

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

% *Date of Judgment: 27.04.2012*

+ RC.REV. 345/2011 & CM No.16178/2011

SUNITA BHAGAT & ANR Petitioners
Through Mr. Rohan Thawani, Adv.

versus

HC SETH DECD THR LRS Respondent
Through Mr. Anil Sharma, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned judgment is dated 29.01.2011 vide which the eviction petition filed by the landlord-H.C. Seth seeking eviction of his tenant from the disputed premises i.e. residential property bearing No. K-32, First Floor, Jangpura Extension, New Delhi comprising of one drawing room cum dinning room, three bedrooms with two attached bathrooms, kitchen and canopy had been ordered to be evicted under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) in favour of the landlord. This was after a trial.

2 Record shows that the present eviction petition has been filed by

the landlord on the ground of bonafide requirement; contention is that the premises are required bonafide for the residence of the family members of the petitioners which comprises of four petitioners; Petitioner No. 1 has two sons and one daughter [petitioner No. 2 & 3 and petitioner No. 4(married)]: petitioner No. 2 has one son and one daughter aged 15 years; petitioner No. 3 has two children and petitioner No. 4 although married but often visits the house to stay with her mother (petitioner No.1). Petitioner No. 1 has developed health complications and cannot climb stairs; the accommodation presently available with the petitioners consist of one drawing cum dinning room, three bedrooms, one study room and a kitchen on the ground floor; the second floor consists of one half drawing room with cement sheet, one room with cement sheet and one room with RCC roof; this is only a temporary structure; one room on the ground floor is occupied by the petitioner No. 1 and the second room on the ground floor is occupied by the family of the petitioner No. 3(the son of the petitioner No. 1); third room on the ground floor is used by the daughters of the petitioner No. 3 who are school going and they have no individual space to study; study room on the ground floor has been given to the maid servants who stays

with their family. Because of the advanced age of petitioner No. 1 and also the fact that she spends a large part of her day in pooja and meditation, her relatives including her sister-in-law (who has strained relations with her son) has also started living with petitioner No. 1 since March 2004; the accommodation presently available with the family of the petitioner is highly insufficient

3 The first floor of as aforementioned is thus required by the petitioners for their family i.e. the family of petitioner Nos. 1 to 3; the accommodation required for their family is one bedroom for the petitioner NO. 1, one bedroom for the petitioner No. 2, one bedroom for the petitioner No. 3, one bedroom for the petitioner No. 4 (daughter of the petitioner NO. 1) who often visits her mother, two bed rooms for the grand-daughters of petitioner No. 1, one puja room, one guest room, one drawing cum dinning room and one room for two maid servants; accordingly, the family members of the petitioner require a house of rooms. Accommodation presently available with the petitioners as noted supra is highly insufficient.

4 Written statement was filed; these contentions were disputed; the plea of res judicata had also been raised.

5 It is not in dispute that the petitioners had filed earlier eviction petition under Section 14(1)(e) of the DRCA which had been dismissed by the Additional Rent Controller (ARC) on 19.07.1997 on the ground that the premises have been let out for a residential-cum-commercial purpose and since at that time the distinction between residential-cum-commercial purpose was being maintained, the petition was dismissed on the ground of as being not maintainable. This order dated 19.07.1997 was upheld by the High Court on 29.09.2000 wherein it was noted that the purpose of letting is residential cum commercial.

6 There is no dispute to the fact that the judgment of Satyawati Sharma vs. Union of India reported in (2008) 5 SCC 287 was delivered on 16th April 2008 wherein the distinction between residential and commercial premises for eviction under Section 14(1)(e) of the DRCA has been brought to a close. There is also no dispute to the factum that prevailing legal position has to be taken into account even in pending eviction proceedings. Thus, on this count the objection of the tenant is wholly irrelevant.

7 The bona fide requirement of the petitioners has been established

in the version of PW 1 who the petitioner No. 1 who has reiterated all the averments made on oath; it is not disputed her elder son Rajesh Seth has two children aged 17 years and 15 years and her younger son Amit Seth has two daughters and her married daughter (petitioner NO.4) often visits the house; it is also not in dispute that the family has two maid servants; these facts not being disputed, the Trial Court had rightly drawn the conclusion that the requirement of the family of the petitioners is a minimum of 7 rooms. The accommodation presently available with them is insufficient comprising of three bed rooms with two attached bathrooms, one drawing room cum dinning room, one kitchen and one study room which is being used by the maid servants of the petitioners; this portion is located on the ground floor. The disputed premise is on the first floor. It is also not in dispute that the family of petitioners has no other accommodation. Testimony of RW1 who is the sole witness on behalf of the respondent has also been tested in the correct perspective

8 Record shows that the requirement of the petitioners for their family members is minimum of 7 rooms; there are three bed rooms on the ground floor; the aforementioned premises which are on the first floor are

thus bonafidely required by the petitioners/landlords and their need has been established; there is also no reasonably suitable accommodation available with the petitioners. Impugned judgment decreeing the eviction petition on no count suffers from any infirmity.

9 The landlord is the best judge of his requirement and this has been reiterated by the courts time and again that the landlord knows the needs of himself and his family; it is neither for the court nor for the tenant to dictate the terms to describe the manner in which the landlord should live. 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.”

10 Record shows that one witness has been examined on either side. The ownership of the present petitioners has not been disputed; it is also not in dispute that tenants are since paying rent to the petitioners. The presumption under Section 116 of the Evidence Act is also drawn in favour of the landlord; even otherwise there has been no serious dispute about the status of the petitioners as owner/landlord.

11 Learned counsel for the petitioner has lastly submitted that till the time of recording of the evidence the respondent remained represented but thereafter on subsequent dates for one reason or the other counsel for the respondent was not available and in fact arguments have been heard without hearing the respondent and a valuable right has thus been lost by the petitioner/tenant. The arguments addressed before this court are admittedly the only arguments which had to be addressed before the court below. The evidence adduced before the Trial Court both oral and documentary of the respective parties has been correctly appreciated; it is clear that the impugned judgment had recorded a correct finding which was based on the coherent and cogent evidence thereby decreeing the eviction petition in favour of the landlord.

12 Moreover, the record shows that it appears that no justifiable explanation for the absence of the respondent through his counsel on the dates six consecutive dates as highlighted by the petitioner for which justifiable explanation has not been tendered. On 06.07.2010 counsel for the respondent was present but on the subsequent dates he was not present; thereafter he was absent on 3rd and 4th day; on 5th day i.e. 22.11.2010, proxy counsel for the respondent had appeared and on that

date last opportunity had been granted to him to address his argument; matter was taken up on 11.01.2011 when it was listed for 29.01.2011; on which date the matter was kept pending till the post-lunch hour when again since the counsel for the respondent did not appear, the impugned judgment was passed.

13 In this background, reliance by the learned counsel for the petitioner on the judgment reported in (191) 2 SCC 788 titled as Rafiq & Anr. vs. Munshilal & Anr. is misplaced. There is no doubt that by and large a litigant should not suffer for the faults committed by his counsel; in this case the Apex Court had noted that when an ignorant and illiterate villager engages a lawyer, he believes that lawyer will look after his best interest and will do rest of the things and thereafter, it is incumbent upon the lawyer to take interest in the case which is not so in the instant case. The facts of this are distinct and are not applicable in this factual scenario.

14 Petition is without any merit it is dismissed.

INDERMEET KAUR, J

APRIL 27, 2012

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