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HIGH COURT OF DELHI : NEW DELHI

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RCR NO.31/2007

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26.02.2008

Smt. Narmada Joshi

.....Petitioner

Through: Mr. Rajiv Bajaj, Advocate

versus

Sh. Laxmi Narayan Gupta

.....Respondent

Through: Mr. Rajiv Sharma, 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? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J. (ORAL)

1. This petition has been preferred to challenge the order dated 19.4.2007 passed by the Rent Controller, Delhi in E-335/06/04 whereby the Rent Controller has allowed the petition filed by the respondent-landlord under Section 14(1)(e) of the Delhi Rent Control Act (the Act) and an eviction order has been passed against the petitioner-tenant.

2. The premises bearing No.24/155, Shakti Nagar, New Delhi is admittedly owned by the respondent/landlord. A portion of this

premises consisting of one room and a kolki being used as kitchen with the facility of common latrine and bath room was let out to the petitioner by the respondent on a monthly rent of Rs.500/-, excluding water and electricity charges. The purpose of letting has been admitted by the petitioner-tenant to be only for residential purpose. Leave to defend was granted to the petitioner. The parties went to trial and by a detailed order the eviction petition has been allowed, as aforesaid. The submission made by the petitioner is that in the eviction petition the respondent-landlord had suppressed the fact that his son owned a residential flat comprising four rooms apart from kitchen, bath room, latrine etc. bearing No.B-1/42, Naveentam Apartment, Plot No.7, Section-IX, Rohini, Delhi. It is argued that on account of this concealment of material fact alone the eviction petition ought to have been dismissed. It is further argued that due to the said concealment the petitioner has not had the opportunity to establish that the said accommodation is reasonably suitable for use and occupation of the landlord.

3. The petitioner has further relied on three decisions of this Court in ***Abdul Hamid and Anr. vs. Nur Mohammad***, AIR 1976 Delhi 328 , ***Hari Mohan Nehru vs. Rameshwar Dayal*** (17) 1980 DLT 284, ***Mohd. Usman vs. Shahzad Begum & Ors.*** 36 (1988) DLT 92 to contend that since the landlord had not disclosed, and had concealed the other residential accommodation available to him from

the court, by not making a reference to the same in the pleadings, the claim of the landlord for bona fide requirement of residence cannot be accepted.

4. On the other hand, the submission of the respondent landlord is that the factum of the ownership of the aforesaid flat by the son of the respondent/landlord was firstly not a material fact, inasmuch as, that flat is not owned by the landlord and in any case, admittedly, the said flat is not a reasonably suitable accommodation available to the landlord. The respondent has relied on the two decisions of the Supreme Court in support of his submissions, that is, ***M.L. Prabhakar vs. Rajiv Singal***, 2001(2) SCC 355 and ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta***, 1999(6) SCC 222.

5. The aspect regarding the availability of other reasonably suitable accommodation with the landlord has been dealt with by the Rent Controller in the following manner:

“(iii) That the petitioner/landlord does not own any other reasonably suitable residential accommodation;

Regarding the alternative accommodation, it is the case of the respondent that the petitioner has concealed true facts from this court that one of his sons, namely, Sh. Shree Niwas Gupta owns a residential flat No.B-1/42, Naveentam Apartment, Plot No.7, Section IX, Rohini, Delhi, which consists of four rooms besides kitchen, bathroom, latrine etc., and which has been rented out by him on a very exorbitant rate of rent and the present petition has been filed in

order to create a false paucity of accommodation. Counsel for the respondent has also relied upon a judgment (supra) **AIR 1988 NOC 71 (DELHI)**, and he has argued that as the petitioner has concealed material facts from this court, present eviction petition is liable to be dismissed.

On the other hand counsel for the petitioner has relied upon a judgment (supra) **1997 RLR 439**, wherein it has been held as under:-

“If landlord living in a building sued tenant of same building's portion, then tenant cannot contend that landlord has some other house also as he is not expected to split his family.”

15.I have gone through the rival contentions of both the parties regarding the aforesaid ingredient. PW1 in his cross examination has admitted **.It is correct that my son Sri Niwas Gupta owns his own flat for the purposes of residence of himself and for his family members. Vol. that is not sufficient for whole of the family.”**

