



2024:DHC:4795



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

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Judgment reserved on: 27.03.2024

Judgment pronounced on: 28.06.2024

+ CM(M) 36/2021 & CM APPL. 1765/2021- stay
PUSHPA KHANNA & ANR.

..... Petitioners

Through: Mr. Ruchir Ranjan Rai & Mr. Prateek
Kumar, Advs.

versus

SANJAY NARANG & ORS

..... Respondents

Through: Mr. B. S. Dhir & Ms. Shuchi Sood,
Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The issue in dispute in the present petition pertains to dismissal of the appeal filed under Section 38 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "DRC Act").

2. It is the case of the petitioners that they filed an Eviction petition bearing RC ARC 14/2019 under Section 14 (1) (b) & 14 (1) (c) DRC Act seeking eviction of the respondents on the ground of sub-letting and misuse of the premises bearing no. 16 A Sunder Nagar, New Delhi (hereinafter referred to as "subject property"). The petition is contested by the respondents. During the pendency of the petition, petitioner no. 1 died on 29.01.2010 and petitioner no. 2 was substituted as the legal heir of the former on 11.05.2011. Subsequent to framing of issues by the learned Trial Court, the petitioners' evidence commenced.



3. Only one witness i.e. PW-1 was examined on behalf of the petitioners and the said witness was cross examined by the respondents. Vide order dated 03.09.2019, the learned Rent Controller (hereinafter referred to as “RC”) closed the evidence of the petitioners and listed the matter for respondents’ evidence. Subsequently, the petitioners filed an application under Order XVI Rule 1(3) and Order VII Rule 14 (3) read with Section 151 of Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) for reopening of evidence of the petitioners along with the documents evidencing that the respondents had sub-let the subject property and sought permission to examine the additional witnesses. The respondents filed their reply and opposed it. Learned RC dismissed the same vide order dated 15.01.2020.

4. The petitioners being aggrieved by the order of the learned RC, preferred an appeal bearing no. 3/2020 against the said order under Section 38 DRC Act on 07.02.2020 before learned District and Sessions Judge, South District, Saket Courts (hereinafter referred to as “Appellate Court”). After hearing the arguments from both the sides, the learned Appellate Court dismissed the appeal filed by the petitioners vide judgment dated 10.09.2020.

5. The petitioners filed the present petition under Article 227 of the Constitution of India to challenge the judgment dated 10.09.2020.

Submissions by the Petitioners:

6. Mr. Ruchir Ranjan Rai, learned counsel for the petitioners submitted that there is serious infirmity with the orders passed by both the courts as the



courts have erroneously held that the evidence sought to be produced was beyond pleadings in the Eviction Petition. The learned counsel submitted that both the Courts did not acknowledge the fact that the petitioners in their Eviction Petition in paragraphs 18(A)(i), (ii) and (iii) have clearly mentioned name of the respondents i.e. respondent nos. 1(a) and (b) who have sub-let the suit premises to respondent nos. 2, 3 & 4 without the permission of the petitioners and in addition, it has been mentioned that “*any another not known to the Petitioners*” thereby indicating about any other subletting which is not known to the petitioners, whereas both the Courts erred in observing that premises in question has been sublet to JNA law firm is not specifically mentioned in the petition. It is a settled position of law that once the eviction is sought on the ground of sub-letting, the tenant clearly understands that it implies all the instances of sub-letting and the pleadings ought to be construed liberally.

7. Learned counsel for the petitioners submitted that therefore, in such instances, the landlord is not required in law to make the sub-tenant a party. Notably, even the Delhi Rent Control Rules, 1959 under FORM-A under clause 3(b) require the landlord to furnish the name of the tenant and not of the sub-tenant.

