

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

% *Date of Judgment: 02.03.2012*

+ RC.REV. 100/2012

URMIL JOSHI & ORS Petitioners
Through: Mr.Jatinder Kamra, Advocate.

versus

SMT RAJ BATRA Respondent
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned is the judgment and decree dated 07.10.2011; the eviction petition filed by the landlady Smt. Raj Batra seeking eviction of her tenant Urmil Joshi from the suit premises i.e. first floor of the property bearing No.A-54, Lajpat Nagar –IV, New Delhi as depicted in red colour in the site plan (filed in the Trial Court). The application seeking leave to defend had been dismissed.

2. Record shows that the present eviction petition has been filed by the landlord on the ground of bonafide requirement. Contention is that the petitioner is the landlady; she has inherited this property from her

father Ladha Ram Batra after his death; she is the sole owner of the suit property. Premises had been rented out to the tenant by her father at a monthly rental of ₹ 200/-; the family of the petitioner comprised of herself and her one married daughter. Petitioner is a resident of London; her daughter is also a resident of Manchester, U.K.. The family of her daughter comprises of her husband and two children. Both the petitioner and her daughter visit India often. Specific contention of the petitioner is that the petitioner comes to India at least twice in a year and so also her daughter; they have to come India for their personal works and have to stay in hotel; which causes unnecessary expense and discomfort to the petitioner and her daughter. The petitioner wants to settle in India but due to non-availability of the suit premises she is not in a position to do so; the tenant is in fact a resident of Mohali and the premises are lying locked by her. The petitioner requires the premises bonafide for herself and her family members. Eviction petition was accordingly filed.

3. The averments made in the application seeking leave to defend have been perused. The ownership of the premises is not in dispute.

The only argument raised and pleaded in the leave to defend is that the

bonafide need of the landlady has not been established; she is admittedly a resident of London; her daughter is also a resident of Manchester, U.K.. The ground floor of these premises had in fact been sold by the landlady in the year 2008-2009; the eviction petition for the vacation of the premises had been filed year 2009; her bonafide need had not been established; she also has an alternate accommodation at A 67, Shalimar Bagh. The tenants are poor persons and it is difficult for them to accommodate themselves elsewhere. The tenant is in fact a senior citizen aged 71 year and is running tuition classes.

4. The corresponding paras of the reply to the leave to defend application have disputed this contention. It is denied that the premises are not required bonafide by the landlady for her residence. It has been reiterated that landlady wants to settle in India but because of non-availability of the accommodation she cannot do so; it is undisputed that she visits India and sometime more than twice in a year she and her daughter who also comes to India and they have to stay in hotel and face unnecessary expenses and discomfort. It has admitted that the ground floor of the suit premises had been sold in the year 2008 to Ramesh Khattar who was the earlier tenant in the ground floor; contention being

that because the landlady was in need of money she had to sell this property to the tenant. The submission of the tenant that the landlady has another alternate accommodation at A-67, Shalimar Bagh had been vehemently denied; contention being that these premises belong to her sister Sneh Arora and are not owned by her.

5. Section 14(1)(e) of the DRCA affords a right to a landlord to seek vacation of his premises if the premises are required by the landlord either for himself or for any member of his family who is dependent upon him. The specific averment of the landlady is that she wishes to settle in India but cannot do so because of non-availability of accommodation; her further undisputed submission being that she has frequent visits to India along with her daughter; the family of her daughter includes her husband and two children; the contention of the landlady that in these frequent visits she has to unnecessarily stay at a hotel and incur expenses and discomfort although she has an accommodation in India which has been tenanted out to the petitioner is also not denied. In these circumstances, the bonafide need of the landlady to get these premises evicted for herself has prima facie been established. It is also come on record that there is no other residential

accommodation with the landlady. The submission of the tenant that A-67, Shalimar Bagh is a premises owned by the landlady has been specifically negated; the premises are owned by her sister Sneh Arora.

6. In this context the observation of the Apex Court in the judgment reported in 97 (2002) DLT 997 S.P. Kapoor Vs. Kamal Mahvir Prasad Murarka & Ors. would be relevant.

"In the case in hand it is satisfactorily shown on record that the respondent no.1 the landlord/owner of the premises in question, although a permanent resident of Mumbai has to visit Delhi off and on in connection with his political and business matters. He is a man of status who needs sufficient accommodation even in the course of his short visits to Delhi so that he may live comfortably and discharge his social and business obligations effectively. It is true that his two daughters are already married but the averment in the petition is that they may also stay in the premises in question during their visits to Delhi. The Courts have no justification to insist that he should either live in hotels or hire some other accommodation merely for the sake of protecting the tenancy of the petitioner. The respondent no.1 owner/landlord cannot be asked to face inconvenience and adjust in smaller accommodation here and there in the course of his visits to Delhi. This Court, therefore, has no hesitation in concluding that the claim of respondent no.1 in regard to his bona fide need of premises in question for his residential use was reasonable and bona fide. The plea of petitioner that this plea is not bona fide or a mere pretence to evict him is unfounded and does not give rise to any triable issue for grant of leave to defend to him."

7. In a judgment reported in 48(1992) DLT 208 T.D.Dhingra Vs. Pritam Rai Khanna a Bench of this Court while dealing with the need of a non-resident Indian to enjoy his own property in India when she chooses to return India the Court had inter alia noted as follows:

“Counsel has not been able to point out any provision of law whereby an India who had acquired foreign citizenship is disentitled to enjoy residence in his own property in India when he chooses to return to India. The passport of the respondent was brought in the Court which shows that ever since 1988 he has been staying in India and even in 1991 his visa was extended up to the year 1994.”

8. In the instant case also it is specifically averred that the petitioner wishes to return to India to settle here but cannot do so because of non-availability of accommodation; there is nothing to show that this statement is to be disbelieved. It is also admitted that the petitioner and her daughter have to make frequent visits to India; they have to come here for their personal needs; the factum that the landlady in fact wishes to shift to India had not been disputed in the application seeking leave to defend.

9. Unless and until triable issues arise leave to defend should not be granted by the courts in a routine and mechanical manner. This proposition has been reiterated time and again by Apex Court.

10. In Nem Chand Daga Vs. Inder Mohan Singh Rana 94 (2001) DLT 683, a Bench of this Court had noted as under:-

“That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.”

11. In (1982) 3 SCC 270 Precision Steel & Engineering Works & another Vs. Prem Devi Niranjana Deva Tayal the Apex Court has held that the prayer for leave to contest should be granted to the tenant only where a prima-facie case has been disclosed by him. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend.

12. There is no doubt that the ground floor of the premises had been sold by the landlady in 2008; this was admittedly sold to the old tenant Ramesh Khatter who was already residing on the ground floor; this was for financial reasons. This contention of the tenant that the present premises are being got vacated from him in order to extract higher rents does not have any force. Apart from the fact that a specific undertaking

has been made in the present petition that the landlady will not part with the possession of the premises to another person and she will retain the premises, the legal consequences which even otherwise would flow are known to the landlady in terms of Section 19 of the DRCA; the ground.

13. The landlady is the best judge of her requirement; it is not for the tenant or the court to dictate terms as to how and in what manner she has to meet her needs for an accommodation. In Prativa Devi (Smt.) Vs. T.V. Krishnan reported in (1996)5SCC353 it was noted:-

“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”

14. In this back ground the application seeking leave to defend having been dismissed as a result of which the eviction decree had fallen in the hands of the landlord. There is no merit in the petition; it is dismissed.

INDERMEET KAUR, J

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