

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

% Judgment reserved on: 24.11.2011
Judgment delivered on: 29.11.2011

+ **RC.REV. No. 76/2009**

BALEY PERSHAD Petitioner
Through: Mr.L.K.Singh and Mr.Sonal
Sinha, Advocates.

versus

ANIL KUMAR & ORS. Respondents
Through: Mr.Vinod Sharma and
Ms.Rashmi Pandey, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. The judgment impugned before this court is the impugned judgment dated 25.07.2009 wherein the eviction petition filed by the landlord under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed.

2. Record shows that the present eviction petition has been filed by the landlord against his tenant; the suit premises which have been tenanted out to the tenant comprise of one room and one kitchen on the ground floor of the premises bearing No. 345A, Ward No. 19, Kishan Ganj, Gali No. 1, Bagh Kare Khan, Delhi; the tenant is occupying the suit premises at a monthly rent

of Rs. 14/-. Contention of the landlord is that the premises are required by him bonafidely for himself and his family members who are dependent upon him who comprise of his three sons of whom one is married and two married daughters who regularly visit him. The accommodation which is presently available with him is not sufficient for his need; present eviction petition has accordingly been filed.

3. In the written statement these facts were disputed; contention was that the petitioner is not the landlord of the premises bearing No. 345A, Ward No. 19, Kishan Ganj, Gali No. 1, Bagh Kare Khan, Delhi from where the eviction has been sought; further, he has sufficient accommodation with him; details have been given in the written statement.

4. Oral and documentary evidence was led. The Rent Controller on 14.05.2002 had granted conditional leave to the tenant to defend the suit; only to the extent of proving bonafide requirement of the suit premises of the petitioner. No other ground was permitted to be taken by the tenant. The order dated 14.05.2002 has since attained finality and this submission made by the learned counsel for the petitioner that the tenant had been permitted only leave to contest to the extent of proving bonafide requirement of the suit premises by the petitioner, is also not

disputed.

5. Counsel for the petitioner has vehemently argued that the impugned order has noted that if the need of the sons of the landlord are taken into account there is admittedly a paucity of accommodation but has adverted to rely on an admission made by the AW1 (son of the landlord) wherein he has admitted although the father of the AW1 (landlord) is dependent upon his sons but the sons are not dependent upon him for their residence and livelihood; contention being that this is a misconstruction of the evidence of AW1 which has not been appreciated in the correct perspective; admittedly, the father and the three sons are living in a joint family and this is in fact the averment made by the tenant in the written statement itself; if the parties are living in a joint family and the landlord-father is a senior citizen aged about 70 years and the sons having no other independent accommodation, it is difficult to imagine that the sons are not dependent upon their father for their residence. This interpretation by the Additional Rent Controller has caused a manifest injustice to the petitioner which finding is liable to be set aside.

6. Arguments have been refuted; it is submitted that the impugned judgment in no manner suffers from any infirmity as the admission of the AW1 was clear and categorical which was to the

effect that the sons of the petitioner i.e. of the landlord/owner were not dependent either for their residence or for their livelihood upon their father.

7. The crux of the matter by and large boils down to the testimony of this witness i.e. AW1; AW1 is the son of the landlord; he has on oath deposed that he is holding a special power of attorney of AW1/1- his father Sh. Baley Pershad and because of his illness, his father was not able to come into the witness box; he has proved the sale deed of the property Ex.AW1/2 to substantiate his ownership in the suit property. Even otherwise as noted supra, in view of the order of the ARC granting conditional leave to the tenant to defend the eviction petition, the question of ownership does not have to be gone into. In fact no ingredient of Section 14(1)(e) of the DRCA has to be seen except whether there is a bonafide need for the landlord for himself or any dependent member of his family and/or he has no other reasonable and suitable accommodation with him.

8. AW1 in his cross-examination has stated that the need of the landlord is of 9 rooms which are required as there are 9 members in the family; further part of the cross-examination states that his father is jobless but earlier he was doing business of stocks; still earlier he was selling Kiryana goods; his brother Ajay is confined

to the house because of an accident; he was earlier working in a car factory and was earning Rs.3,000/- per month; his other brother Anil is working in Maharaja White Line and is earning Rs. 2500-3000/- per month; there is no other source of income in the family; there is only one refrigerator, two coolers; beside that there is no other luxury item. The relevant part of the cross-examination which has been highlighted by both the counsels to substantiate their respective submissions reads as:

"It is correct that my father is dependent upon his son for residence and for livelihood. His sons are not dependent upon the petitioner."

There is no dispute to the proposition that no one line of a deposition of a witness can be extracted from the rest of his testimony to read it in a manner in which one or the other party wants the court to read; the entire gist of the testimony of the witness has to be appreciated; his testimony has to be read as a whole and in entirety from which what the witness intends to state has to be gathered.

A reading of the examination-in-chief [i.e. the affidavit by way of evidence of this witness (son of the landlord)] and his cross-examination clearly show that the parties were living in a joint family where their father also a senior citizen was earlier selling Kiryana goods and since then he is living a retired life in

the house; Ajay is the married son where as the other two sons are yet to be married; one son has been confined to the house because of an accident; other brother is working in a factory. In the written statement also the averment has emanated that this is a joint family and the family has a joint kitchen; this fact has even otherwise not been negated. In these circumstances, this statement of witness AW1 which has been extracted to form the sole basis of the judgment by the ARC holding that this admission of AW1 that the sons are not dependent upon their father either for their residence or livelihood has clearly been misconstrued and mis-interpreted. In the body of the judgment after discussing the entire evidence, the ARC has concluded that if the need of the sons of the landlord is taken into account a clear case of paucity of accommodation is made out. Refusing relief only relying upon the aforementioned sentence in the cross-emanation suffers from an illegality.

9. The site plan Ex. AW1/4 filed by the landlord shows that the disputed property in property No. No. 345A, Ward No. 19, Kishan Ganj, Gali No. 1, Bagh Kare Khan, Delhi comprises of one room with one tin-shed; there are three other rooms and two kitchens depicted in this site plan. In the second site plan (also Ex. AW1/4) which is of property No. 345, Ward No. 19, Kishan Ganj, Gali No.

1, Bagh Kare Khan, Delhi one room, kitchen and one shop have been depicted besides two rooms which have been show in the site plan to be dilapidated and damaged and not in use or in occupation of any person. The accommodation available with the landlord is thus four rooms and three small kitchens; the kitchens are much smaller in size than the rooms; even presuming the submission of the tenant that these kitchens are in fact being used as rooms and only one kitchen is required for the joint family even then total rooms available with the landlord would be five rooms, one kitchen and one shop; even if this shop is used as room it would be six rooms and one kitchen. Petitioner has categorically deposed that his need for himself and his family members is of nine rooms; the accommodation available with him is short of his requirement. The bonafide need of the landlord has been made out; the trial court rejecting the eviction petition has committed an illegality which has caused an injustice to the petitioner; interest of justice demands that the said manifest illegality be rectified. The impugned order is accordingly set aside; eviction petition is decreed.

10. Petition disposed of.

November 29, 2011

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