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THE HIGH COURT OF DELHI AT NEW DELHI

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R.C.REV. 165/2010

Date of Decision: 22.08.2012

EVEREST CORRUGATING IND & ORS.

.... PETITIONER

Through: Mr.Prem Kumar, Adv. with
Mr.Alok Kumar, Mr.Surjeet Singh,
Advocates.

Versus

SIDHESHWAR DAYAL TH. LRs

.....RESPONDENT

Through: Mr.Harish Malhotra, Sr.Advocate
with Mr.Madan Gera, Mr.Rajesh
Baweja, Advocates.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This petition under Article 227 of the Constitution read with Section 25(B)(8) of the Delhi Rent Control Act (for short the 'Act') is filed by the petitioners/tenants assailing the order of their eviction dated 11.3.2010 passed by the Addl. Rent Controller (South).

2. The petitioners are the tenants in respect of the ground floor of the property bearing No. 32, Link Road, Lajpat Nagar III since 1969. Their eviction was sought by the erstwhile owner Sh. Sidheshwar Dayal (since deceased) under Section 14(1)(e) read with Section 25(B) of the Act on the ground of bona fide requirement. The landlord's case was that he is

an old person, aged about 69 years and was suffering from acute form of Asthama and due to his precarious medical condition, it was not possible for him to stay on the first and second floor of the premises. It was also his case that his wife Smt. Chandni Dayal is also an old patient of Arthritis in her knees and she finds it difficult to climb the stairs. Further, it was also his case that his younger brother Kushal Dayal, who is residing with him, is also a patient of Schizophrenia, which is getting worse for the last few years. It was also averred in the eviction petition that his relatives and guests from Delhi as also his widowed sister and her family, frequently visit and stay with him. It was further averred that the present accommodation on the first and second floor of the premises, was not only insufficient, but was not suitable and thus, he bona-fidely required the ground floor' tenanted premises. The petitioners filed leave to defend application, which came to be dismissed vide the impugned order by the Addl. Rent Controller (ARC) and consequently, eviction order was passed, which has been assailed by the petitioners by way of present petition.

3. The petitioners have challenged the impugned order mainly on the ground that they had raised various triable issues. It is submitted that the accommodation on the first and second floor available with the landlord comprised of seven rooms and that was sufficient and suitable for the respondent-landlord and his wife, brother and son. It was also their case that the pleas regarding the wife and brother of the respondent suffering from Arthritis and Schizophrenia respectively, was also a disputed fact, which could only be adjudicated after the trial. It was their plea that they

are also aged 77 and 72 years and suffering from various diseases, and their eviction would cause them immense hardship as they do not have any place to reside. The learned counsel appearing for the petitioners submitted that the learned ARC erred in recording that there was no triable issue raised by the petitioners. It was also submitted that in any case, now since the landlord, Sidheshwar Dayal has expired, and his brother has also left, the bonafide need of the suit premises, if any, stands extinguished. The learned counsel strongly relied upon the decision of the Supreme Court in ***Seshambal (dead) Through LRs Vs. M/s Chelur Corporation, Chelur Building & Ors.*** AIR 2010 SC 1521 to contend that on account of the subsequent development of death of the landlord, Sidheshwar Dayal, for whom the tenanted premises was required on account of his physical condition, the need of the tenanted premises no longer survived.

4. On the other hand, the learned counsel appearing for the LRs of the deceased respondent, Sidheshwar Dayal made two-fold submissions; one, that the rights and obligations of the parties get crystalise on the date of the filing of the petition, and any subsequent development would be irrelevant to the maintainability or the continuance of the proceedings after the death of the original landlord. The alternative, second submission of learned counsel is that in any case, even after the death of Sidheshwar Dayal, the tenanted premises was required for the residence of his wife, Chandni Dayal and his son, as also his brother, Kushal Dayal and for his widowed sister and her family and other guests. The

learned counsel placed reliance on *Shantilal Thakordas Vs. Chimanlal Maganlal Telwala*, AIR 1976 SC 2358, *Kamleshwar Prasad Vs. Pradumanju Agarwal (Dead) By LRs*, (1997) 4 SCC 413, *Ruparel & Company (Delhi) Vs. S. Avtar Singh Puri (Decd.) Thr. LRs & Ors*, 159 (2009) DLT 101 and *Shakuntala Bai and Others Vs. Narayan Das and Others*, (2004) 5 SCC 772.