8. Mr. Rai further submitted that the learned Appellate Court erred in holding that the petitioners came to know about such occupation of the subject property by JNA law firm way back in 2016, but did not take any further steps. Thus, the additional documents & further examination of witnesses cannot be permitted after a delay of more than three years. The learned counsel submitted that the respondent nos. 1(a) & (b) in the reply dated 25.05.2016 to notice issued by petitioners denied the occupation of



JNA law firm and mentioned that the premises in question was in lawful occupation of Mr. Sanjay Narang and Ms. Rachna Narang only. As such the petitioners came to know about the said evidence only in the year 2019. Despite making best efforts, the petitioners could not collect any evidence from the year 2016 till the year 2019 against JNA law firm, being in occupation of the subject property.

9. Learned counsel further submitted that the petitioners even tried to inspect the premises but were not allowed access to the property by the respondents, so much so that the petitioners had to file a police complaint for manhandling when the petitioner no.1 tried to visit the premises. Moreso, the petitioners searched on evidence against the subletting, nothing was available online anywhere even through the firm's websites or by any other means.

10. Learned counsel for the petitioners submitted that the additional witnesses and the documents, sought to be produced are a very crucial piece of evidence and will decide the real controversy between the parties in the pending eviction petition. On the other hand, no prejudice would be caused to the respondents as they are yet to commence their evidence. By not allowing the application for reopening of evidence, a very crucial piece of evidence is being disallowed. It was also submitted, though the matter was adjourned several times at the stage of recording of petitioners' evidence but that should not be the ground to disallow such an important piece of evidence which is against the course of law.

11. Learned Counsel for the petitioners submitted that there has been violation of principles of natural justice, as no one should be condemned unheard. Without allowing to lead evidence is also against the principles of



natural justice and hence the impugned judgment is liable to be set aside.

12. To support arguments, learned counsel has relied upon the following judgments:

- a) *Importers and Manufacturers Ltd. v. Pheroze Framroze Taraporewala & Ors.* (1952) 2 SCC 728
- b) *Rupchand Gupta v. Raghuvanshi (P) Ltd. & Anr.* AIR 1964 SC 1889
- c) *Balvant N. Vishwamitra & Ors. V. Yadav Sadasgiv Mule (dead) Thr. LRs & Ors* (2004) 8 SCC 706
- d) *Rajbir Kaur v. S. Chokesiri & Co.* (1989) 1 SCC 19

Submissions by the Respondents:

13. Mr. B.S. Dhir, learned counsel for the respondents, on the other hand, supported the judgment passed by the learned Appellate Court and submitted that on the face of it, the present petition is basically mere abuse of process of law and procedure, it has been moved in order to fill the lacunae in the eviction petition filed by the petitioners.

14. Learned counsel submitted that the petitioners have not been diligently pursuing the case and the same can be verified from the order dated 10.09.2020 wherein it has been mentioned that the initial proceedings started in 2004, however, eviction petition was dismissed in default. Thereafter, in 2006 again similar eviction petition was filed which was withdrawn by the petitioners as the statutory notice was not issued. Once again, in 2009 another eviction petition was filed and evidence started in 2011 but the said petition was dismissed for non-prosecution vide order dated 01.09.2015 and was thereafter restored in the year 2016 subject to cost. It was submitted that such a non serious approach of petitioners is



sufficient to indicate that there is no merit in the present eviction petition also.

15. Learned counsel submitted that petitioners' evidence was concluded on 03.09.2019, admittedly before that for after more than 6-7 years, the matter was put up for petitioners' evidence and petitioners took so long to conclude their evidence. Therefore, the matter was listed for defendants' evidence, when the petitioners on 21.11.2019 filed an application under Order XVI Rule 1 (3) and Order VII Rule 14 (3) CPC for reopening of petitioners' evidence and production of additional documents. There is no doable explanation as to why the petitioners could not have obtained the said evidence earlier in time. Therefore, the stand of petitioners that they came to know about the additional evidence after closing of their evidence does not inspire confidence rather it raises suspicion over petitioners' averments. Moreover, merely because petitioners took steps to collect evidence after more than three years cannot be a ground to say that petitioners could not have led the evidence earlier.

