

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

+ **R.C. Rev. No.24/2006**

% Date of Decision: 03.01.2008

Smt. Sona Devi Petitioner
^ Through: Mr. Mayank Goel, Advocate

versus

! M/s. Karamvir Aggarwal and Sons Respondents
Through: None.

***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? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.
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1. Despite the matter being shown on the Regular Board, none has appeared for the Respondent.
2. This Revision Petition is directed against the judgment dated 31st August 2005 passed by the Additional Rent Controller, Karkardooma, Delhi, whereby the Petition filed by the Petitioner herein under Section 14D of the Delhi Rent Control Act

(The Act), has been dismissed.

3. The case of the Petitioner was that she was the owner of property bearing No. 477-478, Mohalla Teliwara, Shahdara, Delhi. One big room situated on the Ground Floor forming part of the said property was let out to the Respondent @ Rs.50/- per month excluding other charges in the year 1983 for running a shop. It is this premises in respect of which the eviction Petition was preferred.

4. The husband of the Petitioner died on 11.11.1989. When she became a widow, she was 61 years of age and at the time of the filing of the Eviction Petition No.502/2000, she was about 72 years of age. She filed the Petition on the ground that she bonafide require the premises let out, for her residence and for the residence of her family members, dependent upon her. She used to live earlier in House No.201, Mohalla Gurhai, Shahdara, Delhi, which was an ancestral house of her husband during the lifetime of the husband, with her family consisting of her husband, herself, her four sons out of which the eldest son was married and had two children. The entire family was living in one room measuring 12'-4" x 8'-2" and another room measuring 7'-8" x 13'-5" and a Duchhatti on mezzanine floor measuring 9'-3" x 6'-3". The room measuring 7'-8" x 13'-5" was also being used as

kitchen and passage. Since that accommodation was grossly inadequate for her requirement, she had filed an Eviction petition for eviction of her tenant one Shri Rama Shanker, who was in possession of one room, one kitchen, one tin shed etc. situated on the first floor of the property No.477-478, Teliwara, Shahdara, Delhi under Section 14(1)(e) of the Delhi Rent Control Act on 15.4.1981 and eviction order was passed on 17.10.1990 on the ground of bonafide requirement in favour of the Petitioner. She was able to obtain the possession after executing the eviction order in September 1991. She could not immediately occupy the premises since it was found to be unsafe. Her endeavour to repair the premises resulted in litigation with the Respondent which was ultimately compromised and repair works were undertaken by the Respondent in terms of the compromise. The accommodation on the First Floor which is now in occupation of the Petitioner, her married son Rakesh Kumar, who was about 28 years of age, his wife and one son, was not sufficient, since it consisted of one room, kitchen and bathroom and she required the premises on the Ground Floor consisting of one room for her residence and the residence of his family.

5. The petition was contested by Respondents on various grounds. While dismissing the petition one of the factors

that has swayed with the learned ARC is the fact that the Petitioner did not personally appear before the court to depose. Her son Rajinder Kumar had appeared as a witness and had stated that presently the Petitioner was residing on the First Floor of the property bearing No. 477-478, Teliwara, Shahdara, Delhi which is situated over the tenanted premises and prior to that she was residing at 201, Mohalla Gurhai, Shahdara, Delhi, i.e., a double storied house in which there are four rooms, two small rooms, latrine, bathroom and kitchen on the Ground Floor and four rooms and a kitchen on the First Floor. The said witness has also stated that the said house belongs not only to the Petitioner but also the other three uncles of the witness, namely, Ram Prakash, Jai Prakash and Om Prakash. The Petitioner's family was in possession of two rooms on the Ground Floor and Duchhatti on the mezzanine floor of the said property and after the demise of the father of the witness, i.e., husband of the Petitioner, the Petitioner's family had become the owner of the portion, which was marked and Ex.PW-1/3. The portions in occupation of his uncles Ram Prakash, Jai Prakash and Om Prakash were also disclosed by the said witness. He also deposed with regard to the residence of his brother Ashok, his wife and two sons in property bearing No.201. He stated that he along with his family was

occupying the first and second floors of the property bearing No. 322, Old Post Office Street, Shahdara, Delhi, which is built upon the land measuring 25 sq.yds consisting of Ground Floor, First Floor and Second Floor and one Mumti on the Third floor. The accommodation on the first and the second floor with him consisted of one living room, one bed room, kitchen. His family consisted of himself and his wife, one son aged 24 years and three daughters aged 21, 18 and 16 years. The second floor consisted of two rooms, out of which one was being used as latrine cum bathroom and the other room was with Ramesh Chand wherein he kept his household goods. He stated that his mother, i.e., the Petitioner had no other accommodation with her where she could reside. He explained the conduct of his mother not stepping into the witness box by stating that she was hard of hearing.

