

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

% *Date of Judgment: 09.05.2012*

+ **RC.REV. 9/2005**

SUDESH ANAND Petitioner
Through Mr. Amiet Andley, Adv.

versus

A.K.SINHA Respondent
Through Mr.H.K. Monga, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned order is dated 24.08.2004; the eviction petition filed by the landlady-Sudesh Anand seeking eviction of her tenant-A.K. Sinha from the suit premises under Section 14(1)(e) of the Delhi Rent Control Act on the ground of bona fide requirement had been dismissed.

2 At the outset learned counsel for the respondent has pointed out that this court is sitting in its powers of revision and unless and until a patent illegality or grave injustice accrue to one party qua the other party, no interference by this court is called for; it is in this background that the arguments of the respective parties have been appreciated.

3 Record shows that present eviction petition has been filed by the landlady on the ground of bona fide requirement; there is no dispute about the status of the parties as landlord and tenant; there is also no dispute to the effect that on the date of the filing of the eviction petition which was in February 1998, the family of the landlady comprised of herself, her husband and one son who was to be married; she also has a married daughter and her old in-laws who visit her regularly; accommodation available with the landlady comprised of one room, one kitchen with store as depicted in green colour in the site plan; there were two rooms with the tenant; latrine and bathroom were common to the landlady and the tenant. Contention being that there is scarcity of accommodation and accordingly present eviction petition was filed.

4 Leave to defend had been filed; attention has been drawn to para 8 of the order dated 18.11.1999 vide which the leave to defend had been granted; contention being that only triable issue which had been raised by the tenant was the submission made by the landlord that the first floor of the same premises although admittedly sold but was sold because of financial crunch; it was a only triable issue which was to be answered by the landlord but the landlord had failed to answer this

query; on all other counts, the eviction petition was liable to be dismissed; this submission of the learned counsel for the respondent is bereft of any force; while granting leave to defend this one point alone had not to be noted by the Trial Court; it is the gamut of the evidence which was collected before the Trial Court both oral and documentary that the Trial Court had to appreciate to answer the question as to whether the landlord was entitled to the prayer made by her in the eviction petition filed under Section 14(1)(e) of the DRCA or not.

5 The evidence adduced before the Trial Court has been perused. PW1 was the landlady herself. It is not in dispute that the accommodation presently available with her comprised of only one room with kitchen and one store; latrine and bathroom were common with the tenant; tenant, on the other hand, had two rooms in his occupation. This was on the ground floor of property bearing No. 18 D/1, Behind MCD Committee Office, Ward No. 1, Meharauli, New Delhi. The contention of the tenant was that this paucity of accommodation had deliberately been created by the landlady; in fact she had built residential floors even on the first floor, second floor and third floor of the property which had been sold off by her; further

contention of the tenant was that landlady had also an alternative accommodation even at Faridabad which has also not been disclosed and in these circumstances, the landlady was not entitled to any relief.

6 In the cross-examination, PW1 has admitted that they had a Flat bearing No. 205, Ashoka Enclave, Sector 35, near Badarput Border, Faridabad which she had purchased about 3 or 4 years ago; this witness had come into the witness box in the year 2001 meaning thereby that the property at Faridabad had been purchased around the year 1997. Vehement contention of the landlord is that even presuming that this property at Faridabad was available with them, it is not an alternatively reasonably suitable accommodation with the landlord as Faridabad is more than 24 kilometers away from Meharauli and it also does not fit in the terminology of reasonably suitable alternative accommodation as contained in Section 14(1)(e) of the DRCA. PW 1 in her cross-examination has admitted that Faridabad is 4-5 kilometer from the Haryana border. Vehement contention of the landlord is that this deposition i.e. the property at Faridabad is 4 to 5 kilometers away from Meharauli is a misdirected submission; PW1 has admitted that the property at Faridabad was 4 to 5 kilometer away from the Badarpur

Border; otherwise from her residence it was about 24 kilometers away.

