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

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Judgment reserved on: 24.01.2024
Judgment pronounced on: 02.02.2024+ **RC.REV. 293/2023****MOHD IRFAN**

..... Petitioner

Through: Mr Saquib Arbab, Adv.

versus

SHAINA AFTAB & ORS.

..... Respondents

Through: Ms Shobhana Takiar, Adv.

CORAM:**HON'BLE MR. JUSTICE GIRISH KATHPALIA****GIRISH KATHPALIA, J.:**

1. By way of this petition brought under the proviso to Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”), the petitioner/tenant has assailed order dated 10.04.2023 of the learned Rent Controller, Karkardooma, Delhi in RC/ARC No. 153/2016 whereby his application seeking leave to contest in the eviction proceedings under Section 14(1)(e) of the Act was dismissed and consequently an eviction order in respect of shops No. 4 & 5 (hereinafter referred to as “the subject premises”), situated on the ground floor of the larger premises bearing No. 318-319/4-5, New No. 12A/102/D, Maujpur, Gali 1, Shahdara, Delhi was passed. On service of notice, the respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.



2. At the outset, for convenience, the relevant part of order dated 24.01.2024 passed in this case is extracted below:

“RC.REV. 293/2023 & CM APPL. 54329/2023 (stay)

4. At request of both sides, final arguments heard and concluded. The petitioner has assailed order of learned Additional Rent Controller whereby leave to contest was declined and eviction order was passed. Vide order dated 21.12.2023, the predecessor bench directed that no coercive steps be taken to evict the petitioner/tenant from the subject premises.

5. In support of his case, learned counsel for petitioner has raised only one argument that respondent no. 2, for whose bona fide necessity to run a boutique was pleaded has got married and shifted to Pakistan, so the bona fide necessity ceases. However, in the course of further arguments, learned counsel for petitioner also admitted that respondent no. 2 still remains in India though she is married to a Pakistani national, so she would ultimately follow her husband there. No other argument has been raised.

6. On the other hand, learned counsel for respondents submits that this issue has been dealt with in detail in the impugned order and there is no infirmity in the same. Besides, according to learned counsel for respondents the subject premises are lying locked for the past three years.

7. Accordingly final arguments stand concluded. Judgment reserved”.

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

3.1 The present respondents, claiming themselves to be the owner of the larger premises filed an eviction petition against the present petitioner under Section 14(1)(e) of the Act, pleading that the present petitioner was inducted as a tenant in the subject premises by their mother, after whose death, they became co-owner of the larger premises, on the first and second floor whereof they are residing; that the present respondent no. 1 is aged about 30



years and married, having one child and the present respondent no. 2 is aged about 23 years while the present respondent no. 3 who is aged about 33 years is engaged in business of opticals under the name and style Casa Optics at Ballimaran, Delhi in a rented accommodation; that earlier, the petitioner/tenant was working as a scrap dealer from the subject premises but he closed down the same and for past more than three years, the subject premises are lying locked; that the present petitioner/tenant is now running a mutton shop under the name and style of Dawat-E-Chaman in Darya Ganj; that due to paucity of money for their survival, the present respondent no. 2 with the help of the present respondent no. 1 wants to start business of boutique from the subject premises and they have no reasonably suitable alternate accommodation for the same; that the other ground floor shops bearing No. 1, 2 and 3 and the remaining shops in the larger premises are in possession of other tenants.

3.2 On being served with the summons in the prescribed format, the petitioner/tenant filed application seeking leave to contest the petition, pleading broadly that the requirement of the present respondents/landlords is not *bona fide* as they are very rich persons with substantial rental income; that the respondents/landlords concealed the actual accommodation available with them; and that mother of the present respondents was a Pakistani national, so could not own any property in India and consequently her entire property got vested with the custodian under the Enemy Property Act. In the application seeking leave to contest, the petitioner/tenant claimed with particulars, various portions of the larger premises and other



property allegedly owned by the present respondents/landlords and also claimed that from those properties, the respondents/landlords are earning substantial rental income. But unlike the arguments extracted above, neither in the leave to contest application nor even in this revision petition, the petitioner/tenant made even a whisper of allegation that the present respondent no. 2, for whose *bona fide* necessity to run a boutique the subject premises are required has got married and shifted or intends to shift to Pakistan, so *bona fide* necessity ceases. However, from para 45 of the impugned order, it appears that during pendency of the eviction petition, the present respondent no.2 got married with a Pakistani national, but the learned Rent Controller rejected the argument that on account of marriage of the present respondent no. 2 her *bona fide* requirement of the subject premises has ceased to exist.

