

IN THE HIGH COURT OF DELHI AT NEW DELHI

RC REV. 253/2011

GP WADHAWAN

..... Petitioner

Through: Mr. K.R. Chawla & Mr Arvind Varma,
Advocates.

versus

KRISHAN DEVGAN

..... Respondent

Through: Mr. Sunil Lalwani, Advocate.

CORAM:

HON'BLE MR. JUSTICE P.K. BHASIN

ORDER

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19.09.2011

I have heard counsel for the parties.

The petitioner-tenant is aggrieved by the order of the Additional Rent Controller whereby his application for leave to contest the eviction petition filed by the respondent herein under Section 14(1)(c) of the Delhi Rent Control Act for his eviction from a room in property bearing No. 4-A/49, Old Rajinder Nagar, New Delhi has been dismissed and he has been directed to vacate the said shop.

The undisputed facts are that the respondent landlord is living in the aforesaid house along with his wife, two married sons, two daughters-in-law and three grand children. He pleaded in his eviction petition that the total accommodation in the said property comprises of one room, one drawing room, one kitchen, bathroom, W.C. on the ground floor and similar accommodation was there on the first floor. The said accommodation was alleged to be highly insufficient for his family comprising nine members. The detailed reasons for the eviction of the tenant pleaded in the eviction petition are as follows:-

~ (viii) That the petitioner is 76 years old retired Central (Department Employee, retired from N.R.D.C (Department of Science and technology) Government of India. Family of the Petitioner consists of nine members which includes petitioner, his wife, elder son, elder daughter in law, grand daughter (elder son's daughter) grand son (elder son's son), younger son, younger daughter in law and grand son (younger son's son).

Petitioner wife is 71 years old, suffered fracture neck femur right fracture of High Hip ball and her hip ball is fractured. Elder son of Petitioner Shri Kavinder Devgan is aged about 48 years, and he is in Government service and presently posted in President's Secretariat. Elder daughter in law is a bank employee. Elder son of the petitioner has two children i.e. daughter and a son. Daughter of elder son of Petitioner is 18 years old and studying in a college. Whereas, son of elder son of the Petitioner is 10 years old and studying in Salwan Public School. Second Son of the Petitioner, Shri Rajiv Devgan is running a shop of Ready Made Garments in the same premises, which is shown as Mark X in the site plan filed by Petitioner. His wife is a house wife. The younger son of the Petitioner has only one son aged 3 years. Beside the aforesaid family members, Petitioner has a daughter also who is married and she lives at Vikas Puri visiting the Petitioner every now and then and also stays for some days with the petitioner particularly during the vacation of her children. It is also pertinent to mention here that Petitioner's elder brother was also running a shop of General Store on the Ground Floor which is shown as Mark Y in the site plan filed by the petitioner. The said brother of the petitioner has already died and the portion of the property which was being used by the brother of the Petitioner as shown is now being used as store room after his death.

(ix) The petitioner had constructed two rooms on the 1st Floor also which is shown in the site plan. Presently the accommodation available with the Petitioner is one room, one drawing room, store, verandah (which is being used as a passage), kitchen, bathroom, W.C. and another small store shown as Mark Y and open Court yard on the Ground Floor and one room, one drawing room, one kitchen, covered verandah (being used as passage) store room, bath room and W.C. and toilet on the terrace of the 1st Floor. The Petitioner along with his wife are living on the Ground Floor. Petitioner is a heart patient and getting the treatment at Ram Manohar Hospital. Petitioner is also suffering from enlargement of Prostrate Glands and is under the treatment of Urology Department in the R.M.L. Hospital for the last 10 years. Due to his reason, petitioner has developed the tendency of going to urinal for passing urine frequently and he requires the room near the W.C. on the Ground Floor. Petitioner's wife is also suffering from osteoarthritis and her hip ball of the right leg broken (fracture neck femur) and replacement with Elmer Versys Heritage Bipolar System under Epidural Anesthesia was done at the Orthonova Hospital, New Delhi. She is totally bed ridden and cannot walk without the help of walker. She is also suffering from kidney trouble and high blood pressure and is under the treatment of R.M.L. Hospital.

Petitioner's wife require the room near bathroom so that no family member is disturbed in the night in case petitioner and his wife to go for urination.

(x) That the Petitioner's both sons alongwith their family are

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living in the premises and there is acute scarcity of accommodation. The grand daughter and son 18 and 10 years old respectively, grand daughter of the Petitioner is 18 years old requires a separate room for studies besides the Petitioner also require a Guest Room, Puja Room and separate room for himself and wife. In fact, Petitioner has to accommodate his guests with great difficulty and hardship whenever the daughter of Petitioner or any other guest come to stay with the Petitioner, her family members of the Petitioner, have to sleep on the floor and accommodate themselves in the drawing room.

(xi) That the Petitioner requires at least three more room for himself and for the members of his family. Petitioner will merge the tenanted premises and the small store room which is shown mark Y into one room and the said room, shall be used by the Petitioner himself and his wife."