5. From the leave to contest application of the petitioners, the learned ARC noted the following facts, on which leave was sought:

- “i. that Petitioner has sufficient accommodation on the first floor and the second floor in the property in question.*
- ii. that petitioner has only four members in his family and has four bed rooms set on the first floor and three bedrooms set on the second floor and in addition to that, he has got two rooms above the garage used as servant quarter for his servants.*
- iii. that Petitioner has not come before this court with clean hands. He has suppressed that he has already filed two eviction petition no. E-141/07 on 02.02.2007 U/S 14(1)(i) of the Act and petition no. E-59/07 U/S 14(1)(b)(c) of the Act;*
- iv. that respondent no. 2 and his wife are also old persons aged about 77 and 72 years respectively who are also suffering from arthritis in the knee and other ailments.*
- v. that medical documents filed by the Petitioner in the present petition do not reveal that the petitioner cannot live on the first floor and there is not a single document advising him to live on the ground floor”.*

6. It is noted that the main ground of landlord seeking eviction of the tenants was that he is an old person, suffering from acute form of Asthma known as Chronic Obstructive Pulmonary Disease (COPD) and which has aggravated over the period of time, making it difficult for him to reside on the first floor of the premises. It was also his case that his wife

is also an old person and has developed Arthritis in her knees and finds it difficult to climb the stairs. It was further his case that his younger brother Kushal Dayal, who was aged about 65 years and was residing with him, is a patient of Schizophrenia which is getting worse since last couple of years. It was also averred that it was advisable for him to shift on the ground floor along with his sister-in-law and brother. Apart from this, it was also his case that his relatives, guests as also his widowed sister, aged 60 years and her family members frequently visit and stay with him for long durations and the present accommodation with him is insufficient to meet his requirements for accommodating them.

7. The learned ARC taking note of all the grounds of leave to contest, as noted above, returned a finding that the petitioners could not bring out any special fact to be proved to disentitle the landlord from obtaining the order of eviction. He noted that there being no triable issue, the petitioners are not entitled to leave to contest. He consequently, passed the eviction order against them.

8. Before advertng to the rival contentions, it may be noted that this court, while exercising revisional jurisdiction under Section 25(B)(8) of the Act, has to keep in mind the scope and ambit of the revisional power which is of supervisory nature and only intended to ensure that the order of the Rent Controller did not suffer from any illegality and was not perverse resulting in miscarriage of justice.

9. The question which requires consideration is whether on account of death of a landlord during the pendency of appeal or revision, a petition validly instituted by him for eviction of a tenant on the ground of bona fide requirement of the tenanted premises, is liable to be dismissed and further, as to whether, this court was competent to examine, evaluate and adjudicate the requirement of the premises in view of the subsequent event of death of the landlord and to mould relief accordingly.

10. The learned counsel for the petitioner has placed strong reliance on the Seshambal case (supra) to contend that on the death of the landlord in the original petition, the right to seek eviction on the ground of bona fide requirement of the demised premises becomes extinct. Having gone through the decision of the Supreme Court in Seshambal (supra), I do not find this decision to be laying as it is sought to be urged by the learned counsel. In this case, the eviction was sought for the requirement of the owners only. The eviction petition was totally silent about the requirement of any member of the family of the landlord; leave alone any member of the family dependent upon them. That being so, parties went to trial before the Rent Controller on the basis of case pleaded in the petition and limited to the requirement of the owners for their personal occupation. Neither before the Rent Controller nor before the Appellate Court was it argued that the requirement in question was not only of the landlord of the premises, but also of any other family member of their family, whether dependent upon them or otherwise. Not only that, even in the petition filed before the Supreme Court, the requirement pleaded

was that for the deceased-widowed owner of the tenanted premises and not of any member of her family. Super added to all this, this was a fact that the legal representatives, who sought to claim to be the family members of the deceased, were all married daughters of the deceased couple, each one settled in their respective matrimonial homes in different cities. None of them was dependent upon the deceased, was also an undisputed fact. In this factual situation, the Apex Court held thus:

