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HIGH COURT OF DELHI : NEW DELHI

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RC REV No. 46/2007

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Date of decision: 22.01.2008

M/s Satish Raheja

...Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Mohit Gupta, Advocate.

versus

Prakashwati Gupta

..... Respondent

Through: Mr. Sunil Malhaotra with Ms. Sonali
Malhotra, Advocates.

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?

VIPIN SANGHI, J

1. This Revision Petition has been preferred under Section 25B of the Delhi Rent Control Act (for short the 'Act') to impugn the order dated 25.8.2007 passed by the learned Additional Rent Controller, Delhi in case No.E-429/06, a petition under Section 14 D of the Act filed by the Respondent.

2. The admitted position is that the respondent is a widowed landlady in respect of the tenanted premises comprising of one room in the ground floor wherein the petitioner is a tenant on a monthly rent

of Rs.1,600/- exclusive of all other charges. The only question on which there was a dispute between the parties was whether the suit premise was required by the respondent for her residence. The suit premise is situated in a commercial area and it was let out to the petitioner for commercial purposes. However, for purposes of Section 14 D of the Act, the purpose of letting is not relevant unlike Section 14(1)(e) of the Act, so long as the widowed landlady is able to establish that the premises are required by her for her residence. To establish that the premises are required by her for her own residence she also needs to establish that the premises are capable of being used as a residence. The submission of the petitioner before the Rent Controller was, and the same is reiterated before me is that the tenanted premises consists of only one room admeasuring "16.80 X25". The said premises is admittedly situated in a commercial area. There is no bathroom or kitchen available on the ground floor along with the said room. The requirement set up by the respondent landlady was on the basis that she is an old widow about 74 years of age at the time of filing of the petition and that she was suffering from heart ailments and arthritis in her knees. Consequently, in the absence of even a bathroom on the ground floor, it could not be said that the said premise was required by her for her own residence since it cannot reasonably be expected that she would live on the ground floor without any facility of kitchen or bathroom, particularly when she is suffering

from heart ailments and arthritis in her knees

3. Learned counsel for the petitioner submits that in fact the respondent has sufficient accommodation available with her on the first and second floors where she is residing with her only married daughter, son-in-law and her two grand children. The petitioner also relies on ***Niranjan Lal Sharma (deceased) through his Lrs V. Ved Kumari & Another***, 2002(64) DRJ 17 and particularly paragraph 6 of the judgment which reads as follows:-

“It is true that the landlords classified under Sections 14-A to 14-D of the Act are a class apart and the Act envisages expeditious and immediate availability of residential premises to them, but the Courts cannot lose sight of the fact that these provisions are based on the need of landlord which must be genuine. In certain cases where landlords are found wanting in bonafides and are merely making a pretence of bonafide need, the tenant cannot be thrown out as the underlying object of the Act is to protect the tenants against arbitrary and unwarranted evictions. The grounds for eviction of the tenants envisages under the Act are in the nature of exceptions to the protection provided to the tenants and as such, have to be established strictly in terms of the letter and spirit of law. Therefore, the Courts dealing with eviction petitions are under an onerous obligation to ensure that neither a landlord legally entitled to recovery of possession of his property in the hands of a tenant is harassed by undue delay in making the premises available to him nor a tenant is victimised through eviction on grounds which are not made out as per the provisions of the Act and are a mere pretence to evict a tenant. While dealing with a petition under Section 14-C or 14-D of

the Act, particularly in regard to the premises being used for commercial purpose, the Courts have to be more cautious and circumspect to obviate the possibility of eviction of a tenant from his business premises inasmuch as the rents as well as the value of such properties has gone high which sometimes induces a landlord to seek eviction of his tenant on made up grounds. Therefore, in petitions under Sections 14-C as well 14-D, the Courts have to ensure that the landlord/landlady approaching the Court for eviction of a tenant is in bonafide and genuine need of the premises for residential use only. Eviction on these grounds cannot be ordered if there is something to show that the need is not bonafide. In **Surjit Singh Kalra v. Union of India and Others, (1991) 2 SCC 87 (para-20)**, the Apex Court clearly held that every claim for eviction of a tenant must be a bona fide one."

4. The petitioner also argued that the requirement projected by the petitioner was an eyewash and since the premises is being used and is fit for use as commercial purposes, the endeavour of the respondent-landlady is to evict the petitioner and to relet the same to realise higher rent.

5. On the other hand, the submission of learned counsel for the respondent is that the requirement of the landlady is bona fide and genuine. He relies on paragraphs 20 and 21 of the judgment of the learned Additional Rent Controller wherein the aspect of the requirement of the respondent-landlady is discussed. The said paragraphs read as follows:-

"20. The petitioner has also testified in her

statement that she requires one room for herself, one room for her daughter and son-in-law, one room for her grand daughter Astha Jain and one room for master Sparsh Jain besides one Pooja room, one room for visiting guests and one room to be used as drawing-cum-dining room. In all, the petitioner is in requirement of seven rooms whereas the accommodation available with her is three rooms on the first floor and two rooms on the second floor. The respondent in his testimony has stated that requirement of the petitioner is not bona fide and that she is in possession of sufficient accommodation. The respondent has also testified that petitioner is in occupation of two bedrooms and one drawing-cum-dining room on the second floor. However, perusal of the site plan Ex.PW1/5 shows that second floor accommodation comprises of one living-cum-dining room measuring 15 feet x 13 feet and one bedroom measuring 15 feet 9 inches x 8 feet 6 inches and one store measuring 6 feet x 11 feet. The respondent has not filed any other site plan to controvert the site plan Ex.PW 1/5 filed by the petitioner and the same has to be accepted as correct. Perusal of the second floor accommodation would show that store measuring 6 feet x 11 feet cannot be considered to be a living room. Hon'ble High Court of Delhi in **Brij Mohan Vs. Sri Pal Jain, 1993 Rajdhani Law Reporter 190** has held that "tenant cannot claim that a room of a size of less than 100 sq.feet is a living room. For a room of 200 sq.feet, he cannot contend that it is equal to two rooms. Similarly, in **Uttam Chand Suri Vs. Smt. Ram Murti 1980(2) RCJ 410** that "a room or a Kotha, area of which is less than 100 sq.ft will not fall within the definition of a living room." **The Delhi Municipal Corporation (Building) Bye-laws 1959** as amended from time to time prescribe the requirements regarding minimum size of a habitable room. By-law 20 prescribes that

