

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

% *Judgment reserved on: 13.01.2012*
Judgment reserved on:18.01.2012

+ **R.C.R. No. 16/2005 & CM Nos.2144/2005 & 4036/2007**

SHRI DAYAL CHAND AND ANOTHER Petitioners
Through: Mr. G.P. Threja, Advocate.

Versus

SH GULSHAN KUMAR AND ANOTHER Respondents
Through: Mr. Hari Shankar, Adv. for R-1.
Mr. Ramesh Kumar, Adv. for
R-2.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Order impugned is the judgment and decree dated 04.10.2004 vide which the petition filed by the landlord Dayal Chand under Section 14 (1)(e) of the Delhi Rent Control Act (hereinafter referred to as the 'DRCA') had been dismissed.

2 Record shows that the petitioner claims himself to be the landlord of property bearing No. 1/5695, Gali No. 17, Delhi-10032; the respondent Gulshan Kumar was a tenant on the ground on the said premises; he was in occupation of one room, kitchen with common use of a latrine and bathroom. Contention of the

petitioner in the eviction petition is that the premises in his occupation comprises of three rooms on the ground floor with common courtyard and one room on the first floor. His family comprises of himself, one married son and three children; this eviction petition was filed in the year 2000. The petitioner at the relevant time was 80 years of age; contention being that he needs a separate room for himself; his son Inderjeet aged 45 years has a family of whom two were adult daughters aged 21 years and 15 years respectively and third son is aged 10 years; they had been living together in the said property; his other son is residing in Germany who used to visit the petitioner and the accommodation presently available with them is not sufficient for them. Present eviction petition has accordingly been filed.

3 Leave to defend had been granted to the tenant and he had filed his written statement. He has raised certain contentions; the impugned order has returned a fact finding that the present petitioner is a co-owner in the disputed premises; admittedly a co-owner can maintain an eviction petition and this point was rightly decreed in favour of the landlord. In view of the judgment of 148(2008) DLT 705 (SC) Satyawati Sharma (Dead) by LRs. Vs. Union of India there is also no distinction between a commercial

and a residential purpose as far as the applicability of provisions

contained in Section 14 (1)(e) are concerned.

Oral and documentary evidence had been led before the trial Court. Three witnesses had been examined on behalf of the landlord which included Inderjeet Singh Sharma who had appeared as an attorney of his father as PW-1; PW-2 was their maid servant and PW-3 was their neighbor. Tenant has produced himself as RW-1. On the basis of evidence which had been led before the trial Court, the ARC had returned a finding that the bonafide need of the landlord has not been established. The averments made in the eviction petition as also the documentary evidence which included the site plan Ex.PW-1/7 as also the admission of PW-1 in the cross-examination had led the trial Court to return a finding that the landlord is confused about his need; he has sufficient accommodation available with him; the need of the petitioner having an independent personal room for religious purpose qua the petitioner has come to an end as the petitioner has expired during the pendency of the petition. The landlord having sufficient accommodation with him which had not been put to gainful use, the need of the landlord for the room available with the tenant was a malafide need. Petition had accordingly been dismissed.

SC 2507 *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, the Apex

Court in this context has noted herein as under:-

“The revisional jurisdiction exercisable by the High Court under Section 25-B (8) is not so limited as is under Section 115 CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion from the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to sub-Section (8) of Section 25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law.”

5 It is in this background that the contentions of the respective parties have to be appreciated.

6 PW-1 is the attorney holder of his father i.e. the original landlord; his power of attorney has been proved as Ex. PW-1/1; the site plan has been proved as Ex. PW-1/7. His contention on oath had stated that the accommodation available with them consisting of four rooms on the ground floor and one room on the first floor and out of these four room, one room is in possession of the present tenant and three rooms are in possession of the

petitioner; the site plan is in accordance with this deposition. This has been explained further by PW-1 in his examination in chief wherein it is deposed that out of three rooms, room 'B' is with Inderjeet Singh; room 'C' is occupied by the landlord himself and room 'D' is used for miscellaneous purpose; one room is in occupation of the present tenant; family of the landlord admittedly at that time comprised himself, his married son and his 6 family members of whom two were adult children; deposition being to the effect that all the children cannot be accommodated in the aforementioned accommodation as they require separate rooms for sleeping, for their studies as also for meeting their friends; further deposition being to the effect that they are school going children and there is no separate room for taking tuition; room on the first floor is used for storage of goods and articles; the landlord was himself suffering from asthma and other ailments and admittedly being over 80 years at the time of deposition of PW-1; the medical record of report of the landlord had also been proved on record as Ex.PW-1/10; PW-1 i.e. Inderjeet Singh (son of the landlord) was running a shop of wheel alignment; in his cross-examination he has admitted that the rooms on the first floor is used for all the children and the kitchen is presently being used as godown as there is no other space to store the articles; further submission

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being that his father is not an income tax payee; he himself has an independent income and is not dependent upon his father; this last line of his deposition (as noted supra) has been vehemently highlighted by learned counsel for the respondent to substantiate his submission that PW-1 has himself admitted in his cross-examination that he is not dependent upon his father and as such provisions of Section 14 (1)(e) of the DRCA and the very basis of the eviction petition filed by his father is thus washed out as Section 14 (1)(e) is available only to a landlord to prove either a bonafide need for himself and his family who is dependent upon him; PW-1 has himself admitted that he is not dependent upon his father and thus the need of the landlord not being bonafide calls for a rejection of the eviction petition straightaway.

