

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DRC ACT

Date of Judgment: 15.02.2012

RC.REV. 417/2011, CAV No. 947/2011, CM Nos.19403-03/2011 &
1711/2012.

POKHAR MAL Petitioner
Through Mr. S.N. Gupta, Adv.

versus

OM PARKASH Respondent
Through Mr. J.M. Bari, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned judgment dated 27.07.2011 had decreed the eviction petition filed by the landlord Om Prakash seeking the tenanted premises i.e. a shop bearing No. A-400, ground floor, Amar Puri, Nabi Kari, Paharganj, New Delhi in his favour. The application seeking leave to defend filed by the tenant Pokhar Mal had been declined.

2 In the eviction petition, it has been contended that the petitioner is the owner of the suit premises; contention in para 19 is that in 1970, the whole of the disputed property had been purchased by the petitioner and Ram Avtar in equal shares; thereafter Ram Avtar had transferred his share in favour of the wife of the present petitioner namely Indermani; on 31.08.2005, the property had been sold vide a registered sale deed in favour of Chand Azad; inadvertently the sale deed mentioned this shop as well which was otherwise excluded from the aforementioned sale; shop was thereafter retransferred in the name of the present petitioner on the same date; the present petitioner is the exclusive owner of the suit premises. The documents filed by the petitioner in support of his claim qua his status as owners/landlord of the suit property includes the sale deed dated 31.08.2005

as also a general power of attorney of the same day executed by Chand Azad in favour of the present petitioner. This power of attorney makes a reference to the present property wherein the executent Chand Azad had appointed Om Prakash as his attorney to deal with the property in any manner including the filing of a suit for ejection and to sale/transfer the property. This is a registered document. Admittedly before the date of filing of the petition which had disclosed these facts, the tenant/petitioner was unaware of the sale of the aforementioned property in favour of Chand Azad or the subsequent retransfer of the same in favour of the present petitioner. The bonafide need of the landlord has also been explained in the eviction petition; the bonafide need being to the effect that the family of the petitioner comprises of himself, his wife and three sons; his third son Sandeep is not doing any business and the suit property is required by him for running the business of his son Sandeep who is dependent upon him for his accommodation; he has no other business premises from where he can carry out his business activity; further contention being that the petitioner along with his family is living at 2B, Pocket M, Janta Flats, Sarita Vihar, Delhi which is a first floor accommodation and which cannot be used for any business activity; the shop in question is situated in commercially viable area which would enable his son to carry out his business.

3 Leave to defend had been filed by the tenant. In para 2A, B and C, it has been contended that the petitioner is not the owner and he has also not filed documents of ownership as mentioned by him in para 19. No dispute has been raised about the transaction by Om Prakash in favour of Chand Azad or the retransfer of the property by Chand Azad in favour of the landlord Om Prakash i.e. document dated 31.08.2005 which documents had been filed by the landlord along with his reply to the application for leave to defend. In these circumstances, reliance by learned counsel for the petitioner upon a judgment reported in AIR 1982 S.C. 1213 Devi Dass Vs. Mohan Lal is misplaced; in this case, the trial Court had noted that where the tenant had set out a case that the document of title under which the landlord had claimed ownership was a sham transaction and the landlord had no right, title or interest under the aforementioned document, leave to defend had been granted in favour of this tenant. This is not the factual position in the instant case; no objection whatsoever has been raised by the tenant about the documents of title filed by the landlord; the only submission that he is not the owner of the suit premises as documents of title have not been filed and which submission has also emanated from the admissions made by the landlord himself in the eviction petition.

4 The Apex Court in the case of (1987) 4 SCC 193 Smt.Shanti Sharma & Others Vs. Smt. Ved Prabha & Others had an occasion to examine the concept of 'owner' as envisaged under Section 14 (1)(e) of the DRCA. In this context, it had inter-alia noted as under :-

“The word ‘owner’ is not used in Section 14 (1) proviso (e) of Delhi Rent Control Act in the sense of absolute owner; where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction, the only thing necessary for him to prove being bona fide requirement and he is the owner thereof. In this context the meaning of ‘owner’ is vis-à-vis the tenant i.e. the owner should be something more than the tenant. In most of the modern townships in India the properties stand on plots of land leased out either by the Government or the Development Authorities and therefore it was not contemplated that for all such properties the landlord or the owner of all such properties the landlord or the owner of the property used in common parlance will not be entitled to eviction on the ground of bonafide requirement and it is in this context that we have to examine this contention. It could not be doubted that the term ‘owner’ has to be understood in the modern context and background of the scheme of the Act.”

5 In 1995 RLR 162 Jiwan Lal Vs. Gurdial Kaur & Ors. a Bench of this Court while dealing with the concept of ownership in a pending eviction petition under Section 14(1)(e) of the DRCA had noted as follows:

“There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises.”

6 In the present case, it is not in dispute that even after 31.08.2005, the tenant has been paying rent to the landlord Om Prakash; he has attroned to him. In these circumstances, it was not for the tenant to dispute the ownership of landlord and even if the title of landlord is imperfect, the tenant recognizing no other person as the owner/landlord of the suit premises; this issue cannot be set up as a triable issue. This argument is accordingly rejected.

7 The whole case of the petitioner is in fact bordered upon this argument which as noted supra has been rejected.

8 The second submission of learned counsel for the petitioner is that the bar of Section 14 (6) of the DRCA has also come into operation and even presuming that the landlord had become the owner of the property on 31.08.2005, he could not have filed any application for recovery of possession unless a period of five years has elapsed; eviction petition has been filed on 08.11.2009 which is prior in time. This submission is again wholly unsustainable.

9 Section 14 (6) of the DRCA reads herein as under:-

“Section 14 (6):- Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1), on the ground specified in clause (e) of the proviso thereto, unless a period of five years have elapsed from the date of the acquisition.”

10 It is only in those cases where the landlord has acquired any premises by transfer that no application for recovery of such premises could lie under Section (1) of Section 14 (e) of the DRCA unless a period of five years is elapsed which is clearly not so in this case. The petitioner as is clear from the averments made in the eviction petition is the owner of the premises right from 1970 and on 31.08.2005, he had sold the entire property (A-400) to Chand Azad except the disputed shop; since this discrepancy had appeared in the sale deed, the suit shop had been retransferred to him on the same date i.e. on 31.08.2005; bar of Section 14 (6) of the DRCA is thus not applicable. As such this also does not raise a triable issue.

11 No other argument has either been urged or argued.

12 The eviction petition has disclosed the bonafide need of the landlord. The landlord has three sons of whom Sandeep is not doing any business; this is an admitted position; the landlord has no other accommodation available with him; he is living in a residential flat at Sarita Vihar which cannot be used for a commercial purpose; the only via media through which a business can be started and run by his son Sandeep is from tenanted premises which is a shop in a highly commercial area of Delhi i.e. in Nabi Karim, Pahar Ganj where there is every possibility that his son who is dependent upon him for his accommodation shall be able to succeed in his new business venture.

13 In 2009(2) RCR 455 titled as Ram Babu Agarwal vs. Jay kishan Das, the Apex Court observed as under:-

“However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.”

14 The eviction petition having been decreed in this background suffers from no infirmity. Petition is without any merit. Dismissed.

Sd./-
INDERMEET KAUR, J

FEBRUARY 15, 2012