

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

Date of decision: 11<sup>th</sup> JULY, 2022

IN THE MATTER OF:

+ **RC.REV. 141/2022**

SAIN MAHASABHA NARAINI DHAM REGD ..... Petitioner

Through: Mr. Rajeev Ranjan Pandey, Mr.  
Mohan, Advs.

versus

NARAYAN DASS ..... Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

1. The instant revision petition is directed against the order dated 05.02.2020, passed by the learned Rent Controller, West District, Tis Hazari Courts, Delhi in RC/ARC No. 26155/2016, allowing the application filed by the Respondent herein (*hereinafter referred to as 'the Tenant'*) for leave to defend.

2. The facts, in brief, leading to the instant petition are as under:

- i. It is stated that the Petitioner/Organization (*hereinafter referred to as 'the Landlord'*) is a registered religious society and organizes various religious functions for the upliftment of the general public such as *Mata ki Chowki, Bhagwat Katha, Sain Jayanti, Krishna Janamashtmi, Maha Shiv Ratri and Holi* etc in the main hall of the aforesaid society. It is stated that the

Petitioner/Organization is the owner of Shop No. 1 admeasuring 10 x 20 (*hereinafter referred to as 'the tenanted premises*) situated on the ground floor of Sain Mahasabha Narain Dham, Sain Bhagat Shiv Mandir, Narayani Dham, F Block, Hari Nagar, Ghanta Ghar (Tihar), New Delhi – 110064 which was let out to the Respondent herein/Tenant @ Rs. 1,320/- month excluding electricity and water charges and for commercial purposes only.

- ii. It is stated that the Landlord requested the Tenant to vacate the tenanted shop as the Society did not have sufficient space and, therefore, it required the said shop to be demolished in order to expand the hall area to accommodate the people who wished to attend the religious functions. It is stated that the requirement is bona-fide and urgent. It is stated that vide legal notice dated 03.02.2016, the Tenant was asked to vacate the said premises on or before 29.02.2016.
- iii. It is stated that when the Tenant refused to vacate the premises an eviction petition, being RC/ARC No. 26155/2016, was filed by the Petitioner/Organization through its President. It is stated in the eviction petition that the Tenant is a government employee working with the Delhi Transport Corporation and, therefore, he cannot run any business in the tenanted premises. It is stated that the Tenant is using the tenanted premise for illegal financial gains. It is further stated that the Tenant has been habitually defaulting in the payment of rent and has also

not paid any heed to the requests made by the Petitioner herein/Landlord for vacation of the said premise.

- iv. It is stated that the Tenant has sublet a part of the tenanted premise to one Ms. Asha, wife of Shri Jagdish, Resident of C-212 – D, Hari Nagar for running a beauty parlor and the other part of the tenanted premises has been sublet to one Mr. Ajay Sain, son of Shri Rattan Singh, resident of A-90, Hari Nagar for running a men's salon by partitioning the tenanted premises using a wooden floor. It is stated that Tenant is charging Rs. 10,000/- per month as rent from the sub-tenants of the tenanted premises.
- v. It is stated that in the eviction petition filed by the Landlord, the Tenant filed an application for grant of leave to defend. It is stated in the application for leave to defend that the Tenant is a shopkeeper in the temple premises and not a tenant of the Society. It is stated in the affidavit that the Landlord has wrongfully concealed material facts and that several triable issues exist in the said matter. It is stated in the leave to defend application that the Landlord does not have any *locus standi* to file the application on behalf of the Sain Mahasabha Naraini Dham, Delhi, and that the same is evident from the fact that Landlord issued a legal notice dated 28.03.2016, much after the date of filing of the present petition, for seeking charge of the society.
- vi. It is stated that the President of the Society is currently Mr. Sarvottam Kumar and not Mr. Chander Mohan. It is stated that

Mr. Sarvottam Kumar was elected as the President of the Society and has been in charge of the affairs of the Society since 2013. It is further stated that the Society has not filed any resolution in favour of Mr. Chander Mohan to file, institute and represent before the Hon'ble Court in the present application on behalf of the Society. It is also stated that Mr. Sarvottam Kumar has filed a suit before the lower Court to restrain Mr. Chander Mohan from interfering into the affairs of the society and that the same is pending. It is, therefore, stated that Mr. Chander Mohan is neither in charge of the affairs of the Society nor is its President, and does not have any right or authority to file the eviction petition.

- vii. It is stated in the application for leave to defend that *vide* a perpetual unregistered lease deed dated 01.07.1981 the predecessor of society, that is, Shri Sain Bhat Shiv Mandir Nai Mahasabha, a registered society had granted lease of the tenanted premises to the Tenant for a consideration of Rs. 5,000/-. It is stated that the Tenant had transferred the tenanted premises to his wife Smt. Sumitra Devi in 1986 with prior permission of the predecessor of the society *vide* permission letter dated 03.07.1986.
- viii. It is stated in the application for leave to defend that the wife of the Tenant is running a business in the tenanted premises and Ms. Asha and Mr. Ajay are assisting her in the said business. It is also stated that the Petitioner has incorrectly averred that the Tenant had been charging a sum of Rs. 10,000/- per month

from Ms. Asha and Mr. Vijay. The application for leave to defend further states that the wife of the Tenant has timely paid the rent/donation to the Landlord, however, the society has refused to accept the same. It is stated that, thereafter, the wife of the Tenant filed an application bearing DR No. 43 of 2016 before the learned Rent Controller for depositing rent since January, 2016.

