



2025:DHC:2232



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

%

Date of Decision: 24.03.2025

+ **RC.REV. 398/2024, CM APPL. 75812/2024 and CM APPL.6896/2025**

SH. NAJMUL ARAFEEN CHAWLA & ANR.

.....Petitioners

Through: Ms.Upasana Pahuja, Ms.Mehak
Chaudhary and Mr.Pranav Saha, Advocates

versus

DR. MOHD NAJEEB

.....Respondent

Through: Ms.Bhawana Pandey and
Mr.Piyush Rajan, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present revision petition filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter, '*DRC Act*'), the petitioners seek to set aside the order dated 05.09.2024 passed by learned ARC-02, Central, Tis hazari Courts, Delhi in Eviction Petition No. RC/ARC No.436/2021 (hereinafter, '*impugned judgment*') whereby their application seeking leave to defend came to be dismissed.

Notably, the respondent/landlord had filed the eviction petition under 14(1)(e) of the DRC Act in respect of property being *Ward No. VI, municipal number 1149-50 (old. no.802A), Gali Chhatta Ibrahim, Haveli Hisamuddin Haider, Ballimaran, Delhi-110006* (hereinafter, referred to as '*subject premises*').



2. Respondent claimed to be owner and landlord of subject premises. He claimed that the subject premises were purchased by his parents from Custodian of Evacuee Property Department by virtue of Conveyance Deed dated 24.11.1962, whereafter, the same was let out to the father of the petitioners for residential purposes.

3. The petitioners, in their application for leave to defend averred that there was no *bona fide* requirement on part of the respondent to seek eviction from the subject premises as they also had availability of alternate accommodation. They further contended that eviction could not be maintained for partial eviction and claimed trial. In this context, reference was made to previous proceedings between the parties. In other words, it was contended that triable issues existed which would disentitle the respondent from obtaining an eviction order.

4. The impugned order records that there was no challenge to respondent's ownership or existence of landlord-tenant relationship between the parties.

SUBMISSIONS BEFORE THE COURT

5. Before this Court, the impugned order is assailed primarily on two grounds. *Firstly*, it is contended that the subject premises comprises of ground and first floors, however, the eviction petition was filed only with respect to the ground floor. Reliance is placed on the orders passed in previous proceedings between the parties where the respondent himself had claimed single tenancy for both ground and first floors. Reliance is also placed on decisions to contend that proceedings under Section 14(1)(e) cannot be maintained for partial eviction.¹ *Secondly*, it is contended that the

¹ Shori Lal v. Ram Rakha Mal, reported as 1971 All India Rent Control Journal 424; S. Sanyal v. Gian Chand, reported as 1967 SCC OnLine SC 307; Arjun Singh v. Sarita Rathore, reported as 2012 SCC



respondent deliberately did not disclose the availability of alternate accommodation being *Property No.60, Gali No.2, Lalita Park, Laxmi Nagar, Delhi* where *Mohd. Amir*-brother of the respondent, is residing. Though the said fact was urged before Id. ARC, the documents in support could not be produced. Later, the petitioners have obtained a copy of the Sale Deed dated 24.02.2012 concerning the said property. Lastly, it is contended that though the respondents have claimed that the accommodation used by them was in dilapidated condition, no supporting document was placed on record.

6. *Per contra*, the respondent countered the submissions on the plea of partial eviction by stating that the petitioners' occupation is confined only to the ground floor and that the first floor is in occupation of *Mohd. Yasin* and *Mohd. Nafees*, who separately pay rent to the respondent against proper receipts. Even if judicial proceedings of the years 1964 and 1975 are to be considered, it is submitted that the same are irrelevant as with passage of time, the extent of petitioners' tenancy has changed. In absence of documents to the contrary, the respondent's case as to separate tenancies should sustain. Reliance is placed on Mahesh Kumar v. Pritam Chand (since deceased) through LRs;² Krishan Lal Marwah v. Sharvan Kumar Marwah³ and Kanta Rani v. Kishan Lal.⁴

ANALYSIS AND CONCLUSION

7. It is a settled position in law that while deciding an application for leave the defend, the Rent Controller must examine only whether a *prima facie* case is made out by the tenant raising issues which may be triable in

OnLine Del 4135 and Santosh Jain v. Suresh Chand Bhargava, reported as 1998 SCC OnLine Del 30.

² 2014 SCC OnLine Del 4573.

³ 2025 SCC OnLine Del 1276.

⁴ 2015 SCC OnLine Del 7515.



nature, irrespective of the final outcomes of the pleas so raised. Therefore, at the stage of leave to defend, the threshold to be crossed by the tenant is rather low and there is no need for the tenant to lead incontrovertible evidence proving the same; that is to be determined at the stage of trial. In terms of the burden placed on the landlord, while a presumption may exist in their favour as to the *bona fide* need claimed, once an averment is made to that effect and landlord-tenant relationship is established, it is still the responsibility of the landlord to make out an apparent case of sufficient and reasonable need as well as an absence of alternate accommodation to meet the same. Any material doubt raised as to those issues become triable in nature, warranting grant of leave to defend in favour of the tenant. Needless to state, such an issue cannot be frivolous in nature or raised for the sake of raising a defence, and must be something tenable, even if it might ultimately collapse at trial. [Ref: Charan Dass Duggal v. Brahma Nand;⁵ Santosh Kumar v. Bhai Mool Singh⁶ and Precision Steel & Engg. Works & Anr. v. Prem Deva Niranjana Deva Tayal⁷].

