

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC.REV. 339/2012 & CM No. 12542/2012 (stay)

Reserved on: 10th February, 2015

Decided on: 23rd February, 2015

KANTA RANI

..... Petitioner

Through Mr. S.P. Jha, Adv.

versus

KISHAN LAL DECD THRU LRS

..... Respondent

Through Mr. S.K. Bhaduri, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 24th April, 2012 dismissing the application of the petitioner seeking grant of leave to defend in an eviction petition filed by Kishan Lal under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (in short the DRC Act) the petitioner prefers the present petition.

2. In the eviction petition Kishan Lal stated that the tenanted premises comprising of three rooms, one bathroom, one kitchen, one toilet, verandah and open gallery/ Court yard situated at ground floor of property bearing No.5846, Block No.4, Gali No.6, Dev Nagar, Karol Bagh, New Delhi was let out to the petitioner for residential purposes on a monthly rent of `200/- excluding water and electricity charges which was let out initially to the husband of the petitioner namely late Shri Mohinder Lal vide rent note/ agreement dated 30th January, 1969, however later in June 1973 the petitioner in connivance with her husband Shri Mohinder Lal by playing a fraud on Kishan Lal got the tenancy changed in favour of the petitioner in respect of the ground floor portion of the suit property whereas the first floor

portion of the suit property was occupied by another tenant of Kishan Lal namely A. Mitra and second floor of the suit property was in possession of Kishan Lal. A. Mitra handed over the possession of the first floor of the premises to Kishan Lal in the year 1977 and since then the first floor, second floor and the third floor which has one store are in possession of Kishan Lal. It was further stated by Kishan Lal that he was a senior citizen aged 81 years old and had a large family comprising of four sons, Pyare Lal, Panna Lal, Hardwari Lal and Brij Mohan. Besides he had five married daughters who were also frequently visiting family but due to paucity of accommodation Kishan Lal was not in a position to accommodate them. It was further stated that Kishan Lal along with his son Panna Lal and Hardwari Lal and their families consisting of 20 persons were living in the said house on the first and second floor and third floor being store. Due to shortage of accommodation the other son of Kishan Lal namely Pyare Lal has been residing at Bapa Nagar. Pyare Lal and his family members also visit Kishan Lal often but due to shortage of accommodation Kishan Lal is not able to accommodate them. The fourth son of Kishan Lal i.e. Brij Mohan was posted at Bombay who also visit Shri Kishan Lal occasionally with his family members. It was further stated that Kishan Lal had no other reasonably suitable residential accommodation either in Delhi or elsewhere and thus the ground floor portion of the property was required for the bonafide requirement of Kishan Lal. In the eviction petition Kishan Lal also stated that redemption of mortgage suit against the husband of the petitioner herein was filed by Kishan Lal and after the death of Mohinder Lal, the petitioner herein was the contesting respondent in the suit. Further, Mohinder Lal, the husband of the petitioner had filed a suit for specific performance by forging signatures of Kishan Lal and that Kishan Lal had never entered into any agreement to sell in respect of suit property with Mohinder Lal. It was further stated that the petitioner has not paid rent in respect of the tenanted premises despite the fact that the mortgaged amount has already been adjusted long back. The petitioner herein also filed false and frivolous petition against Shri A. Mitra, the other tenant of Kishan Lal which was dismissed on 17th July, 1987 and the appeal against the said order was also dismissed by the Rent Control Tribunal on 19th September, 1989. Second Appeal against Order (SAO) of the Rent Control Tribunal was also dismissed on 8th August, 2010 where after A. Mitra handed-over the possession of the first floor to Kishan Lal.

3. In the leave to defend application, the petitioner contended that Kishan Lal was not the owner of the suit property and had mortgaged the