“We find it difficult to see how the legal representatives of the deceased- appellant can be allowed to set up a case which was never set up before the Courts below so as to bring forth a requirement that was never pleaded at any stage of the proceedings. Allowing the legal heirs to do so would amount to permitting them to introduce a case which is totally different from the one set up before the Rent Controller the Appellate Authority or even the High Court. The position may indeed have been differentiated if in the original petition the petitioner-owners had pleaded their own requirement and the requirement of any member of their family dependant upon them. In such a case the demise of the original petitioners or any one of them may have made little difference for the person for whose benefit and bona fide requirement the eviction was sought could pursue the case to prove and satisfy any such requirement”.

11. It is noted from the above that the Supreme Court also observed that if in the original petition, had the owners pleaded their own requirement and also of any member of the family dependent upon them, the position would have been different and in such a situation, the person for whose benefit and bona fide requirement the eviction was sought, could pursue the case to prove and satisfy such requirement.

12. In the afore-cited case, the Supreme Court discussed various decisions rendered by it involving similar controversies as to the impact of subsequent development of death of the landlord on the eviction order passed against the tenants. The Supreme Court reiterated its decisions in the case of Shantilal Thakordas (supra) that the law permitted the eviction of the tenant for requirement of the landlord for residence for himself and members of his family, and that such a requirement was both of the landlord and the members of his family, so that on the death of landlord, the right may still survive to the family members of the deceased. The Supreme Court, however, noted that this was not the situation in the case of Seshambal (supra). It was so because, the requirement pleaded in the eviction petition by the original petitioners was their personal requirement and not the requirements of the members of their family, whether dependent or otherwise. Rather, the Apex Court ruled to the extent that indeed if the deceased/landlords had any dependent member of the family, even in the absence of pleading, it could be assumed that the requirement pleaded extended also to the dependent member of their family.

13. The Supreme Court also in the aforesaid case, repelled the contention that subsequent events are completely inconsequential and in this regard held thus:

“While it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out

*from consideration. What the Court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted. That proposition of law is, in our view, fairly settled by the decisions of this Court in **Pasupuleti Venkateswarlu** case (AIR 1975 SC 1409)".*

14. Earlier also, in the case of **Hasmat Rai and Another Vs. Raghunath Prasad**, (1981) 3 SCC 103, the Apex Court had observed that if the tenant is in a position to show that the need or requirement of the landlord no more exists because of subsequent events, it will be open for him to point out such events and the court including the Appellate Court, has to examine, evaluate and adjudicate upon the same.

15. In the case of **Kedar Nath Aggarwal (Dead) & Another Vs. Dhanraji Devi (Dead) by LRs and Anr.**, 2004 (8) SCC 76, the Supreme Court has reiterated the legal position after detailed review of the case law on the subject. That was also a case where two applicants seeking eviction of the tenants have passed away during the pendency of eviction petition and the question was whether the three married daughters of the petitioners left behind by the couple, could continue with the same. The Apex Court observed as under:

*"31. In view of the settled legal position as also the decisions in **Pasupuleti Venkateswarlu** and **Hasmat Rai**, in our opinion, the High Court was in error in not considering the subsequent event of death of both the applicants. In our view, it was power as well as the duty of the High Court to consider the fact of death of the applicants during the pendency of the writ petition. Since it was the case of the*

tenant that all the three daughters got married and were staying with their in-laws, obviously, the said fact was relevant and material...."

16. In the case of **Pratap Rai Tanwani and Another Vs Uttam Chand And Another**, (2004) 8 SCC 490, the Supreme Court held as under:

"8. We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of petition. In Ramesh Kumar v. Kesho Ram a two-Judge Bench of this Court (M.N. Venkatachalia, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

9. The next three-Judge Bench of this Court which approved and followed the above decision, in Hasmat Rai v. Raghunath Prasad has taken care to emphasise that the subsequent events should have "wholly satisfied" the requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below:

"Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on

the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events."

