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

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Judgment reserved on: 05.01.2024
Judgment pronounced on: 18.01.2024

+ **RC.REV. 223/2023, CM APPL. 51003/2023 & 40894/2023****KHADI GRAMODYOG BHAWAN**

..... Petitioner

Through: Mr Rajesh Yadav, Sr. Advocate with
Mr Satyapal Singh, Advocate

versus

SATVINDER KAUR AND ANR

..... Respondents

Through: Mr Vikas Manchanda, Mr Ashish
Kumar, Mr Siddharth Arora, Mr
Gaurav Kumar and Mr Pranjali
Tandon, Advs.

CORAM:**HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****GIRISH KATHPALIA, J.:**

1. The petitioner has assailed order dated 11.04.2023, passed by the learned Additional Rent Controller, Patiala House Courts, New Delhi in RC/ARC No. 34/2021, whereby application of the petitioner/tenant seeking leave to contest the eviction under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") was dismissed and consequently, eviction order in favour of the present respondents/landlords, was passed in respect of a portion admeasuring 300 sq. yards comprising of 04 rooms, 02 bathrooms, 01 kitchen, 01 garage and



open space of the premises situated at 1/124, Janpath Lane, New Delhi-110001 (hereinafter referred to as “the subject premises”) as depicted in the site plan. On notice, the respondents/landlords entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, the factual matrix set up by the petitioner/tenant is as follows.

2.1 In the year 1952, late Shri Pratap Singh, predecessor of the present respondents, inducted the petitioner (a government organization) as tenant in the subject premises. Shri Pratap Singh passed away on 15.04.1966 and the present respondents are his legal representatives.

2.2 In the year 2006, Smt. Sushil Kaur, the now deceased wife of late Shri Mohinder Singh (one of three sons of Shri Pratap Singh) filed an eviction petition under Section 14(1)(e) of the Act against the present petitioner, claiming herself to be the owner and landlady of the subject premises. The said eviction petition was dismissed for non-prosecution vide order dated 11.03.2008. Thereafter, on 07.09.2008, Shri Kamaljeet Singh, son of late Shri Mohinder Singh and late Smt. Sushil Kaur wrote a letter to the petitioner informing about death of Smt. Sushil Kaur and requesting for issuance of rent cheque in the joint names of himself, Shri Gurpreet Singh and Shri Jasjit Singh as the legal representatives of late Smt. Sushil Kaur and late Shri Mohinder Singh. On 18.03.2010, the present petitioner paid rent for the period from October 2008 to February 2010 by way of cheque in the sum of Rs.4,468.50 in the names of the said three persons. On



26.09.2012, the said three legal representatives of late Shri Mohinder Singh and late Smt. Sushil Kaur issued a legal notice to the present petitioner, calling upon it to handover vacant possession of the subject premises, to which the petitioner filed a reply dated 31.10.2012.

2.3 Thereafter on 02.04.2021, the present respondents Smt. Satvinder Kaur and Smt. Gurjeet Chopra issued a legal notice to the present petitioner demanding arrears of rent of Rs.42,300/- alongwith property tax and electricity/water charges as well as the enhanced monthly rent. The petitioner sent a reply dated 13.04.2021 to the said legal notice. On 02.12.2021, the present respondents filed eviction petition under Section 14(1)(e) of the Act in which, by way of the impugned order, application of the petitioner for leave to contest was rejected and the impugned eviction order was passed.

2.4 According to the petitioner/tenant, after death of Shri Pratap Singh, there was a partition among his legal representatives, including the present respondents, whereby the subject premises fell to the share of Smt. Sushil Kaur, so there is no relationship of landlord and tenant between the present respondents and the petitioner. Therefore, leave to contest was wrongly denied to the petitioner.

2.5 During these proceedings, the petitioner also filed an application (CM No. 51003/2023) seeking permission to place on record additional documents/evidence in support of its case, pleading that while preparing the tabular chart, the petitioner found letter dated 15.05.2003 written to it by the



respondents/LRs of late Shri Pratap Singh, according to which the larger property was partitioned amongst the LRs of late Shri Pratap Singh and the subject premises fell in the share of late Smt. Sushil Kaur so the rent ought to be paid to her; that the said letter dated 15.05.2003 was purportedly signed by late Smt. Sushil Kaur, late Shri Surinder Pal Singh (now deceased husband of respondent no.1) and Smt. Gurjeet Chopra, the present respondent no. 2; that after receiving the said letter, the petitioner started paying rent to late Smt. Sushil Kaur.

