra.

11. The Petitioner, tenant, has not disputed the veracity of either the death certificate or the PAN card, filed by the Respondent. The Petitioner has sought to contend that the death certificate does not establish the Respondent as a legal heir, since the name of the owner of the tenanted premises is 'Sh. Ishwar Dass' in the records of NDMC, whereas the name mentioned in the death certificate is 'Sh. Ishwar Dass Kalra'. The Petitioner seeks to contend that the recorded owner's surname was not 'Kalra'. This Court is unable to appreciate this submission of the Petitioner as it is a common practice amongst individuals to not use the surname. The said argument of the Petitioner is therefore, a desperate plea and does not give rise to any triable

issue, as the Petitioner in her zeal to set up a plea of alternate suitable accommodation admits that the Respondent is in occupation and possession of the other portions of the property at Ground 'S' of the revision petition.

12. In the application seeking leave to defend, a plea of oral gift of the tenanted premises by late Smt. Sarla Devi, in favour of the Petitioner's predecessor late Sh. K.S. Dass was setup. The said defence, set up in the leave to defend, is therefore a rival claim of ownership. The plea of oral gift in respect of an immovable property is *ex-facie* illegal and untenable. It also evidences a dishonest attempt by the Petitioner herein to stake a claim in the tenanted premises

13. Pertinently, the Respondent herein, in the eviction petition has asserted that the tenanted premises are lying locked and unused. There is no denial to the said assertion in the application seeking leave to defend and, in the affidavit, sworn in support of the present revision petition as well, the Petitioner's residential address is at Saraswati Kunj and not the tenanted premises. It is therefore evident that the tenanted premises are lying locked and unused and the present petition has been filed for oblique motives.

14. In the proceedings before the Trial Court, the four daughters of late Sh. K.S. Dass, sought their impleadment as Respondent Nos. 1 to 4. The said four (4) Respondents therein are residing in separate and distinct premises as is evident from their addresses mentioned in the affidavits filed before the Trial Court. Their identification cards placed on record, also do not record the tenanted premises as their residential address. None of the Respondents therein are thus, residing at the tenanted premises. The present petition has been filed by a single Petitioner, tenant, and the other sisters have elected not to impugn the eviction order dated 05.03.2022. It is

therefore, apparent that the present petition is nothing but a flailing attempt by the Petitioner to retain the illegal occupation of tenanted premises.

15. The plea of alternate suitable accommodation with respect to availability of front portion of the property was not raised in the pleadings or in the arguments before the Trial Court and therefore, the Petitioner is precluded from raising the said plea for the first time in the present petition.

16. No dispute has been raised in the pleadings seeking leave to defend or in the arguments before the Trial Court with respect to the *bona fide* need of the tenanted premises by the Respondent for opening a clinic for his son. The pleas raised challenging the said bona fide need in the grounds of the revision petition was not pressed during the arguments and even otherwise not admissible since they were not raised before the Trial Court.

17. In these facts and circumstances, the order of the Trial Court holding that the Petitioner has failed to raise any triable issue is correct in law and does not suffer from any infirmity.

18. Accordingly, the present petition along with pending application is dismissed with cost of Rs. 25,000/- payable to the Delhi High Court Legal Services Committee.

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MANMEET PRITAM SINGH ARORA, J

JANUARY 20, 2023/rhc/aa