

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC Rev. 17/2009**

Reserved on: March 06, 2009

Date of Decision: March 18, 2009

%

V.K. BHANDARI

Through

..... Petitioner

Mr.Seeraj Bagga, Advocate

Versus

SHEIKH MOHD. YAHYA & ORS.

Through

..... Respondents

None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

- | | |
|--|------|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not? | Yes. |
| 3. Whether the judgment should be reported in the Digest? | Yes. |

J U D G M E N T

MANMOHAN,J

CM No.3061/2009

1. For the reasons stated in the CM, the same is allowed.
- Accordingly, the application stands disposed of.

CM No. 3060/2009

2. Exemption allowed, subject to all just exceptions.

RC.REV. 17/2009 & CM No.3059/2009

3. Present petition has been filed under Section 25-B(8) of Delhi Rent Control Act, 1958 (hereinafter referred to as 'DRC Act'), seeking to set aside judgment dated 12th September, 2008 whereby Additional Rent

Controller after having granted leave to defend to petitioner-tenant has allowed respondents-landlords' eviction petition.

4. Learned counsel for petitioner-tenant contends that respondents-landlords have not disclosed the alternative accommodation available to them in Delhi. He states that there is no averment in the eviction petition that other family members of respondents did not possess or own any other reasonable suitable residential accommodation. He further contends that though respondents-landlords have been in possession of first and second floors of tenanted premises comprising of four rooms, respondents had not occupied the said floors for the last fifty years. Therefore, according to him, respondents-landlords' requirement was not bona fide and respondents-landlords' intent was only to sell the property at a high price.

5. Mr. Bagga, learned Counsel for petitioner submitted that as in present petition eviction decree had been passed in contravention of statutory conditions, it was not binding. In this context, he referred and relied upon following judgments:

A. ***Precision Steel & Engineering Works v. Prem Deva*** reported in ***AIR 1982 Supreme Court 1518*** wherein it has been held:

"11. The language of sub.sec. (5) of S.25B casts a statutory duty on the Controller to give to the tenant leave to contest the application, the only pre-condition for exercise of jurisdiction being that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground mentioned in S.14(1)(e). S.14(1) starts with a non obstante clause which would necessarily imply that the Controller is precluded from passing an order or decree for recovery of possession of any premises in favour of the landlord against the tenant unless the case is covered by any of the clauses of the proviso. The proviso sets out various enabling provisions on proof of one or the other, the landlord would be entitled to recover possession from the tenant. One such enabling provision is the one enacted in Section 14 (1) provision (e). Upon a true construction of provision (e) to Sec. 14(1), it would

unmistakably appear that the burden is on the landlord to satisfy the Controller that the premises of which possession is sought is: (i) let for residential purposes; and (ii) possession of the premises is required bona fide by the landlord for occupation as residence for himself or for any members of his family etc; and (iii) that the landlord or the person for whose benefit possession is sought has no other reasonably suitable residential accommodation. This burden, the landlord is required to discharge before the Controller gets jurisdiction to make an order for eviction. This necessarily transpires from the language of S.14 (1) which precludes the Controller from making any order or decree for recovery of possession unless the landlord proves to his satisfaction the conditions in the enabling provision enacted as proviso under which possession is sought. Initial burden is thus on the landlord.

B. Deena Nath v. Pooran Lal reported in **(2001) 5**

Supreme Court Cases 705 wherein it has been held:

“12. The “bona fide requirement” must be in praesenti and must be manifested in actual need which would evidence the court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in clause (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available. The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bona fide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the Court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bona fide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment. In such case the High Court cannot be faulted for interfering with the finding in exercise of its second appellate jurisdiction under Section 100 of the Code of Civil Procedure.”

Supreme Court Cases 141 wherein it has been held:

“10. In making a claim that the suit premises is required bona fide for his own occupation as a residence for himself and other members of his family dependent on him and that he has no other reasonably suitable accommodation is a requirement of law before the court can state whether the landlord requires the premises bona fide for his use and occupation. In doing so, the court must also find out whether the landlord or such other person for whose benefit the premises is required has no other reasonably suitable residential accommodation. It cannot be said that the requirement of the landlord is not intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he has other reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide. In such circumstances, further inquiry would be whether that premises is more suitable than the suit premises. Therefore, the questions raised before the court would not necessarily depend upon only the pleadings. It could be a good defence that the landlord has other reasonably suitable residential accommodation and thereby defend (sic defeat) the claim of the landlord.”