entire suit property including the tenanted premises to the deceased husband of the petitioner on 4th June, 1973 for a sum of `33,000/-. The mortgaged amount was to carry an interest @ 7.5% which was payable every six months and the mortgage was for 5 years. The mortgage deed was duly registered and the original documents of ownership were in possession of the late husband of the petitioner. To get an interest on the mortgaged amount a registered rent note was executed in favour of the petitioner for the rent of `200/- per month and this arrangement had continued till the filing of the leave to defend application. So long as the property is not redeemed the tenancy of the petitioner would continue. Neither Kishan Lal was required to pay interest on the mortgaged amount nor the petitioner was liable to pay the rent of the suit property as the rent of the property was to be adjusted towards the loan amount and till the mortgage is subsisting, eviction petition was not maintainable. Further on 19th December, 1974 Kishan Lal agreed to sell the entire suit property which is 2½ storied constructed building which includes the tenanted portion for a total sale consideration of `80,000/- and the husband of the petitioner paid a sum of `16,000/- on various dates in this regard. It was also agreed that at the time of registration of the sale deed the mortgaged amount was to be adjusted towards the sale price. Since Kishan Lal failed to transfer the suit property in the name of Mohinder Lal, the late husband of the petitioner, he filed a suit for specific performance bearing No. 871/1971 for enforcement of agreement to sell dated 19th December, 1974 and for registration of the sale deed. Kishan Lal was contesting the said suit which was listed for final arguments. It was further submitted that Kishan Lal filed an eviction petition under Section 14(1)(e) of the DRC Act against the deceased husband of the petitioner which was dismissed by the learned ARC vide order dated 24th December, 2001 wherein it was held that there is no relationship of landlord tenant between Kishan Lal and the deceased husband of the petitioner herein. Though Kishan Lal filed a revision petition before this Court, however the same was withdrawn. Further the dispute in respect of Mohinder Lal being the tenant and Kanti Rani i.e. the petitioner herein having no locus on the basis of rent note dated 4th June, 1973 was still pending adjudication before the Civil Court which decision would be binding on the learned ARC. It is further stated that the husband of the petitioner was inducted as a tenant in the suit property on 30th January, 1969 by virtue of a lease agreement and on the same date Kishan Lal executed a pro-note of `11,000/- in favour of late Mohinder Nath for the purpose of repaying the loan amount of Shri Ramesh Chander Gupta who had a money decree against Kishan Lal. The parties agreed that the rent of the premises which was `110/- per month

would be adjusted towards the interest payable on the pro-note amount, therefore so long the pro-note existed no rent was paid by late Mohinder Lal to Kishan Lal. On 7th June, 1973 Kishan Lal mortgaged the property to Shri Mohinder Lal for a sum of `32,000/- @ 7.5% interest and the tenancy of late Mohinder Lal was surrendered and fresh tenancy in favour of the petitioner was created on the same day in respect of the entire building for the monthly rent of `200/-. The interest was to be adjusted against the rent; both being equal thus neither the interest was paid nor the rent was collected. Therefore, so long the mortgage exists, tenancy cannot be discontinued as the deed of mortgage as well as rent note being registered documents they are supplementary to each other and form an integrated document. Kishan Lal admitted having taken loan by writing a letter to the tenant of the first floor namely A. Mitra on 16th July, 1973. Though the deceased Mohinder Lal and the petitioner herein were inducted as tenant in the suit property, however till the amount of mortgage is repaid to Shri Mohinder Lal, the tenant was requested to pay the rent to the petitioner herein against the monthly interest on the mortgage amount. Therefore till the arrangement continues the tenancy cannot be terminated. Further, the eviction petition was not maintainable as the property was not let out for residential purpose and the same is being used for composite purpose since beginning. The petitioner was running the registered office of sole proprietorship of business of family from the tenanted premises. Regarding the sons of petitioner Pyare Lal and Brij Mohan it is stated that they are not part of family of Kishan Lal and the eviction petition be dismissed as premature and malafide.

4. In the reply to the leave to defend application Kishan Lal reiterated the contents of the eviction petition and also stated that the petitioner had acquired another premises being flat No.A1-402, situated at fourth floor, The Printer's Cooperative Group Housing Society Ltd., Plot No.18, Sector-13, Rohini and thus the eviction petition under Section 14(1)(h) of the DRC Act is also pending wherein the petitioner has admitted various facts. No triable issues being raised leave to defend be not granted.

5. Pending hearing the leave to defend application before the learned ARC Kishan Lal passed away and thus his legal heirs were impleaded. After hearing the parties and considering the documents placed on record the learned ARC came to the conclusion that in view of the admissions in the rent agreement dated 1st February, 1969 that Kishan Lal was the owner of the property, the relationship of landlord tenant between the deceased Kishan Lal and the deceased husband of the petitioner stood established.

The two suits i.e. one for redemption of the mortgage filed by Kishan Lal and suit for specific performance filed against Kishan Lal were consolidated and during the pendency of arguments on application for leave to defend both the suits were decided by a common order dated 24th February, 2012 by the learned Civil Judge. The learned Civil Judge dismissed the suit for specific performance filed by the husband of the petitioner herein and decreed the suit in favour of deceased Kishan Lal on payment of `20,560/- in the Court. Thus, there remained no dispute about the fact that Kishan Lal was the owner/landlord of the suit property and in view of the finding of the Civil Court, the objection of the petitioner herein with respect to Kishan Lal being not the landlord became infructuous. Regarding the next contention of the petitioner that the property was given for a composite purpose from the beginning i.e. residential-cum-commercial, the learned ARC held that the objection was not maintainable in view of the decision in *Satyawati Sharma Vs. Union of India* (2008) 5 SCC 287. Despite admitting that his two sons Pyare Lal and Brij Mohan were living separately and his five daughters were married, Kishan Lal had a large family and thus the learned ARC came to the conclusion that the requirement of Kishan Lal's legal heirs was completely bonafide and they had no alternative accommodation and hence declined the leave to defend and directed the petitioner to vacate the premises.

