

IN THE HIGH COURT OF DELHI AT New Delhi

RC.REV. No. 58/2009

Date of Decision:- 17.2.2011

Shree Ram Sharma

... Petitioner

Through: Mr. K.K.Sharma, Sr.
Adv. with Ms. Bhanita Patowary for
petitioner

Versus

Mohd. Sabir

Respondent

Through: Mr. L. Roshmani with Mr.
Israr Ahmad for respondent

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

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

S. L. BHAYANA, J.

The present revision petition under section 25-B(8) of Delhi Rent Control Act, 1958 (for short as "Act") has been filed by the petitioner against the order dated 30.05.2009 passed by Additional Rent Controller (for short as "controller") Delhi, vide which leave to contest has been granted to the respondent tenant.

2. Undisputedly, the petitioner is the landlord in respect of premises bearing No.2, Satnam Park, Chander Nagar Road, Delhi 110051 admeasuring 190 sq. yards. The respondent is a tenant of the petitioner at a monthly rent of Rs. 825/- p.m. excluding the electricity and other charges for the last about 39 years. The respondent has been running a hair cutting saloon in the tenanted premises. The petitioner is a senior citizen aged about 70 years and his family consists of his ailing wife aged about 66 years, 2 married sons and 3

married daughters. The elder son has one son aged 18 years and 2 daughters aged about 17 and 16 years. The younger son of the petitioner has 2 sons aged about 10 years and 5 years. The younger son is a practicing lawyer and has been occupying two rooms as his office and library on the ground floor. His three married daughters often pay visits to their parental house along with their families. Other relatives of the petitioner reside in the vicinity and they also often pay visits. The petitioner is suffering from heart problem coupled with old age related ailments and his wife is also suffering from high blood pressure, lungs disease and acute arthritis. The petitioner and his wife are not able to climb stairs and have been medically advised to stay at the ground floor.

3. The petitioner has two small kitchens and almost 25 sq. yards of un-constructed open area in the premises. There is one pooja room, one drawing room, one dining room and one store room. A servant is also residing in the house in one room. The respondent is using the tenanted premises for the last about 38 years and now the family of the petitioner needs more space for their own use. The property in question i.e. the shop is required bonafide by the petitioner for himself and family members. The petitioner has no other reasonably suitable accommodation.

4. Learned counsel for the petitioner has contended that the petitioner is a senior citizen aged about 72 years and his ailing wife is aged about 68 years, 2 married sons and 3 married daughters with their minor and major children along with their spouses. Further learned counsel has submitted that the petitioner is suffering from heart ailment coupled with old age related diseases and is not able of climbing the stairs and similarly the wife of the petitioner is suffering

from acute arthritis and acute incurable Lungs disease therefore, she is also not able to climb the stairs.

5. Learned counsel for the petitioner has argued that three married daughters of the petitioner along with their kids and husband and relatives of the petitioner visit and reside for couple of days almost every week. Therefore the petitioner's need is bonafide and at least one guest room is required to accommodate his daughters, their children and other relatives.

6. Further learned counsel for the petitioner has vehemently argued that the entire family of the petitioner is occupying lesser accommodation than actual requirement of his family. The younger son of the petitioner is a practicing lawyer and has been occupying two rooms as his office and library.

7. Learned counsel for the petitioner has contended that the DRC Act is a complete Code in itself and the present petition is maintainable under section 25-B (8) of the DRC Act which provides with ample revisional powers vested in the High Court to look into the order passed by the Rent Controller whether allowing and disallowing the leave to contest the eviction petition filed by the respondent/tenant as upheld by the High Court in the case *R.S.Bakshi & Anr. V/s. H.K.Malhari*, 2003(67) DRJ 410 in paras 8, 9, and 13.

8. Further learned counsel for the petitioner has argued that no evidences is required to be adduced by the parties when there is no dispute as to the size of the family of the petitioner/landlord and requirement of accommodation as detailed by the petitioner/landlord in the petition as upheld by the High Court in case of *Sanwal Ram Aggarwal V/s. Smt. Gianwati*, 1999 (1) RCR529, Para 11 and Para 15.

9. Learned counsel for the petitioner/landlord has submitted that the petitioner being the landlord is the best judge of his requirement for residential or business purpose as upheld by the Supreme Court in *Raghavendra Kumar V/s. Firm Prem Machinery & Co., 2000(1) SCC679*.

