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IN THE HIGH COURT OF DELHI AT NEW DELHI

Dated of Reserve: July 10, 2008
Date of Order: August 25, 2008

+ RCR No.33/2008

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25.08.2008

Reflex International Pvt. Ltd.

...Petitioner

Through: Mr. Arvind Nigam with Mr. Mandeep Kaur and Ms. Sumati, Advocates.

Versus

Rajinder Dev Chopra

...Respondent

Through: Mr. Arun Mohan, Sr. Adv. with Mr. Arvind Bhatt, Advocates

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT:

1. Aggrieved by the order of learned Additional Rent Controller (ARC) dated 3rd January 2008 whereby he dismissed an application of the petitioner (hereinafter called the tenant) for leave to contest the eviction petition filed by the respondent (hereinafter called the landlord) under Section 14(1) (e) of the Delhi Rent Control Act, (for short, "DRC Act"), the petitioner has preferred this revision petition.

2. It is to be noted here that the relationship of landlord and tenant is not in dispute. The respondent, before filing of the eviction petition, sent a notice dated 11th January 2007 to the petitioner terminating the tenancy wherein the landlord claimed that the rate of rent was Rs.3,993/- per month. The petitioner, in reply to this notice, asserted that the claim of the landlord was false and the rate of rent was Rs.2,000/- per month only and hire charges for fittings and fixtures cannot be added to the rent to make it more than Rs.35,00/-. The petitioner took a specific plea that the premises was governed by the provisions of DRC Act. In the notice

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bonafide requirements as he was aged around 80 years. He was having pace-marker and he had also slipped from the stairs and he need to shift to ground floor to avoid climbing stairs to reach the first floor. The lift installed at the premises could not be used by him since it could accommodate only one person and he cannot take the lift unless accompanied by another person. He was a heart patient and a pace marker was installed upon him in February 2006. His wife also suffering from the heart problem. His son's right leg was amputated due to an accident and he also needed to reside at ground floor whenever on his visiting them. He, therefore, requested tenant to vacate the ground floor premises under its tenancy.

3. In reply to the notice, the tenant took the stand that the notice under Section 106 of the Transfer of Properties Act was illegal. The rate of rent was Rs.2000/- per month. The need of the landlord was not bonafide. The tenancy was governed and fell within the purview of provisions of DRC Act.

4. After this reply of the tenant, the landlord filed eviction petition under the provisions of DRC Act to which leave to defend was filed by the tenant and tenant took the ground that the petition was not maintainable since the tenanted premises was not covered under the provisions of DRC Act as rent of the premises was more than Rs.3,500/- and the petition was without any cause of action. The other ground taken was that the requirements of the landlord were not bonafide.

5. As far as the first contention regarding jurisdiction is concerned, the learned ARC came to conclusion that the tenant cannot be allowed to blow hot and cold simultaneously. Once the tenant has taken a stand that the rent was Rs.2000/- and the premises was covered within the purview of the DRC Act, the tenant was estopped from taking a contrary stand about the jurisdiction. As far as bonafide requirements of the landlord were concerned, the learned ARC came to conclusion that the landlord has been able to show that he was aged 80 years and his wife was aged 75 years. Both were having heart problems resulting into use of pacemaker.

The learned ARC gave finding that in view of the old age with heart problems and use of pacemaker, there can be no defence to the plea of landlord that it was difficult for them to climb up the stairs. The lift which was installed at the premises was not fit to carry two persons at a time. It could take only one person and hence the lift could not be used either by the landlord or his wife as they needed assistance of a person for using the lift due to their health. It was, therefore, not possible for them to use the lift. The trial court found that the application for leave to defend does not disclose the triable issues. The need of the landlord and his wife to live at ground floor was a bonafide need. He, therefore, dismissed the application.

