

Delhi District Court

//1// vs Sh. Jagmohan @ Raju on 28 March, 2013

Author: Mr. Satish Arora

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IN THE COURT OF SATISH KUMAR ARORA, ARC-1 (CENTRAL) TIS  
HAZARI COURTS, DELHI.  
E-342/09

28.03.2013

Shri J.S.Mehta

s/o Late Shri Mehta Ram Lal Vaid

R/o RZ-C/17-18, Mahavir Enclave,

Palam Village, New Delhi-45.

...Petitioner

VERSUS

1. Sh. Jagmohan @ Raju

s/o Sh. Kundan Singh,

Khoka No. 1 in property no. 32, Block No. 3,  
Old Rajinder Nagar, Delhi.

2. Smt. Kanta Mehta w/o Late Sh. Banke Bihari

r/o quarter no. 32, block no. 3,  
Old Rajinder Nagar, Delhi.

(respondent expired and proceedings abated on 26.10.2009)

3. Union of India through its Secretary,

Ministry of Housing and Urban Development,

Land and Development office,

Nirman Bhavan, New Delhi.

...Respondents

Petition u/s 14 (1) (a) & (k) of Delhi Rent Control Act

1. Date of institution of the case : 16.08.2002

2. Date of Judgment reserved : 19.03.2013

3. Date of Judgment pronounced : 28.03.2013

## JUDGMENT

1. The brief facts as stated in the petition are that the petitioner is claiming himself to be the owner of property no. 32, Block No. 3, Old Rajinder Nagar, New Delhi by virtue of a Will executed by his Late father Sh. Mehta Ram Lal Vaid. It is further stated that respondent no. 2 (since expired, proceedings abated) who is the wife of Late Sh. Banke Bihari, brother of the petitioner also //2// admitted the genuineness of the said Will in suit no. 80/97 titled as Shri J.S.Mehta Vs. Smt. Kanta Mehta & Others which was decided by Shri Y.S.Jonwal, the then Ld. ADJ, Delhi on 22.05.2000. It is further stated that the the respondent no. 1 is an old tenant in respect of Khoka No.1 in property no. 32, Block No. 3, Old Rajinder Nagar, Delhi, more specifically shown in red in the site plan filed therewith and hereinafter referred to as the suit premises. It is further stated that the land underneath the property in question was allotted to the father of the petitioner by the Rehabilitation Department on the lease hold basis and as per one of the conditions imposed in the said lease by the L&DO, the land and the building erected thereon shall not be used for any purposes other than residential purposes. It is further stated that the respondent no. 1 contrary to the said terms and conditions of the lease agreement has been using the premises in question for commercial purposes and running his business under the name and style of M/s R.S.Tailors. It is further stated that the respondent no. 3 has already imposed damages/misuser charges of Rs. 2,88,492/- with respect to

the user of suit property for commercial purposes by the respondent no. 1. It is further stated that the petitioner has served notices dated 11.12.2000 and 08.04.2002 upon the respondent no. 1 calling upon him to stop using the suit premises for commercial purposes, however, the respondent no. 1 is still continuing with his tailoring business from the suit shop. It is further stated that the respondent no.1 has also neither paid nor tendered the rent to the petitioner within two months from the receipt of the legal notice dated 11.12.2000 and 08.04.2002 despite being in arrears of rent w.e.f 01.01.2001. It is on the basis of these facts that a prayer is made for passing of an eviction order under clause (a) and (k) of the proviso to sub section 1 of section 14 of DRC Act in //3// respect of the suit premises in favour of the petitioner and against the respondent.