3. On the other hand, the factual matrix set up on behalf of the present respondents/landlords is as follows.

3.1 The present respondents, namely Smt. Satvinder Kaur and Smt. Gurjeet Chopra, besides others are co-owners of the entire undivided property bearing no. 1/124, Janpath Lane, New Delhi, being legal representatives of the erstwhile owner late Shri Pratap Singh by virtue of registered Conveyance Deed dated 13.02.2015.

3.2 The petitioner was inducted as a tenant in the year 1952 at a monthly rent of Rs.248.25 for the purposes of running a guest house in the subject premises and presently for past about 20 years the subject premises are in dilapidated condition and not being used.

3.3 The respondents and their family members comprise of 15 persons, who are occupying only 5 bedrooms, 1 store room, 2 drawing rooms, 1 kitchen and 2 bathrooms with no available alternative accommodation. The



present respondent no. 1 is aged 75 years and her family comprising of 10 members are occupying only 2 rooms, 1 kitchen, 1 dining and 1 bathroom. The respondent no.1 and her family are in bonafide requirement of at least 9 bedrooms, 5 bathrooms, 2 drawing rooms, 1 puja room and 1 store room. The present respondent no. 2 has a married son and a married daughter, each of whom has two children. Presently, respondent no.2 has bonafide requirement of 4 bedrooms, 3 bathrooms, 1 drawing room, 1 puja room and 1 store room.

3.4 In view of these requirements, the present respondents instituted the eviction proceedings under Section 14(1)(e) of the Act against the present petitioner.

3.5 The petitioner has neither challenged the bonafide requirement of the respondents nor pleaded about any alternative accommodation available with them. Since the jural relationship of tenancy between the petitioner and the erstwhile owner landlord late Shri Pratap Singh is not in dispute; the present respondents being the surviving legal representatives of late Shri Pratap Singh not being in dispute; tendering of rent by the petitioner to the erstwhile owner late Shri Pratap Singh and thereafter his legal representatives including the now deceased husband of respondent no. 1 not being in dispute; and transfer of the subject premises in favour of legal representatives including the present respondents of late Shri Pratap Singh by way of registered Conveyance Deed dated 13.02.2015, the petitioner has no ground to claim leave to contest and is liable to vacate the subject premises in view of bonafide necessity of the present respondents.



4. During final arguments, learned counsel for both sides took me through their respective cases as set up above.

4.1 Learned senior counsel for the petitioner/tenant contended that leave to contest was wrongly denied to the tenant and the impugned eviction order is not sustainable in the eyes of law because late Smt. Sushil Kaur after becoming owner of the subject premises by virtue of family partition among the legal representatives of late Shri Pratap Singh, wrote letter dated 15.05.2003 to the petitioner/tenant and subsequently filed an eviction petition also, though the same got dismissed, so there is no relationship of tenancy between the parties. In the course of these proceedings the petitioner/tenant discovered the said letter dated 15.05.2003, so an application has been filed by the petitioner/tenant to place the same on record. The petitioner/tenant has thus been able to establish *prima facie* that there is no jural relationship of tenancy between the parties, so the petitioner/tenant deserves leave to contest and consequently, the impugned order is liable to be set aside, according to learned senior counsel.