no habitable room shall have a floor area of less than 100 square feet. Hence, from the above discussion, it is apparent that petitioner is in possession of five rooms only and is short of two rooms for her accommodation. The requirement stated by the petitioner cannot be called as exaggerated or fanciful. In **2001 (2) RCR (Rent) 519 Delhi titled Pratap Rai Kalra V. Om Prakash Sharma Hon'ble High Court of Delhi** had observed that need of the landlord for one room, one room for her son and daughter in law, one room for grand children and one room as Pooja room, one room for guests and one room for married daughter were considered to be bona fide.

21. The respondent has also tried to show that tenanted premises being a shop and surrounded by other shops is not suitable for the purposes of residence as the entire area is commercial in nature and hence premises is not suitable for the residence of the petitioner or her family members. Counsel for the respondent has also relied on the judgment of **Niranjan Lal Sharma (deceased) Vs. Ved Kumari & Anr 2003(1) RCJ 1** to substantiate his defence. The respondent has examined RW1 and has testified that premises in question were let out for commercial purposes for running of the shop and there are five spare parts shops and 36 footwear shops as per list Ex.RW1/C. He has also testified that entire area of Naiwalan, Karol Bagh is commercial area and gali no 68 consists of more than 40 shops, which are adjacent to each other and hence the premises is not habitable for residential purposes. RW2 Sunil Oberoi has also testified in his affidavit that respondent has been doing his business in the tenanted premises which is a shop surrounded by other shops from all sides and there is not ventilation and this shop is unfit for human dwelling. He has further testified that to his knowledge, the entire area is commercial.

This defence raised by the respondent is not at all tenable. At the outset, it may be stated here that tenant cannot dictate to the landlord as to how he should reside and where he should reside. It is also not necessary that premises which is not habitable in its present form, also cannot become habitable in future. The landlord may make alterations in the same after it is vacated to make suitable for his residence.”

6. Learned counsel for the respondent submits that the landlady is an old and ailing widow who needs to be looked after, and is being taken care of by her only married daughter, son-in-law and her two grand children. It is not necessary for the landlady to have her own separate kitchen on the ground floor and a common toilet is available on the ground floor. Learned counsel for the respondent further submits that Section 19 of the Act prohibits the landlord, who seeks eviction, inter alia, only under Section 14D of the Act to relet the whole or any part of the said premise within three years from the date of obtaining possession thereof. He submits that the need of the respondent-landlady is genuine and bona fide and she is willing to even give an undertaking to this Court that she would not relet the premises in compliance of Section 19 of the Act.

7. For purposes of Section 14D it is immaterial whether the premises have been let out for residential, commercial or for any other purpose. What is of relevance is that the widowed landlady bona fide requires the premises for her own residence. Therefore, if the premises is capable of being used as a residence, or a part of a

residence, and she is otherwise not in occupation of sufficient accommodation to meet her needs, the widowed landlady would be entitled to seek eviction of the tenant under Section 14D of the Act. In the present case it is has come on record that the petitioner-landlady who is now 78 years of age and is suffering from various ailments is being looked after by her only married daughter, son-in-law and two grand children.

8. The learned Additional Rent Controller has applied the principles evolved from time to time and on that basis assessed the requirement of the respondent as seven rooms while the respondent is in possession of five rooms. Therefore it cannot be said that she has in her possession sufficient accommodation on the first and the second floor of the same building where the suit premises are situated.

9. Even if one were to ignore the claim of the respondent that there is a common toilet on the ground floor which could be used by the landlady (because the existence of the same has not been established before the learned Additional Rent Controller), the suit premises on the ground floor which consists of one large room is undoubtedly capable of being used by the landlady for her residence as there is no prohibition against the landlady making necessary alterations in accordance with law to make the same convenient for her use as a part of her residence. The requirement of Section 14D is not that at the time of filing of the eviction petition, the tenanted

premises should, in its existing form necessarily be not in a completely habitable state. So long as the premises can be made habitable, in my view it would be permissible for the widowed landlady to seek eviction of the tenant under Section 14 D, if the other requirements of law are satisfied. It is not the petitioner's case that it is illegal to use the tenanted premises for residential purpose.

10. The decision cited by the petitioner, to my mind, is of no avail in the facts of the present case. Admittedly the petitioner is residing on the first and second floors of the same building and admittedly the tenanted premises is a stand alone premises, separated from her existing accommodation by such distance that it cannot be used in conjunction with her existing accommodation. In conjunction with the premises already in her use and occupation on the first and second floors the tenanted premises can be used by the landlady for her own residence.

11. Having considered the impugned judgment, I find that the learned Additional Rent Controller has properly appreciated the facts and the law and rightly come to the conclusion of the requirement of the respondent being bona fide. I find no error in the said judgment which would call for interference by this Court in the exercise of its revisionary jurisdiction. Dismissed.

VIPIN SANGHI, J.

January 22, 2008
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