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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment reserved on: 22.05.2024**Judgment pronounced on: 29.05.2024*

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RC.REV. 99/2023, CM APPL.17519/2023 & 17518/2023**MADHULIKA GUPTA**

..... Petitioner

Through: Mr Amol Chitale, Mr Anand
Srivastava, Mr Aashish Srivastava
and Mr Ajay Chawla, Advs.

versus

M/S SAFEWAY ENTERPRISES PRIVATE LIMITED

..... Respondent

Through: Mr. Sanjeev Sindhvani, Sr.
Advocate with Mr. Jai Sahai Endlaw
and Ms. Sambhavi Kala, Advocates

CORAM: JUSTICE GIRISH KATHPALIA**J U D G M E N T**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, 1958, the petitioner/tenant has assailed the order passed by the learned Additional Rent Controller, South-East District, Delhi whereby her application for leave to contest the proceedings under Section 14(1)(e) of the Act was dismissed. On notice of these proceedings, the respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for present purposes are as follows.

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2.1 The present respondent, a private limited company, claiming itself to be owner of the larger premises bearing No. 26, Jor Bagh, New Delhi filed eviction petition under Section 14(1)(e) of the Act against the petitioner/tenant, pleading that during his lifetime Shri Bhim Sen Gupta, the now deceased husband of the petitioner/tenant was inducted as a tenant in the front portion of ground floor consisting of three bedrooms with two baths, kitchen, verandah and user of common living and dining area and garage (*hereinafter referred to as "the subject premises"*) depicted with red colour in the site plan of the said larger premises no. 26, Jor Bagh, New Delhi by way of agreement dated 22.04.1988 for a period upto 31.03.1992 at a monthly rent of Rs.1,000/-; that during the lifetime of Shri Bhim Sen Gupta, the tenancy was terminated, so in terms with Section 2(l) of the Act, his wife, the present petitioner inherited the tenancy rights only for limited period of one year as she was not financially dependent on her husband at the time of his death and their children were residing abroad; that the ground floor portion behind the subject premises is in possession of another tenant Smt Shashi Gupta while first floor front portion of the said larger premises is in possession of Shri Ashwani Gupta (*Director of the respondent company*) and his family and the portion behind the same on first floor is in joint possession of Smt Swaran Prabha, mother of Shri Ashwani Gupta and Shri Arvind Gupta as well as Shri Arvind Gupta and his family; that the subject premises are now *bona fide* required by Shri Arvind Gupta, who with his wife and grown up daughter is residing with his mother in the rear portion on the first floor; that Smt Swaran Prabha



being a senior citizen is facing difficulty in climbing stairs; that Shri Arvind Gupta, his wife and one daughter are residing with his mother Smt Swaran Prabha in three rooms in the rear portion of the first floor, out of which one bedroom with attached bathroom is occupied by Smt Swaran Prabha and one bedroom with attached bathroom is occupied by daughter of Shri Arvind Gupta while the third room constructed above the garage on the ground floor and otherwise meant to be servant room is occupied by Shri Arvind Gupta and his wife, who are constrained to share their kitchen, drawing room and dining room with the family of Shri Ashwani Gupta; that there is no study room, *puja* room and guest room available for Shri Arvind Gupta; and that the respondent/landlord company has no reasonably suitable alternate accommodation available for residence of its Director Shri Arvind Gupta.

2.2 On service of summons in the prescribed format, the petitioner/tenant filed an application seeking leave to contest the eviction proceedings before the learned Additional Rent Controller, in which she pleaded that the said larger premises bearing No. 26, Jor Bagh, New Delhi were purchased by her husband jointly with his three brothers for their residential purposes and accordingly, all four brothers with their families moved in the said larger premises in the year 1986; that her husband had paid a sum of Rs.3,00,000/- out of total consideration of Rs.9,00,000/- for purchase of said larger premises, therefore, she is a co-owner of the same; that a larger share in the respondent company is held by another company



M/s Aryan Brothers, in which her husband was a Director but his name was deleted from board of the respondent company because he used to frequently travel to the US; that her husband was compelled to sign the lease agreement pertaining to the subject premises; that Shri Arvind Gupta has sufficient accommodation on the first floor of the said larger premises, besides which he owns various properties in Delhi and the same can be used by him to reside.

2.3 The respondent/landlord filed a detailed reply, denying the contents of the application for leave to contest and reaffirmed the petition contents. The petitioner/tenant filed a rejoinder with certain documents, reiterating her pleadings of the leave to contest application.