2. Upon being served with the summons, respondent no. 1 and respondent no. 2 separately filed their written statements.

3. In his written statement, respondent no. 1 took a preliminary objection that the present petition is not maintainable as the petitioner is neither the owner nor the landlord of the suit premises and that there is no privity of contract between them. It was further stated that respondent no. 1 was inducted as a tenant into the suit shop by Shri Ram Lal Mehta for residence cum commercial purposes and after his death, respondent no. 1 started paying rent to his son Sh. Banke Bihari. It was further stated that after the death of Sh. Banke Bihari, his wife Smt. Kanta Mehta became the owner/landlord of the premises and respondent no. 1 started paying rent to her and has paid the rent upto September, 2002. It was further stated that the property in dispute is being used for commercial purposes by the legal heirs of the landlord themselves and the liability, if any, for the payment of damages is that of the legal heirs of the previous landlord i.e respondent no. 2 who claims herself to be the owner and landlord of the premises. It was further stated that even otherwise the suit premises is situated in commercial area and the said area is declared commercial by L&DO and all new buildings are being erected for commercial purposes. It was further stated that the suit property which is khoka no.1 is not a part of the land underneath the property no. 32, Block No. 3, Old Rajinder Nagar, New Delhi and thus does not belong to respondent no. 3. It was further stated that the answering respondent has received only a notice dated 11.12.2000 and no notice dated 08.04.2002 was ever received. It was further stated that reply to notice dated 11.12.2000 was sent through the //4// advocate of respondent no. 1 Shri Jatinder Chawla on 01.01.2001. Prayer was thus made to dismiss the eviction petition with costs.

4. Respondent no. 2 in her written statement took a plea that the alleged order and decree passed by the Court of Sh. Y.S.Jonwal, the then Ld. ADJ on 22.05.2000 in civil suit no. 80/97 has been obtained by the petitioner by playing fraud upon the court and the answering respondent and that appropriate steps have been taken for setting aside the said order and decree and the proceedings are pending in the court of Sh. S.C.Rajan, the then Ld. ADJ, Delhi. It was also stated that the alleged Will of Mehta Ram Lal Vaid is a forged and fabricated document and no property was bequeathed in favour of the petitioner. Prayer was, thus, made to dismiss the eviction petition with costs.

5. Replication to the written statements of two respondents was filed on behalf of the petitioner wherein the averments made in the eviction petition were reiterated and reaffirmed and those made in the written statements were denied and controverted.

6. It is pertinent to note here that vide order dated 16.07.2003, the present eviction petition alongwith five other eviction petitions filed by the petitioner herein against different respondents were consolidated as the grounds in all the cases were common as that of section 14 (1) (a) and (k) of DRC Act. Even the defense in all the six cases including the present eviction petition were common. However, it is to be seen that the present eviction petition with another eviction petition bearing no. E-343/09/02 (previous no. E-RC-3537/02/66) came up for final arguments simultaneously and the other matters were still at the stage of trial/respondent's evidence. Therefore, on the request and submissions of the Ld. Counsel for the parties, final arguments //5// were heard in the present matter and in the connected petition as afore said.

7. Evidence led by the parties In order to prove his case, petitioner has examined himself as AW-1/PW-1 by way of affidavit Ex. A-1.

The documents exhibited in the evidence of PW-1 are the copies of the certified copies of statements in suit no. 80/97, order passed in that suit, application u/o 23 rule 3 r/w section 151 CPC, affidavit of PW-1 in that suit and the affidavit of Smt. Kanta Mehta which has been filed in eviction petition no. 23/01 are marked A to E, copy of the letter of attornment cum notice dated 11.12.2000 as Ex. AW-1/6 with its postal and UPC receipt as Ex. AW-1/9 and AW-1/10 and the returned AD card as Ex. AW-1/11 respectively. Ex. AW-1/7 which was stated to be the reply dated 01.01.2001 was not filed, therefore, de-exhibited. The second demand notice dated 08.04.2002 as Ex. AW-1/8 alongwith its postal & UPC receipts and the returned AD card. Photocopy of the lease deed was marked as mark F. Site plan was identified by the petitioner as Ex. AW-1/12.

8. On the other hand respondent has examined himself as DW-1 by way of affidavit Ex. D-A. The documents proved by the respondent were exhibited Ex. DW-1/R1 to Ex. DW-1/R7 respectively.

9. Grounds u/s 14 (1) (a) of DRC Act provides as under :-

The ingredients required to be proved for the ground u/s 14 (1) (a) of DRC Act are :-

- (i) Existence of relationship of landlord and tenant between the parties;
- (ii) Existence of arrears of rent/legally recoverable rent on the date of notice of demand;
- (iii) Service of notice of demand in the manner as provided in section 106 //6// of the Transfer of Property Act ;
- (iv) Failure of tenant to pay or tender the whole of the arrears of rent legally recoverable from him within two months of date of service of notice.

