

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

% RCR NO. 48/2009

+ Date of Decision: 30th August, 2011

LAXMI NARAIN ...Petitioner

! Through: Mr.Mir Akhtar Hussain, Advocate

Versus

\$ BHAGWANTI Respondent

Through: Mr. Anil Goel, 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 is a revision petition under section 25-B(8) of the Delhi Rent Control Act, 1958 against the order dated 25.05.2009 passed by learned Additional Rent Controller dismissing the application filed by the petitioner-tenant seeking leave to defend the eviction petition filed by his landlady, respondent herein, in respect of one room on the ground floor of premises bearing no. 2937, Arya Nagar,

Subzi Mandi, Delhi under Section 14(1)(e). As a result of dismissal of the leave application eviction order has been passed against the petitioner-tenant.

2. The respondent-landlady, who has died after filing of the present petition and is now being represented by her legal representatives, had sought eviction of the petitioner on the ground that she required the premises under the tenancy of the petitioner for herself and her four sons and their families out whom two sons were living separately as they could not be accommodated in property no. 2937 due to shortage of space there. She also pleaded that earlier there were seven tenants in all in her house, including the petitioner herein, and out of them six had been got evicted and now the petitioner herein was the only tenant who remained to be evicted. It was her further case that as she herself was not in a condition to climb stairs because of her old age she was living with one of her four sons Bhimsen in Vikaspuri but that son had got transferred to Hyderabad and so she wanted to shift to her house and to live with her children but there was no other room available for her on the ground floor in house no.2937. It was also her case that on the ground floor of said the property there were six rooms in all, including the one under the tenancy of the petitioner herein, and out of five rooms one was not worth living because the same was filled with waste wooden furniture etc. of her two sons who were not living in the said house due to

shortage of space, the second room was kept for the guests of the family, third room was pooja room, the fourth room was used by her son Dharam Veer for storing his house-hold goods and the fifth room was used by another son Om Prakash Narang who was not having good health and was suffering from hypertension and breathing problems. It was also the landlady's case that on the first floor she had eight rooms but those rooms were already occupied by the families of her two sons Om Parkash and Dharam Vir and in any case those rooms were not useful for her as she was unable to climb stairs and she required ground floor accommodation.

3. The petitioner-tenant in his affidavit filed before the trial Court seeking leave to defend the eviction petition claimed that his landlady herself was not living in the house in question but was living in another house in Vikaspuri with one of her four sons. The first floor of the house in question was in occupation of her other two sons, namely, Sh. Om Prakash and Sh. Dharm Vir and their families and on the ground floor four rooms were lying vacant and in two rooms her son Dharam Vir was running his business and so she did not require the room in question under his tenancy.

4. The learned Additional Rent Controller declined leave to the petitioner-tenant to contest the eviction petition. While rejecting the petitioner's pleas which according to him gave rise to several triable issues the learned Additional

Rent Controller gave his findings in para nos. 12 to 14 of the impugned order and those paragraphs are re-produced below:-

12) Having heard the submissions of the respondent, I observe that the respondent himself is unclear about the occupancy and possession of the petitioner and her family members in the entire property. On the one side, he is claiming that the ground floor of the aforesaid property is lying vacant and on the other side, he is stating that two rooms on the ground floor are occupied by son of the petitioner, Dharamveer Narang for running his business of Saree falls. Also, the respondent has stated that the entire property is in occupation and possession of the two sons of the petitioner except the tenanted premises. It is apparent that the respondent has no definite stand with regard to the occupancy of the petitioner or her family members in the suit premises. Even otherwise, if the plea of the respondent with regard to sixteen rooms is presumed to be correct then also I feel that bona fide requirement of the petitioner still exists. The old age of eighty years of the petitioner and composition of her family has not been disputed by the respondent meaning thereby there are three couples viz. Sh. Om Prakash Narang, Sh. Dharamveer Narang and Sh. Kamal Narang already residing in the suit premises and require at least three separate bed rooms for themselves. Similarly, they also require three separate guest rooms as it is a settled preposition of law that every married son requires a separate guest room. Further, three sons and one daughter of the petitioner's sons viz. Sh. Bhisham Narang, Sh. Lokesh Narang and Sh. Gulshan Narang and Ms. Kavita admittedly are of the marriageable ages of 27, 25, 28 and 23 years respectively and are to be married soon. Intrinsically, three sons of the petitioner of marriageable ages would also require three separate bed-rooms along with three guests rooms. Anyhow, presently the four individual adults require at least four separate rooms for them. Now, since, the petitioner is an old lady of above eighty years of age, she has shown her bona fide requirement of one room on the ground floor on the premises that she cannot climb on the stairs to reach the second floor. School going adolescent girls also require their separate study rooms. Four individuals adults and two young girls of fourteen years and twelve years respectively are admittedly living in the aforesaid property. The size of the family of the petitioner is so large that