16. Learned counsel submitted that the petitioners have not denied the notice dated 12.05.2016 addressed to one Ms. Vandana Sehgal, partner of JNA law firm but still allowed the said firm to unlawfully occupy the suit premises. The petitioners should have been vigilant in taking steps to collect evidence, if they had an apprehension that the said premises was in unlawful occupation by JNA law firm. They cannot escape their liability under law to make averments at an appropriate stage and to collect relevant evidence of fresh subletting rather than merely relying upon the reply dated 25.05.2016.

17. Learned counsel further submitted that the plea raised by the petitioners that JNA law firm is occupying the suit premises as a sub-tenant



is beyond the pleadings of the petition. The petitioners to come out of the said situation are relying upon the general and bald averments made by them in the petition that the premises let out to “*any other person not known to petitioners*” covers all the instances of subsequent subletting.

18. The learned counsel submitted that as per settled proposition of law, the reopening of evidence is a discretionary power which should be used sparingly by the Court and should not be permitted to fill up lacunae in the case of any of the parties which in fact the petitioners have intended to do so. The learned counsel also submitted that the judgments relied upon by the petitioners are not applicable to the facts and circumstances of the present case.

19. Mr. Dhir has relied upon the following judgments so as to support his contentions:

- a) ***K.K. Veluswamy v. N. Palanisamy*** Civil Appeal No. 2795-2796/2011
- b) ***Vaneeta Khanna &Ors. V. Vikram Sehgal*** 2021 SCC OnLine Del 4631

20. To conclude the submissions, Mr. Dhir submitted, the position of law is well-settled that evidence must be confined to the issues framed in the pleadings. The parties must adhere to the pleadings and any evidence beyond the scope of these pleadings is generally inadmissible. It is further crystal clear that evidence which does not pertain to the issue framed upon the pleadings is not relevant and cannot be considered and any attempt to introduce evidence beyond pleadings undermines the judicial process and causes delays and injustice.

21. To strengthen his arguments, learned counsel has placed reliance on the judgment in the case of ***Bachhaj Nahar vs Nilima Mandal & Ors.: AIR***



2009 SC 1103.

Reasoning & Conclusion

22. Apart from hearing detailed submissions addressed on behalf of the parties, the record and impugned orders have been considered.

23. The petitioners have stated that originally Shri Manohar Lal Narang, father of respondent no.1 (a) and 1(b) had taken the premises on rent from the husband of petitioner no.1 and father of petitioner no.2 for residential purposes vide lease deed dated 04.10.1978. After demise of Shri Manohar Lal Narang, respondent nos.1 (a) & 1(b) being the children of late Shri Manohar Lal Narang had come into possession of the premises.

24. It is further the case of the petitioners that respondent nos.1 (a) & 1(b) have sublet assigned and illegally parted with the whole of the premises without the consent in writing of the petitioners in favour of respondent nos.2 to 4, moreover, the respondents have also used the premises for commercial purposes, which is opposed to the covenants of the lease deed prescribing the user of the subject property for residential purpose only. The petitioners have instituted the eviction petition on the ground of subletting under Section 14(1)(b) and for misuse under Section 14(1)(c) of Delhi Rent Control Act.

25. It is also not disputed that in the petition, it is clearly averred that subject property has been sublet to the respondent nos.2 to 4 and Eviction Petition also includes “*any and other not known to the petitioners*”. It is important to note that a decree for possession passed against a tenant in a suit for eviction/ejectment is binding on a person claiming title under or through that tenant and is executable against such person whether or not he was or was not a party to the suit. It is quite clear that law does not require



that sub-tenant needs to be made a party. The decree in such an eviction petition would be binding on the sub-lessee also. At the most, in a suit for possession by a landlord against the tenant, sub tenant is merely proper party and not a necessary party.