6. Before this Court the petitioner urges the same ground as taken in the leave to defend i.e. premises having been given for residential-cum-commercial purposes vide lease deed registered on 6th June, 1973 the eviction petition was not maintainable. Further the decision in case of *Satyawati Sharma* (supra) had no application to the present eviction petition as the same was filed prior to the decision of the Supreme Court which could not be applied retrospectively. Moreover the eviction petition qua partial eviction of the premises was not maintainable for the reason the rent note stated that the entire suit property comprising of the ground floor, first floor and Barsati were let out to the petitioner and hence eviction of the petitioner from the ground floor only was not maintainable. Since the case of the respondent is that the registered rent note is a forged document, the petitioner is entitled to lead evidence on this ground and thus leave to defend was required to be granted. Kishan Lal had filed an earlier eviction petition against the husband of the petitioner on the same ground of bonafide requirement which was dismissed and hence leave to defend is required to be granted to the petitioner.

7. Learned counsel for the respondent on the other hand contends that the decision in Satyawati Sharma (supra) is squarely applicable to the facts of the present case and whether the decision is to be applied retrospectively or not has been decided by this Court in Satnam Kaur & Ors. Vs. Ashlar Stores (P) Ltd. 158 (2009) DLT 62. The plea of partial eviction was never taken in the leave to defend application, rather as per the documents filed before the learned ARC it was very clear that A. Mitra had handed-over the possession of the first floor to the respondents herein besides there being a finding that Kishan Lal was the owner of the property. In the eviction petition filed by the petitioner against A. Mitra the learned ARC and this Court returned a finding about the landlord tenant relationship between the parties. The certified copies of the rent note which was called from the Sub-Registrar Office does not show interpolation on the basis of which the petitioner contends that the premises was let out for residential-cum-commercial purposes. Respondent has clearly stated the requirement because of his family members. Kishan Lal had four sons of whom two sons with their large families are residing in the suit premises. The petitioner is presently staying at Rohini as disclosed in the reply to the leave to defend application and the tenanted premises is lying locked. Suit for specific performance filed by the petitioner has been dismissed on merits and that of the respondent being allowed which was duly taken note of by the learned ARC in the impugned judgment and thus there being a finding of Civil Court qua the ownership of the respondents in the suit property, no triable issues having been raised. Learned counsel for the respondents relies on the following judgments; Satnam Kaur & Ors. Vs. Ashler Stores (P) Ltd. 158 (2009) DLT 62; Bhagwati Vs. Vijay Rani 2010 IV AD (DELHI) 403; Raj Kumar Prasad @ Raj Kumar Verma Vs. Smt. Inder Wati 188 (2012) DLT, 479; Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors. 155 (2008) DLT 383; Krishan Kumar Gupta Vs. Swadesh Bhushan Gupta 152 (2008) DLT 556 and Surinder Singh Vs. Jasbir Singh 172 (2010) DLT 611.

8. Thus, the main disputes between the parties is whether the premises was let out exclusively for residential purposes or residential-cum-commercial purpose in which case whether the decision of the Supreme Court in Satyawati Sharma would have application to the facts of the case and secondly whether there is relationship of landlord tenant between the parties.

9. The eviction petition was filed on 15th March, 2007. The reliance of the petitioner was on the certified copies of the rent note dated 6th June,

1973 entered into between Kishan Lal and the petitioner herein. As per the rent note placed on record by the petitioner, Clause 3 notes that the tenant shall use the premises, permits its user only for residential “and office” purposes. The word “and office” has been inserted in hand, however as per the petitioner the parties acknowledge the hand-writing insertions. The respondents have placed on record rent note dated 6th June, 1973 between Kishan Lal and petitioner, copy of which had been obtained from the Sub-Registrar Office wherein no such insertions have been noted. However, neither was the learned ARC required to go into this controversy nor this Court for the simple reason that the Supreme Court in Satyawati Sharma (supra) held Section 14(1)(e) of the DRC Act, 1958 to be violative of the doctrine of equality embedded in Article 14 of the Constitution of India in so far as it discriminates between the premises let out for residential and non-residential purposes when the same are required bonafidely by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter’s right to seek eviction of the tenant from the premises let for residential purposes only. The Supreme Court clarified that the declaration was not to be misunderstood as total striking down of Section 14(1)(e) of the DRC Act as being unconstitutional and struck down only the discriminatory portion. Learned counsel for the petitioner relying on para 44 of the decision in Satyawati Sharma (supra) states that the Supreme Court clarified Section 14(1)(e) of the DRC Act to read as it indicated in para 42 of the judgment. The relevant portion of para 42 of the judgment reads as under:-

“that the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation.”

