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

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Date of Decision: 22.04.2024+ **RC.REV. 404/2018**

MAYA DEVI & ORS

..... Petitioners

Through: Ms Sangeeta Chandra, Adv. with
petitioners in person

versus

SUSHILA DEVI

..... Respondent

Through: Mr Shalabh Gupta, Ms Prachi Gupta
and Mr Avanit Arya, Advs.**CORAM: JUSTICE GIRISH KATHPALIA****J U D G M E N T (O R A L)**

1. By way of this petition brought under proviso to Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as "the Act"), the petitioners/tenants have assailed order dated 22.05.2018 of the learned Rent Controller whereby application of the present petitioners no. 1 and 3 for grant of leave to contest the proceedings under Section 14(1)(e) of the Act was dismissed. On issuance of notice, the respondent/landlord entered appearance through counsel. I heard learned counsel for both sides and examined the records.

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

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2.1 The present respondent, claiming herself to be owner of the northern side room ad-measuring 11ft. 2 inches by 9 ft. 9 inches with attached latrine and passage (hereinafter referred to as “the subject premises”) forming part of the larger property bearing no. 137 Hari Nagar Ashram, New Delhi, filed eviction petition against the present petitioners and 03 more persons, pleading that Shri Laxman Dass Kanojia, husband of the present petitioner no.1 and father remaining present petitioners as well as one brother and two sisters of the present petitioners no. 2 and 3 was inducted as a tenant in the subject premises and after his death, his widow and children inherited the tenancy, though it is only the present petitioners who claimed the tenancy rights being in possession of the subject premises; that the said larger property no. 137 Hari Nagar Ashram, New Delhi is ancestral property of the present respondent as her father-in-law Shri Santosh Narayan inherited the same from his father late Shri Damodar Shastri by virtue of registered will dated 18.03.1975 and her husband inherited the same from his father and after death of her husband, the present respondent became owner of the said larger premises by virtue of registered relinquishment deed dated 03.11.2016; that the said larger premises were orally partitioned and the subject premises fell to the share of the present respondent; that the present respondent is aged about 60 years suffering with various ailments and has three sons namely Pradeep Kumar, Sashikant and Nakul and one married daughter Sonia; that Pradeep Kumar is married and has his family consisting of his wife, a son and a daughter; that Sashikant and Nakul are of marriageable age while Sonia is already married; that ground floor of the said larger premises consists of two bed rooms, one drawing room, one



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kitchen and one toilet while the first floor of the said larger premises consists of two bed rooms, one store room, one temporary kitchen in tin shed and a toilet; that on account of having suffered various ailments, the present respondent no.1 is unable to climb stairs and needs ground floor accommodation with one of her children who can look after her; that the first floor of the said larger premises are occupied by Shri Pradeep Kumar who stays with his wife in one room and his two children occupy second room while the third room is in dilapidated condition and being used as a store; that the tin shed on the first floor is being used by the family of Pradeep Kumar as a kitchen; that on ground floor, the present respondent is staying in one room and another bed room on ground floor is being used jointly by her sons Sashikant and Nakul while the drawing room on the ground floor is being used as common room for the entire family; that Sashikant and Nakul aged 32 years and 29 years respectively have not been able to get married as there is not enough space in the said larger property for them; that the present respondent therefore *bona fide* requires the subject premises for herself and her family and they have no reasonably suitable alternate accommodation.

2.2 On service of summons in the prescribed format on the widow and children of Shri Laxman Dass, only the widow (*present petitioner no.1*) and one daughter (*present petitioner no.3*) filed application for leave to contest, in which they admitted the ownership of the present respondent over the said larger premises and *jural* relationship of tenancy between the parties but sought leave to contest the petition, pleading that Pradeep Kumar is residing



in a separate house in a different locality and not on the first floor of the said larger premises; that the present respondent and her family members need only four rooms whereas they have eight rooms available, so their requirement is not *bona fide*; that the present respondent and her family members have 2-3 other properties also in other localities.

2.3 The present respondent filed reply to the application for leave to contest, reaffirming the petition contents and denying the contents of the application for leave to contest.

2.4 After hearing both sides, the learned Rent Controller dismissed the application for leave to contest by way of the impugned order observing that the present respondent had sufficiently explained the proposed use of the subject premises by her for herself and her family members and need of the present respondent to accommodate her grown up sons comfortably cannot be termed as *mala fide* and that as regards the availability of the alternate accommodation, mere bald statement of the present petitioners no. 1 and 3 that the present respondent and her family members have 2-3 other properties in other localities is not enough in the absence of specific particulars.