3.3 In reply to the application for leave to contest, the present respondents/landlords with the help of relevant documents narrated the manner in which the larger premises came to be owned by them and also pleaded that the petitioner/tenant was even paying rent to them. The respondents/landlords also explained specifically as to why the remaining portions of the larger premises are not suitable for them to run a business of boutique. The respondents/landlords also denied being owners of other properties as alleged in the application for leave to contest.

3.4 In the backdrop of above rival pleadings, the learned Rent Controller heard both sides and dismissed the application of petitioner/tenant for leave



to contest by way of a detailed order, impugned in the present proceedings. In the impugned order, the learned Rent Controller took a view that for the purposes of proceedings of the present nature, the eviction petitioner is not expected to prove absolute title over the tenanted premises and in the present case, the rent receipts pertaining to the subject premises placed on record were not disputed by the present petitioner/tenant so the issue of ownership of the subject premises and jural relationship of tenancy between the parties stood established. As regards the issue of the Enemy Property Act, the learned Rent Controller with the help of judicial precedents from the Supreme Court, including in the case of *Union of India & Anr vs Raja Mohammed Amir Mohammad Khan*, (2005) 8 SCC 696 correctly came to the conclusion that the embargo under the Enemy Property Act would not apply to challenge the title of the landlord in the present case since admittedly the respondents/landlords, born and brought up in India are citizens of India and inherited the subject premises.

3.5 Hence, the present revision petition.

4. As reflected from the above extract of order dated 24.01.2024, during final arguments, learned counsel for petitioner/tenant raised only one ground to assail the impugned eviction order. And that ground is that since the present respondent no. 2, for whose *bona fide* necessity to run a boutique from the subject premises has got married with a Pakistani national, so she would shift ultimately to Pakistan and therefore, the *bona fide* requirement ceases to exist. This argument completely fails to convince for multiple



reasons. Firstly, it is not in dispute that respondent no. 2 has so far not migrated to Pakistan. Secondly, in today's world of electronic business, it is not unbelievable that a person sitting in any country can run business in some other country through electronic communications and payments. Most significantly, according to the respondents/landlords, the boutique in question would be run by the respondent no. 2 as well as respondent no. 1 and admittedly, as regards respondent no. 1 no such impediment has been pleaded by the petitioner/tenant. I find no infirmity in the view taken by the learned Rent Controller on this aspect that marriage of a landlady does not automatically extinguish her requirement.

4.1 Further, it is settled law that while considering the *bona fide* requirement of the landlord, the crucial date is the date of institution of the eviction petition, with the only exception that the court is not precluded from moulding the reliefs appropriately in the light of subsequent events, provided such events had an impact on the rights and obligations of the parties. Even according to the petitioner/tenant, marriage of the present respondent no. 2 occurred subsequent to the institution of the eviction petition.

4.2 Above all, admittedly, till date the present respondent no. 2 continues to be an Indian national. So, her marriage with a Pakistani national does not, in any manner, diminish her rights as a citizen of India.



5. Although during final arguments, learned counsel for petitioner/tenant did not address on any other ground of challenge to the impugned eviction order, but I have examined the entire record on other aspects as well.

5.1 As mentioned above, the petitioner/tenant has not disputed the rent receipts qua payment of rent by him to the present respondents/landlords and that being so, the jural relationship of tenancy between the parties stands established. For the same reason, the petitioner/tenant is also estopped from disputing title of the respondents/landlords by virtue of Section 116 of the Indian Evidence Act in the sense that the petitioner/tenant having not disputed the genuineness of the rent receipts, cannot be allowed to plead that title over the subject premises does not vest in the respondents/landlords or that the title is imperfect.

5.2 On the issue of availability of the reasonably suitable alternate accommodation, the petitioner/tenant contended that the respondents/landlords have a big commercial hall cum shop on ground floor, a big basement, a big commercial hall and shops on first floor, two big commercial rooms on second floor and a big commercial hall on the third floor of the larger premises. The respondents/landlords explained that the big commercial halls and/or the shops above ground floor are not suitable for boutique. As correctly observed by learned Rent Controller in the impugned order the landlord is the best judge to determine suitability of the alternate accommodation and in that regard a tenant cannot force the landlord. I am in complete agreement with the learned Rent Controller that



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the respondents/landlords have no reasonably suitable alternate accommodation from where they may operate a boutique.

6. I am unable to find any infirmity in the impugned order, so the same is upheld and the present revision petition is dismissed.

**GIRISH
KATHPALIA** Digitally signed by
GIRISH KATHPALIA
Date: 2024.02.02
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**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 02, 2024/as