10. Thus the emphasis of the learned counsel for the petitioner is on the word ‘now’ and according to the learned counsel only eviction petitions filed after the decision of the Supreme Court on 16th April, 2008 for premises which were let out for commercial purposes were maintainable and no retrospective operation of the judgment was permissible. This issue came up for consideration before this Court in Satnam Kaur (supra) wherein dealing with a similar submission it was held:

“13. In my view, the Hon’ble Supreme Court has nowhere stipulated that its judgment is prospective in nature. In fact, it is settled law that Courts only declare and not make law. Consequently, declaration of law can never be prospective. The only exception is that the Supreme Court in exercise of

its powers under Article 142 of Constitution may prospectively either overrule its own judgment or give effect to its own judgment. In the present instance, the Hon'ble Supreme Court has not stated that its interpretation of Section 14(1)(e) will apply prospectively. Consequently, this submission of petitioners is also untenable in law.”

11. As regards the main issue of landlord tenant relationship, when the leave to defend application was filed, the proceedings in the suit for redemption of mortgage filed by Kishan Lal and the suit for specific performance filed by the petitioner were pending, however before the application could be decided the suits were finally decided by the learned Civil Judge vide the judgment dated 24th February, 2012 wherein all these documents i.e. the rent note, mortgage documents etc., were considered. It was held that the so-called agreement to sell dated 19th December, 1974 could not be considered as an agreement-to-sell as the same was not a proper agreement and does not reflect mutuality and the intention of mortgager that he agreed to sell the suit property and thus the petitioner herein had failed to prove that Kishan Lal had entered into agreement to sell dated 19th December, 1974 with the petitioner herein in respect of the suit property. Thus the suit for specific performance filed by the petitioner was dismissed on the said ground. Further the petitioner on the basis of the documents as noted above filed an eviction petition against A. Mitra impleading Kishan Lal as respondent No.2 which eviction petition was dismissed, however when the matter came up before this Court in SAO No. 127/1989 the parties agreed that any observation made by the learned ARC or the Rent Control Tribunal will have no effect or bearing on the litigations which are pending between the parties. Even despite this observation of this Court, in the eviction petition filed by the petitioner against A. Mitra, since the Civil Court has already dismissed the suit filed by the petitioner seeking specific performance of the agreement on the basis of which the petitioner claims that landlord tenant relationship does not subsist, no further enquiry was required to be conducted for the purposes of eviction petition. It is well-settled that the landlord is not required to prove that he is the owner of the property and in eviction petition if he is able to show that he has a claim better than the tenant the same is sufficient for the purposes of deciding an eviction petition. The petitioner and her husband have admitted in various documents entered into between the parties, the landlord tenant relationship. The landlord tenant relationship having been admitted and the suit for specific performance of agreement to sell filed by the petitioner having been

dismissed, I find no illegality in the order impugned rejecting the leave to defend to the petitioner on this count.

12. As regards the plea of partial eviction it may be noted that this plea was never taken in the leave to defend application and thus the same cannot be entertained at this stage. Further even as per the petitioner she had filed an eviction petition against A. Mitra who was a tenant on the first floor claiming herself to be the landlord which petition was dismissed by the learned ARC and the learned Rent Controller. This Court vide order dated 8th August, 2002 in SAO No. 127/1989 noted that A. Mitra had delivered the possession of the first floor premises to Kishan Lal who was the owner of the property. There is no dispute to this extent. The petitioner being admittedly not in occupation and possession of the first floor and second floor premises no eviction thereof could have been sought by Kishan Lal and thus the plea of the petitioner qua partial eviction deserves to be rejected.

13. As regards the bona-fide requirement, the petitioner did not dispute in the leave to defend application that Kishan Lal was a senior citizen of 81 years and that he had four sons out of which two sons namely Panna Lal and Hardwari Lal were living in the suit premises with him on the first floor though Pyare Lal and Brij Mohan were living separately. With 20 members of the family and other sons and daughters who were living separately also required to be visiting Kishan Lal and his family the accommodation of 4 rooms on two floors and one store room on the third floor was highly insufficient. The petitioner has not even taken the plea in the leave to defend application that the respondents have any other alternative suitable accommodation, rather respondents have pointed out that the petitioner is now living at Rohini and the tenanted premises are lying locked.

14. In view of the discussion as aforesaid, none of the issues raised by the petitioner needed trial and hence the learned ARC rightly dismissed the leave to defend application. Petition and application are accordingly dismissed.

Sd/-
(MUKTA GUPTA)
JUDGE

FEBRUARY 23, 2015