6. The order is also challenged on the ground that the ARC ought to have held that the rent of the premises was Rs.3993/- per month as was alleged by the landlord in his notice and the ARC had no jurisdiction. It is stated that it was a case where landlord was blowing hot and cold simultaneously. Since the landlord in the notice alleged rent @ Rs.3993/- and had filed this petition on the ground that rent was Rs.2000/- per month, the eviction petition was liable to be dismissed.

7. I consider that this argument of the petitioner's counsel must fail. The landlord had given a notice to the tenant under Section 106 of the DRC Act claiming that the rent was Rs.3993/-. The petitioner flatly denied this claim of the landlord and categorically took the stand that the rent was Rs.2000/- per month. Paragraph 6 of the reply reads as under: -

"That in reply to para 6 of your notice, it is respectfully submitted that the rent of the tenanted premises is Rs.2000/- per month and the same is mutually agreed between your client and my client from time to time. It is denied that our client has ever promised to vacate the premises at any time as alleged and for that reason, he has not enhanced the rent."

Paragraph 16 of the reply reads as under:

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".....In fact, whatever has been stated in this para, is an imaginary picture in the mind of your client, whereas, your client has no right to claim the eviction of the tenanted premises which is governed and controlled by the provisions of the Delhi Rent Control Act and there is a protection under Section 14 of the Delhi Rent Control Act of the tenants."

Paragraph 26 of the reply reads as under:

".....It is respectfully submitted that the tenanted premises governs by the provisions of Delhi Rent Control Act and the tenants are protected in the said Act and any eviction can be sought within the purview of Section 14 of the Delhi Rent Control Act. It is further respectfully submitted that time and again asking for the vacant possession of the tenanted premises from our client which is not within the purview of Section ."

8. In view of the stand taken by the tenant categorically refusing that the rent was Rs.3993/-, the landlord had no option but to file a petition under Section 14 of the DRC Act so that the landlord had not to rush from one court to another court and get bogged down in the issue of jurisdiction of the court itself. In the Civil Court the landlord would not have to prove anything except termination of tenancy, whereas the test to be passed by the landlord before the Rent Controller was more stringent. It was the tenant who had taken a stand that the premises was covered under DRC Act and the rent was Rs.2,000/-. He now cannot be allowed to change its stand. I consider that it is the duty of the court to ensure that the system of justice is not polluted by such respondents who approbate and reprobate in accordance with their sweet will about jurisdiction of different forums. Once a tenant takes a stand that his rent was not what was alleged by the landlord but his rent was below Rs.3500/- so as to be covered by the jurisdiction of DRC Act and he takes this specific stand that his premises was only governed by DRC Act, he

cannot be allowed to say that the ARC had no jurisdiction. This Court in CM(M) No. 1190 of 2007 observed as follows:

“8. The Courts and the Rent Controller must keep in mind that the Courts cannot be converted into a wrestling field, for trial of tricks where the Court has to act as an umpire. The Courts must effectively intervene and nip the evil of perjury and false statements in bud. Where a tenant takes different stand in different Courts to defeat the effort of landlord to get the premises vacated at the time of need such an effort must be curbed down by the Courts effectively by binding him with his earlier statement in respect of the same premises and his plea of raising a dispute in respect of the rent admitted by him should not be heard and entertained. If the parties are allowed to approbate and reprobate at their sweet will and convenience and take the Courts for a ride, the whole judicial system shall fail. The courts must effectively check such parties, who take inconsistent stand according to their convenience in different proceedings. I consider the Trial Court grossly erred in holding that a triable issue was there regarding the rate of rent. Once the respondent had taken the stand in one Court that the rent was reduced to Rs.3100/- p.m, and the Civil Judge had no jurisdiction only Rent Controller had jurisdiction, now he cannot be allowed to reprobate that Rent Controller had no jurisdiction and Civil Court had jurisdiction.”

