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VIJAY KUMAR AHLUWALIA & ORS.

v.

BISHAN CHAND MAHESHWARI & ANR.

(Civil Appeal No. 1546 of 2017)

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FEBRUARY 07, 2017

[J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.]

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Delhi Rent Control Act, 1958 – ss. 25 B(4), 14 (e) – Application filed by appellants (tenants) u/s. 25B(4) for grant of leave to contest the eviction proceedings filed by respondent No.1 (landlord) against the appellants u/s. 14(e) – Rejection of, by courts below – On appeal, held: While considering the grant of leave to contest the eviction proceedings under the Rent Laws, the Authority/Court is not expected to examine the merits and demerits of the grounds raised in the application for grant of leave to contest and if the

D *Authority/Court finds that the grounds raised prima facie disclose a defence which, if accepted, may result in non-suiting the landlord from claiming eviction, tenant is entitled to obtain leave to contest the eviction proceedings on merits – On facts, grounds sufficient for granting leave to the appellants to contest the eviction application of respondent No.1 on merits – Grounds raised by*

E *appellants, if accepted, could result in dismissal of respondent No.1's eviction application thereby disentitling him to claim appellants' eviction from the suit shop – Thus, the order passed by Additional Rent Controlling Authority set aside.*

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Allowing the appeal, the Court

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HELD:1.1 The ground relating to proof of ownership of respondent No.1 over the suit shop, which was based on the alleged adoption deed set up by him, for the first time, after 17 years coupled with the ground in relation to devolution of tenancy between the parties after the death of landlady and lastly, the ground relating to *bona fide* need and availability of the alternative accommodation did disclose *prima facie* facts within the meaning of sub-sections 4 and 5 of Section 25B of the Delhi Rent Control Act, 1958 to contest the eviction application of respondent No.1 on merits. It is, *inter alia*, for the reasons, though *prima facie*, that the appellants had not attorned to respondent No.1 as the

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owner of the suit shop and, in turn, his status as landlord; there was no evidence to prove the existence of relationship of landlord and tenant between the parties; and specific averments were made by the appellants to show availability of alternative accommodation to satisfy the need of respondent No.1, if it really existed. The said grounds, were sufficient for granting leave to the appellants to contest the eviction application of respondent No.1 on merits. [Paras 18-20] [684-F-H; 685-A-B]

1.2 While considering the grant of leave to contest the eviction proceedings under the Rent Laws, the Authority/Court is not expected to examine the merits and demerits of the grounds raised in the application for grant of leave to contest and if the Authority/Court finds that the grounds raised *prima facie* disclose a defence which, if accepted, may result in non-suiting the landlord from claiming eviction, the tenant is entitled to obtain leave to contest the eviction proceedings on merits. In the instant case, it is found that the appellants-tenant have made out such grounds and therefore, a *prima facie* case was made out entitling the appellants for grant of leave to contest the eviction proceedings filed by respondent No.1 against them on merits. The grounds raised by the appellants, if accepted, could result in dismissal of respondent No.1's eviction application thereby disentitling him to claim appellants' eviction from the suit shop. Thus, the reasoning and the conclusion arrived at by the Rent Controlling Authority and the High Court cannot be concurred with. The impugned judgment and the order passed by the Additional Rent Controlling Authority are set aside. [Paras 17, 21-23] [684-D-E; 685-C, D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1546 of 2017.

From the Judgment and Order dated 04.08.2014 of the High Court of Delhi at New Delhi in RC Rev. No. 76 of 2013.

Nikunj Dayal, Pramod Dayal, Ms. Payal Dayal, Advs. for the Appellants.

S. Gurukrishna Kumar, Sr. Adv., Ms. Meenesh Dubey, Mohan Raj, S. R. Setia, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

A 2. This appeal is filed against the final judgment and order dated
04.08.2014 passed by the High Court of Delhi at New Delhi in RCR No.
76 of 2013 whereby the High Court dismissed the revision filed by the
appellants herein against the judgment dated 13.08.2012 of the Additional
Rent Controller, Delhi by which the leave to contest the application filed
B by the appellants-tenant has been dismissed and the eviction petition
under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter
referred to as “the Act”) filed by respondent No.1 was decreed.