4.2 On the other hand, learned counsel for the respondents/landlords contended that the entire application for leave to contest was based on a claim of an alleged partition among the legal representatives of late Shri Pratap Singh, but no document in that regard was filed despite clear stand of the respondents to the contrary. It was contended that since there is no dispute that the present respondents are the legal representatives of the



erstwhile landlord late Shri Pratap Singh, in the absence of any reliable material, the jural relationship of tenancy between parties to these proceedings cannot be denied. Learned counsel for respondents also took me through a copy of notice dated 04.10.2012, a copy whereof was filed before the learned Additional Rent Controller by the petitioner itself and that letter also clearly shows that as on 04.10.2012, the petitioner/tenant was clearly informed that there had been no partition of the estate left behind by late Shri Pratap Singh and the legal representatives of late Shri Pratap Singh were staking claim as co-owners of the subject premises. Learned counsel for respondents/landlords also argued that the subsequent instrument of registered Conveyance Deed dated 13.02.2015 supersedes all earlier documents contrary thereto including the letter dated 15.05.2003, so the latter being no more a relevant document, has to be discarded. It was argued that there is no reason to make the present respondents/landlords suffer on account of late Smt. Sushil Kaur having filed false pleadings claiming herself to be the owner, which eviction petition ultimately got abated.

4.3 In rebuttal arguments, learned senior counsel on behalf of petitioner submitted with the help of judicial precedents that for obtaining leave to contest, the tenant has to show only a *prima facie* and not strong case qua the issue of ownership of the subject property, so in view of letter dated 15.05.2003, petitioner deserved leave to contest.

4.4 In support of his submissions on behalf of petitioner/tenant, learned senior counsel placed reliance on the judgments in the cases titled : ***Charan Dass Duggal vs Brahma Nand***, (1983) 1 SCC 301; ***Inderjeet Kaur vs***



Nirpal Singh, (2001) 1 SCC 706; *Liaq Ahmed & Others vs Habeeb-Ur-Rehman*, (2000) 5 SCC 708; *M.M. Quasim vs Manohar Lal Sharma & others*, (1981) 3 SCC 36; *Vijay Kumar Ahluwalia & others vs Bishan Chand Maheshwari & another*, (2017) 3 SCC 189; *Qamruddin vs Ziauddin*, (2020) SCC OnLine Del 2575; and *Santosh Devi Soni vs Chand Kiran* (2001) 1 SCC 255.

4.5 On the other hand, learned counsel for respondents/landlords relied upon the judgments in the cases titled : *Abid Ul Islam vs Inder Sain Dua*, (2022) 6 SCC 30; *Mangal Builders & Enterprises Limited & Anr. vs Williamson Magor & Co. Ltd. & Anr.*, (2017) SCC OnLine SC 2133; *Kamal Tanan (Deceased) by LRs vs M.L. Vasistha (Deceased) by LRs*, (2001) 9 Scc 263; *Baleshwar Dayal Sharma vs Bimal Gupta & Ors.*, (2018) SCC OnLine Del 13326; *Ratan Kumar & Anr. vs Santosh Jalutharia & Ors.*, (2023) SCC OnLine Del 5625; *Prabha Goel vs Nirmal Kumari Jain & Ors*, (2014) SCC OnLine Del 6488; *H.S Bajaj & Ors vs Satish Chopra*, (2023) SCC OnLine Del 3886; *Naresh Kumar vs Surender Kumar Gulati*, (2016) SCC OnLine Del 6824; *M/s Ram Swaroop Radhey Shyam through its Proprietor vs Sh. Ajay Shukla*, (2023) SCC OnLine Del 2004; and *Harivansh Lal Rabra vs Madan Lal Jolly*, (1997) SCC OnLine Del 76.

5. Broadly speaking, claim of the petitioner/tenant is based on its contention that the present respondents are not owners of the subject premises, insofar as the estate left behind by late Shri Pratap Singh was partitioned among his legal representatives and in that process, the subject



premises fell to the share of Smt. Sushil Kaur; and that being so, there is no jural relationship of tenancy between the parties. Further, in order to establish its case, the petitioner/tenant seeks permission to place on record a letter dated 15.05.2003 addressed to it by Smt. Sushil Kaur, which letter was discovered by it subsequent to passing of the impugned eviction order.

5.1 On the other hand, the respondents/landlords categorically denied having carried out any partition of the estate left behind by Shri Pratap Singh and claimed that they filed the eviction petition as co-owners of the subject premises.

6. As regards the requirement of the respondents/landlords being bonafide and non-availability of any other reasonably suitable accommodation, there was no challenge from the side of the petitioner during final arguments. However, I have examined the impugned order even on these counts and find no infirmity in the same.

