

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Judgment: 16.3.2012

RC.REV. No.141/2011 & CM No.8661/2011

HAJI YUSUF SIDDIQUI Petitioner
Through: Mr.Mohd. Rashid, Adv.

versus

MOHD WASEEM & ANR Respondents
Through: Mr.S.H.Nizami, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Impugned judgment is dated 14.2.2009; application filed by the tenant seeking leave to defend had been dismissed; eviction petition filed the landlord under Section 14(1)(e) of the Delhi Rent Control (hereinafter referred to as the DRCA) had been decreed.

2. Record shows that the present eviction petition has been filed by the landlord on the ground of bonafide requirement; he has claimed himself to the owner of the suit premises; the aforementioned suit premises are property no.85/1, Gali No.2, Jaffrabad, Delhi. The petitioners have become the owners by virtue of a oral gift deed dated 1.6.1988 bequeathed to them by their grandmother Laiq-un-nissa; pursuant to this oral gift deed which had bequeathed the disputed property to them an Award dated 19.11.1988 had followed which was made a Rule of the Court on 23.01.1989; the petitioner claimed the status of owner/landlord in respect of the aforementioned premises;

contention was that that his family consists of himself; he is a bachelor; petitioner no.2 is also of a marriageable age; the mother of the petitioners no.1 and 2 is also dependent upon them who live with them. Petitioner no.1 wants to start a new business from the suit premises; presently he is doing business of embroidery from the only room which is in their occupation; suit premises are accordingly required by him as there is an acute paucity of accommodation. They are in occupation of only one room; it has no kitchen, bathroom; they have no dining/ drawing room or place of worship. The tenant himself has a large house i.e. House No.64/2, Gali No.3, Jafrabad, Delhi which include a big hall and two rooms on the ground floor, three rooms, kitchen bathroom, courtyard on first floor and one room and open courtyard on the second floor. Eviction petition on the ground of bonafide requirement had accordingly been filed.

3. Leave to defend was filed. Three main grounds have been raised; contention is that the gift deed was only an oral bequeath; it does not confer any valid legal title upon the petitioners. It is, however, not disputed that the property was originally owned by the grandmother of the petitioners and after the oral gift deed dated 01.6.1988 an Award dated 19.11.1983 was passed which was made into a Rule of Court on 23.1.1989; contention of the tenant being that this does not give ownership right to the petitioners.

4. This submission of the petitioner is wholly bereft of merit. The concept of ownership as envisaged in Section 14(1)(e) of the DRCA is not the same as enjoined in proceedings in a title suit. There is no dispute to the fact that the disputed premises were originally owned by grandmother of the petitioners. The oral gift deed had been created in favour of the grandchildren and on the basis of this oral gift deed an Award had been passed which had become the Rule of Court; this was made into a Rule of Court by a competent court of law. This decree has attained a finality; it has not been the subject matter of challenge before any court. This was thus a valid bequeath of rights in the property by the grandmother Laiq-un-nissa in favour of her grandchildren i.e. the present petitioners. It is also not the case of the tenant that he recognizes any other person as his landlord.

5. In this context, 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. The Apex Court has noted that the word 'owner' has

not been defined anywhere in the DRCA; the following extract of the judgment of the Apex Court is relevant:-

“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.”

6. This argument of the petitioner is thus without any merit; it does not in any manner raise any triable issue.

7. The second submission made by the learned counsel for the petitioner is to the effect that the grandmother namely Laiq-un-nissa during her life time validly terminated the tenancy of the tenant by a notice dated 17.7.1985; contention is that even as per the case of the petitioners they have become owners of this property by virtue of an Award which had been made a Rule of Court on 20.3.1989; the present petition filed under Section 14(1)(e) of the DRCA is beyond the period of limitation as Article 67 of the Indian Limitation Act prescribes a period of 12 years for a landlord to initiate eviction proceedings against the tenant. This submission vehemently argued before this Court does not find mention in the averments made in the application for leave to defend. The ground of limitation has not been pleaded. Learned counsel for the petitioner on this score submits that under Section 3 of Limitation Act there is a mandate upon the court to examine the issue of limitation even it has not been raised. There is no doubt to this proposition that this court even suo moto take up the point of limitation if it is simplicitor a legal issue. However, there is no dispute to the proposition that a triable issue has to emanate from the pleadings of the parties which would be the affidavit filed by the tenant accompanying his application seeking leave to defend. There is no objection raised by the tenant about

limitation; the necessary corollary is that the landlord had not got any opportunity to answer this plea which has now been urged for the first time before this court; it also does not appear to have been taken up as an objection before the trial court as the impugned order has not dealt with the same; this has also been fairly conceded by the learned counsel for the petitioner. Counsel for the petitioner to substantiate his submission has placed reliance upon a judgment of Supreme Court reported in AIR 1987 SC 1823 Smt. Shakuntala S. Tiwari Vs. Hem Chand to support a submission that Article 67 of the Limitation Act would be applicable even to proceedings under the Rent Act. Article 67 of the Limitation Act enunciates that the time would begin to run which would be 12 years from the date when the tenancy was determined. In the application for leave to defend the tenant had stated that the original landlady i.e. Laiq-un-nissa had determined the tenancy vide a legal notice dated 17.7.1985 to which there was a categorical denial in the reply filed by the landlord. That apart the question of limitation to be counted from the termination of the tenancy was never raised as a triable issue in the application for leave to defend and naturally no answer could have been given by the landlord on this point. The landlord cannot now be taken by surprise; as noted supra, it is only from the averments made in the application for leave to defend that triable issues emanate; this objection urged does not emanate from the pleadings in the leave to defend. This objection is accordingly rejected. No triable issue has arisen on this court.

8. Last submission of the petitioner in his application for leave to defend is to the effect that the landlord has two other vacant shops which are lying locked for a long period of time which can be used by him; as such it cannot be said that he has no other alternate accommodation. Corresponding para of the reply has been perused. It is contended that these shops are in highly dilapidated condition and require or huge amount of money for repairs and the petitioners are very poor persons and would not be able to afford this repair; petitioner no.2 is a girl aged 23 years and is not doing any work; petitioner no.1 is doing work of embroidery and earning only Rs.2000/- per month and has to bear the expenses of entire house hold. It is reiterated that the aforementioned disputed premises which are with the tenant are thus urgently required by the petitioners for their residential purpose as also for the job work of the petitioner no.1 who is doing work of embroidery from the only room in their occupation where they are living and petitioner No.1 is also carrying out his embroidery work. There is no rebuttal to this submission. No triable issue has arisen on this court either.

9. The Courts time and again have held that unless and until a triable issue arises leave to defend should not be granted in a routine or in a mechanical manner.

10. In *Nem Chand Daga Vs. Inder Mohan Singh Rana* 94 (2001) DLT 683, a Bench of this Court had noted as under:-

“That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.”

11. In (1982) 3 SCC 270 *Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal* the Apex Court has held as follows:

“Prayer for leave to contest should be granted to the tenant only where a prima-facie case has been disclosed by him. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend.”

No such issue has arisen. The landlord has been able to establish that he requires the dispute premises for the needs of both the petitioners i.e. petitioner no.1 and petitioner no.2; accommodation presently available with them is only one room without any kitchen or bathroom; the tenant is in occupation of one room, toilet and a bathroom on the ground floor. Bonafide need of the landlord is established.

12. In this background eviction petition having been decreed and leave to defend having been dismissed suffers from no infirmity. Petition is without any merit. Dismissed.

Sd/-
INDERMEET KAUR, J

MARCH 16, 2012