9. I, find no force in the contention of the petitioner about lack of jurisdiction in ARC. The other contention of the petitioner is that the ARC ought not to have taken into account the age of the respondent and his wife as the respondent and his wife did not turn 80 and 75 years respectively overnight. The tenant had been occupying the premises of the respondent continuously since July 1979 and allegedly filing of the petition, the landlord had not shown his bonafide requirements. It is further

contended that the landlord had filed the eviction petition on 31st July 2006 and the petitioner was allowed to live in the premises before that. If the landlord at the age of 79 and his wife at the age of 75 had no difficulty in living on the second floor of the house, they should have no difficulty even at the age of 80 and 75 years respectively and the age suddenly cannot become the basis for throwing out the petitioner/tenant. It is also submitted that the landlord had installed an elevator in the premises and this elevator could be used by the landlord for approaching the first and second floor and the plea of the landlord that the elevator could not accommodate two persons was a baseless plea. It was further submitted that the petitioner had been traveling abroad and climbing stairs at the airport and walking long distance but all of a sudden raised the trivial issue of his age.

10. It must be kept in mind that the underlying principles of rent restriction legislations is that there should be no exploitation of the tenants at the hands of the landlords. These restrictions, however, cannot be construed or interpreted so as to make the protection conferred on the tenant as a source of torture and gross injustice to the landlord, who at the time of his bonafide needs is not even allowed to re-occupy his premises. Advancement of the age of the landlord and his wife is definitely a decisive factors while considering the needs of the landlord to live at the ground floor. The tenant cannot be heard to say that if the landlord could live at the age of 70 on the first floor, he should be compelled to live at the age of 75 years also on the first floor. If the landlord had not chosen to file eviction petition against the tenant till he was able to climb the stairs, he cannot be punished and penalized for not filing the eviction petition before and eviction cannot be denied when his health has deteriorated and he is not in a position to climb the stairs. It is an undisputed fact in this case that the landlord and his wife are aged around 80 and 75 years both had pacemakers and both are suffering from heart ailments. The tenant who is a company and had been enjoying the premises for the last so many years, if does

not consider the requirement of the landlord to be genuine even at this age, when the landlord had not troubled the company earlier with any other petition for eviction, the attitude of such a tenant must be considered as callous, irrational, guided only by greed and nothing else. Firstly, the tenant took the stand that the rent was below Rs.3500/- so that the landlord could not approach the civil court and thereafter the tenant took the stand that the rent was above Rs.3500/- per month. This attitude of the tenant itself shows that the tenant somehow wanted to cling to the premises by hook or crook. If an application under Section 25(B) of the DRC Act to contest the eviction petition is allowed on such grounds of a tenant who is out to take contradictory and false pleas and tries to make a case that even old age of 80 years cannot be a ground to shift to the ground floor, there cannot be more glaring example of injustice.

11. In order to seek leave to contest in such a case, the tenant must show that the need of the landlord to occupy the ground floor was not a bonafide one. In the present case, the petitioner has miserably failed to show that the need of the landlord to shift to the ground floor due to his health, his wife's health and a peculiar situation of his son, who has amputated leg was malafide.

12. The plea that the landlord was frequently visiting the foreign country is another plea of a person having sick mind. It is only at the old age when a person, craves for the company and needs more socialization as he has no other work and he tries to spend his days with his relatives, sons and daughters. It is well known that all airlines have special provisions for old persons and they are provided special care by the airlines. They are provided with wheel chairs and an escort. They are also provided special care at the time of landing also. In almost all international airports there are elevators and walkers. So the plea is baseless.

13. As far as the lift installed at the premises is concerned, it has come on record that the lift was not fit for use of two persons and it was hardly 24 inch wide and at

one time only one person could be fit in. The tenant/petitioner had deliberately not inspected the lift despite given an opportunity.

14. It is settled law that this Court while sitting in revision cannot substitute its own judgment in place of the judgment of the learned ARC. This Court can set aside the order of the ARC only if there was some manifest error either of facts or of law on the face of the judgment. The error must be so glaring that it vitiates the judgment itself.

15. In view of my above discussion, I find no merits in the petition. The same is hereby dismissed. No orders as to costs.

August 25, 2008

SHIV NARAYAN DHINGRA J.

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