

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
% RC.REV.126/2011

+ Date of Decision: 9th May, 2011

BAL KRISHAN KHANNA ...Petitioner
! Through: Mr. S.M. Chopra & Mr. A.K.
Chandhiok, Advocates

Versus

\$ RAVI KANTA MADHOK Respondent
Through: Mr. Mithlesh Kumar Singh, Advocate

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)**

ORDER

P.K.BHASIN, J:

This revision petition under section 25(B)(8) of the Delhi Rent Control Act, 1958 has been filed by a tenant who has been unsuccessful in getting the leave to contest the eviction petition filed by his landlord on the ground of *bona fide* requirement of the leased premises.

2. The petitioner's application for leave to contest the eviction petition had been rejected by the learned Additional Rent Controller vide order dated 02.12.2009 and an eviction order had been passed

against him. Feeling aggrieved, the petitioner-tenant had invoked the revisional jurisdiction of this Court by filing a revision petition. The petitioner-tenant had raised two points before this Court. First was that there was an understanding between him and the deceased father-in-law of the respondent herein that he could remain in occupation so long as he wanted to live during his lifetime. Oral understanding in that regard between him and the father-in-law of the respondent herein was pleaded by the petitioner herein in his leave application. The other point urged before this Court was that two years before the filing of the eviction case the respondent-landlady had let out an area of 155 sq.yds. on the ground floor to another tenant. This Court after rejecting the first of these two pleas urged on behalf of the petitioner-tenant remanded back the matter to the trial Court for giving its findings on the second point taken by the tenant in his leave application to the effect that since the respondent-landlady had two years before the filing of present eviction case let out 155 sq. yds. area to another tenant her requirement of the premises in occupation of the petitioner-tenant could not be said to be bona fide. The remand order was passed since the trial Court had not dealt with this plea of the petitioner-tenant in its order dated 05/12/09. The learned trial Court accordingly passed a fresh order on 07/03/11 after hearing the parties. The relevant observations in this short order are re-produced:-

“From the contention of the parties, it is clear that the petitioner though has let out portion of ground floor about two years ago yet she has a right to get the shop evicted for her personal use or of her dependants/family members. The petitioner has categorically stated that the shop is required by her son for his office use who is an LIC agent and has no office.

The contention of the respondent is thus without merits and is no help to the respondent , so far as the bonafide need of the petitioner is concerned.....”

3. The petitioner-tenant has now challenged the fresh decision also of the Additional Rent Controller.

4. Learned counsel for the petitioner had at the outset pointed that before the passing of the present order the same Judge has vide his order dated 7th February, 2011 allowed the leave to defend application of another tenant of another shop in the property no.11/4, West Patel Nagar, New Delhi let out by the respondent herein on the same grounds as were taken in the petition against the petitioner including the one that she requires more accommodation for her son to do his business as an LIC agent, which was also one of the grounds taken in the eviction petition against the present petitioner seeking his eviction from the premises in question. It was also submitted that the trial court has simply brushed aside that two years back landlady had let out a major portion of her house on the ground floor to another tenant without giving any cogent reason. Learned counsel also submitted that the

rejection of the new ground which trial court was to decide after remand is biased since the petitioner had challenged in the earlier order dated 5/12/09 before this court and the bias is apparent given on the same grounds and the tenant had been granted the leave to contest.

5. Learned counsel for the respondent-landlady simply supported the decision taken by the trial Court after remand and contended that letting out of some portion in the main house to another tenant two years ago was irrelevant for considering the leave to defend application of the present petitioner-tenant and that circumstance has been rightly been not used in favour of the tenant. Regarding the same Judge who has passed the present order in favour of the landlady passing an order in favour of another tenant of another shop in the same house a month before the passing of the present order after remand learned counsel for the respondent-landlady submitted that the other order is liable to be challenged by the landlady and in any event the petitioner herein cannot derive any benefit from the other tenant getting the leave to contest the eviction petition filed by the landlady on same grounds on which eviction of the petitioner is being sought.

6. In my view, the petitioner is now entitled to succeed in this petition for the reasons urged on his behalf by his counsel. I am in full agreement with the submission of the learned counsel for the petitioner

that the respondent-landlady should have disclosed in her eviction petition the fact that before filing of the eviction petition against the petitioner-tenant she had let out a big portion of the main house no. 11/4, West Patel Nagar, New Delhi to another tenant. That was a material fact which should have been disclosed in the eviction petition. I also find force in the second point urged on behalf of the petitioner that the affect of the respondent-landlady letting out the accommodation already available with her to another tenant before the filing of the present petition can be appreciated only after parties are given opportunity to lead evidence. The landlady will have to justify that decision of hers at an appropriate stage and this aspect of the matter could not have been rejected by the learned Additional Rent Controller and particularly in the manner it has been done. The learned Additional Rent Controller has not said anything in the impugned order as to why this fact was not being considered to be sufficient enough to grant leave to contest to the tenant. I am also of the view that the petitioner-tenant is entitled to get the leave to contest the eviction petition also for the reason that the requirement of the landlady on the basis of which the present eviction petition was filed has not been found to be prima facie bonafide by the same judge who has passed the impugned order in the present case while accepting similar leave to defend application filed against the respondent-landlady against another tenant in her premises

in respect of shop no. 2. It was not disputed by the learned counsel for the respondent-landlady that there are three shops on the ground floor which have been numbered as Shops No. 1, 2 and 3. The tenanted premises in the present case is shop no. 1. If the learned Additional Rent Controller could find the requirement of the respondent-landlady to be not bonafide in the eviction case against another tenant the same could not be said to be bonafide in the present case, atleast at the stage of consideration of the application of the petitioner-tenant for leave to contest the eviction petition.

7. For the aforesaid reasons, the petitioner-tenant is granted leave to defend the eviction petition filed against him by the respondent-landlady. The matter shall now be taken up by the Additional Rent Controller on 27th May, 2011 at 2 p.m. when the parties shall appear there and the petitioner-respondent shall present his written statement and thereafter the eviction petition shall proceed further in accordance with the law.

P.K. BHASIN, J

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