The petitioner-tenant sought leave to defend the eviction petition on the ground that the respondent-landlord has more than sufficient accommodation already with him in the property in question and further than as far as the petitioner's family members are concerned they were not dependent upon him financially or for residence.

The learned trial Court has rejected the petitioner's application for leave to contest. Various pleas urged by the landlord as well as by the tenant have been dealt with in paras no. 8 to 12 of the impugned order and the same are reproduced below verbatim:-

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In the present case, the petitioner is aged about 76 years and a heart patient and also suffering from enlargement of prostate glands. The wife of petitioner is aged about 71 years and suffering from osteoarthritis and totally bed ridden and cannot walk without help of walker. In my opinion, this Court cannot compel the petitioner landlord and his wife who are senior citizens suffering from multiple diseases to shift to second floor just to protect the respondent/tenant occupancy.

It is well established proposition of law that a tenant cannot dictate the terms to the Landlord as to who the landlord has to live and occupy the portion of his house. In the case law cited as 169 (2010) Delhi Law Times 769 it was held by the Hon'ble Delhi High Court that "It is settled law that it is not for a tenant to dictate the terms to the landlord as to how and in what manner he should adjust himself, without calling upon the tenant to vacate a tenanted premises. While deciding the question of bonafides of requirement of landlord, it is quite unnecessary to make an endeavor as to how else the landlord could have adjusted. When the landlord shows a prima facie case, a presumption that the requirement of the landlord is bonafide, is available to be drawn. It is also settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter and it is no

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concern of the Courts to dictate to landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The tenant cannot compel a landlord to live in a particular fashion and method until and unless the requirement shown is totally mala fide or not genuine”.

In view of above, the objection raised by respondent is not sustainable and same is rejected.

9. *The another objection is that petitioner does not require the tenanted shop which is a small shop of 6x6 feet for his residence and petitioner has more than sufficient accommodation for himself and for his wife on the ground floor.*

In the petition, petitioner has averred that he has only one room and a drawing room on the ground floor beside kitchen, bath room, W.C. and store room and court yard and the shop room vacated by the brother of the petitioner is being used as a store room out of compulsion and can only be useful if the same is merged with the tenanted premises.

To prove this, petitioner has filed the site plan on record to show that he has only one room and a drawing room on the ground floor beside kitchen, bath room, W.C. and store room and court yard and the shop room vacated by the brother of the petitioner is being used as a store room.

On the other hand, respondent has assailed that entire ground floor consisting of one drawing room, two rooms, kitchen, bathroom, WC and store room, open court yard is in occupation of petitioner and his wife.

It seems that respondent has stated the passage verandah on the ground floor as room. The respondent has not filed any site plan to show that petitioner has wrongly stated one room as passage and to show that there is sufficient space available with petitioner in the suit property. It is well settled proposition of law that if tenant does not file any site plan, the site plan filed by petitioner is assumed to be correct. Hence, it is assumed that site plan filed by petitioner is correct and no other space in the suit premises is available with petitioner.

*It may also be seen that petitioner has stated that he requires at least three more rooms for himself and for his family members. Even if verandah assumed to be a room then also petitioner requires two more rooms as puja room and guest room as his daughter is married used to visit the petitioner off and on and in laws of his two sons used to visit the petitioner and sons occasionally. In case **Krishan Kumar Gupta vs Swadesh Bhushan Gupta (RC Rev. No.62/2008)** cited as **152 (2008) DLT 556**, it has been held by the Hon'ble High Court that requirement of landlord to have sufficient accommodation for families of his visiting daughter and son is not fanciful requirement. As per petitioner, he requires one room as puja room. In my opinion, if petitioner wants one room for the worship the goddesses then the Court cannot prevent him to do so.*

Considering the total accommodation and the number of family members, I am satisfied that the available accommodation cannot be said to be sufficient for the petitioner and his family members. Further, it is the choice of the petitioner to have and use the accommodation according to his comfort. This objection is also dismissed.

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10. The other objections is that petitioner not required the tenanted shop for any other family members and the other family members are not dependent upon the petitioner for accommodation and petitioner has not stated that his sons are dependent upon him.

I have gone through the petition, in para no.(viii) and (x), the petitioner has clearly mentioned that his younger son running a shop of readymade garments in the same premises; that his married daughter used to visit him and also stays for some days and that his both sons along with their family are living in the premises and there is acute scarcity of accommodation.

The above clearly shows that petitioner is living in the joint family and all members of his family are dependent upon the petitioner for the purpose of residence. Merely not mentioning the particular word 'dependent' in my opinion is no ground for allowing the objection raised by respondent. Even otherwise, in case **Dwarka Prasad vs. Niranjan & Another** cited as (2003) 4 Supreme Court Cases 549, it has been clearly held that scope of word himself whether to be confined to the landlord alone or includes the requirements of family members of the plaintiff i.e. his sons, brothers and sisters etc., covers the requirement of a member of family of the landlord who is dependent on the landlord for purposes of residence or for economic consideration.