6. On a perusal of impugned order, I find that Additional Rent controller by way of impugned order has given cogent reasons for allowing respondents-landlords' eviction petition. Some of the relevant observations in the impugned order are reproduced herein below for ready reference:

“8. As far as the requirement of the petitioner No.2 & 3 is concerned, the family of Petitioner No.2 consists of his wife, three grown up unmarried daughters and a son and as such, the petitioner No.2 requires at least four bed rooms for their family and a guest room, a drawing-cum-dining room, a study room apart from kitchen, latrine and bathroom, which makes his total requirement to be seven rooms, whereas the family of petitioner No.3 consisting of his wife, two grown up unmarried sons and a daughter. He at least requires three bed rooms, a guest room, a drawing-cum-dining room and a study room, which makes his total requirement to be six rooms and as such, both the petitioner No.2 & 3 requires at least a minimum of 13 rooms between their families and they only have six rooms available at property No.3331, Bara Hindu Rao and another four rooms on the first floor above the suit property, which makes only 10 rooms available to them.

9. *Otherwise also another important fact, which requires consideration, is that both petitioner No.2 & 3 are doctors by profession and have status in the society and wants to shift from a slum area to a posh locality where the suit property is situated and the same coupled with the fact that the property at Bara Hindu Rao is highly insufficient for their requirement, I am of the opinion that a case of bonafide requirement has been made in this case and an eviction order is passed in favour of the petitioners and against the respondents in respect of the suit property, i.e. ground floor of the property No.XVI/9448, Block No.65/4, Sardar Manzil, New Rohtak Road, New Delhi, except of one garage, more specifically shown red in the site plan Ex.PW1/11. However, eviction order shall not be executable for a period of 6 months from today. File be consigned to Record Room.*

7. In the eviction petition, I find that respondents-landlords have categorically stated, *“that the first floor of the Suit property consist of 4 small rooms. The barsati floor (on the 2nd floor) has 2 small rooms and does not have bathroom or kitchen. This accommodation is insufficient for the petitioners (respondents-landlords herein) and their family members who are dependent on them for residence and the petitioners (respondents-landlords herein) have no other suitable residential accommodation in Delhi except the suit property.”* Further, in the present case, unlike in ***Precision Steel case (Supra)***, I find that petitioner-tenant had been granted leave to defend and he had an opportunity not only to file written statement but also to lead evidence and cross-examine the respondents-landlords. In my view, if the petitioner-tenant had some information that respondents-landlords or any of their dependant family members possessed or owned some other alternative residential property which was available to them, he should have either cross-examined respondents-landlords with regard to specific alternative accommodation available or he should have filed substantial evidence. But he failed to do so. Consequently, the case law cited by petitioner-tenant is inapplicable to facts of the present case.

8. As far as petitioner's contention that respondents-landlords had not occupied the first and second floor of tenanted premises for the last fifty years is concerned, I am of the opinion that in view of Additional Rent Controller's finding that respondents-landlords require minimum thirteen rooms for accommodating their two families, it cannot be said the said accommodation is sufficient alternative accommodation as respondents cannot be forced to stay in four bedrooms alleged to be available on the first and second floors of tenanted premises.

9. As far as petitioner's apprehension that respondents-landlords have only filed an eviction petition with a view to get the tenanted premises evicted so that they can sell the same, I am of the view that this apprehension is baseless as firstly no evidence to this effect has either been filed or led by petitioner-tenant. Moreover, Section 19 of DRC Act specifically takes care of this apprehension inasmuch as it provides that landlords after getting the premises evicted under Section 14 of said Act cannot sell the same for a period of three years without obtaining permission of Controller.

10. Consequently, present petition along with application being devoid of merits are dismissed with costs of Rs.11,000/-.

MANMOHAN, J

MARCH 18, 2009

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