

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 Date of Reserve: July 08, 2008
 Date of Order: 08.08.2008

+ RCR 58/2008

% 08.08.2008

Vinod Kapoor ... **Plaintiffs**
Through: Mr. Harpreet Singh with Mr. Rajesh Gupta, Advocates

Versus

Kailash Sethi ... **Defendant**
Through: Mr. Naveen Kr. Nayyar, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

ORDER:

Vide order dated 9.5.2008 learned ARC allowed the eviction petition filed by respondent under section 14 D of the Delhi Rent Control Act dismissing the application of the respondent for leave to defend. The petitioner is aggrieved by the said order and has preferred this revision on the ground that the requirement of the widow land-lady was not a bona fide requirement.

2. The petitioner's grievance is that the ARC failed to appreciate the plausible defence raised by the petitioner in his application for leave

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to defend and wrongly refused the permission to contest the eviction petition. The accommodation available with the respondent was sufficient for herself and her family members. She had not shown correct accommodation with her and the learned ARC wrongly disbelieved the contention of the petitioner. In his application for leave to defend the petitioner had stated that the respondent was having 10 rooms available for use in her occupation.

3. The property in question was let out to the petitioner by the deceased husband of respondent about 28 years prior to filing of the eviction petition. It is not disputed that the petitioner had become widow and she filed the petition under section 14 D after having become the widow. The extent of family of the landlord was not disputed.

4. The landlady had contended that the premises available with her comprised of one drawing-cum-dining room, one bedroom, one kitchen, one toilet-cum-bathroom and one lobby. Because of paucity of accommodation one garage having only 8 feet height, had been converted into a makeshift bedroom per force. The space under the stairs though not properly ventilated and having access to sunlight/air was being used by her grandson Mr.Gaurav Sethi and a makeshift toilet was created out of sheer compulsion. The mezzanine space having only 7 feet height had also been converted by the landlady per force into a makeshift bedroom and was in occupation of her son Mr.Rohit Sethi and his wife, though it was not a livable room as it has no free movement of

air or sunlight and even ceiling fan cannot be fixed. One room and barsati with glass windows on the top was there. However, this room and barsati could not be used as there was no toilet and bath room on barsati. There was no space for accommodating the relatives and guests for overnight stay. Her grand son Mr.Gaurav Sethi, an MBA, wished to leave his service and set up his business with his father, a disabled Army Officer not enjoying good health due to injuries. The landlady herself was 85 years of age suffering from various age related diseases and she needed constant care. The family had employed one servant for her care and to look after her, who has to sleep in lobby due to paucity of accommodation. The petitioner's family was forced to park its car on the road as garage has been converted into a makeshift bedroom. The other requirements of pooja room and separate kitchen were also pleaded by the landlady. The ARC considered all the requirements of the landlady and the accommodation available with her and came to conclusion that the accommodation available with her was not sufficient for her and her family members.

5. It is well settled that requirements of a garage for car parking and requirement of a guest room for guests, are bona fide requirements. The requirement of family members of landlord who are living with him and with whom the landlord is enjoying the life are bona fide requirements of the landlord. The plea of the tenant that the landlady was having 10 rooms, has been found to be false by the learned ARC. The

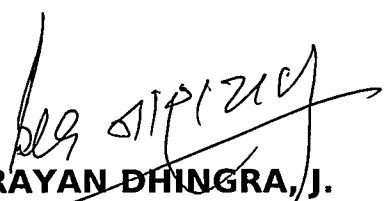
space in Miani & garage are not habitable rooms. A livable room must have minimum height of 9 feet for air circulation. The two rooms one in Miani and other in garage do not have a height of 9 feet. Moreover it is not necessary for the landlord to cramp himself within the available accommodation so that his tenants continues to live in the premises. When the family of a landlord grows, the requirements of landlord and his family members is bona fide requirement.

6. Counsel for the petitioner has stated in the revision petition that the decision of the ARC was contrary to the ratio laid down by the SC in Prativa Devi vs. T.V. Krishna, JT 1987(1) SC 764. The citation given by the petitioner as well as by ARC in his order is not correct. The correct citation having the same title is: (1996) 5 SCC 353, wherein the Supreme Court has observed that the landlord was the best judge of his residential requirement.

7. It is settled law that while sitting in revision jurisdiction this Court cannot substitute its own judgment in place of the judgment of the trial Court. This Court does not act as a Court of appeal to re-appreciate the evidence and come to a different conclusion. This Court can interfere into order only in rare cases where Court finds that the order was manifestly wrong since it was passed by the trial Court in total disregard to the material placed before it or was contrary to the basic tenants of law or the Court below had acted in gross disregard to its jurisdiction. It is not so in this case.

8. I find no merits in the revision petition. The revision is hereby dismissed.

August 08, 2008.
v


SHIV NARAYAN DHINGRA, J.