

**(2011) 11 DEL CK 0176**

**Delhi High Court**

**Case No:** CM (M) 1246 of 2011 and CM No"s. 19608-09 of 2011

Bharti Laiq (Nee Bhargava)

APPELLANT

Vs

Gardenia Estates (P) Ltd.

RESPONDENT

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**Date of Decision:** Nov. 1, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Delhi Rent Control Act, 1958 - Section 14, 25(B)
- Delhi Rent Control Rules, 1959 - Rule 23

**Hon'ble Judges:** Indermeet Kaur, J

**Bench:** Single Bench

**Advocate:** Lata Krishnamurti, Mr. Gurinder Pal Singh, Mr. Pranav Diesh and Mr. Karan Kalia, for the Appellant; Nemo, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Indermeet Kaur, J.

Order impugned is the order dated 24.9.2011 vide which the application filed by the tenant seeking amendment of his application for leave to defend under Order 6 rule 17 of the CPC (hereinafter referred to as "the Code") had been dismissed.

2. Record shows that the present eviction petition has been filed by the landlord M/s Gardenia Estates (P) Ltd. on the ground that there is bonafide requirement of the one of the directors of the landlord company namely Pavan Kohli of the disputed premises for his residence. The disputed premises are the first floor of premises bearing no. 138-A, Golf Links, New Delhi which has been tenanted out to the tenant/petitioner namely Bharti Laiq. Application for leave to defend had been filed on 22.7.2010; present application seeking amendment of the said application for leave to defend had been filed about more than six months later i.e. on 05.02.2011. In the application under Order 6 Rule 17 of the Code the submission made by the tenant is that the director of the landlord company namely Pavan Kohli is a director

in other holding companies of the petitioner as well and details of the said companies have been given in the said application; contention being that the present petition has been filed only to harass the petitioner as Pavan Kohli is the grandson of Narinder Singh Kohli who has other properties which are available with the petitioner company; further contention being that the company has residential accommodation at various places in Delhi and the director Pavan Kohli be directed to give a full disclosure of all these facts on affidavit; further the company M/s Pink City Apartments (P) Ltd. is the owner of the property No.227, Jor Bagh where Pavan Kohli is presently residing and he has a right to remain in this property in his own right; the company Speed Lines (P) Ltd. also has several commercial flats; there is no bonafide need of the present accommodation.

3. Reply has been filed by the landlord to the application under Order VI Rule 17 of the Code. On behalf of the landlord it has been vehemently urged that the landlord company is a distinct legal entity and this property is required bonafide for the residence of its director namely Pavan Kohli; further even as per the petitioner these facts were known to the petitioner vide information obtained from a website and inspections conducted by their company secretary which are dated 28.7.2010, 13.8.2010 and 01.9.2010; there is no explanation for filing the amendment application in February 2011. It is argued that the landlord is a construction company and is carrying on its commercial activity of construction; the aforementioned properties are commercial flats and admittedly not a part of Delhi; the premises in dispute is bonafide required by the director of the company for his own need; the present accommodation where the petitioner is putting up is too small to accommodate himself and his family.

4. The impugned order had dismissed the application primarily on the ground that an application seeking amendment is not permissible in an eviction petition u/s 14(1)(e) of the DRCA as the procedure enlisted for dealing with such an application is contained in Section 25(B) of the said Act and in view of the pronouncement of the Apex Court reported in [Prithipal Singh Vs. Satpal Singh \(Dead\) through LRs.](#), such an application could not be entertained.

5. This order is the subject matter of the present petition.

6. On behalf of the petitioner it has vehemently been urged that the judgment of Prithipal Singh (supra) is peculiar to the facts of the said case; contention being that in that case application for leave to defend was not filed within the stipulated period whereupon the court had noted that the time could not be extended for the said purpose and in that scenario it has been noted that Rule 23 of Delhi Rent Control Rules, 1959 is inapplicable. Facts of the instant case are different. Counsel for the petitioner has placed reliance upon a judgment of a Bench of this Court reported in 2009 10 (AD) Del 284 Ved Prakash and Anr. vs. Om Prakash Jain wherein an amendment application seeking permission to amend an application for leave to defend had been considered; contention being that such an application is clearly

maintainable; even on merits the case of the petitioner is prima facie strong; the last contention of the petitioner being that he has no objection if a time bound frame is chalked out by this court for disposal of his application for leave to defend. Reliance has also been placed upon a judgment of a Bench of this Court delivered on 21.08.2007 Shri Tulsi Ram vs. Shri Ram Kishan Dass and Others to support the same submission.

7. In the counter arguments; these submission have been vehemently disputed. It is submitted that the Apex Court has in Prithipal Singh (supra) held that such an application is not maintainable; even on merits the facts now sought to be incorporated were all pre-existing which were well within the knowledge of the petitioner at the time of filing of his application for leave to defend; this is only a delaying tactic.

