

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

% *Date of Judgment: 30.04.2013*

+ RC.REV. 108/2012  
MOHD ASLAM

..... Petitioner

Through Mr. M.A. Khan, Adv.

versus

MST NAIMA KHATOON & ORS

..... Respondents

Through Ms. Shalini Kapoor, Ms. Promil  
Seth and Ms. Krati Arora, Advs.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

**INDERMEET KAUR, J.** (Oral)

1 The petitioner is aggrieved by the impugned order dated 09.11.2011 whereby the eviction petition filed by the landlords under Section 14 (1)(e) of the Delhi Rent Control Act, 1958 (DRCA) had been decreed; the application filed by the petitioner/tenant seeking leave to defend had been declined.

2 Record shows that the present eviction petition has been filed on the ground of bonafide requirement under Section 14 (1)(e) of the DRCA. There were three petitioners before the trial Court. Their contention was that they are the owners of the suit property. The property was initially owned by Asifa Khatoon; she had gifted the

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property in favour of the petitioners. A suit for declaration had in fact been filed by the petitioners wherein a compromise had been arrived at between the parties in terms of which the aforementioned property had fallen to the share of the three petitioners. The copy of the plaint, the application filed under Order 23 Rule 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code') as also the order dated 23.09.1997 recording the compromise in the aforementioned suit had been placed on record. The bonafide need has been described in para 18-A of the eviction petition. The need has been described is the need of petitioner No. 1; she required the premises for carrying on the medical clinic of her son namely Mohd. Aamir who is a Doctor and dependent upon petitioner No. 1 for the purpose of getting accommodation for running of his clinic; she has no other reasonable suitable accommodation for running a clinic for her son. Premises were thus bonafide required by her. It has further been averred that Mohd. Aamir had obtained his medical degree from Delhi Bhartiya Chikitsa Parishad on 27.09.2010 and wants to run his own clinic for the purpose of his livelihood. Eviction petition was accordingly filed.

3 The application seeking leave to defend has been perused. There were four main grounds which were urged before the trial Court. The first and foremost ground was the denial of landlord/tenant relationship. Submission of learned counsel for the petitioner on this count is that the petitioner was the tenant of Asifa Khatoon and not of the present landlord; Asifa Khatoon had in fact died in Pakistan on 26.10.1994 and

the suit for declaration in which the aforementioned compromise had been arrived at between the petitioners and Asifa Khatoon is a sham transaction; the petitioners have played a fraud upon this Court. Admittedly this submission which has now been propounded before this Court is not a part of the plea either written or oral before the ARC. This plea has been set up for the first time. It is submitted that only recently i.e. 4-5 days ago, it was learnt that Asifa Khatoon had expired in the year 1994 and as such she could not have entered into a valid agreement in the year 1995; the compromise on the basis of which the landlords have filed the present eviction petition was thus an invalid document. This bald submission of the tenant that the landlord was Asifa Khatoon does not stand substantiated. The petitioner is admittedly a tenant; the document on record i.e. compromise arrived at between the parties on 23.09.1997 and declared so by a Court of competent jurisdiction establishes the fact that it is petitioners who are the owners and landlords of the disputed property. It is also an admitted fact that the petitioner/tenant has been depositing rent in favour of the landlord. He is even otherwise estopped from challenging the title of the landlords.

4 The law is well settled. Unless a triable issue arises from the pleadings in the trial Court, leave to defend may not be granted. Pleadings would comprise of the eviction petition, application seeking leave to defend accompanied by the affidavit, reply to the said application seeking leave to defend and other documents which are part of the record of the ARC. Admittedly this submission had not been

made before the trial Court. It cannot be permitted to be taken up at this stage before this Court. It is accordingly rejected. Reliance by the learned counsel for the petitioner on AIR 1972 Delhi 251 Zia-uddin Vs. Abdul Majid and other is totally misplaced. It is not the duty of the Court to institute and enquire into the matters which are not before it; it would in fact be outside the jurisdiction of the Court.

5 No other ground has been pleaded before this appeal Court. No other argument has also been addressed.

6 The other grounds as raised in the application seeking leave to defend have been dealt with by the ARC. An objection had been taken by the learned counsel for the tenant that there is another alternative accommodation available with the landlords and they have 11 shops on the ground floor of the suit premises and as such the need of the landlords is not bonafide as they have other alternative accommodation. This averment had been denied in the reply filed by the landlords. It was clearly stated that these shops are occupied by old tenants and in fact had already been sold to them while they were tenants in the said shops; the landlords are not in possession of any of the said shops. There was no rebuttal evidence to the contrary. The trial Court has correctly noted that no photograph or any other document i.e. bill, invoice or any other document of the like had been placed on record to substantiate this bald submission of the tenant that the other shops were in possession of the landlords.

7 It is thus clear that the need of the landlords for the present premises had been established which was the need to set up a medical clinic for the adult son of petitioner No. 1 who was dependent upon his mother for his need for accommodation. The fact that he was a Doctor duly qualified was never disputed. The fact that he has no other alternate accommodation is also undisputed. There being no other alternate suitable accommodation available with petitioner No. 1, her need to get the tenant evicted from the disputed premises has been established.

8 The disputed premises comprise of two rooms, one kitchen and two toilets on the first floor of the suit property bearing No. 3839, Choori Walan, Delhi; being in the commercial hub of Delhi, the property would be suitable for the purpose which had been depicted in the eviction petition.

9 No other ground either having been raised or pleaded before this Court, the impugned order in this background having decreed the eviction petition in favour of the landlords and dismissing the application of the tenant seeking leave to defend thus suffers from no infirmity.

10 Petition is without any merit. Dismissed.

**INDERMEET KAUR, J.**

**APRIL 30, 2013**

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