8. In other words, while at the stage of leave to defend, the tenant need not establish a fool proof case fit for rejection of the petition for eviction in totality, the grounds raised must also not be mere assertions and must raise a triable issue such that gives rise to a necessity for it to be tested at trial for a proper and just adjudication. [Ref: Abid-Ul-Islam v. Inder Sain Dua⁸]

9. Having established the threshold to be crossed by the tenant at the stage of considering an application for leave to defend, it is prudent to examine the contentions raised by the petitioners in the present case in that

⁵ (1983) 1 SCC 301.

⁶ 1958 SCC OnLine SC 62.

⁷ (1982) 3 SCC 270.

⁸ (2022) 6 SCC 30.



light. As regards the first contention, i.e., partial eviction, it is no longer *res integra* that in case of single indivisible tenancy, an eviction petition for partial eviction is not maintainable. A gainful reference may be made to the decision of the Supreme Court in Habibunnisa Begum & Ors. v. G. Doraikannu Chettiar,⁹ wherein it was held, as under:

*“2. The only question that arises in this case is as to whether it was open to the High Court to split the single tenancy by ordering partial ejectment of the tenant from the premises let out to him. **In S. Sanyal v. Gian Chand [AIR 1968 SC 438 : (1968) 1 SCR 536]** it was held that where a contract of tenancy was a single indivisible contract and in the absence of any statutory provision to that effect, it is not open to the court to split the tenancy. Law, therefore, is that where there is a single indivisible contract of tenancy, it cannot be split by a court unless there is a statutory provision to that effect. In the present case it is not disputed that the contract of tenancy is a single indivisible contract for Doors Nos. 27 and 28. It is also not disputed that there is no provision in the Tamil Nadu Buildings (Lease and Rent Control) Act empowering the court to order partial ejectment of a tenant from the premises by splitting the single indivisible tenancy. For these reasons it was not open to the High Court to split the tenancy and order for partial ejectment of the tenant from the premises.”*

(Emphasis supplied)

10. A contract of tenancy when granted singularly becomes indivisible and cannot be substituted with tenancy of separate portions with different landlords thereof, unless proved in accordance with law. [Ref: Avery India Ltd. v. Nirmal Kumar Jain & Anr.,¹⁰ and Chemons India Pvt. Ltd. v. Vijay Singh Sandhu¹¹]

11. Coming to the factual matrix at hand, it is an undisputed position that by way of previous litigations between the parties, the tenancy regarding the

⁹ (2000) 1 SCC 74.

¹⁰ 2018 SCC OnLine Del 10939.

¹¹ (2013) 204 DLT 260.



subject premises in respect of both, ground and first floors, was held to be single tenancy in nature. Pertinently, in the earlier proceedings, it was the specific case of respondent's predecessor-in-interest that the petitioner's predecessor-in-interest had sublet the first floor. However, in the present eviction proceedings, the respondent has claimed that after *Atta Ullah* (predecessor in interest of the present occupants) and with the passage of time, the tenancy of the first floor has become separate and distinct inasmuch as the occupants of first floor are paying rent directly. A perusal of the order dated 10.09.1964 passed by the learned Rent Controller in an eviction petition filed by the father of the respondent, wherein *Atta Ullah* was held to be old occupant of the first floor, would show that the father of the respondent had alleged that the first floor was sublet out to *Atta Ullah* after 09.06.1952. An appeal challenging the said order before the Rent Control Tribunal also came to be dismissed vide order dated 05.03.1965. In another proceedings instituted by the father of respondent under Section 19-A of the Slum Areas (Improvement and Clearance) Act, vide order dated 19.07.1975, the application for recovery of possession in respect of subject premises i.e., the ground floor was dismissed by holding that the petition was for part of the tenanted premises and hence, not maintainable. An appeal against the said order was also dismissed on 19.01.1976.

In this backdrop, the respondent's stand that the tenants of the first floor of the subject premises have become direct tenants under the respondent would need to be substantiated in trial.

12. As regards the petitioners' second contention of concealment of alternate accommodation, it is noted that even though the same was averred before the Id. Rent Controller, relevant documents were not produced to substantiate the same. It shall be open to the petitioner to urge the same in



2025:DHC:2232



the trial.

13. Considering the aforesaid facts and legal position, this Court is of the view that triable issues are made out, hence, the impugned order dated 05.09.2024 rejecting petitioners' application for leave to defend is set aside.

14. The present petition alongwith pending applications are disposed of in the above terms. It is directed that the parties shall appear before the concerned Trial Court on 25.04.2025.

15. Copy of this order be sent to the concerned Trial Court for information and necessary compliance.

MANOJ KUMAR OHRI, J

MARCH 24, 2025/ik