7. At this stage, it would be apposite to briefly traverse through the legal position, which should be guiding light for the High Court while exercising jurisdiction under proviso to Section 25B(8) of the Act. As regards the legal position, there is no dispute between the parties to this case. Therefore, instead of citing each of the judicial precedents quoted by each side, I have noted the culled down legal position as follows.

7.1 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 bonafide need of the tenanted premises. It is also significant to note that the proviso, enacted in Section 25B 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 frustrate the legislative intendment of expeditious remedy in certain specific kind of cases. A minute 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. Unlike Section 115 of the Code of Civil Procedure dealing with the scope of revision in civil cases, the proviso to Section 25B of the Act does not expect the High Court to look for satisfaction as regards regularity of the proceedings under scrutiny or correctness, legality or propriety of any decision or order for recovery of possession passed in the summary proceedings under Section 25B of the Act. 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”.



7.2 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 the 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. Thus, scope of interference by the High Court in the proceedings of the present nature is quite restrictive and the High Court should not venture into disturbing the decision of the court of first adjudication unless it finds some error apparent on the face of record, which would only mean the absence of adjudication per se. While examining the records of the Rent Controller in order to satisfy itself that the impugned order was passed according to law, the High Court should be cautious not to venture into a roving enquiry which would convert the power of superintendence into that of a regular first appeal, which in turn is completely forbidden by the legislature. 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.

7.3 By way of an amendment in the year 1976, Chapter IIIA was inserted into the 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 bonafide 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 the 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 bonafidely requires the tenanted premises should not suffer for long, awaiting eviction, but 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.

7.4 At the stage of seeking leave to contest, it is sufficient if the tenant makes out a case by disclosing such facts as would disentitle the landlord from obtaining an eviction order. At the stage of seeking leave to contest, the tenant is not required to establish such a strong case that would non-suit the landlord. At the stage of seeking leave to contest, the test to be applied is as to whether the facts disclosed in the affidavit of the tenant *prima facie* show that the landlord would be disentitled from obtaining the eviction order and not that the defence may fail in the end.



7.5 At the same time, the court also has to be conscious that a leave to contest cannot be granted for mere asking or in a routine manner, as that would defeat the object behind Chapter IIIA of the Act. It is only when the pleas and contentions raised by the tenant in the application seeking leave to contest make out a triable issue and the dispute on facts demands that the matter be properly adjudicated after ascertaining the truth through cross-examination of witnesses that leave to contest must be granted. Each case has to be decided on its merits and not on the basis of any generalized suppositions. The court also cannot ignore a situation where the case set up by the tenant has been so set up with the sole object of protracting the proceedings so as to lead to the landlord giving up in frustration, which would in turn frustrate the process of law. Where the tenant seeks leave to contest, pleading anything and everything, pulled out of thin air and claims to have raised a *prima facie* case, the court is under a duty to read between the lines so as to ensure justice to the process established by law.

8. Falling back to the present case, claim of the petitioner/tenant that there was partition of the estate left behind by Shri Pratap Singh is completely without any foundation. The respondents/landlords or any of the remaining legal representatives of Shri Pratap Singh never claimed to have undertaken any partition. Even Smt. Sushil Kaur, in her eviction petition, which ultimately got abated, made no whisper of any partition of the estate left behind by Shri Pratap Singh that would have brought the subject premises to her exclusive share. Rather Smt. Sushil Kaur had filed her eviction petition in her capacity as co-owner of the subject premises. Since during the course of the proceedings before the learned Rent Controller as



well as this court, the respondents/ landlords categorically denied having undergone any partition, it was incumbent upon the petitioner/tenant to place on record some material on the basis of which it claimed the event of partition. But not even a shred of document was produced in that regard.

9. So far as the letter dated 15.05.2003 is concerned, admittedly it was addressed to the petitioner/tenant itself. But no convincing reason has been advanced as to why this letter did not see light of the day till the eviction order was passed. The statutorily permitted time to file this document expired long ago.