6. The learned Additional Rent Controller observed that the question before the court is as to whether the Petitioner, who had already sought eviction on the ground of bona fide requirement under Section 14(1)(e) of the Act previously from the court in respect of the First Floor portion, could again come to the court under Section 14D of the Act in respect of Ground Floor portion. However, she does not answer this question specifically.

In my view, there is no impediment in invoking and maintaining two petitions, one under Section 14(1)(e) in respect of one tenant and thereafter maintaining another petition under Section 14D in respect of other tenant in case the landlord is able to establish the necessary ingredients relevant for invoking the said provisions of law. On a reading of section 14D it is clear that it is irrelevant as to whether the premises, which is let out by her or by her husband in respect of which she has filed the Eviction petition have not been let only for residential purpose. Even if the purpose of letting is other than residential, the petition under Section 14D could be maintained provided that the widow is able to establish that the said premises is capable of being used by her for her own residence or for the residence of her family. It has come on record in evidence that the said premises could be used as a residence in conjunction with the premises in her occupation on the First Floor, inasmuch as, the First Floor has, apart from one room, also as a kitchen and a bathroom. Merely because there was no separate bathroom or kitchen on the Ground Floor, is no ground to conclude that the tenanted premises on the Ground Floor which consisted of only one room could not be used as a residence. The requirement of law is not that the widow should establish that the premises in respect of which she is seeking

eviction under Section 14D, should by itself independently be capable of being used as residence. Considering the fact that the Petitioner was nearly 72 years of age, it is reasonable to assume that she needs the assistance and care of her sons and their family and she cannot be expected to live all by herself. It is apparent from para 26 of the impugned order itself that the case of the Petitioner was that she could not live alone in the premises being more than 72 years of age. Considering the fact that she, alongwith her married son, his wife and one grand son were in occupation of only one room accommodation on the First Floor, it cannot be said that the need projected by the Petitioner was not bonafide or was whimsical and fanciful. Merely because the Petitioner did not appear as a witness, to my mind, does not disentitle her from seeking eviction if her case is otherwise duly proved on record. The purpose of production of witness is to bring before the court the relevant evidence. That evidence can be led by any witness who has personal knowledge of the facts deposed by him.

7. It is not for the court to determine which particular premises the widow landlady may chose to occupy. It was explained by the Petitioner that the ancestral house was in joint ownership and occupation of not only by her family but also that

of her three other brother-in-laws. PW-1, Rajinder Kumar had clearly deposed with regard to the extent of accommodation available in the ancestral house situated at 201, Mohalla Gurahai, Shahdara, Delhi and that the family is in occupation of two rooms on the Ground Floor and Duchhatti on the mezzanine floor. He has stated that his brother Ashok, his wife and his two sons, aged 10 and 8 years and his another brother Ramesh, were residing in the portion of the said premises which fell to their branch of the family. The witness had even identified separate rooms in occupation of the different members of the family. Therefore, it could not be said that the Petitioner has created an artificial scarcity and has filed the present petition for eviction while not utilizing accommodation otherwise available to her and her family.

8. Learned counsel for the Petitioner has relied on ***S.N. Kapoor (D) by his LRs., v. Basant Lal Khatri and others***, AIR 2002 SC 171, wherein the Hon'ble Supreme Court quoted from its earlier decision in 1995 Sup. (3) SCC 172 and held as follows:

“we are of the view that under Section [14D](#), the tenant has practically no defence whatever. All that has to be proved under the said Section extracted above are-(i) that the landlady is a widow and (ii) the

premises are required by her for her own residence". The Court further observed that the fact that she is living with her daughter or any other person, is no ground to say that the premises in question is not required for her residence. So far as Section [14\(1\)\(e\)](#) is concerned, the bona fide nature of the requirement need be established for getting an order of eviction and even in the absence of a specific stipulation in this regard this Court, in order to make the enabling power under Section [14D](#) to be more reasonable read into it also the need to substantiate that the request of the widow to recover possession of the premises for her own residence should be bona fide. The common determining factor being the "Bona fides" in both cases and the landlady seeks an adjudication on the basis of material already on record there should be no impediment for the Authorities Courts functioning even under the Act to permit such conversion of alteration and consider the claims made under the altered provision of law. As a matter of fact subsequent developments and altered circumstances were held to be relevant in adjudging the nature and character of the claim made, at all stages of the proceedings."

