

* **HIGH COURT OF DELHI : NEW DELHI**

+ **R.C. Rev. No. 11 of 2007**

% **Dated : March 3, 2008**

Mr. Jitender Jha Petitioner
Through: Mr. C.S. Rathore, Advocate.
versus

Mrs. Kiran Sharma. Respondent
Through: Mr. Manoranjan, Advocate

***CORAM:**
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

VIPIN SANGHI, J.(ORAL)

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1. This revision petition is preferred to challenge the order dated 21st November 2006 passed by the learned Additional Rent Controller, Delhi whereby the application filed by the petitioner tenant seeking leave to defend the eviction petition filed by the respondent under Section 14(1)(e) of the Delhi Rent Control Act has been rejected and consequently an eviction order passed. The respondent had sought eviction of the petitioner from Janta Flat No.43, Site II, Ground Floor, Vikaspuri, New Delhi on the ground of bonafide requirement. Admittedly, respondent is the landlady/ owner of the aforesaid

premises. The premises was let out to the petitioner on 6.8.1988 for residential purposes. The family of the respondent consists of herself, her husband, one son, studying at the time of filing the petition in second year of college and daughter studying in class 11. She further states that her parents are also dependent upon her for residence. The respondent herself is living in a tenanted premises at WZ-1391/23 B, Nangal Rai, New Delhi on the monthly rent of Rs.2800 per month. The petition was filed on the basis that her son is now of marriageable age and needs a separate room. She further submitted that she could not finalize the matrimony of her son on account of paucity of accommodation. Her case was that after the eviction of the suit premises, her son could live in the said Janta Flat.

2. The petitioner tenant filed his application seeking leave to defend and one of the primary contentions was that the landlady has earlier filed an eviction petition on the same ground of bonafide requirement which had been dismissed by the learned ARC on 4.12.2002. That petition had been filed in March 2000. It was contended that the earlier decision would operate as res-judicata and subsequent petition could not be maintained. It was also argued that the tenanted premises consists of only one room accommodation, which would not be able to accommodate the family of the respondent. The respondent was having a much larger accommodation available with her presently, though tenanted for her residence and the residence of her family. Consequently, the bonafide

need of the respondent was disputed.

3. The learned Additional Rent Controller considered these submissions and observed as follows:

“10. From the arguments advanced on behalf of both the parties and on the basis of evidence on record, I am inclined to agree with the submissions made by learned counsel for the petitioner. It is not disputed that the earlier eviction petition was dismissed as it was held that the petitioner could not accommodate her entire family in one room in Janta Flat and thus her need was not bonafide. However, from bare perusal of contents of the petition it is apparent that petitioner has sought eviction of the respondent on the ground that she requires one room Janta Flat for her son to accommodate alongwith his wife after solemnization of his marriage. In other words, by this petition petitioner does not seek eviction of the respondent from the suit premises with a view to accommodate her entire family including her parents. It is her case that her son is now marriageable age and that she has not been able to finalize his marriage on account of paucity of accommodation. Considering the totality of facts and circumstances of the case, I am of the view that present petition cannot be said to be barred by principle of res-judicata.

11. It has already been observed herein that petitioner's ownership was disputed by respondent initially yet in his cross-examination he admitted petitioner to be owner/landlord of the suit property. Petitioner has stated that although her requirement is much more in order to accommodate her entire family and her parents who are dependent upon her yet tenanted premises are required by her for accommodate his marriageable son. Law is well settled that it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. I am

supported with the judgment of Hon'ble Supreme Court titled as R.C. Tamrakar and another vs. Nidi Lekha, 2001 (2 RCR) 511."

4. Before me, once again the submission of the petitioner tenant is that since the earlier eviction petition had been dismissed by not finding the need of the respondent landlady to be bonafide, she could not maintain the present petition and in any case, the same raises a triable issue.

5. I find no merit in the submission of the petitioner. As aforesaid, the earlier petition had been filed in the year 2000, when the children of the respondent were still school going. However, over the years, the children of the respondent have grown up and her son was of 22 years when the petition was filed, and the daughter was also of 17 years of age. These are materially changed circumstances from those existing when the earlier eviction petition was filed and decided. The present eviction petition has to be examined on the basis of the presently existing factual situation, and merely because the earlier petition was dismissed, which was founded upon the facts then pleaded and as they existed, cannot inhibit the case of the respondent. Obviously, earlier, the son of the respondent could not have been expected to live away from the respondent being a school boy. However, he is now grown up and can live separately and is also of marriageable age. Needs of respondents family have grown over the years and her need for the suit premises to settle her son cannot be said to be an eye wash. I find no error of jurisdiction and the

impugned order appears to have been passed on consideration of relevant and cogent material. No triable issue appears to have been raised by the petitioner warranting the grant of leave to defend the eviction petition.

6. Dismissed.

March 3, 2008
P.K. BABBAR

VIPIN SANGHI, J.