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Rajesh Kumar vs.shiv Charan

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Court : Delhi

Decided On : Sep-01-2017

Appellant : Rajesh Kumar

Respondent : Shiv Charan

Advocate for Pet/Ap. : Mr. Madhurendra Kumar

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

1. t September, 2017 RC.REV.411/2017 RAJESH KUMAR .....

... Petitioner
Through: Mr. Madhurendra Kumar, Adv. Versus SHIV CHARAN Through: None. ..... Respondent CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW CM Nos.32017-18/2017 (both for exemptions) 1.

2. Allowed, subject to just exceptions. The applications are disposed of. RC.REV.411/2017 & CM No.32016/2017 (for stay) 3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 15th December, 2016 in E.No.26072/2016 of the Court of Additional Rent Controller (ARC) (West), Tis Hazari Courts, Delhi]. of dismissal of the application filed by the petitioner / tenant for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent / landlord and the consequent order of eviction of the petitioner / tenant from Shop No.6 in property

No.1624-25/913, Shiv Market, A-4, Paschim Vihar, New Delhi.

4. 5. The counsel for the petitioner / tenant has been heard. The respondent / landlord instituted the petition for eviction, from which this petition arises, pleading i) that property No.1624- 25/913, Shiv Market, A-4, Paschim Vihar, New Delhi was joint RC.REV. No.411/2017 Page 1 of 15 property of the respondent / landlord along with his father and brothers; ii) that as per decree in CS(OS) No.1325/1987 of this Court, the shop No.6 in the tenancy of the petitioner / tenant, besides certain other shops, came in the share of the respondent / landlord; iii) that besides the shop in tenancy of petitioner / tenant, the respondent / landlord is owner / landlord of four other shops in the same property, which are occupied by other tenants; the respondent / landlord does not own or occupy any other commercial property; iv) that the son of the respondent / landlord viz. Mr. Nirdesh Sharma @ Nirdosh Sharma, who is dependent upon the respondent / landlord, is jobless and unemployed; v) that the respondent / landlord does not have any commercial premises from where he can open shop along with his son Nirdesh Sharma; vi) that the respondent / landlord himself has been a wrestler and his son is also a sports person and they want to open a shop for sports equipment, so that they can earn their livelihood; vii) that the respondent / landlord or his son do not have any other reasonable suitable alternate accommodation.

6. The petitioner / tenant applied for leave to defend, pleading i) that the petition for eviction is bad for non-joinder of parties; the respondent / landlord is not the owner of the shop in the tenancy of the petitioner / tenant and the partition as claimed by the respondent / landlord has not been enforced and thus the respondent / landlord alone cannot sue the petitioner / tenant for eviction and the co-owners of the respondent / landlord are a necessary party, who have not been impleaded; ii) that the respondent / landlord is a Skipping Coach in Sports Branch at Chhatrasal Stadium, Model Town, Delhi under the RC.REV. No.411/2017 Page 2 of 15 Directorate of Education and is earning handsome salary therefrom and from which the respondent / landlord has become owner of various properties in Delhi; iii) that the respondent / landlord is running a commercial institute under the name and style of Rope Skipping Federation of India (Regd) at C/160, Dayanand Colony, Lajpat Nagar, New Delhi and is earning a lot of money therefrom; iv) that

Nirdesh Sharma, son of the respondent / landlord is also sharing the income from Rope Skipping Federation of India (Regd) along with the respondent / landlord; v) that the respondent / landlord and his son Nirdesh Sharma are running a factory for manufacturing mobile chargers at Madipur Village, Delhi and which is looked after mainly by Nirdesh Sharma only; vi) that the respondent / landlord is also owner of property No.WZ-254, village Madipur, Delhi, ground floor and third floor whereof are let out and in first and second floors whereof Nirdesh Sharma is running a Gym; vii) that the respondent / landlord thus has no paucity of accommodation and the petition for eviction has been filed only to get higher rate of rent; and, viii) that the respondent / landlord, in the petition for eviction, has admitted having four other shops; two of the said shops are lying vacant and the respondent / landlord, if at all desires to set up a sports equipment shop, can set up the same therefrom.