2.4 Against the above rival pleadings, the learned Additional Rent Controller heard both sides and passed the impugned order, thereby dismissing the application of the petitioner/tenant for leave to contest the proceedings. In the impugned order, the learned Additional Rent Controller took a note that the petitioner/tenant had categorically admitted ownership of the respondent company over the subject premises and the rent agreement executed between her husband and the respondent company as well as the rent receipts pertaining to the subject premises. In view of these admissions, coupled with failure of the petitioner/tenant to submit any reliable material *qua* the alleged family ownership of the subject premises, the learned Additional Rent Controller rejected the assertions of the



petitioner/tenant that there was a family settlement to use the said larger premises as a joint family house. As regards claim of the petitioner/tenant that her husband had contributed Rs.3,00,000/- towards purchase of the said larger premises, the learned Additional Rent Controller referred to the documents of the respondent/landlord to the effect that the said amount was a loan advanced by husband of the petitioner/tenant to the respondent company and not towards contribution to sale consideration. On the issue of *bona fide* requirement, the learned Additional Rent Controller, taking note of number of rooms available in the said larger premises in comparison with families of both Directors of the respondent company found the requirement projected by the respondent company as *bona fide*. As regards availability of alternate accommodation, the learned Additional Rent Controller held that out of the properties allegedly owned by Shri Arvind Gupta, only one property, which is situated in Shanti Niketan was admitted on behalf of the respondent/landlord but as regards the remaining properties, no material was produced by the petitioner/tenant despite denial on the part of the respondent company; the learned Additional Rent Controller also opined that even the Shanti Niketan property is owned not by the respondent company but by its Director, while what is required is that the said property should have been owned by the respondent company and even otherwise, one of the Directors of the respondent company cannot be expected to stay alone in Shanti Niketan away from his mother and brother. Therefore, according to the learned Additional Rent Controller, there was no triable issue in this case.



2.5 Hence, the present petition.

3. During arguments, learned counsel for petitioner/tenant took me through the above record and contended that the impugned order is not sustainable in the eyes of law on mainly four grounds. Firstly, it was contended that in view of specific wordings of the provision under Section 14(1)(e) of the Act, where the landlord is a company and the requirement of the tenanted premises projected is for its Director, the eviction petition must necessarily bear pleadings that not only the landlord company, but its concerned Director also does not have any reasonably suitable alternate accommodation, but in the present case there are no pleadings to the effect that Shri Arvind Gupta does not have available any reasonably suitable alternate accommodation, so the eviction petition was liable to be rejected outright. Secondly, it was argued that the documents filed by the petitioner/tenant along with her rejoinder show multiple properties owned by Shri Arvind Gupta and in view of the basic pleadings in application for leave to contest, those documents can be looked into by the Court. Thirdly, it was argued that since Shri Arvind Gupta admittedly owns property in Shanti Niketan, he can reside there instead of seeking eviction of petitioner/tenant from the subject premises. Fourthly, it was argued that since the landlord in this case is a company, this Court ought to wait for the decision of the Division Bench of this Court, seized with the Reference in the case of *K.S. Bhandari vs International Security Printers Pvt. Ltd.*, 2017 SCC OnLine Del 12520.



4. On the other hand, learned counsel for respondent/landlord supported the impugned order and contended that the present petition is completely devoid of merits. Learned senior counsel for respondent/landlord argued with the help of judicial precedents that merely on account of lack of an averment in the pleadings, the plaint/petition cannot be thrown out, as it would be a hyper-technical approach; besides, even the petitioner/tenant had not pleaded at any stage that for want of specific pleadings *qua* accommodation available with Shri Arvind Gupta, the eviction petition was liable to be dismissed outright. As regards the admissibility of documents filed with the rejoinder by the petitioner/tenant, the learned senior counsel for respondent/landlord contended that since the respondent/landlord did not have any occasion to explain or challenge those documents, the same cannot be looked into. Pertaining to the Shanti Niketan property, learned senior counsel for respondent/landlord argued that Shri Arvind Gupta cannot be compelled to stay apart from his mother and brother. Regarding the argument *qua* waiting for the decision in ***K.S. Bhandari*** (supra), learned senior counsel for respondent/landlord argued with the help of judicial precedents that this Court is not bound to wait.