7 Before this court on 19.05.2010, in view of the averment and the counter averments made by the party, this court had directed the landlord to place on record an affidavit showing the status of the property at Faridabad as the contention of the petitioner was that the property at Faridabad had been sold by the landlady; an affidavit has been filed disclosing that the ground floor of the property at Faridabad had been sold on 19.08.2003, second floor had been sold on 28.08.2003 and first floor had been sold on 01.08.2008; in this affidavit it has clearly been stated that a loan had been taken from the Housing Board for the purposes of purchase of this flat and for its construction; schedule of payment could not be adhered to by the landlady and she could not pay the installed in fix time and it was in these circumstances, the property at Faridabad had accordingly been sold on the aforementioned dates. Contention of the tenant was that this loan was taken for a period of 12 years which had to be re-paid in installments but the same have pre-paid on 22.05.2003 i.e. even prior to the date when the landlady had sold the ground floor and the first floor of the property at Faridabad shows that the case set up by the landlady is false; further fortified by

the submission that the loan had been repaid on 22.05.2003; as per the case of the landlord he had received money for the sale transaction of property at Faridabad only in August 2003 and how could he have paid the amount three months prior therefrom, has not been explained. A specific query has been put to the learned counsel for the petitioner to explain the aforementioned position to which he has answered that advance amounts had been received in cash prior to the actual sale transaction and all sale dealings of immovable property are in fact conducted in the above fashion and as such it was this amount which was raised to pay off the loan of the Housing Board and this submission of the learned counsel for the landlord is not without any weight; it carries force.

8 That apart, as on date the position is that the landlady is in possession of only one room on the ground floor of the disputed property; there is no property available with her at Faridabad. Even presuming that on the date of the filing of the eviction petition, the property at Faridabad was available with her by no stretch of imagination it can be said to be a reasonably suitable accommodation as it was more than 24 Kilometers away from her present residence and outside the Delhi State; it did not fit into the terminology of an

alternatively suitable accommodation.

9 The need of the landlady was set up to have residence for herself, her husband and her son who was of marriageable age and to accommodate her married daughter and her old in-laws who visit her house regularly. These facts are not disputed. It is never expected that due to insufficiency of accommodation presently available with the landlady, her married daughter and old in-law visit landlady's Faridabad accommodation; it cannot be expected that when her son get married he would stay at Faridabad; merely because the tenant was not willing to vacate the premises; the family schedule should not be disturbed.

10 There is also no dispute to the fact that the accommodation presently available with the landlady comprised of only one room with one kitchen and store; latrine and bathroom are being shared by the landlord and the tenant; there are two rooms with the tenant; if landlady is able to vacate the two rooms which are in occupation of the tenant probably the bona fide need of the landlady can be satisfied. The Apex Court in the case of *R.D. Aggarwal vs. Smt. Arjan Kaur* reported in 1988(2) RCJ 179 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 On all score the landlady has been able to establish her case of bona fide requirement. The essential ingredients to succeed in a petition under Section 14(1)(e) are as follows:

- (a) The applicant has to be a landlord;
- (b) He has also to be an owner;
- (c) The premises in question should have been let out for residential or commercial purpose or both;
- (d) The said premises are required bon fade by the landlord for occupation as a residence for himself or his family dependent upon him and;
- (e) That the landlord or such person dependent upon him has no other reasonably suitable residential accommodation.”

12 In this background, impugned judgment holding otherwise and dismissing the eviction petition on the ground that the financial crisis as propounded by the landlady could not been explained by her is misdirected; even presuming that this financial crises pursuant to which he had been forced to sell the first, second and the third floor of the

properties at Meharauli could not been explained, these properties were sold admittedly two years prior to the filing of the eviction petition. Periods in life are even others never static; they are changing and so also the monetary conditions of a man. Admittedly on the date of the filing of the eviction petition which was in the year 1998 the only accommodation which was available with the petitioner in Delhi was one room with one kitchen which accommodation was highly insufficient for the need of her family details of which have already been noted (supra).

13 The landlord is also the best judge of his requirement and this has been reiterated by the courts time and again that it is not for the court or the tenant to describe the manner in which the landlord wishes to chalk out his life style for himself or for his family members who are dependent upon him. The Supreme in Prativa Devi (Smt.) Vs. T.V. Krishnan (1996) 5SCC 353 had held in this context inter alia noted as:-

“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 The patent illegality and perversity has been committed by the

Trial Court in dismissing this eviction petition; in this background impugned judgment calls for interference; impugned judgment is set aside. Petition is disposed of.

INDERMEET KAUR, J

MAY 09, 2012
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