10. The letter dated 15.05.2003 simply records, even according to the petitioner/tenant, the claim of partition made by Smt. Sushil Kaur, that too quite vaguely without giving a specific date, month or even year reference, insofar as it is stated therein that some partition took place long time back. In contrast, before this court is a certified copy of the registered Conveyance Deed dated 13.02.2015 in which the legal representatives of Shri Pratap Singh have been named as co-owners of the subject premises. I am in complete agreement with the learned counsel for respondents/landlords that the said registered Conveyance Deed dated 13.02.2015, having been issued by a competent government authority would supersede the even otherwise vague averments of letter dated 15.05.2003 as regards the claim of partition. Significantly, even legal representatives of Smt. Sushil Kaur have been named as co-owners of the subject premises in the said Conveyance Deed.



11. Further, the petitioner/tenant itself filed before the trial court a copy of communication dated 04.10.2012 addressed to it by counsel for legal representatives of Smt. Sushil Kaur. That letter also does not even whisper any partition among legal representatives of Shri Pratap Singh. Rather, that letter categorically mentions that the present respondents and legal representatives of Smt. Sushil Kaur are co-owners of the subject premises.

12. Furthermore, the petitioner/tenant through its counsel had sent reply dated 25.05.2021 to the legal notice dated 13.04.2021 of the present respondents. The said reply dated 25.05.2021 also is completely silent about any partition. Rather, in reply dated 25.05.2021, counsel for the petitioner/tenant expressed willingness to pay rent to all the legal representatives of Shri Pratap Singh, without even a whisper of any partition. If the letter dated 15.05.2003 (*now sought to be taken on records in these proceedings*) was actually received by the petitioner/tenant, contents of reply dated 25.05.2021 would have been completely different. Therefore, I also find the genuineness of letter dated 15.05.2003 not above suspicion.

13. It would be most significant to note that the petitioner/tenant till date has never challenged the genuineness of the registered Conveyance Deed dated 13.02.2015.

14. In such circumstances, there is no reason to make the parties undergo churning and rigmarole of full dress trial on the aspect of ownership and consequently the jural relationship of tenancy between the parties.



15. As regards the bonafide requirement of the present respondents and other legal representatives of Shri Pratap Singh as well as availability of suitable alternate accommodation, no arguments were advanced before this court. However, as mentioned above, I traversed through the findings delivered by the learned Additional Rent Controller on these aspects. The relevant portion from the impugned eviction order is extracted below:

“12.3 As regards the requirement of petitioner being bonafide and non-availability of any other reasonably suitable accommodation to the petitioner, both the requirements are discussed simultaneously. In this regard, respondent has barely averred in his application for leave to defend that the petitioners have sufficient residential accommodation in their possession. He has failed to substantiate his ground by stating necessary details i.e. the details of alternative accommodation, if any owned by the petitioners or how the present accommodation available with the petitioner is sufficient for them.

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12.5 It is also the case of the respondent that while it is claimed in the petition that 22 number of persons are residing in the premises but aadhar card of only 10 number of persons are filed. In this regard it must be noted that aadhar card of petitioner no.2 is filed. As per petition, she is an old widow lady and her children are not residing with her but they are required to visit her and she needs additional space to provide for their accommodation and also for her own personal needs like attached bathroom, puja room etc. Further, aadhar card of petitioner no.1 is filed alongwith aadhar card of her two sons, two daughters-in-law and four grand children. The said aadhar cards are enough to show that petitioner no.1's family consist of her two sons and their respective families, who all are residing in the premises in question.

.....

12.7 It may further be noted that the respondent has nowhere disputed the site plan filed by the petitioners. As per the site plan and from the averments of the petitioners, it is apparent that the petitioner no.1. is in occupation of only two bed rooms, one bath room, one kitchen, one dinning/room and petitioner no.2 is in occupation of only one bed room, one drawing room, one small kitchen, one bath room. Considering the size of their family members, there is no reason to believe that their need for the tenanted premises is not bonafide”.



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Findings delivered by the learned Additional Rent Controller on these aspects are sound and in accordance with law. In any case, as mentioned above, the subject premises are in completely dilapidated condition and not being used by anyone, according to the documents on record.

16. In view of above discussion, I am unable to find any infirmity in the impugned order, so the same is upheld and the revision petition is dismissed. The pending applications accordingly stand disposed of.

**GIRISH KATHPALIA
(JUDGE)**

JANUARY 18, 2024
as

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