17. Now coming back to the instant case. During the arguments before me, it was not disputed by the learned counsel for the petitioners that so far as the landlord Sidheshwar Dayal was concerned, the tenanted premises may be required for his residence. It is not that with the death of landlord Sidheshwar Dayal, the requirement of the tenanted premises gets extinguished. As is noted above, it was the case of the landlord that the tenanted premises was not only required for him, but the same was required for his wife as also for his brother Kushal Dayal. The plea that after the death of landlord, his brother Kushal Dayal has left and is residing in Mumbai with some other relative, is vague and extraneous. Undisputedly, Kushal Dayal, brother of the deceased/landlord had been residing with his brother (deceased) in the first and second floor of the suit premises. A brother or sister of landlord, who has no place of his/her to live and, has been living with him for considerable time, shall be taken to be his family member dependent upon him for residence. It is also undisputed that he has been suffering from serious ailment of Schizophrenia and was dependent upon his brother and his sister-in-law. In response to the plea that he has left for Mumbai, it was submitted on behalf of the respondents that Kushal Dayal, brother of the deceased had gone to Mumbai temporarily for his treatment and ultimately has to reside

in the suit premises. It is also undisputed that Chandni Dayal, wife of the deceased/landlord was also aged about 65 years, and was an old patient of Arthritis. The plea taken by the petitioners that there was no medical evidence produced to show her ailment and that she required to shift on the ground floor on medical ground, is nothing but irrelevant and meritless. When it was not disputed that she is aged person suffering from Arthritis which was obvious, no specific medical certificate was required to testify the same. It is common knowledge that a person suffering from Arthritis would be generally more comfortable to live on the ground floor and it would be certainly inconvenient for him/her to climb the stairs and it was unreasonable to compel a landlady suffering from Arthritis to climb the stairs for facilitating the comfort of the tenant on the ground floor. Absolutely, there cannot be any reason to disregard the plea of such an old landlady that she cannot live comfortably on the first floor of her property and would like to live on the ground floor. It cannot be said to be a mere fanciful plea. We cannot be oblivious of the realities of life that the people advanced in age are averse to climb the stairs. The need of such a landlord/landlady has to be viewed from a practical point of view, not confined to the extent of accommodation alone. There cannot be any dispute that the question of landlord having other reasonably, suitable residential accommodation, has to be determined not from the point of view of mere space, but after the consideration of all the relevant factors in the given case including age, general health of the owner/landlord and of the members of his/her family and a host of other relevant considerations, which cannot be exhaustively enumerated or specified. In the totality of all this, the requirement of the

wife of the deceased/landlord to live on the ground floor cannot be said to be mala fide or fanciful. Then, it is also not disputed that the landlord had a son namely Raghav Dayal, who was also living with them. Though it is extraneous at this stage that he was also suffering from heart ailment and was advised to live on the ground floor, but the fact remains that he being the only son of his widowed mother, would be required to stay with her to look after her.

18. With regard to the plea that the petitioners are also aged persons and are suffering from Arthritis and other ailments and have no other place to reside, this is though unfortunate, but the law in the given facts and circumstances as noted above, does not provide remedy to them. Their old age and ailments cannot disentitle the landlady from seeking their eviction from the premises which is seen to be her bona-fide requirement.

19. Further, the plea of landlord having suppressed the fact of filing two eviction petitions, is not relevant for the consideration of leave to defend application in the eviction petition on the ground of bona-fide requirement. Non-disclosure of the said information is no ground to disentitle the landlord to seek eviction on the ground of bona fide requirement.

20. In view of my above discussion, I do not see any infirmity or illegality in the impugned order. The petition has no merit and is hereby

dismissed. The petitioners being aged persons are given three months' time to vacate the tenanted premises from the date of this order.

21. Petition stands disposed of accordingly.

M.L. MEHTA, J.

AUGUST 22, 2012

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