9. In that case, the court was considering the requirement of a widow, who was otherwise residing at Bhopal with one of her sons and his family. While dealing with the said issue, the Hon'ble Apex Court observed as under:

"The need felt by the landlady to do so does appear to be sincere and honest and not a mere pretence only to evict the tenant. No material has been brought on

record and no proof has been made by the tenant by any positive material that it is neither genuine nor bona fide or reasonable but a mere excuse to get rid of the tenant. Though the choice or proclaimed need cannot be whimsical or merely fanciful yet certain amount of discretion has to be allowed in favour of the landlady too and courts should not also impose its own wisdom forcibly upon the landlady to arrange her own affairs, according to their own perception carried away only by the interests or hardship of the tenant and inconvenience that may result to him in passing an order of eviction. In adjudging the claim under Section [14D](#) what is required to be substantiated is that the landlady is a widow and that she wants the premises for her own residence and that the claim by her is bona fide and not a feigned one. So far as a claim under Section [14\(1\)\(e\)](#) is concerned the very requirement has to be shown not only to be bona fide but the move of the landlord/landlady to seek the eviction of the tenant must be genuine. As far as the claim under Section [14D](#) is concerned, the widow-landlady's need for her own residence is recognized statutorily to be a valid one, but the move or request made to avail of the special benefit must be shown to be a bona fide and not a pretext only to get rid of the tenant. Viewed in the context of the indisputable facts on record that the widow has no other premises of her own at New Delhi and that she wants to reside away from Bhopal and aloof from her daughter-in-law are by themselves sufficient to sustain her claim. The rejection of the claim seems to be on hyper technical appreciation of the materials on record and does not constitute a real, proper and effective consideration at all. Therefore, viewed from any angle we find the need

and requirement of the appellant-landlady to be bona fide and consequently an order of eviction shall follow. We allow the claim of the landlady for eviction and the appeal against the order dated 3.7.2000 shall stand allowed."

10. In the present case, the Respondent has not been able to establish that the claim of the Petitioner was not genuine or was an artificially created necessity. Learned counsel for the Petitioner has also relied on the decision of this court in 52 (1993) DLT 83, **Navneet Rai v. Narinder Kaur**, wherein this court has observed as follows:

"As held in P.P.Kapur's case (supra) what is important is whether the premises in question after reversion to the landlady could or could not be used for residential purposes. As stated above, though let out for commercial purposes, the premises in question, being a part of the whole house and connected therewith through intervening doors can well be used for residential purposes. However, if the premises in question was the only space owned and sought to be got vacated and used independently for residence by the respondent, it could perhaps be said that the premises in question having been built and let out for commercial purposes were not covered by section [14D](#) of the Act as the same could not be used for residential purposes after the same are vacated by the petitioner. But the present case is entirely different. It is not that after eviction of the petitioner, it is only the premises in question which will be available to the respondent for residence. She is already in

occupation of the remaining adjoining connected portion of the house, under use by her as residence which, as found by the learned Rent Controller, is not sufficient for her residential requirement.”

11. This case is very similar to the one in hand. To contend that the accommodation available at the ancestral house is not reasonably suitable accommodation in view of the fact that it is already in occupation of two of her sons and his family, the Petitioner relies on AIR 2001 SC 522, **M.A. Prabhakar v. Rajiv Singal**, wherein the Hon'ble Supreme Court held that the suitability of alternative accommodation has to be seen from the convenience of the landlord and his family members and on the basis of the totality of the circumstances including their profession, fashion, style of living, habits and background.

12. In view of my aforesaid discussion, I find that the impugned order passed by learned Additional Rent Controller is laconic and the learned Additional Rent Controller has failed to appreciate the facts of the case as well as the law applicable thereto. The learned ARC has misdirected herself in law. I also find that the Petitioner has been able to make out a case for eviction of the Respondent under Section 14D of the Act. Accordingly, I set aside the impugned order dated 30th August 2005 passed by learned Additional Rent Controller in Eviction

Case No.502/2000 and pass an eviction order in respect of the premises in question, namely, Ground Floor portion of the premises No.477-478, Teliwara, Shahdara, Delhi against the Respondent. The eviction order shall be executable at the expiry of two months from today.

13. With the aforesaid directions, the petition stands disposed of.

VIPIN SANGHI, J.

January 03, 2008
P.K. BABBAR