2.5 Hence the present petition.

3. During arguments, learned counsel for petitioners opts not to raise any of the grounds taken in the application for leave to contest. It is argued by



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learned counsel for petitioners that the eviction petition was not even maintainable by virtue of Section 14(6) of the Act in the light of admitted pleadings that the present respondent acquired ownership over the subject premises by virtue of Relinquishment Deed dated 03.11.2016, while the eviction petition was filed on 10.11.2017. It is also argued that even the said relinquishment was in favour of the present respondent and Kamini, widow of sibling of husband of the present respondent. It is also argued by learned counsel for petitioners that site plan of the subject premises is not correct in the sense that the subject premises fall in passage. It is further argued by learned counsel for petitioners that the subject premises are actually owned by a trust and not by the present respondent. No other challenge to the impugned order has been raised.

4. On the other hand, learned counsel for the present respondent supports the impugned order and contends that the present petition is completely devoid of merit. It is submitted by learned counsel for the present respondent that the factum of ownership of the present respondent over the subject premises as well as the *jural* relationship of tenancy between the parties was clearly admitted by the present petitioners even in their leave to contest application, so now they cannot be allowed to retract. As regards the plea of bar under Section 14(6) of the Act, learned counsel for the present respondent refers to the judgment of a coordinate bench of this Court in the case of *Hindustan Lever Ltd. vs. Rajeshwari Pandey*, 75 (1998) DLT 238 and argues that relinquishment of right does not amount to transfer of property as contemplated by Section 14(6) of the Act.



5. Perusal of record would reflect that twice the erstwhile counsel for the present petitioners had taken adjournments to obtain instructions qua the time required by the present petitioners to vacate the subject premises but subsequently they opted to proceed on merits. Even today, in the pre-lunch session after concluding her arguments, learned counsel for the present petitioners took pass-over to obtain similar instructions of her clients but in the post-lunch session, she requested for adjudication on merits.

6. As discussed above, before the learned Rent Controller, the ownership of the present respondent over the subject premises and the *jural* relationship of tenancy between the parties was explicitly admitted by the present petitioners.

7. Before the learned Rent Controller, the only ground on which the leave to contest was sought was that Pradeep Kumar, the eldest son of the present respondent, is not residing on first floor of the said larger premises but elsewhere in some other locality, so the requirement projected by the present respondent was not *bona fide*. This claim of the present petitioners was denied by the present respondent in her reply to the application for leave to contest. But the present petitioners, what to say of adducing any reliable material in support of their allegation qua separate residence of Pradeep Kumar, did not even disclose specific particulars of the premises in which he is separately residing. On this count, I find no reason to suspect *bona fides* of the requirement set up by the present respondent.



8. The other ground raised by the present petitioners seeking leave to contest before the learned Rent Controller was that the present respondent owns few other properties as well. This claim of reasonably suitable alternate accommodation also was denied by the present respondent in her reply to application for leave to contest. But on this count also, neither any reliable material was produced nor even specific particulars were disclosed by the present petitioners. As such, I find no merit in the argument that the present respondent has available to her a reasonably suitable alternate accommodation.

9. Coming to the pleas raised on behalf of the present petitioners before this Court for the first time, namely that the petition is barred by Section 14(6) of the Act and that the site plan is not correct, in my considered view, this Court in proceedings under proviso to Section 25B(8) of the Act cannot dive deeply into these issues because on these issues not even a whisper was made before the learned Rent Controller and scope of the present proceedings is only to ascertain as to whether the impugned order was passed in accordance with law. Irrespective of that legal position, the admitted situation is that the present respondent is one of the successors of the original owner of the said larger premises, namely Smt. Bhawati Devi, whose pedigree chart has been filed by the present petitioners themselves, forming part of *pdf* page 17 of the paperbook. I am in respectful agreement with the view taken by the coordinate bench of this Court in the case of ***Hindustan Lever Ltd.*** (*supra*) that relinquishment of right by a co-owner



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only widens the rights of the other co-owner in whose favour the relinquishment is made and it does not lead to transfer of property in terms with Section 14(6) of the Act. As regards correctness of the site plan, neither identity of the subject premises was ever disputed nor any rival site plan has been filed by the present petitioners at any stage, so this ground also must fail.

10. In view of the aforesaid, I am unable to find any infirmity in the impugned order, so the same is upheld and the petition is dismissed.

**GIRISH
KATHPALIA**
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**GIRISH KATHPALIA
JUDGE**

APRIL 22, 2024/as/rk