10. Learned counsel for the respondent has submitted that the present revision petition is not maintainable as the same is filed against interim order wherein leave to defend has been granted. Regarding maintainability of this revision petition learned counsel for the respondent has relied upon *Mahavir Singh V/s Kamal Narain, 15 DLT (1979)232 (SN)* in which the High Court has observed that order granting leave to defend is not open to revision.

11. Further learned counsel for the respondent has relied upon *Shiv-Shakti Co-opt. Housing Society V/s. Swaraj Developer, (2003)6SCC659* wherein it has been observed that, no revision lies against interim order under section 115 CPC after the amendment of 2002 except in case where it amounts to disposal of the main matter. Further the said proposition of law has also been upheld by the Supreme Court in the case of *Gayatri Devi-Shashi Pal Singh, (2005)5SCC527*.

12. Learned counsel for the respondent has further submitted that the petitioner has filed eviction petition without giving a true description of his own property as the same is not in accordance with the site plan filed by the petitioner and he has concealed the number of rooms available to him.

13. Further learned counsel for the respondent has asserted that petitioner's requirement is for his residential purposes he is seeking possession of a shop which is not fit for residential purpose.

14. Learned counsel for the respondent has further asserted that the petitioner had refused to receive rent from the respondent in order to

term him as defaulter therefore, the respondent has deposited the rent with the Additional Rent Controller under section 27 of the DRC Act, 1958.

15. Learned counsel for the respondent has asserted that the petitioner has concealed that he has only one more tenant besides the respondent. It is incorrect because the petitioner has two more shops beside the shop of respondent. There is one T.V. shop and one tea shop namely "Satya Tea Stall". Besides these shops the petitioner still has one more room on the 2nd floor which is shown in the photographs filed by the respondent, therefore, petitioner does not have bonafide requirement of the said tenanted premises.

16. I have heard learned counsel for both the parties and perused the record carefully. As there is an expansion in the family of the petitioner and the petitioner and his wife both are aged persons and suffering from diseases regarding which the medical documents have been filed by the petitioner. The younger son of the petitioner is a practicing advocate and he requires at least two rooms to use as office and library. The elder son is having one son and two daughters and his wife. Three married daughters with their spouses and children regularly pay visits at their parental home. Even the relatives of the petitioner residing in the vicinity of the petitioner oftenly pay visits.

17. I may refer to the decision of this court in *Mukesh Kumar V/s. Rishi Prakash*, MANU/DE/2622/2009. The factual situation in that case was very similar to the present case. The eviction petition has been filed by the landlord on the ground of bonafide requirement under section 14 (1) (e) of the Act. Against which leave to defend was filed by the tenant and the learned ARC had granted leave to defend to the tenant against the landlord. The order of the trial court was challenged by the landlord by filing a revision petition. The High Court held that

the need of the petitioner/landlord was bonafide. The leave to defend application filed by the respondent in Trial Court has been wrongly granted by the Learned ARC by adopting an erroneous approach.

18. The learned ARC has also not taken into account the fact that the petitioner and his wife being aged and suffering from heart diseases and acute arthritis can't climb stairs and they need accommodation on the ground floor. Moreover, their three married daughters, along with their family, also visit them frequently. The requirement of the petitioner cannot be pegged down at only one room. Whenever they visit them, they would require at least two rooms. The disease of the petitioner and his ailing wife are of such a nature that they are advised not to climb the stairs and not to put pressure on their knees. Therefore the need of the petitioner to stay at the ground floor is genuine and bonafide.

19. Considering the aforesaid aspects, I am of the view that the need of the petitioner was clearly bonafide. The tenanted accommodation was the most suitable to meet the requirement of the petitioner's expanded family. The need of the petitioner as made out appears to be sincere and honest and not a mere pretence or pretext to evict the respondent/tenant. Viewed in the aforesaid light it can be said that the need of the petitioner to occupy the tenanted premises is natural, real sincere and honest. I am of the view that the respondent did not raise any triable issue which required a trial, and for which the respondent was granted leave to defend the eviction petition. The same has been granted by adopting an erroneous approach and on a perfunctory reading of the submissions of the parties.

20. Accordingly, I set aside the impugned order and reject the respondent's application seeking leave to defend the eviction petition. Eviction order is accordingly passed against the respondent and in

favour of the petitioner in respect of the suit premises which is shown in red colour in the site plan filed by the petitioner along with the eviction petition as Annexure P-2. Petitioner will not execute the decree of eviction against the respondent for a period of six months from today.

The Revision petition stands disposed of.

S.L.Bhayana, J.

February 17, 2011