- ix. It is further stated in the application for leave to defend that the petitioner has no bona-fide requirement of the tenanted premises and that the temple where the festivities are carried out covers more than one bigha land. It is further stated that the wife of the respondent is rendering service to the devotees and a part of the revenue earned by the shopkeepers goes to the well being and upkeep of the temple.
- x. The Landlord filed a reply to the application for leave to defend filed by the Tenant, denying the allegations of the Tenant. The Landlord also stated that Mr. Chander Mohan is the President of the Society and that the entire Executive Committee has authorized him to represent and act on behalf of the Society.
- xi. The Landlord also filed a counter affidavit denying the allegations of the Tenant and reiterated the contents of the eviction petition. In the counter affidavit, it is stated that no election has taken place since 16.07.2006 in which the answering Defendant No. 4 was elected as the President and the charge was taken from Surender Badalia, General Secretary on 18.07.2006. It is stated that the bank accounts of the Society

indicate that Mr. Chander Mohan is the President, and Mr. Rishal Singh is the General Secretary. It is further stated that Mr. Sarvottam Kumar was never elected as the office bearer of Society. It is further stated that the entire Executive Committee has appointed Mr. Chander Mohan to represent the Society and has also given him various powers to act on behalf of the Society. It is stated that the list of the Executive Members is available with the Registrar of Societies at Anand Vihar, Delhi. The Landlord has also denied that Mr. Sarvottam Kumar has filed any suit for a declaration against Mr. Chander Mohan.

- xii. The Landlord also denied that any lease was granted to the Tenant and further stated that the Tenant had no right to transfer the said premise in the name of his wife. The Landlord has further denied that the Tenant has paid rent regularly and that the Landlord refused to accept the said rent.
  - xiii. The Tenant filed a rejoinder to the reply as well as the counter affidavit filed by the Landlord denying the allegations made by the Landlord.
  - xiv. After going through the material on record, the learned Rent Controller allowed the application for grant of leave to defend by holding that several triable issues are found to be involved in the case.
  - xv. It is this order which has been assailed in the present petition.
3. The Landlord in his revision petition has contended that on 22.03.2016, the Society filed four similar eviction petitions before the Rent Controller District West, Tis Hazari Court Delhi, and that in three petitions,

namely, RC/ACR No. 25233/2012, CS/SCJ No. 1212/2018 and CS/SCJ No. 1213/2018, the tenants have been ordered to vacate the premises by the Learned Rent Controller Court. However, in the fourth identical eviction petition, the Order dated 05.02.2020 passed by the Learned Rent Controller is unreasonably different. It is further contended that on 10.03.2018, an election of the Managing Committee of the Society was conducted and an application was filed on 25.08.2018 for the substitution of the Management Members Committee which was allowed. Therefore, the transfer of power happened much before the impugned Order passed on 05.02.2020.

4. It is contended that the case was filed by the Society through the office bearers of the Managing Committee of the Society who are essentially the authorized representatives of the Society as per the Resolution dated 06.12.2015 which was passed in pursuance of the Managing Committee meetings. It was further contended that the tenanted premise is genuinely required for the welfare of the devotees and that the members of the Society have no personal interest over the functioning of the Society and the decisions taken by it.

5. It is further contended that there exists a difference between the Managing Committee and the members of the Society. The dispute amongst the members are to be adjudicated by the Hon'ble Cooperative Court and therefore, the Order dated 05.02.2020 has incorrectly taken unrelated matters as triable issues and granted leave to defend. It is also contended that the Order dated 05.02.2020 is against the spirit of the judgment passed by the Apex Court in Inderjeet Kaur v. Nirpal Singh, [2000] Supp. 5 SCR 707.

6. Heard Mr. Mr. Rajeev Ranjan Pandey, learned counsel for the petitioner and perused the material on record.

7. It is well settled that when leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (refer: Santosh Kumar v. Bhai Mool Singh, AIR 1958 SC 321).

8. It is well settled that when leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (refer: Santosh Kumar v. Bhai Mool Singh, AIR 1958 SC 321).

9. It is further well settled that where the tenant carves out a prima facie case, the Court must grant leave to defend. Section 25-B (5) of the Delhi Rent Control Act, 1958, also states that where the tenant discloses such facts that would disentitle the landlord from obtaining a title of eviction, then leave to defend must be granted. Any other approach would deny the tenant from having a fair and effective opportunity to participate in the matter and disprove the case which has been made out against him.

10. In the instant case, the Tenant has contested that Mr. Chander Mohan is not the President of the Society and does not have the right or the authority to file the application for eviction. He has pointed out that there is no resolution which authorizes him to represent the Society. The learned Rent Controller *vide* Order dated 05.02.2020 has noted that the Landlord in the corresponding paragraphs of his counter affidavit has not specifically denied the fact that Mr. Sarvottam Kumar was elected as the President in 2013 and has been in charge of the affairs of the society since then. The Learned Rent Controller has further noted that the Landlord has not disputed the issuance



of notice dated 28.03.2016. It has further been noted that the Landlord has not specifically denied that he was neither the President nor the in-charge of the Society, and that no resolution was ever passed in the presence of Mr. Sarvottam Kumar.

11. The above issues question the maintainability of the eviction petition since it disputes the *locus standi* of Mr. Chander Mohan to file the eviction petition and, therefore, strikes at the very root of the matter. Thus, it is a triable issue which needs to be adjudicated. In addition to this, there are several other triable issues in the matter as noted by the Learned Rent Controller for which evidence has to be led.

12. In view of the above, this Court does not find any perversity in the Order dated 05.02.2020, passed by the learned Rent Controller, East District, Tis Hazari Courts, Delhi in RC/ARC No. 26155/2016. The findings in the Order dated 05.02.2020 are legally firm and do not warrant the interference of this Court.

13. Accordingly, the petition is dismissed along with the pending application(s), if any.

नास्त्यमेव जयते

**SUBRAMONIUM PRASAD, J.**

**JULY 11, 2022**

*Rahul*