

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

**% RC.REV.No. 67/2010**

**+ Date of Decision: 20<sup>th</sup> September, 2011**

**SEWA SINGH & ANR. ....Petitioners**

**! Through: Mr.J.C. Mahindroo, Advocate**

**Versus**

**\$ JAI KUMAR JAIN & ANR. ....Respondents**

**Through: None**

**CORAM:**

**\* HON'BLE MR. JUSTICE P.K.BHASIN**

- 1. Whether Reporters of local papers may be allowed to see the judgment? (No)**
- 2. To be referred to the Reporter or not? (No)**
- 3. Whether the judgment should be reported in the digest?(No)**

### **JUDGMENT**

**P.K BHASIN,J:**

This petition under Section 25-B(8) of the Delhi Rent Control Act,1958(hereinafter called 'the Act') has been filed by the petitioners-landlords against the order dated 02.03.10 passed by the learned Additional Rent Controller whereby the application filed by respondent no.2 herein seeking leave to contest the eviction petition filed against him

and respondent no.1 under Section 14(1)(e) of the Act for their eviction from one shop on the ground floor of property bearing no. 26, Rameshwar Nagar, Azad Pur, Delhi, has been allowed.

2. The petitioners are the owners of building no. 26, Rameshwar Nagar, Azad Pur, Delhi which has five shops on the ground floor out of which four shops, in respect of which three eviction petitions were filed against the three tenants as well as against two persons who were impleaded in two petitions as sub-tenants. The respondent no.1 herein was let out shop no.3 and respondent no.2 was impleaded in the eviction petition as a sub-tenant.

3. The petitioners-landlords, who are father and son, pleaded in the eviction petitions that their family comprised of ten members comprising of the parents of petitioner no.1, wife of petitioner no.2 and their one son. It was claimed that though another son of petitioner no.1 had shifted to Chandigarh on account of riots but he was also now desirous of settling in Delhi keeping into account the educational prospects of his children. It was also pleaded that petitioner no.1 wanted his old parents also to live

with him because of their old age but the accommodation available with them in property no. 26, Rameshwar Nagar, Azad Pur was comprising of only two bed rooms on the first floor and a drawing room, living/dining room, one kitchen, WC and bathroom, one small store room. The second floor was in occupation of a tenant and on the ground floor there was a shop also with them. The petitioners-landlords pleaded that the accommodation available with them was not sufficient for accommodating the parents of petitioner no.1 who were separately living in another house in Rameshwar Nagar, Azadpur due to paucity of accommodation in property where the petitioners were living and also his other son presently living in Chandigarh. As far as the petitioner no. 1 is concerned, it was also claimed that he being an old person required the accommodation on the ground floor.

4. The respondent no.1 had not filed any application seeking leave to defend the eviction petition while it was filed by respondent no.2 who claimed himself to be a tenant though claimed by the petitioners to be a sub-tenant. He sought leave to contest the eviction petition on the ground

that the requirement of the shop under his tenancy by the landlord was not *bona fide* inasmuch as they were already having sufficient accommodation for both of them and the wife and son of petitioner no. 2. It was claimed that the petitioners were also having four rooms on the rear side of the ground floor. It was also claimed that since the parents of petitioner no. 1 were already residing in another house near to the house in question the requirement of additional accommodation for them was also not *bona fide* and the other son of the petitioner no. 1 was already well settled in Chandigarh for many years. It was also claimed that the shop in question, in any event, could not be used for residence. Ownership of the petitioners was also challenged.

5. The learned Additional Rent Controller had come to the conclusion in the impugned order, by which the common order he had allowed all the applications moved in the three petitions seeking leave to defend the eviction petitions, that there was no dispute about the extent of accommodation available with the petitioners on the first floor of house No. 26, Rameshwar Nagar, Azad Pur and as far as the plea of the

respondent no.2 herein that the petitioners had four rooms on the ground floor also is concerned, it was not acceptable. The petitioners' case was that they required one room for petitioner no. 1 on the ground floor because of his old age and medical problems, one room for petitioner no. 2 and his wife, one room for their son, one room to be used as study room by the grandchildren and one room for pooja. The trial Court has accepted this requirement to be *bona fide*. The petitioners also claimed one room for guests and one room for the son of petitioner no. 1 who was living in Chandigarh and who, even according to the trial court, had every right to visit his parents. The trial court, however, accepted the requirement of one room only for the guests as well as the son staying at Chandigarh. The case of the petitioners that the parents of the petitioner no.1 who were over eighty years of age also needed to be live with their son has not been accepted by the trial court on the ground that they were not dependant on their son for their residence. Thus, the learned Additional Rent Controller concluded that the petitioners were having only two bedrooms, one drawing room and one dining room with them on the first floor and one

room (shop no.1) on ground floor while their requirement was of five bedrooms i.e. one room for the petitioner no.1, one room for the petitioner no.2 and his wife and one room for their child , one room to be used as a pooja room and one for the guests. Still, leave was granted to the respondent to contest the eviction petition on the ground that the landlords were claiming the possession of four shops from three different tenants while their requirement was not for all the four shops and since it could not be decided at the stage of disposal of leave to contest application as to which of the three shops should be got vacated and from which of the three tenants leave deserved to be granted in all the three petitions. This is what the learned Additional Rent Controller observed in the concluding para of the impugned order:-

“In the present case, the total suit shops involved are four in number all measuring about 12 ft 9 inch x 7 ft 9 inch and since the requirement of the petitioner as discussed hereinabove not appears to be for the entire suit shops and it is cardinal principle of law that in such a situation leave to defend cannot be granted by pick and choose and therefore, in the circumstances, the bonafide requirements as stated by the petitioner’s requires evidence in respect of their additional accommodation and in this regard reliance can be placed upon judgment reported in 2000 JT 3 397 titled as ‘Santosh Devi Soni vs. Chand Kiran.’

6. Feeling aggrieved by the grant of leave to contest to the respondent-tenant, the petitioners filed the present revision petition.

7. The respondents were served with the notice of this petition but they chose not to enter appearance and, therefore, I had heard the counsel for the petitioners-landlords only.

8. In my view, this petition deserves to be allowed .The learned trial Court should have in fact passed the eviction order straightaway when the respondent no.1, who according to the petitioners was their tenant, had not filed any application for leave to contest the eviction. In any event, even if the application of the alleged sub-tenant was to be entertained the trial Court should also have found the requirement of one room to be used as a study room and one room for the old parents of the petitioner no.1 as *bona fide*. Even though the parents of the petitioner no. 1 were living separately but considering the fact that they were more than eighty years old the claim of petitioner no.1 that he wanted them to live with him so that he could take care of them in case of an emergency could not be considered to be not *bona fide*. The mother of the petitioner no. 1 has already

undergone bye-pass surgery. So, the claim of the petitioners on that count should not have been rejected just because of the fact that the old couple was not dependent on their son for residence. For their safety and well being in old age they are definitely dependent on their son. In fact, this aspect appears to have escaped the attention of the trial court. So, the trial court should not have granted leave to defend to the respondent no.2 and its view that even though the requirement of landlord was *bona fide* the leave to defend deserved to be granted in all the three cases as there was no need of all the four shops for the petitioners and it could not be decided at this stage as to which of the tenants should be asked to vacate is totally an unreasonable view.

9. This petition is, therefore, allowed and an eviction order is passed against the respondents but six months time is granted to vacate the shop in question.

**P.K. BHASIN, J**

September 20, 2011/sh