7. The respondent / landlord filed a reply to the aforesaid pleas, pleading that a) the respondent / landlord is the sole owner of the shop in the tenancy of the petitioner / tenant and there are no co-owners; b) the petitioner / tenant has accepted the respondent / landlord as owner and landlord and has been paying rent to the respondent / landlord; c) RC.REV. No.411/2017 Page 3 of 15 the petitioner / tenant as a tenant cannot question the compromise entered into between the co-owners before the High Court in CS(OS) No.1325/1987 and under which compromise, the respondent / landlord is the sole owner of the shop in the tenancy of the petitioner / tenant; d) denying that the respondent / landlord is Skipping Coach at Chhatrasal Stadium, Model Town, Delhi or gets any salary from the same; e) denying that the respondent / landlord is running any commercial institute in the name and style of Rope Skipping Federation of India (Regd) at C/160, Dayanand Colony, Lajpat Nagar, New Delhi; f) reiterating that the respondent / landlord and his son are not working anywhere; g) Rope Skipping Federation of India (Regd) at C/160, Dayanand Colony, Lajpat Nagar, New Delhi is a society registered under the Societies Registration Act, 1860 and is a National Federation of Rope Skipping Sport and all its office bearers are honorary; h) Nirdesh Sharma, son of the respondent / landlord is the Honorary Director (Technical) of Rope Skipping Federation of India (Regd); i) Nirdesh Sharma has been an international player of Rope Skipping sport and has been appointed

Director (Technical) to provide assistance for promotion of said sport in India; j) Rope Skipping Federation of India (Regd) does not have any employee and is being run by office bearers, all of whom are honorary members; k) denying that the respondent / landlord or his son were running any factory for manufacturing mobile chargers at Madipur village or that Nirdesh Sharma was looking after any such business; l) denying that Nirdesh Sharma, son of the respondent / landlord was running a Gym on the first and second floors of WZ-254, village Madipur, Delhi; m) RC.REV. No.411/2017 Page 4 of 15 denying that the respondent / landlord or his son Nirdesh Sharama have any commercial premises in village Madipur; n) the respondent / landlord is not even aware about any such property No.WZ-254, village Madipur, Delhi or owner thereof; o) denying that two of the other four shops in ownership of the respondent / landlord in the same property are lying vacant; and, p) reiterating that shops No.7,8,13 and 24 are occupied by old tenants.

8. The learned ARC, vide the impugned order, has denied leave to defend to the petitioner / tenant and passed an order of eviction of the petitioner / tenant, reasoning / observing / holding i) that the petitioner / tenant had admitted the respondent / landlord to be a co-owner / co- landlord; as per law laid down in M.M. Quasim Vs. Manohar Lal Sharma (1981) 3 SCC36and Shanti Sharma Vs. Ved Prabha AIR 1987 SC2028 the respondent, even if co-owner / co-landlord, is entitled to maintain a petition for eviction under Section 14(1)(e) of the Act; ii) that the petitioner / tenant has not brought any document on record to show that the respondent / landlord is the owner of premises No.WZ-254, village Madipur, Delhi or that the first and second floors of the same are being used by Nirdesh Sharma, son of the respondent / landlord for running a Gym or that the respondent / landlord is earning any rent from the ground and third floors of the said property; iii) that the petitioner / tenant had produced before the Court a letter dated 3rd December, 2009 of Additional Director of Education (Sports), Government of NCT of Delhi, Directorate of Education, Sports Branch, Chattarsal Stadium, Model Town, Delhi but the same did not prove that the respondent / landlord was employed as RC.REV. No.411/2017 Page 5 of 15 Skipping Coach at Chattarsal Stadium; the said letter was addressed to the Heads of all schools under the Directorate of Education, Government of NCT of Delhi in respect of selection trials

