

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

Date of Reserve: February 22, 2010

Date of Order: April 8, 2010

CM(M) No.20 of 2007

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08.04.2010

RAM PRASHAD

... Petitioner

Through: Mr. Varun Nischal, Advocate

Versus

KRISHAN KUMAR VERMA DECD. THR. LRs ... Respondents

Through: Mr. Arvind K. Goel, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By this petition, the petitioner has assailed an order of learned ARCT dated 6th October, 2006 whereby the learned ARCT allowed the appeal of respondent and passed a decree in favour of respondent for eviction of the premises in question under Section 14 (1) (h) of DRC Act.

2. The respondent/landlord had filed an eviction petition against the petitioner under section 14(1) (h) of DRC Act on the ground that the respondent had acquired an alternate accommodation for himself and for his family at RZ – 332, Sagarpur, Shiv puri, Gali no. 7, New Delhi – 110 046 where he was living with his family but he continued to occupy the tenanted premises namely WZ-1142, Nangal Raya, Tulsi Ram Ki Bagichi, New Delhi. The landlord also alleged that a part of the

property acquired by the tenant namely RZ-332, Sagarpur, Shiv Puri, Gali No. 7, New Delhi, was in his occupation and a part was under the occupation of his tenants as he had let out the part of the property.

3. In his Written Statement, under preliminary objections, the respondent had taken a stand that he had not acquired the alleged property in Shivpuri and there was no cause of action for filing this eviction petition. While replying on merits to para 5 of the petition, he has stated that he neither owned, acquired or possessed any part of property No. RZ-332, Sagarpur, Shiv Puri, Gali No. 7, New Delhi. He denied that he had built the aforesaid house at Shivpuri, Sagar Pur. It is noteworthy that while landlord had, in his petition given the property No. acquired by the tenant as RZ-332, Shivpuri, Sagar Pur, Gali No. 7, the respondent/tenant had been talking of WZ-332, Shivpuri, Raigarpura. However, in para 18 of the WS, after denying that he had not acquired any property, he submitted that there was no Sale Deed, G.P.A. or Agreement to Sell of WZ-332, Shivpuri in his favour. He submitted that there was some dispute within his family so he, his elder son and children had been living in tenanted premises while his wife deserted him and started living separately with younger son. Respondent was not in touch with her for last three years.

4. The landlord in order to prove that the alternate premises was acquired by the tenant in the name of his wife, called witnesses from DESU showing that the wife of the respondent had filed an affidavit with DESU that she was owner of premises No. WZ-332 of Shiv Puri, West Sagarpur, since 4th February, 1984. Her affidavit stated that construction was completed in the premises prior to 1.1.81.

This affidavit of her was proved as AW3/2. She had applied for a domestic connection in the house in her name. She also executed an Indemnity Bond in favour of DESU which was proved as AW3/3 stating therein that she was lawful owner of the premises since 4th February, 1984. She also enclosed, along with her application her title documents showing that she had purchased the plot. The landlord also placed on record photographs of the house.

5. The learned ARC, after considering the evidence of the parties, came to conclusion that the landlord has not been able to prove conclusively that property No. RZ-332, Shivpur was acquired by the tenant himself and even if it was acquired by the wife of the tenant in her name, that was of no help to the landlord as the wife had liberty to acquire any property in her name out of her own funds and he has also observed that the landlord failed to place on record documentary evidence that the tenant was having cordial relations with his wife. He observed that landlord 's witness admitted in her testimony that elder son of the tenant was residing in the tenanted premises. The landlord failed to examine witnesses to show that the tenant did not have strained relations with his wife. The tenant only proved documents from DESU in order to prove the ownership of premises by tenant's wife. These documents were photocopies filed with DESU and therefore could not be relied upon.

6. The learned ARCT in appeal set aside the order of Ld. ARC & observed that the onus of proving originals was wrongly shifted by learned ARC on the landlord. The landlord was only supposed to show that a premises had been acquired by the tenant either himself or through his wife. Once this initial onus

had been discharged, the onus shifted on the tenant to prove that his wife had independent source of income or he was not living with his wife. Ld. ARCT also observed that the approach of the Trial Court in dismissing the petition was wrong. Once it had come on record that the property was acquired by the wife and she has obtained electricity connection in her own name, it was sufficient for the Trial Court to believe the case of the landlord and it was for the tenant to rebutt the evidence led by the landlord and to prove that he and his wife had strained relations & not living together.

7. Section 106 of Evidence Act provides that if something is in the special knowledge of the person, the onus to prove will lies on him. The landlord in his case has pleaded that a premises had been acquired by the tenant having No. RZ-332, Shivpur, Sagar Puri, Gali No. 7, Delhi. In order to substantiate his pleadings, he led sufficient evidence to show that the premises was owned by the tenant's wife. She had applied for electricity connection in her own name and filed affidavit and Indemnity Bond with DESU claiming to be the owner since 1984. More could not have been done by the landlord. The documents of ownership were in possession of the tenant's wife. All original documents were with her and the landlord could not have been produced originals. If the tenant was not residing with his wife, he could have easily proved the same by producing Ration Card and other documents showing that his family did not consist his wife and their children and he was living separately from his wife. It was within the special knowledge of the tenant as to from where he was drawing ration, where his bank account was and where his correspondence used to come. What was the source of income of

his wife? Wherefrom she got funds for acquiring the property? The onus to prove all this was on him. Once documentary evidence is brought on record from an authentic source like DESU, where an application was made by the tenant's wife claiming herself to be the owner of the property, the onus that the premises in question was purchased by wife from her own income or it was not being enjoyed by the tenant or he has having strained relations with his wife, shifted to the tenant and this was supposed to be proved by him not by the landlord. The testimony of the landlord showed that the tenant was not living in the premises in question, rather, he had given this premises for living to his son & sons family. It was for the tenant to rebutt this testimony by cogent evidence that he was very much living in the premises.

8. In **Narender Vs. Pradeep Kumar; (2005) 5 SCC 371**, the Hon'ble Supreme Court upheld eviction order passed by RCT on the ground that wife of tenant had purchased a plot and they had alternate accommodation. The Hon'ble Supreme Court set aside the order of the High Court and restored the order of RCT, both on facts and law holding that the view taken by the RCT was correct that as the wife of tenant had purchased a plot, they had alternate accommodation.

9. The petitioner's reliance on **B.R. Mehta's case (B.R. Mehta Vs. Smt. Atma Devi & Others), 33 (1987) DLT 154** is of no help since in that case, the wife was allotted a residential premises by her employer and the Hon'ble Supreme Court had held that this would not dis-entitled the tenant from retaining the tenanted premises. It is not the case here. Here the wife had acquired the alternate premises and part of it was even given to tenants on rent.

10. Another issue raised by the petitioner before this Court is that the landlord had not examined himself and only his Attorney appeared. I consider that this issue is not open to be raised by the petitioner. In this case the landlord was seriously ill and he gave Attorney to his wife who prosecuted the petition before trial court. The wife was aware of the facts of the case and she deposed in respect of those facts which were in her knowledge. It is settled law that anybody having knowledge of the facts concerning issues before the Court can appear as a witness and depose in the Court and an Attorney who has knowledge of the facts concerning the issues is also a competent witness. An Attorney cannot depose about those facts of which he has no knowledge and about which he had drawn knowledge by hearing others since such evidence falls under the category of hearsay evidence and is not admissible.

11. I find no merits in this petition. The petition is dismissed.

April 08, 2010
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SHIV NARAYAN DHINGRA, J.