10. It is to be seen that it has always been the stand of respondent no. 1/tenant that the petitioner is neither the owner nor the landlord of the suit premises. He had also taken a stand that the suit premises was originally let out by Sh. Ram Lal Mehta and after his death, rent was paid to his son Sh. Banke Bihari and after the death of Sh. Banke Bihari, to his wife Smt. Kanta Mehta who is the

respondent no. 2 herein. It is in the light of this, that the testimony of the petitioner/PW-1 is to be dealt with and analysed. In his affidavit in evidence which is Ex. A-1, AW-1 deposed that Sh. Mehta Ram Lal Vaid was the allottee of property no. 32, Block No. 3, Old Rajinder Nagar, Delhi who had bequeathed the said property in his favour by virtue of a Will. AW-1 further deposed that the said Will was admitted by the respondent no. 2 in suit no. 80/97. Coming on to his cross examination, AW-1 deposed that Late Sh. Mehta Ram Lal Vaid was the original owner of the suit property and he had let out the premises in question during his life time. He further deposed that the khoka shown as shop no. 1 in red in the site plan Ex. AW-1/12 is not on municipal land. He further deposed that the khoka/premises in dispute is a wooden structure and that it cannot be used for residence. He admitted that in para no. 4 of his petition, he had stated that the wooden khoka is residential in nature. He also admitted that the L&DO has not issued any notice pertaining to the khoka. In his further cross examination, he admitted that after the death of his father, Mr. Banke Bihari was collecting the rent from the tenant. However, while so admitting he stated that it was //7// being collected with his permission. He admitted that there is no document in writing with respect to the permission given by him as he was his younger brother and no written permission was required. He also admitted that after the death of Sh. Banke Bihari, Smt. Kanta Mehta was collecting the rent from the tenant. While so admitting, he stated that she was collecting the rent illegally. He admitted that he had not filed any suit against Smt. Kanta Mehta for restraining her in collecting the rent. He stated that he had only filed a suit in the Court of Sh. Y.S.Zonwal. In his further cross examination, AW-1 admitted that Smt. Kanta Mehta continued collecting the rent. He further admitted that he has no documentary record available with him to show that respondent no. 1 ever dealt with him as a landlord. While so admitting, he stated that he and the respondent no. 1 had a personal meeting in this regard in the year 1997, however he has no record of the said meeting. He further admitted that whereas he has not applied for probate in respect of the Will in his favour, on the other hand, Smt. Kanta Mehta had applied for probate on the basis of a Will in favour of Sh. Banke Bihari.

11. From the aforesaid testimony of AW-1, it becomes apparent that petitioner/AW-1 failed to produce any documentary evidence on record to establish that after the death of his father Sh. Mehta Ram Lal Vaid, he became the exclusive owner of the suit property and that also became the landlord of the tenant/respondent no. 1. Further, AW-1 also admitted that he has nothing in his possession to establish that respondent no. 1 admitted him to be his landlord. He also admitted that he had never collected the rent from the respondent no.1 and that after the death of his father, initially his brother Sh. Banke Bihari was collecting the rent and thereafter, Smt. Kanta Mehta continued collecting the rent. For the first time in his cross examination, //8// petitioner stated that the rent was collected by Late Sh. Banke Bihari with his permission and after his death Smt. Kanta Mehta was illegally collecting the rent from the tenant. It is quite evident from the testimony of the petitioner himself that it was Sh. Banke Bihari and after his death his wife Smt. Kanta Mehta were collecting the rent and were dealing with the tenant. This endorses the stand taken up by the respondent no. 1 in his written statement that at no point of time, petitioner has been admitted to be the landlord of the suit premises/khoka/tenanted shop. Going further, petitioner for the purposes of filing the present eviction petition and to establish that he is the landlord/owner of the suit property relied upon the compromise which took place between him and the respondent no. 2 in Civil Suit No. 80/97. The copy of the certified copies of the compromise proceedings in the said Civil Suit were filed on record. It is to be seen that the compromise between the petitioner and respondent no. 1 was

