

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

**SUBJECT : DELHI RENT CONTROL ACT**

Date of Judgment: 15.03.2012

RC.REV. 241/2011 & CM Nos12119/2011 & 21034/2011

OM PRAKASH JAIN & ANR

..... Petitioner

Through Mr. J.C. Mahendro, Adv.

versus

ASHOK KUMAR JAIN

..... Respondent

Through Mr. Ashish Kapoor, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The impugned judgment is dated 06.09.2010; the application filed by the tenant seeking leave to defend in pending eviction proceedings under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed.

2 Record shows that an eviction petition had been filed by the landlord Ashok Kumar Jain against his tenant Om Prakash Jain seeking eviction of this tenant on the ground of bonafide requirement from the suit premises bearing No. 5193-94, Main Road, Sadar Bazar, Delhi. The averments in the eviction petition discloses that the petitioner has a family comprising of himself, his wife and two married sons Sharad and Amit both of them are residing with him; the petitioner is running his business from shop No. 4341, Pahari Dhiraj, Delhi which is a rented accommodation; he has no other alternate premises except the aforementioned tenanted premises which are tenanted out to the tenant. His elder son Sharad is married since 2001 and is having two sons; he is working as a commission agent; he also supplies

various items such as cloth, dhoop and agarbati; premises are required for the business of his son in order that he can have a separate working place; there is no accommodation which is suitable to carry out the business activity of Sharad; his son is completely dependent upon him for his need for accommodation. Further contention is that the suit premises are owned by the petitioner; they were in joint occupation with Nirmal Jain who has since died and now the petitioner is the sole owner.

3 The application for leave to defend was filed. Contention in para 3 is that the petitioner is not the owner; the suit premises belongs to Jaswant Singh and now to his legal heirs. Second submission is that the petition is bad for non-joinder of necessary party as the legal heirs of Jaswant Singh and of Nirmal Jain have not added as parties to the petition. No other averment has been urged or noted in this application seeking leave to defend.

4 Corresponding paras of the reply have been filed. It is denied that Jaswant Singh was in no manner connected with the suit property; it has been reiterated that the petitioner is the sole owner of the suit property; it is also an admitted fact that the tenant has been paying rent to the present petitioner; the brother of the petitioner Nirmal Jain had died in 2000 and thereafter the petitioner has become the sole owner of this property and after his death vide letter dated 27.06.2000, the tenant has been paying rent to the petitioner.

5 Learned counsel for the petitioner has also drawn attention to the mediation proceedings which had been conducted between the parties inter-se wherein in the course of compromise, a sum of `48,000/- had been paid by the petitioner Om Prakash to the landlord Ashok Kumar Jain; this compromise/mediation settlement had been arrived at on 18.09.2007 and is part of the record; in fact attention has been drawn to this document by the petitioner himself thus substantiating the submission of the landlord that the petitioner even as per this document has recognized Ashok Kumar Jain as his landlord. No serious dispute has also been raised about the ownership of the property.

6 In (1987) 4 SCC 193 Smt. Shanti Sharma & Ors. Vs. Ved Prabha & Ors.

“The word 'owner' has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be is that ownership means

absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Govt. or the authorities constituted by the State and in this view of the matter it could not be thought of that the Legislature when it used the term 'owner' in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term 'owner' has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act.”

7 No triable issue has arisen on this count.

8 The second submission of the petitioner is that the legal heirs of Jaswant Singh and Nirmal Jain have not been joined as necessary parties; admittedly the status of Ashok Kumar Jain as owner/landlord stands established, non-joinder of other legal heirs would not impair the maintainability of this eviction petition.

9 In AIR 2004 SC 1321 M/s India Umbrella Manufacturing Co. & Ors. vs. Bhagabandei Agarwalla (dead) by L.Rs. & Ors. it has been held that one of the co-owners can file a suit for eviction of a tenant in the property owned by co-owners; this principle is based on the doctrine of agency; one co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and on behalf of the other co-owner.

10 The Court cannot thus grant leave to defend in a routine or in a mechanical manner.

11 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.”

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

“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.”

13 In this background the eviction petition having been decreed and the application seeking leave to defend having been dismissed as no triable issue has arisen, suffers from no infirmity. Petition is without any merit. Dismissed.

Sd/-  
INDERMEET KAUR, J

MARCH 15, 2012