for Rope Skipping for under 19 boys and girls and asked them to contact Nirdesh Sharma; iv) similarly, another letter dated 8th November, 2011 was produced by the petitioner / tenant merely describing Nirdesh Sharma as a Rope Skipping Coach; v) the plea of the petitioner / tenant however was that it was the respondent / landlord who was the Skipping Coach and not that Nirdesh Sharma was the Skipping Coach; vi) that the petitioner / tenant had also not brought on record anything to show that the respondent / landlord is running a commercial institute under the name and style of Rope Skipping Federation of India (Regd); vii) that the respondent / landlord had filed a Certificate dated 9th April, 2013 of the President, Rope Skipping Federation of India (Regd) to the effect that Nirdesh Sharma is Director (Technical) therein and is providing services without any remuneration and occupying the post as Honorary Member; viii) that the petitioner / tenant has similarly not placed anything on record to show that the respondent / landlord and his son Nirdesh Sharma are running a factory for manufacturing mobile chargers at village Madipur, Delhi; ix) that all averments made by the petitioner / tenant in the application for leave to defend were bald; x) that though the petitioner / tenant, during the course of hearing, had produced a copy of the letter of the Delhi Development Authority but the same was also of allotment of a residential plot of land to the respondent / landlord; the requirement pleaded by the respondent / landlord was however of commercial RC.REV. No.411/2017 Page 6 of 15 premises; xi) that the petitioner / tenant had during the course of hearing also filed some photographs but they merely showed a car in the name of Nirdesh Sharma, son of the respondent / landlord; merely because the son of the respondent / landlord owns a car, does not diminish his requirement for commercial premises; xii) that the petitioner / tenant had also filed a document of Trade and Taxes in respect of Shree Vinayak Sport; the respondent / landlord had however responded that he or his son do not own any such shop; even otherwise there was no averment in the application for leave to defend in this regard; xiii) that the petitioner / tenant had also filed a copy of the CIBIL Consumer Credit Information Report to show that Nirdesh Sharma is salaried and his income is Rs.2,75,000/-; however only two of three pages of the said report had been filed and the genuineness and authenticity thereof could not be vouched for; xiv) that the petitioner / tenant had also filed a copy of the eviction petitioner under Section

14(1)(f) of the Act filed by the respondent / landlord against one Rajesh Khanna and in which the respondent / landlord had claimed to be possessed of sufficient funds to carry out works in the premises with respect to which that petition for eviction was filed; however, merely because the respondent / landlord had stated being possessed of sufficient funds to carry out necessary works of repair in that shop was no reason to doubt the requirement of the respondent / landlord.

9. The counsel for the petitioner / tenant before me has not controverted ownership of the respondent / landlord of the shop in the tenancy of the petitioner / tenant or relationship of tenant and landlord RC.REV. No.411/2017 Page 7 of 15 with the respondent/landlord. The contention of the counsel for the petitioner / tenant however is that on the pleas taken in the leave to defend application, leave to defend should have been allowed.

10. Reliance, in the memorandum of this petition itself is placed on Precision Steel & Engineering Works Vs Prem Deva Niranjan Deva Tayal AIR 1982 SC1518 Inderjeet Kaur Vs. Nirpal Singh 89 (2001) DLT27(SC) and Ramesh Kumar Aggarwal Vs. Rani Ravindran AIR 2009 SC2462 The pleas taken in the application for leave to defend and the arguments urged before the ARC as already noticed above are reiterated. It is contended that the documents filed show the business in the name and style of Shree Vinayak Sport to be of Sarla Sharma wife of Nirdesh Sharma and it is argued that the said fact was concealed by the respondent / landlord and reliance in the memorandum of the petition itself is placed on S.P. Chengalvaraya Naidu Vs. Jagannath AIR 1994 SC853 It is further argued that the contact number given of the business of Shree Vinayak Sport is of Nirdesh Sharma. It is yet further explained that the learned ARC ignored the CIBIL Consumer Credit Information which is collected on the basis of information given for availing of loan facility from any bank.

11. I have considered the aforesaid contentions.

12. I have in Ram Saroop Vs. Viney Kumar Mahajan MANU/DE/3530/2017, with respect to leave to defend under Section 25B(4) of the Act held as under: 18. If leave to defend were to be granted on such vague pleas, the same would defeat the legislative intent of inserting Section 25B in the Rent Act RC.REV.

No.411/2017 Page 8 of 15 as summary procedure for dealing with petitions for eviction on the ground of requirement of the premises by the landlord for his own use. A tenant, to be entitled to leave to defend has to disclose facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. It is only such facts which when proved would so disentitle the landlord which can entitle the tenant to leave to defend. Evidence in proof of such facts has to be confined to the pleas and cannot be beyond the pleas. If the tenant is unable to make specific pleas, the Court cannot grant leave to defend on the premise that he will improve his case during trial. Leave to defend is not to be granted to allow to the tenant time to improve his case.