conditional as in clause (vi) of para no. 2 of the application u/o 23 rule 3 r/w section 151 CPC, it was agreed as part of the compromise that petitioner herein/plaintiff in the aforesaid Civil suit shall give 40% share to the defendants (respondent no. 2 herein alongwith the LRs of Late Sh. Banke Bihari). It was only then that the defendants accepted to be left with no claim whatsoever in the property in question. Nothing has been filed on record by the petitioner herein as to whether or not he gave the 40% share as agreed to the respondent no. 2 herein and her children. Once there is nothing on record with respect to the compliance of the compromise, petitioner has nothing available with him to even establish that he became the exclusive owner of the property in question. Even the respondent no. 2 Smt. Kanta Mehta in her written statement filed in the present eviction petition took a definite stand that the alleged compromise in the civil suit no. 80/97 was //9// obtained on the basis of fraud played by the petitioner herein. Thus, in view of the same and the admissions made by the petitioner in his cross examination that he never collected the rent from the tenant or ever dealt with him and that Smt. Kanta Mehta continued collecting the rent, it stands concluded that petitioner has failed to even prima facie establish on record that there was any relationship of landlord-tenant between him and the respondent no. 1. Further, respondent no. 1 in his cross examination placed on record and proved the rent receipts issued by Smt. Kanta Mehta which were identified as Ex. DW-1/R1 to DW-1/R7 respectively. Ex. DW-1/R1 is the receipt dated 15.01.1997 and is for the period 10.08.1994 to 31.01.1997. Ex. DW-1/R2 is the receipt dated 07.11.2000 and is for the period 01.10.2000 to 31.12.2000. Ex. DW-1/R3 is the receipt dated 01.01.2001 and is for the period 01.01.2001 to 31.03.2001. Ex. DW-1/R4 is the receipt dated 07.04.2001 and is for the period 01.04.2001 to 30.06.2001. Ex. DW-1/R5 is the receipt dated 07.07.2001 and is for the period 07.07.2001 to 07.10.2001. Ex. DW-1/R6 is the receipt dated 10.01.2002 and is for the period 10.01.2002 to 10.03.2002. Ex. DW-1/R7 is the receipt dated 10.04.2002 and is for the period 10.04.2002 to 10.06.2002. Two more receipts which were not exhibited are dated 10.10.2001 for the period 10.10.2001 to 31.12.2001 and dated 08.07.2002 for the period 08.07.2002 to 30.09.2002 respectively. Admittedly, petitioner did not dispute the genuineness of the said rent receipts and as is to be seen from the said rent receipts, they are for the period ranging from the year 1997 to the year 2002 respectively. Once the respondent no. 1 was tendering the rent to the respondent no. 2 Smt. Kanta Mehta and it was accepted till 30.09.2002, there is no cause of action insofar as the petition u/s 14 (1) (a) of DRC Act is concerned as the respondent no. 1 was never in arrears of rent on //10// or before the date of the legal notice. As already noted, petitioner even in his cross examination admitted that Smt. Kanta Mehta continued collecting the rent and that he had not filed any suit restraining her from collecting the rent except the civil suit no. 80/97 which was disposed of as compromised. It has also been noted that petitioner failed to place on record any document to establish that the compromise in the said civil suit was ever given effect to between him and the respondent no. 2. Thus, insofar as the prayer of the petitioner u/s 14(1) (a) of DRC Act is concerned, same is without any merits and is accordingly declined.

12. Now, coming on to the case of the petitioner u/s section 14 (1) (k) of DRC Act, again it is to be seen that despite taking a specific plea in the eviction petition that the L&DO department has imposed damages/misuser charges of Rs. 2,88,492/- for the user of the suit property for commercial purposes by the respondent no. 1, petitioner did not file on record any such document and even did not summon any witness from the L&DO department so as to establish that the user of the premises by the respondent no. 1 for commercial purposes is contrary to any condition imposed upon the

owner of the suit property by the government or its concerned agency. Even in his cross examination, AW-1 admitted that L&DO department has not issued any notice pertaining to khoka/the suit shop. He further admitted that the khoka which is a wooden structure cannot be used for residential purposes. This is again sufficient to conclude that the petitioner also fails to establish on record that the user of the suit premises by the respondent no. 1 for commercial purposes is in contravention of any condition imposed upon the petitioner with respect to the suit premises by the government or its concerned department. Thus, even the prayer of the petitioner u/s 14 (1) (k) of DRC Act is without any //11// merits and is accordingly declined.

13. In view of the forgoing, the eviction petition filed by the petitioner u/s 14 (1) (a) & (k) of DRC Act is hereby dismissed. No orders as to cost.

File be consigned to record room.

(Announced in the open court  
on 28.03.13)

(Satish Kumar Arora)  
ARC-1/Central/THC/Delhi