5. At this stage, borrowing from various previous judgments authored by me, it would be apposite to briefly traverse through the legal position culled out of various judicial pronouncements, which should be guiding



light for this court while exercising jurisdiction under proviso to Section 25B(8) of the Act.

5.1 By way of an amendment in the year 1976, Chapter IIIA was inserted into the Delhi Rent Control Act with retrospective effect from 01.12.1975 in order to stipulate summary trials pertaining to the eviction claims largely dealing with the situations where the landlord was in *bona fide* need of the tenanted accommodation. One such situation was already on the statute book in the form of Section 14(1)(e) of the Act and one more such situation was added by amendment of the year 1976 in the form of Section 14A. Subsequently, the amendment in the year 1988 added more such situations in the form of Section 14B to Section 14D of the Act. The broad scheme of Chapter IIIA precludes a tenant from contesting the eviction proceedings of those specific situations as a matter of right, unless the tenant obtains leave to contest from the Controller; and if the leave is declined, an order of eviction would necessarily follow. The whole idea is that a landlord who *bona fide* requires the tenanted premises should not suffer for long, awaiting eviction, though at the same time, the tenant also must not be subjected to eviction like any other civil consequence without being afforded an effective opportunity to defend himself in such civil proceedings. The court has to cautiously and judiciously strike a fine balance between the right of the landlord to eviction through summary proceedings and right of the tenant to continue tenancy.



5.2 Notably, the provision under sub-section (8) of Section 25B of the Act places complete embargo on any appellate scrutiny of an order for recovery of possession of the tenanted premises passed by the Rent Controller in accordance with the summary procedure laid down under Section 25B. The underlying principle was to ensure expeditious remedy to the landlord who is in *bona fide* need of the tenanted premises. It is also significant to note that the proviso, enacted in Section 25B(8) of the Act to lift the blanket of scrutiny in a limited manner has to be understood and used in such a manner that it does not negate the legislative intendment of expeditious remedy in certain specific kind of cases.

5.3 A careful examination of the proviso to Section 25B(8) of the Act would show that it does not specifically use the term “revision”. But the provision read in its entirety shows that the power conferred under the said proviso is a revisional power, completely distinct from appellate power in the sense that the appellate power is wide enough to afford the appellate court to scrutinize the entire case and arrive at fresh conclusion whereas the revisional power is quite restricted to superintendence and supervision aimed at ensuring that the subordinate courts and tribunals operate within the bounds of law. The proviso to Section 25B(8) of the Act confines the satisfaction of the High Court to the extent that the order impugned before it was passed by the Controller under Section 25B “in accordance to law”.



5.4 It is trite that the power of revision conferred upon the High Court by the proviso to Section 25B(8) of the Act being in the nature of superintendence over the court of first adjudication on the decision making process, including compliance with the procedure laid down by law, the High Court cannot substitute and supplant its view over that of the court of the first adjudication by exercising parameters of appellate scrutiny. The High Court has a superintendence role only to the extent of satisfying itself on the process adopted. It is not permissible for the High Court in such proceedings to arrive at a finding of fact different from the one recorded by the Rent Controller, unless the findings of fact recorded by the Rent Controller were so unreasonable that no Rent Controller would have recorded the same on the material available.

5.5 In the case of *Shiv Sarup Gupta vs Mahesh Chand Gupta*, (1999), 3SCR 1260, the Supreme Court held that the High Court in such proceedings is obliged to test the order of the Rent Controller on the touchstone of whether it is according to law and it is for the limited purpose of ascertaining whether the conclusion arrived at by the Rent Controller is only unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available that the High Court can examine the matter.

6. Falling back to the present case, as mentioned above, in view of unambiguous admissions of the petitioner/tenant, there remains no dispute



that the respondent company is the owner of the larger premises bearing No. 26, Jor Bagh, New Delhi, of which the subject premises are a part on its ground floor and that there existed a *jural* relationship of landlord and tenant between the respondent company and the now deceased husband of the petitioner/tenant. The present dispute revolves around four issues mentioned above and the same are dealt with as under.

7. Dealing with the last contention of the learned counsel for petitioner/tenant first, it is contended on behalf of petitioner/tenant that since the landlord in the present case is a corporate entity, maintainability of the eviction petition under Section 14(1)(e) of the Act in preference to Section 22 of the Act remains under cloud and for that purpose, in view of differing opinions of different Benches, the issue is pending before the Reference Court in bunch of cases, ***K.S. Bhandari*** (supra) being the lead case, therefore, this Court must adjourn this matter, awaiting the decision of ***K.S. Bhandari*** (supra).

