

* **HIGH COURT OF DELHI : NEW DELHI**
CM (M)No. 885/2010 & CM No. 12169/2010

% Judgment reserved on: 27th July, 2010

Judgment delivered on: 05th Aug, 2010

Smt. Asha Kapoor,
W/o late Sh. Kishan Chand,
R/o 1/6595, East Rohtas Nagar,
Ludhiana Building,
Shahadra,
Delhi.

....Petitioner

Through: Mr. B. B. Gupta, Adv.
Versus

Shri Hari Om Sharda,
S/o Sh. Behari Lal
R/o 1/6595, Rohtas Nagar,
Shahdara,
Delhi-1100032

....Respondent

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

This petition under Article 227 of the Constitution of India has been filed against impugned judgment dated 6th April, 2010, passed by Additional Rent Control Tribunal (for short as 'Tribunal') Karkardooma Courts, Delhi allowing the eviction petition of the landlord-respondent herein, under Section 14 (1) (h) of Delhi Control Act 1958 (for short as 'Act'). Petitioner has also prayed to confirm the judgment dated 30th March, 2009 passed by Additional Rent Controller (for short as 'Controller') Delhi, vide which eviction petition of the respondent, under Section 14 (1) (h) of the Act was dismissed.

2. Brief facts are that, respondent filed an Eviction Petition under Section 14 (1) (a), (j) and (h) of the Act against petitioner, inter alia on the allegations that he is landlord/owner of property bearing no. 1/6595, East Rohtas Nagar, Ludhiana Building, Shahdara, Delhi. Petitioner is a tenant in respect of two rooms, kitchen, open verandah and open courtyard at a monthly rent of Rs.100/-. Premises were let out for residential purpose but petitioner is not residing in the premises and has shifted to property No. C-91, IIIrd Floor, West Gorakh Park Extn., Shahdara Delhi.

3. Petitioner in her written statement admits that she is a tenant in the premises in question. She denies that she is not residing in the suit premises.

In fact, she is residing in suit premises along with her family, consisting of two married sons and grand children.

4. The Controller dismissed the Eviction Petition of the respondent on all the three grounds.

5. Respondent, thereafter filed an appeal before the Tribunal. Vide impugned order the Tribunal set aside the findings of the Controller with regard to Section 14 (1) (a) of the Act, but granted benefit of Section 14 (1) (2) of the Act, to the petitioner. Appeal qua Section 14 (1) (j) of the Act, was dismissed.

6. Regarding Section 14 (1) (h) of the Act, the Tribunal set aside the findings of Controller and passed an eviction order.

7. It is contended by learned counsel that petitioner had at no point ever acquired or being allotted, premises bearing No. C-91, IIIrd Floor, West Gorakh Park Extn., Shahdara Delhi. As per evidence this premise is owned and possessed by Ms. Aarti Nayyar and Mr. Amit Kapur. No evidence has been produced by the landlord to the effect that petitioner is having any vested right in the said property.

8. It is further contended that daughter of petitioner is living in separate premises whereas, petitioner is residing with her son in the said premises and there was no cross-examination to the effect that petitioner is not living in the suit premises. The onus was upon the landlord to prove that petitioner

has acquired a residential premise. However, respondent failed to prove its case during trial.

9. Other contention is that, mere fact that service of the summons was effected upon petitioner at premises No. C-91, IIIrd Floor, West, Gorakh Park Ext. Shahadra, Delhi will not mean that petitioner has acquired alternative accommodation, as admittedly service of summons of appeal was effected upon petitioner in the tenanted premises.

10. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court under this Article is limited.

11. In *Waryam Singh and another vs. Amarnath and another*, AIR 1954, SC 215, the court observed;

“This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in – ‘Dalmia Jain Airways Ltd. V. Sukumar Mukherjee’, AIR 1951 Cal 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

12. In light of principles laid down in the above decision, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned order is maintainable or not.

13. In para 18 (a) (iii) of eviction petition, there appears to be a typographical error with regard to mentioning of this para as 18 (a) (iii). In fact, this para should be read as para 18 (a) (iv). Averments made in this para are;

“That the respondent has also acquired vacant and physical possession of the premises bearing No. C-91, IIIrd Floor, West Gorakh Park Ext. Shahdara, Delhi, and is not residing in the premises in question.”

14. Petitioner/tenant in reply to this para in her written statement has stated;

“The contents of para 18 (a) (iv) of the petition under reply are not only mischievous, motivated and false the same are untenable and are thus vehemently denied. Each and every averment in the para under reply is hereby individually adverted to and specifically denied. It is pertinent to mention here that the Respondent is still occupying and /or residing at the suit premises with her two married sons and her grand children. The petitioner is put to strict proof of any allegations to the contrary.”

15. Thus, as per written statement of petitioner it is apparent that, she has nowhere specifically denied that she has not acquired vacant and physical possession of premises no. C-91, IIIrd Floor, West, Gorakh Park Ext. Shahadra, Delhi.

16. Order VIII Rule 3, 4 and 5 of the Code of Civil Procedure (for short as ‘Code’) read as under;

“3. Denial to be specific.- It shall not be sufficient for a defendant in his written statement to deny generally the ground alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Evasive denial- Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Specific denial-[(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability;

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the fact contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.]”