8. In Prithipal Singh (supra) the court was dealing with the prayer of the tenant who had sought extension of time for filing his application for leave to defend. Admittedly he had not filed the application within the stipulated period of 15 days. The history of the legislation i.e. the DRCA and introduction of Chapter IIIA which is a special procedure introduced by the legislature for a summary trial of certain applications filed under the Rent Act had been delved into. In this context the Apex Court had noted as follows:

Section 25-B of the Act is a complete code by which the entire procedure to be adopted for eviction of a tenant on the ground of bona fide requirement filed by the landlord in respect of a premises, shall be followed. From a close examination of Section 25-B(1) of the Rent Act, it is evident and clear that an application filed by a landlord for recovery of possession of any premises on the ground specified in clause(e) of the proviso to sub-section(1) of Section 14 or u/s 14-A or u/s 14-B or under 14-C or u/s 14-D, shall be dealt with in accordance with the procedure specified in this section. Apart from that, Section 25-B itself is a special code and therefore, the Rent Controller, while dealing with an application for eviction of a tenant on the ground of bona fide requirement, has to follow a procedure strictly in compliance with Section 25-B of the Act.

9. Rule 23 of the Delhi Rent Control Rules, 1959 is also relevant; the extract of which reads herein as under:

23. CPC to be generally followed

In deciding any question relating to procedure not specifically provided by the Act and these rules the Controller and the Rent Control Tribunal shall, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908.

10. In this context the Apex Court in Prithipal Singh (supra) on the applicability of Rule 23 had made the following observation:

Rule 23 does not specifically confer any power on the Controller to follow the provisions of CPC in cases of special classes of landlords. Rule 23 is a general rule, by which the Controller in deciding any question relating to procedure not specifically provided by the Act and these Rules shall, as far as possible, be guided by the provisions contained in CPC. After insertion of Section 25-B of the Act, any application for granting eviction for a special kind of landlord, shall be dealt with strictly in compliance with Section 25-B and Rule 23 of the Rules, which also does not give full right to apply the provisions of CPC, cannot be applied.

11. Contention of the petitioner before this Court is that the procedure contained in Section 25B is silent as to whether an amendment is permissible or not and in the absence of which Rule 23 of the Delhi Rent Control Rules, 1959 can be adhered to. Reliance has also been placed upon the judgment of Ved Prakash (supra). The said judgment had been pronounced on 07.8.2009 which is admittedly prior in time to the judgment of Prithipal Singh (supra) which was pronounced on 18.12.2009.

12. The judgment of Prithipal Singh is clear and categorical on the point that the procedure contained in Section 25B of the DRCA has to be strictly adhered to for dealing with a petition u/s 14(1)(e) of the DRCA. This ratio of Prithipal Singh precludes the applicability of the provisions of the Code of Civil Procedure; further the amendments sought for even otherwise were of facts which were already known to the petitioner. The facts which were sought to be incorporated i.e. that the landlord company was a part of a huge Real Estate Group of companies having several properties in their name were all facts known to the tenant; even otherwise they would not have a bearing on the bonafide requirement of the Director of the company namely Pavan Kohli who is seeking this eviction order for his own personal residence for himself and his family. These facts being all pre-existing i.e. existing at the time when the application for leave to defend was filed; if such an application is permitted the whole purpose and intent of the provisions of Section 25B(4) would be defeated as the specifically stipulated period for filing an application for leave to defend within 15 days would be given a go by and by permitting the amendment there would be an automatic extension of time for filing the application for leave to defend. This could not and was not the intent of the statute. In Ved Prakash (Supra) also the amendments sought for although being of subsequent events were disallowed, as having been filed belatedly. In the case of Tulsi Ram (Supra) a distinction between the pre-existing and subsequent events had been drawn; in that case during the pendency of the appeal, five more rooms had been added by the landlord which was a fact which had been sought to be incorporated in the application seeking amendment; the Court had also noted that there was no contest by the landlord to this factual averment of the tenant. As noted supra the facts which are sought to be incorporated by way of the present application under Order 6 Rule 17 of the Code were all pre-existing i.e. existing at the time when the application for leave to defend was filed.

13. The Supreme Court in the judgment of Prithipal Singh has also quoted with approval the observation made by the Apex Court in its earlier judgment reported in [Ravi Dutt Sharma Vs. Ratan Lal Bhargava](#), . Relevant extract reads as follows:

7. .... The dominant object of amending act is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Section 14(1)(e) and 14-A and for avoiding unusual dilatory process provided otherwise by the Rent Act. It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In many cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and it there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief which the legislature intended to avoid by incorporating the new procedure in Chapter III-A. The legislature in its wisdom thought that in cases where the landlords required their own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14-A and should be allowed to reap the fruits of decrees for eviction within the quickest possible time. In cannot, therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the amending Act and the purposes which it seeks to subserve. Tenants cannot complain of any discrimination because the Rent Act merely gave certain protection to them in public interest and if the protection or a part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of Property Act was still preserved, no genuine grievance could be made.

14. Thus after the insertion of 25-B of the Act any application for granting eviction by a special kind of landlord shall be dealt with strictly in compliance with the procedure as contained in Section 25-B. Impugned order suffers from no infirmity. Dismissed.