7.1 To begin with, admittedly, no order has been placed before this court to show that the Division Bench dealing with the said bunch of cases has directed that all cases dealing with the argument of interplay between the said two provisions are to be stayed, awaiting the order of the Reference Court. In the case of ***Ashok Sadarangani & Anr vs Union of India***, (2012) 11 SCC 321, the Hon'ble Supreme Court held thus:

“29. As was indicated in ***Harbhajan Singh*** case [*Harbhajan Singh vs State of Punjab* (2010) 1 SCC (Cri) 1135], the pendency



*of a Reference to a Larger Bench does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the Reference. The Reference made in **Gian Singh** case [Gian Singh vs State of Punjab (2010) 15 SCC 118], therefore, need not detain us. Till such time as the decision cited at the Bar are not modified or altered in any way, they continue to hold the field”.*

7.2 Recently, in the case of **Union Territory of Ladakh & Ors vs Jammu & Kashmir National Conference & Anr**, 2023 SCC OnLine SC 1140, the Supreme Court held thus:

*“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this court on this subject is either referred to a larger bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this court on the score that a later co-ordinate bench has doubted its correctness. In this regard, we lay down the position in law. **We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this court, to await an outcome of a Reference or a Review Petition, as the case may be”.***

(emphasis supplied)

7.3 Further, while dealing with the Reference in question, this court after detailed discussion in the cases of **M/s Suvyns Developers Pvt. Ltd. vs M/s Verma Beauty Parlor & Hair Dressers**, RC Rev 545/2019 decided on 06.11.2020; and **Om Prakash vs Delhi Pinjrapole Society (Regd)**, CM(M) 864/2022 decided on 26.08.2022, held that merely because the Reference is pending, it does not mean that the proceedings in all other cases have to be stayed.



7.4 Further, the objection to the effect that the eviction petition ought to have been filed only under Section 22 of the Act and not under Section 14(1)(e) of the Act was never even whispered before the learned Additional Rent Controller.

7.5 Therefore, I find no substance in the submission of learned counsel for petitioner/tenant that the proceedings in the present case ought to be stayed till decision of the Reference Court.

8. As regards the availability of alternate accommodation with Shri Arvind Gupta, the petitioner/tenant seeks to place reliance on documents filed with the rejoinder in the application for leave to contest and that reliance is resisted by the respondent/landlord on the ground that there being no scope of further pleadings after rejoinder, it had no opportunity to challenge and/or explain those documents. In response, the petitioner/tenant claims that since those documents only elucidate the already existing pleadings in the application for leave to contest, those documents can certainly be looked into.

8.1 I am of the considered view that the documents filed with the rejoinder can be taken to be merely elucidation of the original pleadings, provided the original pleadings give specific particulars. Where the original pleadings in the application for leave to contest make only a bald averment that the landlord owns a number of properties or even that the landlord



owns properties in a particular area, and the landlord in reply denies those pleadings, the documents filed at a subsequent stage with rejoinder cannot be treated as merely elucidation of the original pleadings. It is only when the tenant pleads a specific address of the property available with the landlord, which pleading is denied in the reply that the tenant can file documents related to that specific property and those documents would be acceptable as elucidation of the original pleadings. Otherwise, the landlord would get no opportunity to explain the properties reflected from documents filed with the rejoinder; the landlord would be deprived of claiming and establishing that those documents are not genuine or not valid or the property concerned already stood liquidated.

8.2 Further, in the present case, the documents filed by the petitioner/tenant for the first time with the rejoinder were printout of some electronic record, so the decision of the learned Additional Rent Controller not to place reliance on the same for want of certification under Section 65B of the Evidence Act was perfectly justified. Not only this, those documents having been filed beyond the statutory period available for filing an application for leave to contest were rightly rejected.

9. Then comes the contention of the petitioner/tenant that Shri Arvind Gupta owns a property in Shanti Niketan, which being a reasonably suitable alternate accommodation, Shri Arvind Gupta must shift there instead of seeking eviction of the petitioner from the subject premises.