19. Supreme Court in Baldev Singh Bajwa v. Monish Saini MANU/SC/1239/20

(2005) 12 SCC778 in the context of summary procedure under the East Punjab Urban Rent Restriction Act, 1949 held that a heavy burden lies on the tenant and the tenant is called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant was held to be not sufficient. Similarly, in Rajender Kumar Sharma v. Leela Wati MANU/DE/1386/20

(2008) 155 DLT383it was held that Section 25B was inserted as a special provision for eviction of the tenants in respect of specified category of cases as provided therein; where a landlord seeks eviction on the basis of bona fide necessity, a summary procedure is provided and the tenant has to seek leave to defend disclosing such facts which disentitle the landlord from seeking eviction; where a tenant, in leave to defend, pleads preposterous propositions and makes such averments which are palpably false and the landlord in his reply to leave to defend is able to show the said falsity, the Controller is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it. Again, in Ramesh Chand v. Uganti Devi MANU/DE/1566/20

(2009) 157 DLT450 it was held that mere assertions do not raise any triable issue and if these bald assertions were RC.REV. No.411/2017 Page 9 of 15 entertained,

then every tenant would get away with leave to defend, defeating the intent of legislature. It was further held that only in those cases leave to defend can be granted where Controller finds some substance in the issues raised by the tenant. I have also taken the same view in Sarwan Das Bange v. Ram Prakash MANU/DE/0204/20

(2010) 167 DLT80 20. Supreme Court in Busching Schmitz Private Limited v. P.T. Menghani MANU/SC/0344/1977: (1977) 2 SCC835held that Controller's power to give leave to contest is cribbed by the condition that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in Section 14(1)(e) of the Act; disclosure of facts is a sine qua non for grant of leave. It was further held in Kewal Singh v. Lajwanti MANU/SC/0491/19

(1980) 1 SCC290that it is a salutary provision in order to prevent frivolous pleas taken by the tenants to avoid eviction. In Precision Steel & Engineering Works v. Prem Deva Niranjan Deva Tayal MANU/SC/0210/19

(1982) 3 SCC270it was further expanded that while browsing through the affidavit, if there emerges averment of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted; however leave to contest should not be granted unless the affidavit discloses such facts. Ultimately in Prithipal Singh v. Satpal Singh MANU/SC/1920/20

(2010) 2 SCC15it was held that the dominant object of insertion of Section 25B is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated inter alia by Section 14(1)(e) and for avoiding unusual dilatory process provided otherwise by the Rent Act and the application of Order XXXVII Rule 4 of the Code of Civil Procedure, 1908 (CPC) to Section 25B in force till prior thereto, was held to be bad.

21. I am afraid making of vague pleas in the application for leave to defend and affidavit accompanying the same, without giving any particulars, cannot be said to be disclosing facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. RC.REV. No.411/2017 Page 10 of 15

13. Again, in judgment dated 2nd August, 2017 in R.C. REV. No.352/2017 titled Lalta Prasad Gupta Vs. Sita Ram, it was held as under: 15. The contention of the counsel for the petitioner/tenant however is that once the petitioner/tenant has taken such a plea and which was denied by the respondent/landlord, a case for grant of leave was made out.

16.

17. I am unable to agree. The word discloses in Section 25 B (5) of the Rent Act has to be understood as disclosing facts which if proved would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e). Unless the words discloses such facts in Section 25B(5) are understood and interpreted as placing before the Rent Controller facts which when proved will result in dismissal of petition for eviction, the Rent Controller will be unable to apply summary procedure prescribed in Section 25B for such petitions for eviction. If it were to be held that every plea in the application for leave to defend, howsoever vague and without particulars and without anything in support thereof, should be permitted to be proved, the advocates for tenants, with their astute drafting skills, will not allow the summary procedure, prescribed by legislature to be followed for petitions for eviction of tenants on the ground of requirement of the landlord of the tenancy premises for self use, to be followed in any case and leave to defend will have to be granted and each case put to trial.

18. Thus, if the tenant seeks leave to defend controverting the requirement pleaded by landlord on the ground of the landlord, though at the time of requirement having alternate premises, having not used the same and instead having commercially exploited the same, the tenant must plead (a) the particulars of such premises; (b) RC.REV. No.411/2017 Page 11 of 15 the right / title of the landlord to the same; (c) that the said premises were vacant and available for use at the time of the pleaded requirement of landlord; (d) how the said premises were suitable for the pleaded requirement; and, (e) how the landlord has deprived himself thereof i.e. by sale or letting and support the said pleas with material on the basis whereof such pleas will be proved. I say that it is essential to place such material before the Rent Controller because the purpose of trial, resulting from

