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

+ **RC.REV. 227/2019**

POORVI R BOLE & ANR

..... Petitioners

Through: Mr. Sushil Kumar Pandey, Advocate

versus

BANSARSI DAS CHANDIWALA & ORS

..... Respondents

Through: Mr. Anuj Malhotra, Advocate for R-1
and R-2

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

29.05.2024

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[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 17258/2019 (interim relief)

1. Adjournment requested by learned counsel for petitioners on the ground that due to fire at his residence, his spectacles got damaged. Adjournment request is strongly opposed by learned counsel for respondents taking me through last order. It appears that despite extension of time granted by the Supreme Court to deposit keys of the subject premises till 21.12.2013 the predecessor bench vide order dated 31.01.2020 stayed the execution proceedings till next date. And that stay continued on date to date basis till the matter came to be listed before me on last date. On last date also, adjournment was requested by learned counsel for petitioners on the ground of some personal difficulty at home.



2. At this stage, learned counsel for petitioners submits that he had read the brief yesterday and is ready to address arguments in case this court is not inclined to extend the stay order. I have specifically asked learned counsel for petitioners whether he wants adjournment, to which I am not averse because of the circumstances submitted by him and I would like to trust him. But learned counsel for petitioners submits that arguments on stay application be heard.

3. As such, I have heard learned counsel for petitioners. It is contended by learned counsel that the eviction petitioner being not a juristic person, provision under Section 14(1)(e) of the Act cannot be invoked; that the respondent trust does not have authority to run a clinic; that the present petitioners had paid *pugri* to officials of the respondent trust, so they have become owner; and that the learned trial court could not expect the petitioners to file documents in support of their averments in the application for leave to contest since the law requires only an affidavit to be filed by the tenant as per Section 25B(4) &(5) of the Act.

4. Learned counsel for petitioners requests for a pass over to further look into some judicial precedents in support of his arguments.

5. Recall after lunch.

GIRISH KATHPALIA, J

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6. In this call after lunch, further arguments have been advanced. Learned counsel for petitioners has placed reliance on the judgment of the



Hon'ble Supreme Court in the case of ***Charan Dass Duggal vs Brahma Nand***, (1983) 1 SCC 301 in support of his argument that for leave to contest the proceedings under Section 14(1)(e) of the Delhi Rent Control Act, the tenant need not make out such a strong case as would non-suit the landlord. Learned counsel for petitioners has further referred to the judgment of Hon'ble Supreme Court in the case of ***Shanti Devi vs Rajesh Kumar Jain***, (2015) 2 SCC 158 in support of his argument that since the petitioners contended in the application for leave to contest about the alternate accommodations, it was a case fit for grant of leave to contest.

7. On the other hand, learned counsel for respondent submitted that the present revision petition was filed by only two of the tenants, arrayed in the eviction petition as respondent no. 1 and 2 while the remaining two tenants, arrayed in the eviction petition as respondent no. 3 and 4 had jointly filed a separate revision petition. The revision petition filed by the respondents no. 3 and 4 of the eviction petition, challenging the same order, which has been challenged in the present proceedings was dismissed by a co-ordinate bench of this court in RC Rev 386/2016 decided on 29.01.2018. Thereafter, respondents no. 3 and 4 of the eviction petition vacated the premises but the present petitioners (*respondents no. 1 and 2 of the eviction petition*) filed the present petition, in which the predecessor bench did not feel inclined to stay operation of the impugned eviction order. In the meanwhile, warrants of possession were issued by the Execution Court, which were challenged by the present petitioners through CM(M) 1193/2018. The learned Single Judge of this court dismissed the said petition, directing the present petitioners to deposit the keys of the subject premises in court on or before 30.11.2019. That order was challenged by the present petitioners before the



Hon'ble Supreme Court in which the Supreme Court did not find it a fit case to intervene, though extended the time to deposit the keys in court, while further observing that this court could hear and pass an order on stay application. It is thereafter that the learned predecessor bench stayed the operation of the impugned eviction order till next date and that order continued till last date. According to learned counsel for respondent, all the arguments raised today have already been dealt with and rejected by the co-ordinate bench of this court in RC Rev 386/2016.

8. So far as the legal position that at the stage of leave to contest, the tenant does not have to make out such a strong case as would non-suit the landlord, there is no dispute. The judgment in the case of *Shanti Devi* (supra) relied upon by learned counsel for petitioners was clearly a fact based order as would be reflected from paragraphs 3 and 4 of the said judgment.

9. I am unable to accept the contention of learned counsel for petitioners that for obtaining leave to contest, the tenant has only to file an affidavit setting up triable issues. In this regard, the legal position was recapitulated by the Hon'ble Supreme Court in the case of *Gopi @ Goverdhannath vs Ballabh Vayas*, 2022 SCC OnLine SC 1279, holding that mere assertions in the affidavit without supporting material are not enough to grant leave to contest. The reason is that if mere assertions in the affidavit are allowed to be accepted without any supporting material, leave to contest would have to be granted in every case, thereby completely negating the sacrosanct principles on the basis whereof Chapter IIIA was inserted in the Delhi Rent Control Act in the year 1976.



10. I am also unable to accept the contention of the learned counsel for petitioners as regards payment of *pugri*. Such a payment is prohibited by law and in any case, mere payment of *pugri* cannot convey ownership over the subject premises. However, learned counsel for respondent strongly denies payment of any *pugri*, though the other side submits that there is no such denial in the pleadings.

11. The subject premises are a flat situated in Chawri Bazar and the requirement setup by the present respondent trust is the expansion of charitable medical facilities being already run by the respondent trust in the larger premises, of which subject premises are a part.

12. In view of above circumstances, coupled with the dismissal of RC Rev 386/2016, arising out of same order which has been impugned in the present case, I find no reason to extend the interim protection being granted to the petitioners on date to date basis.

13. The stay application is accordingly dismissed.

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14. At this stage, learned counsel for petitioners on instructions of his clients present in the court room requests that petitioners may be permitted to withdraw this petition and be granted six months to vacate. Learned counsel for respondent is not averse to the request.

15. Accordingly, as requested by learned counsel for petitioners on instructions of his client, the petition is dismissed as withdrawn with the direction that execution of the impugned eviction order shall not be carried out till 30.11.2024 provided petitioners continue to pay the use and occupation charges as already fixed. It is made clear that in case the petitioners do not vacate the subject premises on or before 30.11.2024 or



they commit default in payment of use and occupation charges, the respondent shall be at liberty to seek execution of the impugned eviction order in accordance with law. Pending application stands disposed of.

GIRISH KATHPALIA, J

MAY 29, 2024/as

[Click here to check corrigendum, if any](#)