In view of the aforesaid admission made by the PW1 in his cross examination, it is clear that the petitioner also admits that his son Sh. Sri Niwas Gupta owns a 10 residential flat in Rohini, as no replication to the written statement has been filed on the record, as discussed above. Now, the only question, which has to be seen is whether the said flat at Rohini can be considered reasonably suitable for the residence of petitioner and his family members. In this regard, the judgment relied upon the petitioner (supra) is squarely applicable to the facts of the present case, as in the present case, the landlord has sued tenant of the same building and the petitioner has desired that he wants to live in the property alongwith his son and family, and he

cannot live alone, and he has stated said facts in para 7 of his affidavit, and nothing material has come out in his cross examination. Accordingly, the petitioner is not expected to split his family for the sake of the convenience of the tenant at two separate places, one at Rohini and one at suit premises, and the counsel for the petitioner has also argued that alternative accommodation is far away in Rohini, whereas, the grand son of petitioner is doing the business on the ground floor of the premises in question and he wants to live with his son and grand son in the twilight of his age. Accordingly, the suitability of the accommodation has to be seen from the point of view of distance between the suit premises and the location of the premises at Rohini, which must be around 11-12 K.Ms. away from the suit premises, which are situated at Shakti Nagar, whereas the suit premises would be definitely more convenient to the petitioner and his family members, as one of the grand son of the petitioner is admittedly, running a shop on the ground floor of the suit premises, which has not been denied by the respondent herself in her written statement. Accordingly, the premises in question would be more suitable for the residence of the petitioner and his family members at one place, and the premises located at Rohini would not be suitable for residence of entire family together and in any case, the petitioner is not expected to bifurcate his family for the sake of the convenience of the tenant and the judgment relied upon the respondent's counsel is not applicable to the peculiar facts of the present case, as in the said case (supra), **AIR 1988 NOC 71 (DELHI)**, the owner concealed material facts from the court that he was having another premises of which he or his sons were the owners and the said premises

were near to the premises in question and were admittedly few feet from the suit property. Whereas the distance and the premises in question and premises at Rohini would be approximately 11-12 K. Ms. Accordingly, said judgment is not applicable to the peculiar facts of the present case and further petitioner has specified his requirement to be five bed rooms, one independent drawing room, dining room, guest room and one room for accommodation of servant. Admittedly, as per the suggestion given by the respondent in the cross examination of PW1, he has admitted that there are four rooms in the said flat. RW1 has also stated in his cross examination that **"It is correct that whole of the family of the petitioner cannot live in the said flat."** Therefore, looking from every angle the said accommodation at Rohini would not be reasonably suitable for residence of the petitioner and his family members. Accordingly, I hold that petitioner has no other reasonably suitable alternative residential accommodation."

6. From the discussion which is found in the impugned order it is clear that the petitioner tenant had ample opportunity to deal with the aspect about the availability of alternative reasonably suitable accommodation with the landlord. It is not his case that the petitioner became aware about the existence of the said accommodation at a late stage in the proceedings. The tenant was aware of, and had specifically pleaded about the availability of the said accommodation in his written statement. No prejudice has been caused to the petitioner on account of the fact that in the eviction

petition the landlord had not made a mention of the said accommodation.

7. I also find force in the submission of the learned counsel for the respondent that the said accommodation, in any event, could not be considered to be a reasonably suitable alternative accommodation available to the landlord. Admittedly, the said accommodation is not owned by the respondent and is at a distance of at least ten kilometers from the present accommodation. The landlord is already in occupation of a substantial portion of the property bearing No.24/155, Shakti Nagar, Delhi and the landlord could not be expected to move into a flat which not even owned by him, merely to accommodate the petitioner tenant. His desire to live with his children and grand children cannot be grudged by the tenant and he cannot be told by the tenant to split his family. [(See **Smt. Maya Devi vs. Amar Singh** 75 (1998) DLT 165 and **Shiv Sarup Gupta** (supra)].

8. In my view, the decisions cited by the respondent squarely apply in the facts of this case. In **M.L. Prabhakar** (supra) a similar argument was raised by the tenant that the landlord had suppressed the premises which were available to him at a different location. The argument was countered by the landlord by submitting that the only requirement in law is to disclose such accommodation as is suitable for residence of the landlord. Relying on **Ram Narain Arora vs. Asha Rani**, 1991(1) SCC 141 it was submitted that the question whether the

landlord had any other reasonably suitable residential accommodation is a question which is intermixed with the question regarding bona fide requirement. Whether the landlord had any other reasonably suitable residential accommodation is a defence for the tenant to take. It was held in **Ram Narain Arora** (supra) that whether the other accommodation is more suitable than the suit premises would not depend solely on pleadings and non-disclosure by the landlord that he has another accommodation would not be fatal to the eviction proceedings, if both the parties understood the case and placed materials before the Court and the case of neither party was prejudiced. The Supreme Court applied the ratio of **Ram Narain Arora** (supra) and held *"In this case even though the landlord has not mentioned about the other two premises, the material in respect of the other two premises was placed before the Rent Controller as well as before the High Court, thus no prejudice has been caused. The parties have squarely dealt with this question."* In **M.L. Prabhakar** (supra) the Supreme Court also held that *"it could not have been the intendment of the rent control law to compel the landlord to shift to a different house and locality so as to permit the tenant to continue to live in the tenanted premises."*

9. Since the other accommodation is not even owned by the respondent and admittedly is not enough to meet the needs of the respondent/landlord, there is no concealment by the respondent in not

making any averment with regard to the said accommodation in the eviction petition. Dismissed.

10. Trial court records be returned forthwith.

February 26, 2008
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VIPIN SANGHI, J.