Respondent has also contended that elder son of petitioner is in Government service and his wife is a bank employee and second of petitioner is running a garment shop and hence, sons of petitioner are not dependent upon the petitioner. In case **Sh.Gobind Das and others vs. Sh. Kuldip Singh** cited as 1970 All India Rent Control Journal 742 it has been clearly that the plea that because a person is earning his livelihood he should not be regarded as dependent upon the landlord, if accepted, would tend to restrict the meaning of the word 'dependent' used in proviso (e) of Section 14(1) of the Delhi Rent Control Act, 1958 to a person being financially dependent. In case **Sh.Lala Ram vs. Smt.Kalawati bearing SAO No.256 of 1972 decided on 21.05.1974**, it has been held by the Hon'ble Delhi High Court that "it has already been held by this court in numerous cases that the 'expression self' appearing in the Proviso (e) to Sector 14(1) of the Delhi Rent Control Act includes all members of the family of the Land Lord who had been living with the Landlord whether as dependent or otherwise. In view of these judgments, the contention of the respondent that sons of petitioner being engaged for gains are not dependent upon the petitioner, is not sustainable.

In view of above, this objection raised by respondent is also not tenable and same is rejected as such.

11. The another objection of the respondent is that petitioner has not filed the copy of sale deed to show that he had actually purchased the property from his mother Smt.Maya Devi.

Petitioner in the petition has averred that suit property was originally allotted to his mother Smt.Maya Devi by the Ministry of Rehabilitation, Government of India and his mother had let out the tenanted premises to respondent and a rent note was executed between them on 27.03.1994. Prior to death of Smt.Maya Devi, she had sold the suit property to his son i.e. petitioner.

To prove this fact that he has placed on record copy of conveyance deed dated 17.01.2000. Counsel for petitioner argued that on the basis of sale deed, the Land and Development Office, Ministry of Urban Affairs and Employment, New Delhi has executed a conveyance deed in favour of petitioner. The petitioner has also placed on record copy of rent receipt dated 03.10.2008 to show that respondent is tendering the rent to him.

On the other hand, respondent has not filed any document on record to show that any person other than petitioner is the landlord of the suit property. While making the allegation that petitioner is not the owner of the suit property, respondent must disclose as to who is the real owner of the suit property. A mere bald allegation is not enough.

12 *The another objection is that the present case is for requiring additional accommodation and the Hon'ble Supreme Court has held in many cases that tenant must be granted leave in such a case.*

*Counsel for respondent has shown the case **Santosh Devi Soni v/s. Chand Kiran (civil appeal no.412/2000)** cited as JT 2000 (3) SC 397; **B.R. Anand vs. Prem Sagar (C.R. no.1110/2000)** cited as 2003(1) RCJ 105 and judgment of Hon'ble Supreme Court in civil appeal no.120.1990 namely Dr.S.M. Mishra vs. D.D. Malik to show that in cases requiring additional accommodation, the tenant must be granted leave in such cases.*

I have seen the entire petition and of the opinion that respondent is just making an attempt to save himself from the eviction. The judgments cited by the respondent are not at all application to the facts of the present case. In view of reasoning given to objection no. (c), I am satisfied the need of petitioner is bonafide and respondent has failed to show that need of petitioner is not bonafide. The petitioner has been able to show that there are nine members in his family and only two rooms are available with petitioner and in fact, he requires at least three more rooms i.e. one for himself and his wife, second as guest room and third as puja room.

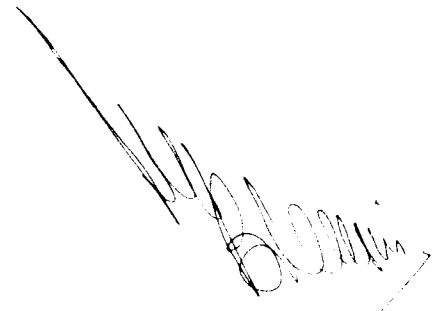
Same pleas which were urged before the trial Court on behalf of the tenant for seeking leave to defend have been urged before this Court also by the learned counsel for the petitioner-tenant. Learned counsel for the petitioner-tenant has placed reliance upon one judgment of the Supreme Court in "**Santosh Devi Soni vs. Chand Kiran**", JT 2000 (3) SC 397 in support of the submission but it being a case of additional requirement of the landlady leave has to be granted to the tenant to const the eviction petition. However, in the present case even the existing accommodation of the landlord being totally insufficient for her family the judgment relied upon by the learned counsel is not of any

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help to the petitioner.

After considering the reasons given by the learned trial Court rejecting all the pleas raised by the petitioner-tenant for seeking leave to defend the eviction petition I find that the learned Additional Rent Controller has not committed any perversity, irregularity or illegality in declining the leave to contest the eviction petition to the petitioner-tenant.

This petition being devoid of merits is dismissed.



SEPTEMBER 19, 2011/nk

P.K. BHASIN, J