9.1 As described above, two of the Directors of the respondent company, namely Shri Ashwani Gupta and Shri Arvind Gupta are real brothers, residing along with their respective families with their mother in the same house. In my considered view, in order to ensure continuation of tenancy, the joint family of the landlord cannot be expected to split itself into two houses distant from each other. In old age, it is extremely atrocious to make any parent living in joint family, live with either of the child and leave the other or to keep shuttling between her two children living in two different houses. Of course, in a case where children are already living in different houses, the parents have to accept the arrangement under which they would keep shuttling between the children. But where children are already living in same house, the emotional support and strength of the old parent cannot be sacrificed at the altar of tenancy of a third person by expecting one of the children to shift to a distant house.

9.2 This view of mine stands fortified by the decision of the Hon'ble Supreme Court in the case of *M.L. Prabhakar vs Rajiv Singal*, AIR 2001 SC 522, holding that the suitability has to be seen from convenience of the landlord and his family members on the basis of totality of circumstances including their profession, style of living, habits and background, so even if the alternate accommodation is available, it could hardly be suggested that some of the members of the family of landlord would stay at one premises and the others at the alternate premises, only to ensure convenience of the tenant.



10. Lastly, the argument of learned counsel for petitioner/tenant that on account of absence of specific pleadings in the eviction petition that Shri Arvind Gupta does not own any other reasonable suitable accommodation, the eviction petition is liable to be outright rejected sounds hyper-technical. The role of a Court is to adjudicate the dispute and render justice in accordance with law. Rejection of an eviction petition simply on the grounds of drafting infirmity is a kind of docket exclusion, which militates against all norms of justice and is thereby extremely counter-productive for society. Merely because the counsel who drafted the eviction petition did not specifically plead a sentence in the eviction petition that Shri Arvind Gupta does not own any reasonably suitable accommodation, it cannot be fatal to the petition, irrespective of the question as to whether that failure in drafting was advertent or inadvertent.

10.1 There is another aspect. The plea that for want of a pleading to the effect that Shri Arvind Gupta does not own reasonably suitable alternate accommodation should entail outright rejection of the eviction petition is not in the nature of setting up a triable issue. It is in the nature of challenge similar to the one under Order VII Rule 11 CPC. That is not the scope of an application seeking leave to contest.

10.2 Further, as mentioned above, the petitioner/tenant never even whispered in her pleadings that for want of averment that Shri Arvind



Gupta does not own any alternate property, the eviction petition was liable to be rejected. Had the petitioner/tenant specifically pleaded this objection, the respondent/landlord could have availed remedial action. Therefore, now the petitioner/tenant cannot be allowed to raise such issue.

10.3 It would also be significant to keep in mind that the matter was extensively argued before the learned Additional Rent Controller and even thereafter till this stage, but there never was any confusion in the mind of either side or any Court on account of there being no specific pleading that Shri Arvind Gupta does not own any alternate accommodation. Both sides as well as the learned Additional Rent Controller and this Court have been absolutely conscious about existence of Shanti Niketan property of Shri Arvind Gupta and the consequence thereof. Now, at this stage, rejecting the eviction petition for want of the said pleading would be completely unsustainable. Same was the view of a co-ordinate bench of this court in the case of *Gurdial Nagdev vs Smt Debi Bai*, 1979(1) RCR 119.

10.4 In the case of *Ram Gopal vs Washeshwar Nath*, 1979 SCC OnLine Del 126, a co-ordinate bench of this court, after crystallizing the question as to whether the eviction petition under Section 14(1)(e) of the Act was not maintainable because the eviction petitioner had failed to allege and prove that he had no other reasonably suitable alternate accommodation, held thus:

“2. He has no doubt omitted to say that he had no other reasonably suitable accommodation, but that is implied under



*clause (e) aforesaid, under which the petition has been made. This objection was not raised before the Additional Rent Controller or the Tribunal. Otherwise, the petitioner would have amended his petition and rectified the defect.In **Rattan Lal vs Vardesh Chander**, 1976 RCR 355, the Supreme Court observed that **the Act contemplates no elaborate pleadings but filling out of particulars in a proforma which takes the place of a plaint. No specific averment of forfeiture and consequent determination of the lease was made in that petition. The Supreme Court held that having regard to the comparative informality of these proceedings and the quasi judicial nature of the whole process, such an omission cannot be exaggerated into a lethal infirmity**".*

(emphasis supplied)

11. In view of the aforesaid discussion, I am unable to find any infirmity, much less any perversity in the impugned order, which would warrant intervention of this court. Therefore, the impugned order is upheld and the petition as well as pending applications are dismissed.

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**GIRISH KATHPALIA
(JUDGE)**

MAY 29, 2024/as