grant of leave to defend, is to prove the said pleas and if the tenant has nothing from which he can possibly prove the said pleas, the trial also will not result in the landlord being disentitled from obtaining an order for recovery of possession of premises on the ground specified in Clause (e) of proviso to sub Section (1) of Section 14 of the Act, within the meaning of Section 25B(5) supra. This is not to say that the tenant should file fool proof documentary evidence at the stage of leave to defend. However there must be placed on record all the requisite particulars. The onus on the tenant, at the stage of seeking leave to defend, is thus somewhere in between fool proof documentary evidence and a totally vague, bereft of any particulars plea. Where, in between the said onus lies, depends on facts of each case. 14. Applying the aforesaid law also, no error can be found with the reasoning given by the ARC, of the pleas of the petitioner / tenant in the application for leave to defend being bald.

15. That brings me to the argument of the counsel for the petitioner / tenant, with respect to Shree Vinayak Sport.

16. There is not a whisper with respect thereto in the application for leave to defend. The Legislature in its wisdom, in Section 25B of the Act has required the tenant, desirous of seeking leave to defend a petition for eviction under Section 14(1)(e) of the Act, to file an RC.REV. No.411/2017 Page 12 of 15 affidavit within 15 days of service of the summons / notice of the petition for eviction and disclosing such facts as would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. The question which thus arises is, whether the tenant can be granted leave to defend on pleas, facts which are not disclosed in the application for leave to defend so filed.

17. The answer has to be obviously No.If it were to be held that leave to defend can be granted even on pleas, facts which are not disclosed in the application for leave to defend, the same would set at naught the very legislative purpose of providing for filing of an application for leave to defend within 15 days. A similar view has been taken in Krishna Chopra Vs. Raksha (1999) 82 DLT360(SLP (C) No.15794/1999 preferred whereagainst was dismissed on 14th February, 2000); Gulati Trading Company Vs. Man Mohan Verma 2014 SCC OnLine 4121; and Kali

Charan & Sons (Jewellers) Vs. Rakesh Jindal 2014 SCC OnLine Del 4407 (SLP(C) No.32260/2014 preferred whereagianst was dismissed on 3rd December, 2014). Reference in this regard can also be made to Prithipal Singh Vs. Satpal Singh (2010) 2 SCC15 18. Be that as it may, even if the aforesaid requirement of law were to be ignored, what is interesting is that the argument of the petitioner / tenant has been changing from time to time. In the application for leave to defend, not a whisper was made with respect to Shree Vinayak Sport. At the time of arguments before the ARC, it was contended that it was Nirdesh Sharma, son of the respondent / landlord who was carrying on the business of Shree Vinayak Sport. RC.REV. No.411/2017 Page 13 of 15 Now before this Court, it is stated that it is the wife of Nirdesh Sharma who is the owner of the said business. Though as aforesaid, facts not disclosed in the affidavit accompanying the application for leave to defend are not to be considered but even if the same were to be considered, it is not open in todays day and time of gender equality to contend that the business or vocation, though in the name of a wife, is in fact of the husband. Thus, even if it were to be believed that the wife of Nirdesh Sharma is carrying on business in the name and style of Shree Vinayak Sport, the same does not falsify the stand of the respondent / landlord in the application for leave to defend of he himself and his son Nirdesh Sharma not carrying on any business and having no other commercial premises available. The premises from where wife of Nirdesh Sharma is carrying on business in her own name cannot be said to be premises available to Nirdesh Sharma or to the respondent / landlord. It cannot also be lost sight of that the requirement pleaded is of the respondent / landlord himself and his son Nirdesh Sharma. The plea of the petitioner / tenant, of the respondent / landlord having purchased a car or the respondent / landlord having sufficient funds, does not disentitle the respondent / landlord from seeking an order of eviction under Section 14(1)(e) of the Act for his bona fide requirement of the commercial premises.

19. I am therefore unable to find any merit in this Revision Petition or to hold that the order of the ARC is not in accordance with law within the meaning of Section 25B(8) of the Act capable of interference within the parameters of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta (1999) 6 SCC222and Hindustan Petroleum RC.REV. No.411/2017 Page 14 of 15 Corporation Ltd. Vs. Dilbahar Singh (2014) 9

SCC78under Section 25B(8) of the Act. Dismissed. No costs. RAJIV SAHAI ENDLAW, J.

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