26. The record reveals that the eviction petition was filed on 17.10.2015. Subsequent thereto, the notice dated 12.05.2016 was sent to Ms. Vandana Sehgal, partner of JNA law firm seeking disclosure as to how and under what rights the said law firm was occupying the subject property. The said fact about sending notice to JNA law firm is a subsequent event emerging after filing of the eviction petition.

27. Insofar the argument of the respondents that the petitioners did not diligently gather information or collect evidence to prove that JNA law firm was occupying the suit premises as a sub-tenant, the petitioners have clearly averred that they were always under the impression that property is under occupation of the respondents. Though earlier also, the petitioners had some apprehension that the premises in question was being used by JNA law firm but they were not sure. For this, they have relied upon the reply dated 25.05.2016 sent by the respondents to the notice dated 12.05.2016 of the petitioners wherein the respondents had denied such occupation of the premises and had stated that the premises was occupied by Mr. Sanjay Narang and Ms. Rachna Narang only. The petitioners have further averred that they could not collect any evidence in the year 2016 as they were not allowed access to the property for which a police complaint was also lodged. Nothing was available online anywhere even through sub-lettees' website. The search of evidence continued in the year 2017-18 also but no information could be gathered.



28. The petitioners have also averred that it was in the year 2019, when a family friend of the petitioners happened to visit the premises and found out that a law firm by the name of JNA law firm was in possession of the premises and was operating a full-fledged office from the said premises. Thereafter, the petitioners gathered the evidence i.e. the requisite documents such as visiting card of the partner of JNA law firm; print out of websites of JNA law firm showing the address to be of the subject premises. The evidence of the petitioners was closed on 03.09.2019 and the petitioners on 07.09.2019 moved the application to bring on record the documents and the visiting card, printout of website, photographs of demised premises and printout of MTNL directory and to summon Shri Vivek Jain, the friend of petitioners who visited the premises and one Shri Rohan Thawani, partner of JNA law firm.

29. Order XVI Rule 1(3) CPC deals with the summoning and attendance of witnesses. It allows a party to summon witnesses at any time before the date fixed for the hearing, demonstrating good cause.

30. Order VII Rule 14(3) CPC pertains to the production of documents that were not filed with the plaint. It provides that if a document that ought to have been filed along with the plaint is not filed, the party can produce it later only with the leave of the court.

31. It is noteworthy that reopening of evidence is not a matter of right for the parties. It can only be allowed, if it is essential for the just decision of the case. The court must be satisfied that the additional evidence is crucial and was not produced earlier due to reasons beyond the control of the party. The case titled *The K. Velusamy vs. N. Palanisamy* (2) RCR Civil 875 serves as a precedent for courts to follow a balanced approach while dealing with



applications for reopening evidence. It underscores the importance of procedural fairness and the role of the Courts in preventing abuse of process while ensuring that justice is served.

32. It accordingly appears from the record that the petitioners came to know about the relevant evidence only in the year 2019 and thus moved an application for reopening of the petitioners' evidence. The evidence collected by the petitioners in the year 2019 cannot be permitted to be disallowed on the ground that in the year 2016, petitioners had an apprehension that the suit property was occupied by JNA law firm and they did not take any further steps as per law to collect evidence with respect to such occupation of the suit property.

33. Keeping in view of the peculiar circumstances as put forth by the parties and in the interest of justice, petitioners are allowed two opportunities to lead its evidence, subject to cost of Rs. 35,000/- to be paid to the respondent before the learned Trial Court on the next date of hearing.

34. The petitioners are further allowed to place on record the documents i.e. photographs of the demised premises, internet generated printout of website, printout of directory of MTNL and the copy of the visiting card of JNA Law Firm within a week from today. However, the learned RC is expected to expedite the disposal of the eviction petition being an old case.

35. Consequently, the orders dated 15.01.2020 of learned RC and 10.09.2020 of learned Appellate Court are set aside. The petition along with pending application is allowed.

SHALINDER KAUR, J.

JUNE 28, 2024

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