3. We herein set out the facts, in brief, to appreciate the issue involved
in this appeal.

C 4. One Miri Mal was the owner of the shop situated on the ground
floor of property bearing No. 1548/V, Nai Sarak, Delhi-110 006
(hereinafter referred to as “the suit shop”). Miri Mal let out the suit shop
to one Ram Prakash in 1944 on monthly rent of ‘Ek Ana’. Miri Mal died
in 1974 leaving behind his widow-Smt. Ram Piari, who became the
owner/landlady of the suit shop by inheritance. After the death of Miri
D Lal, Ram Piari started collecting rent from Ram Prakash. Ram Prakash
died in 1989 leaving behind his son (appellant herein). Smt. Ram Piari
died issueless in 1994.

E 5. Almost after 17 years of the death of Smt. Ram Piari, on
28.07.2011, Respondent No.1 herein claiming to be the adopted son of
Miri Mal and Smt. Ram Piari, filed an application under Section 14(1)(e)
of Act seeking appellants’ eviction from the suit shop being Case No.
E-167/2011. Respondent No.1 sought eviction, *inter alia*, on the ground
that he is the adopted son of Miri Mal and Smt. Ram Piari, therefore,
became the owner and landlord of the suit shop on their death as their
F adopted son by inheritance. Respondent No.1 sought eviction on the
ground of his *bona fide* need to start a business in the suit shop.

6. In order to prove his ownership over the suit shop, respondent
No.1 filed some documents which included one adoption deed dated
14.03.1978 alleged to have been executed by Smt. Ram Piari.

G 7. The appellants, on receipt of the summons of the application,
filed an application with an affidavit under Section 25B(4) of the Act by
raising grounds therein and sought leave to contest the application filed
by respondent No.1 for eviction. Since the issue relating to the ownership
of respondent No.1 over the suit shop, on the strength of adoption deed
surfaced for the first time in these proceedings, the appellants in his
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leave to contest the application denied the ownership of respondent No. 1 over the suit shop so also the relationship of landlord and tenant between them. The appellants also denied the *bona fide* need set up by respondent No. 1 contending, *inter alia*, that alternative suitable accommodation in the building in question is available to respondent No. 1 on other floors and hence the plea of *bona fide* need is not genuine. These were essentially the grounds on which the appellants sought leave to contest the application on merits.

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8. Respondent No. 1 denied the averments made by the appellants in the application for leave to contest. The appellants then filed rejoinder and reiterated their grounds already taken in the application for leave to contest.

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9. By order dated 13.08.2012, the Additional Rent Controller dismissed the application filed by the appellants for leave to contest and passed an eviction order against the appellants from the suit shop.

10. Felt aggrieved by the said order, the appellants filed revision before the High Court. By impugned judgment dated 04.08.2014, the High Court dismissed the revision.

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11. Challenging the order of the High Court, the appellants have filed this appeal by way of special leave before this Court.

12. Heard Mr. Nikunj Dayal, learned counsel for the appellants and Mr. S. Gurukrishna Kumar, learned senior counsel for respondent No. 1. Respondent No. 2 refused to acknowledge the receipt of the service of notice issued to him under registered cover. This refusal on the part of respondent No. 2 is deemed as proper service.

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13. Learned counsel for the appellants (tenant) while assailing the legality and correctness of the impugned order contended that the Rent Controlling Authority and the High Court erred in dismissing the appellants' application for leave to contest the eviction application filed by respondent No. 1. It was his submission that keeping in view the grounds raised by the appellants in the application, especially, three grounds, namely, first, relating to ownership of respondent No. 1 over the suit shop, second, the existence of the relationship of landlord and tenant between them and, third, the availability of alternative suitable accommodation in the same building for accomplishing the need, *prima facie*, a case is made out to contest the respondent No. 1's application for eviction on merits. The Rent Controlling Authority and the High Court should have, therefore,

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A granted leave to contest respondent No. 1's application on merits on these grounds.

14. In reply, learned senior counsel for respondent No. 1 supported the impugned order and contended that no case is made out to interfere in the impugned order which, according to him, is based on proper reasoning calling no interference in this appeal.

15. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions of the learned counsel for the appellants.

C 16. The short question, which arises for consideration in this appeal, is whether the Courts below were justified in rejecting the application filed by the appellants under Section 25B(4) of the Act for grant of leave to contest the eviction proceedings filed by respondent No. 1 against the appellants under Section 14 (e) of the Act on merits?

D 17. In our considered opinion, the application filed by the appellants under Section 25B(4) of the Act seeking leave to contest the eviction application of respondent No. 1 should have been allowed to enable the appellants (tenant) to contest the eviction application on its merits. In other words, keeping in view the grounds raised by the appellants, we are of the opinion that a *prima facie* case was made out entitling the appellants to contest the application of respondent No. 1 on merits. The grounds raised by the appellants, if accepted, could result in dismissal of respondent No. 1's eviction application thereby disentitling him to claim appellants' eviction from the suit shop.

F 18. We find that the ground relating to proof of ownership of respondent No. 1 over the suit shop, which was based on the alleged adoption deed set up by him, for the first time, after 17 years coupled with the ground in relation to devolution of tenancy between the parties after the death of Smt. Ram Piari and lastly, the ground relating to *bona fide* need and availability of the alternative accommodation did disclose *prima facie* facts within the meaning of sub-sections 4 and 5 of Section 25B of the Act to contest the eviction application of respondent No. 1 on merits.

H 19. It is, *inter alia*, for the reasons, though *prima facie*, that, firstly, the appellants had not attorned to respondent No. 1 as the owner of the suit shop and, in turn, his status as landlord; Secondly, there was no evidence to prove the existence of relationship of landlord and tenant

between the parties; and Thirdly, specific averments were made by the appellants to show availability of alternative accommodation to satisfy the need of respondent No.1, if it really existed.

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20. The aforesaid grounds, in our view, were sufficient for granting leave to the appellants to contest the eviction application of respondent No.1 on merits.

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21. It is a settled principle of law that while considering the grant of leave to contest the eviction proceedings under the Rent Laws, the Authority/Court is not expected to examine the merits and demerits of the grounds raised in the application for grant of leave to contest and if the Authority/Court finds that the grounds raised *prima facie* disclose a defence which, if accepted, may result in non-suiting the landlord from claiming eviction, the tenant is entitled to obtain leave to contest the eviction proceedings on merits. In this case, we find that the appellants-tenant have made out such grounds and are, therefore, entitled for grant of leave to contest the eviction proceedings filed by respondent No.1 against them on merits.

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22. In the light of foregoing discussion, we are unable to concur with the reasoning and the conclusion arrived at by the Rent Controlling Authority and the High Court.

23. As a result, the appeal succeeds and is accordingly allowed. The impugned judgment and the order passed by the Additional Rent Controlling Authority dated 13.08.2012 in E-167/2011 (Annexure-P-6 of SLP) are set aside. As a consequence thereof, the application filed by the appellants under Section 25B(4) of the Act dated 29.08.2011 (Annexure P-3 of SLP) is allowed. The appellants-tenant are granted leave to contest the application filed by respondent No.1 under Section 14 of the Act on merits.

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24. The eviction case filed by respondent No.1 being Case No. E-167/2011 out of which this appeal arises is accordingly restored to its original file before the Additional Rent Controlling Authority for its disposal on merits in accordance with law.

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25. The appellants are directed to deposit the entire arrears of rent payable from the date of application filed by respondent No.1 for their eviction and continue to deposit the monthly rent on or before 15th of each month at the rate determined by the High Court till final orders are passed by the Rent Controlling Authority. Failure to deposit the arrears

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A including monthly rent, as directed herein, would result in refusal to contest the eviction proceedings.

26. Let the arrears be deposited within one month. Depending upon the result of the final order, appropriate orders for payment of rent deposited be passed.

B 27. Before parting with the case, we consider it apposite to mention that we have not expressed any opinion on the merits of the grounds raised by the parties. The Rent Controlling Authority would, therefore, decide the case on merits strictly in accordance with law without being influenced by any of our observations made in this order.

C 28. Since the matter relates to eviction, we direct the Rent Controlling Authority to decide the same expeditiously.

Nidhi Jain

Appeal allowed.