7 PW-2 was the maid servant who was working with the landlord since the last about 18 years attending to the household work as also to the needs of the landlord who was suffering from asthma and other ailments; she has on oath deposed that the landlord himself requires a puja room as he is religious person; children are school going; there is no space for a tutor; in her cross-examination she has admitted that from the site plan i.e. in between the room which is in occupation of the tenant and the room which is occupation of the landlord, there is a gallery. PW-3

is a neighbor; he was the person who had made available the accommodation in his use for the visits of the second son of the landlord who used to come from Germany and his deposition is to the effect that since there was not enough accommodation available with the landlord his son used to live with him. RW-1 was the tenant himself. He has admitted that he has not filed any counter site plan to the site plan already filed by the landlord and as such the trial Court had rightly relied upon this document as the only site plan depicting the accommodation correctly. This was the sum total evidence which had led before the trial Court both oral and documentary. The trial Court on this basis had rejected the eviction petition.

8 In view of this Court, this evidence has not been appreciated correctly; there appears to be a manifest illegality committed by the trial Court in this regard which require a correction in the absence of which travesty of injustice will be caused to the landlord.

9 The case of the landlord as is evident from the eviction petition is that he has a three room accommodation on the ground floor and one room on the first floor which is being used for storage of goods. The site plan Ex. PW-1/7 is clearly in conformity with this deposition; his deposition is also in conformity; PW-1

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Injderjeet Singh had in fact explained that there are four rooms with them of which one room is with the tenant and the trial Court relying upon this one line version of the petitioner wherein he had stated that he has four rooms available with him and holding that the petitioner is a confused man has clearly erred; the testimony of a witness has to be read as a whole and not a single line statement can be subtracted or extracted to give it a meaning not which is otherwise not made out from the wholesome reading of this version.

10 It has come on record that the family of PW-1 comprised of himself, his wife, three children of whom two were adults and his father; his father i.e. the landlord being 80 years of age and requiring constant medical attention; accommodation available with the landlord at the relevant time i.e. on the date of filing of the eviction petition were three rooms only of which one was occupied by the landlord himself, one by Inderjeet Singh and third room was being used for miscellaneous purpose. Admittedly miscellaneous purpose has not been explained in the eviction petition but the testimony of PW-1 has explained it; he has enlarged this definition by stating that his two adult daughters and 10 years old son have tuitions; tutors come to their house to teach children but there is no space available with the children to

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accommodate them; there is no separate space for them to sleep and to meet their friends; admittedly one more room which is depicted in the site plan (Ex.PW-1/7) and which has not been mentioned in the eviction petition is a room without a roof which cannot be used for any purpose and as such even if this fact did not find mention in the eviction petition it can in no manner be termed as concealment of a material fact which would disentitle the petitioner to a decree if he is otherwise so entitled. A Bench of this Court in 1988 (2) RCJ 179 R.D. Aggarwal Vs. Smt. Arjan Kaur in this context has held as under:-

“In an eviction petition on the ground of bona fide requirement it is only where a particular landlord intentionally conceals the residential accommodation available to him from the court that he/she can be non-suited on this ground. Concealment of innocuous accommodation which cannot be used as a regular room should not result in dismissal of her/his claim for more accommodation.”

11 PW-1 has further in his deposition explained that although in the eviction petition it has been stated that the room on the first floor is being used for storage purpose but it is now being used a study; substantiating and fortifying the submission of the petitioner that the need of the landlord is grave and that is why the room on the first floor which was used for storage purpose is now being used for a study for the children as there is no space to

accommodate them and their tutors. It has also come on record in the version of PW-3 (which remains unchallenged) that the second son who visits his father from Germany is staying at the house of PW-3 as there is no accommodation with his father to accommodate him; testimony of the maid-servant of the petitioner (PW-2) is also relevant and corroborative on this score; all these testimonies were disregarded; the trial Court has failed to appreciate them in the correct perspective.

12 The landlord himself has expired during the pendency of the petition but the need of the family has in no manner decreased; children have grown up and the family of Inderjeet Singh now comprises of himself, his wife and all the three children who are adults and all of whom need separate rooms. Two are adult daughters and third is an adult son; his brother also visits him from the Germany; he also has to be accommodated; the accommodation presently available with the petitioner is only three rooms on the ground floor and one room on the first floor. Even assuming that the two adult daughters can be accommodated in a single room, the son requires one room and Inderjeet Singh and his wife require one room; they also need a guest room as well to accommodate their brother who is also a co-owner in this premises and it cannot be expected that all times he

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will continue to live in the house of the neighbor. The bonafide need of the landlord had been disregarded; the testimony has been mis-read. This is an illegality which needs to be cured.

13 In this back ground the impugned order suffers from an infirmity; it is accordingly set aside. Eviction petition of the landlord is decreed.

JANUARY 18, 2012
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INDERMEET KAUR, J