17. The effect of Order 8 Rule 3 read along with rr 4 and 5 of the Code is that, defendant is bound to deal specifically with each allegation of fact not admitted by him; he must either deny or state definitely that the substance of each allegation is not admitted. The main allegations which form the foundation of the suit should be dealt with in that way and expressly denied. Facts not specifically dealt with will be taken to be admitted under Order 8 Rule 5 of the Code.

18. Order 8 Rule 5 of the Code is known as doctrine of non-traverse which means that where a material averment is passed over without specific denial, it is taken to be admitted. The rule says that any allegation of fact must either be denied specifically or by necessary implication or there should be a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation should taken to be admitted.

19. Supreme Court in *M. Venkataraman Hebbar (D) By L.RS. Vs. M. Rajgopal Hebbar & Ors. 2007 (5) SCALE 598*, observed;

“Thus, if a plea which was relevant for the purpose of maintaining a suit had not been specifically traversed, the Court was entitled to draw an inference that the same had been admitted. A fact admitted in terms of Section 58 of the Evidence Act need not be proved.”

20. In the written statement of the petitioner, there is no specific denial to the fact “that petitioner has acquired vacant and peaceful possession of the

premises bearing no. C-91, IIIrd Floor, East Gorakh Park Ext. Shahdara, Delhi.”

21. Section 14 (1) (h) of the Act read as under:

“that the tenant has, whether before or after the commencement of this Act, acquired vacant possession of , or been allotted, a residence.”

22. Meaning of “Acquire” is to “gain by oneself and for oneself; or come into possession.” The words, “acquired vacant possession” means that the tenant obtains vacant possession of another premises by virtue of a right vested in him. Such acquisition of vacant possession maybe by contract, sale or devolution or in any other manner. It is not necessary that premises obtained by the tenant should be on a permanent basis like purchase. The words used in clause (h) of the Act are not “acquired ownership” of the premises but “acquired vacant possession.” One can acquire vacant possession of premises for residence even without becoming owner thereof.”

23. In this regard Tribunal observed;

- (i) “Perusal of written statement filed by the respondent goes to show that there is absolutely no denial in regard to the acquisition of this property by the respondent. It was merely denied that respondent was not residing in the premises in question and it was alleged that respondent was still occupying or residing in the suit premises with her two married sons and her grand children;

- (ii) A perusal of the judgment goes to show that basic emphasis was laid on the point whether respondent was still residing in the suit property or had shifted to the acquired property in as much as in the eviction petition, it was also averred that respondent is not residing in the suit premises. The petitioner also deposed that respondent is not residing in the premises in question after acquiring the property and is residing at C-91, West Gorakh Park, Shahdara Delhi. He also examined PW-2 Naveen Kumar Verma, Process Server, who deposed that he served the summons of eviction petition upon the respondent at the address C-91 III floor, West Gorakh Park, Shahdara, Delhi. On the other hand, case of the respondent was that she was still residing in the suit property along with her sons. She examined herself and admitted that she received the summons of this eviction petition at C-91, West Gorakh Park, Shahdara Delhi. However, she went on stating that she had gone to see her ailing daughter on that particular date and when she was present there, wife of the petitioner came with somebody and served the summons upon her on the said address.
- (iii) The only thing which was required to be seen was whether the respondent has acquired vacant possession of a residence or not and respondent herself has proved by examining Sh. H. S. Chaudhary from the office of Sub Registrar that property No. C-91 Gorakh Park was sold by Lalit Kumar in favour of Aarti Nayyar and Amit Kapoor who are daughter and son of the respondent respectively;
- (iv) The position of law is now well settled that if tenant has acquired another residential accommodation out of his own funds and has legal right to reside there he is liable to be evicted irrespective of the fact in whose name property stands purchased. Even if the alternative accommodation is acquired in the name of joint family of the tenant he is liable to be evicted;

- (v) Turning to the case in hand, in the written statement, there was no denial of the fact of acquisition of the property. It is not the case of the respondent at any stage that she has no legal right to reside in this property. Rather the details given by RW2 himself goes to show that the son and daughter of the respondent were shown as residents of 1/6595, Ludhiana Building, East Rohtas Nagar, Shahdara, Delhi, which is the address of the suit property meaning thereby that they were residing with the respondent. Under the circumstances, it was for the respondent to show that she has no legal right to occupy this property which has been purchased in the name of her daughter and son. It is her own case that her sons are residing with her in the suit property. She admitted that the summons of eviction petition were served upon her on the address of this property. However, it was pleaded that she had gone to see her ailing daughter who was residing there. May be that daughter of the respondent is residing in that premises but since respondent herself has not denied that acquisition of accommodation, the question that whether she is residing in the suit property or not is irrelevant. That being so, the petitioner succeeded in proving that respondent has acquired property No. C-91, 3rd Floor, East Gorakh Park, Shahdara, Delhi for the purpose of residence. Therefore, finding in regard to this ground of eviction deserves to be set aside and is accordingly set aside.”

24. Thus, after going through the judgment of the tribunal and in view of the fact that there is no specific denial on behalf of the petitioner with regard to acquiring vacant peaceful possession of premises bearing no. C-91, IIIrd Floor, East Gorakh Park Ext., Shahdara, Delhi, no infirmity or ambiguity can be found in the impugned order of the tribunal.

25. Keeping in view the decision in *Waryam Singh (Supra)*, there is no illegality or irrationality also in the impugned order. As such present petition is hereby dismissed.

CM No. 12169/2010

26. Dismissed.

5th Aug, 2010
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V.B.GUPTA, J.