they at least require one drawing room and one dining room for the entire family. They also require at least one pooja room which makes their bona fide requirement to be a bare minimum of 16 habitable rooms apart from kitchens, latrines, bath rooms and stores. Apart from this, the respondent himself submitted that Sh. Dharambir Narang, son of the petitioner is running his business of saree falls on the ground floor and therefore is using two rooms on the ground floor shown at point 'A' and point 'B'.

13) In the light of the above discussion, I observe that the petitioner has already shortage of accommodation in the property and she has bona fide need for one room on the ground floor to stay peacefully in her own residential accommodation.

14) Further, the respondent alleged that two other sons of the petitioner are residing at different places of Dwarka and Vikaspuri respectively and the petitioner is residing with her son namely Bhimsen at Vikaspuri where she is living a luxurious and comfortable life without any tension. Here, admittedly her son Bhimsen has been transferred to Hyderabad and his family has already shifted to Hyderabad. Further, as per the petitioner, since the said accommodation of Vikaspuri area is on the ground floor and she had gone there to stay only because of her deteriorating health and now, it has become very difficult for her to stay all alone in the absence of his son or other family members.....”

5. Feeling aggrieved the petitioner had approached this Court by filing this revision petition but after filing this revision petition he was evicted through execution proceedings. However, the counsel of the petitioner had pressed for hearing of the revision petition in the hope that if he succeeds then petitioner might get back the possession of the tenanted premises.

6. It was submitted by the learned counsel for the petitioner-tenant that he had raised many triable issues including the most vital one regarding the number

of rooms on the ground floor in his affidavit seeking leave to defend the eviction but the learned trial Court has committed material irregularity while coming to the conclusion that no triable issue had been raised by him. Learned counsel for the respondents, on the other hand supported the impugned order and prayed for the dismissal of this revision petition.

7. As noticed already, it was the deceased landlady's case that she had in her possession five rooms on the ground floor and eight on the first floor. As far as the accommodation on the first floor is concerned there was no dispute between the parties and according to the both the parties there are eight rooms. The total family members of her two sons living in the property no. 2937 were twelve including one married grandson of the deceased landlady and his wife and that is why the learned trial Court has observed that three married couples in the family of the deceased were living on the first floor of the property in question. This factual position has not been in dispute either before the trial Court or before this Court from the side of the petitioner - tenant. The landlady had annexed with the eviction petition a plan which shows that there were five rooms on the ground floor in addition to the room in the possession of the petitioner-tenant. The plan filed by the petitioner-tenant in respect of the ground floor is a photocopy of the plan filed by the landlady and that also shows the same accommodation in

possession of the landlady as is shown in her plan. Therefore, the petitioner's plea taken for getting leave to defend to the effect that his landlady was having eight rooms on the ground floor gets falsified from his own plan of the ground floor. The petitioner-tenant has attempted to project that in some rooms there were some kind of partitions raised for making two rooms of one room. But even then the petitioner cannot derive any benefit considering the large number of members of the family of the deceased landlady. If the deceased landlady in order to live with her sons had made some kind of temporary arrangements in the existing rooms that would not show that her requirement stood satisfied, as was the submission of the learned counsel for the petitioner-tenant and particularly when it is not the case of the petitioner that the deceased landlady's family was not joint or that her two sons who were living there were not dependant on her for residence. Thus, the position which emerges out is that the accommodation available with the deceased landlady and the families of her two sons who were already living in the property in question comprised of eight rooms on the first floor, out of which two rooms ,according to the landlady,had been recently constructed to be used as study rooms for grandchildren. On the ground floor, she had five rooms out of which two were, even according to the case of the petitioner – tenant , being used by one of the sons of deceased landlady for carrying on his business. In these circumstances, no fault can be

found with the decision of the learned Additional Rent Controller to the effect that the petitioner – tenant had failed to make out any case entitling him to get leave to defend the eviction petition and that the requirement of the deceased landlady in respect of the tenanted premises in the possession of the petitioner – tenant was very much *bona fide*. This Court fully endorses the said decision of the trial Court and finds no reason whatsoever to interfere in that decision in exercise of revisional jurisdiction despite the fact that now the landlady has died.

8. This revision petition is accordingly dismissed.

P.K. BHASIN,J

AUGUST 30, 2011
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