

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

% *Date of Judgment: 14.02.2012*

+ RC.REV. 521/2011 & CM Nos.22510/2011

FARIDA KHANAM Petitioner
Through Mr. S.D. Ansari, Adv.

versus

KHWAJA RASHID AHMAD & ANR Respondents
Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned is the order dated 10.06.2011; eviction petition filed by the landlord under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) seeking eviction of his tenant i.e. Farida Khanam from a portion of premises bearing No. 2675A, Bada Satghara, Mohalla Niyarian, G.B. Road, Delhi had been decreed in favour of the landlord. The application seeking leave to defend filed by the tenant had been declined.

2 Record shows that the disputed premises comprise of one room, one kitche, latrine, bathroom and open court yard on the ground floor of

the property which had been tenanted out at a monthly rent of ₹50/-. There were two petitioners before the trial Court. The family of the first petitioner comprised of himself, his wife, two sons and one daughter i.e. five persons. The family of petitioner No. 2 who at the relevant time was a resident of Bikaner, Rajasthan comprised of herself, her husband, two sons and one daughter i.e. five persons again. Daughter of petitioner No. 2 was doing a post graduate course i.e. master in business administration and her younger son was doing a diploma in D-Pharmacy; her husband had retired; contention was that the family of petitioner No. 2 wished to settle in Delhi and she has no other accommodation except the present premises; because of the non-availability of accommodation in Delhi, she is not able to make arrangements to shift to Delhi. Further contention in the eviction petition was to the effect that petitioner No. 1 in view of the needs of his family required atleast 11 rooms; present accommodation available with them is falling short. The need of petitioner No. 2 has also been depicted to be 12 rooms.

3 Admitted case is that petitioner No. 1 is already living in a portion of the suit premises whereas petitioner No. 2 is presently a resident of Bikaner and she wishes to shift to Delhi along with her family. Eviction

petition has also detailed the other properties which are owned by the petitioners. The present premises are a part of property No. 2675A, Bada Satghara, Mohalla Niyarian, G.B. Road, Delhi. The other properties owned by the petitioners have also being detailed; the details find mention in para 18 of the eviction petition; it is stated that property No. 2664 is under the tenancy of Mohd. Shafi, property No. 2665/A is under the tenancy of Jameel Ahmed (since deceased and his legal heirs are in possession); basement of property No. 2665/2 is under the tenancy of Gulzar Ali; ground floor of property No. 2665/2 is under the tenancy of Mohd. Rafi; first and second floor of property No. 2665/2 is under the tenancy of Mohd. Sami; property No. 2666 is under the tenant of Yaqoob; property No 2667 is under the tenancy of Atau Rehman, property No. 2671A is under the tenant of Furqan Ali and Tariq Ali; property No. 2671-B1 is under the tenancy of Faratullah, Tasleem Ahmed, Mohd. Saleem; property No. 2672 is under the tenant of Mohd. Suleman and Mohd. Laeeq; property No. 2675A is under the tenancy of the present tenant Farida Khanam; property No. 2675-B is under the tenancy of Azizuddin and property No. 2677 is under the tenancy of Noor Hasan and presently occupied by his legal heirs. The documentary

evidence substantiating this submission is in the form of rent receipts of various tenants who are occupying the aforementioned premises. These documents had been filed by the landlord and are part of the trial court record.

4 The first submission urged before this Court is that the respondent is not the owner/landlord of the premises; contention being that this is an objection which has been taken by the tenant in his application for leave to defend; further contention being that the rent receipts filed by the landlord are not genuine; they are concocted. On 22.09.1959 in a suit for partition being Suit No. 168/190/1962, a decree was passed by the Sub-Judge, First Class wherein the present suit property had fallen to the share of the petitioners; this is clear from the judgment and decree dated 22.09.1959 (copy of this judgment is on the record). By virtue of this document, the petitioners had become the owners of this suit property. Even otherwise, the entire reading of the application for leave to defend clearly show that in some portion, the tenant has himself admitted the status of the respondent as owners/landlords as in para 13 it has been specifically contended that the petitioners “are also the owners of the properties No. 2668 & 2669” meaning thereby that the tenant has not

really disputed the ownership of the respondent qua the present property as well. The petitioners have also failed to explain as to in what capacity they are living in the disputed premises; in the application for leave to defend, it has been contended that they are in physical possession of the suit property for the last more than 50 years but in what capacity, they are occupying the property has neither been detailed and nor explained.

5 The Apex Court in the case of (1987) 4 SCC 193 Smt.Shanti Sharma & Others Vs. Smt. Ved Prabha & Others had an occasion to examine the concept of ‘owner’ as envisaged under Section 14 (1)(e) of the DRCA. In this context, it had inter-alia noted as under :-

“The word ‘owner’ is not used in Section 14 (1) proviso (e) of Delhi Rent Control Act in the sense of absolute owner; where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction, the only thing necessary for him to prove being bona fide requirement and he is the owner thereof. In this context the meaning of ‘owner’ is vis-à-vis the tenant i.e. the owner should be something more than the tenant. In most of the modern townships in India the properties stand on plots of land leased out either by the Government or the Development Authorities and therefore it was not contemplated that for all such properties the landlord or the owner of all such properties the landlord or the owner of the property used in common parlance will not be entitled to eviction on the ground of bonafide requirement and it is in this context that we have to examine this contention. It could not be doubted that the term ‘owner’ has to be understood in the modern context and background of the

scheme of the Act.”

6 In 1995 RLR 162 Jiwan Lal Vs. Gurdial Kaur & Ors. a Bench of this Court while dealing with the concept of ownership in a pending eviction petition under Section 14(1)(e) of the DRCA had noted as follows:

“There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the substance of such a plea on the part of the tenants the Courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises.”

7 It is thus clear that this objection of the petitioner is without any merit; it does not in any manner raise a triable issue.

8 The second submission of the petitioner is that the accommodation i.e. property bearing No. 2670 comprises of 12 rooms and two kothris is in an area of 160 square yards which is an accommodation available to the landlord; this property consists of a ground floor as also a first and second floor; there are four large rooms on the ground floor and so also on the first floor there are two other

rooms. The present premises are thus not required bonafide by the landlord. The corresponding para of the reply has vehemently denied this position; each and every averment in the corresponding para i.e. para 10 which has been averred by the tenant has been specifically denied by the landlord. In the eviction petition it has been clearly stated that the petitioner who is a resident of 2670 has an accommodation consisting of two rooms, two kothris, kitchen and latrine and a bathroom; no counter site plan has also been filed by the tenant. Qua properties No. 2668 & 2669 it has been specifically stated that they in fact been sold by the petitioner vide a registered sale deed dated 28.05.2007 which was much prior in time to the filing of the eviction petition to Gulrez @ Gulraj; this accommodation is thus admittedly not available with the petitioner. Property No. 2667 is under the tenancy of Atau Rehman and this has specifically been pleaded both in the eviction petition as also reiterated in the reply filed by the landlord to the application for leave to defend; rent receipts issued by Azizuddin is also a document which is on the record of the trial Court; in fact rent receipts of all the tenants details of which have been given in the eviction petition are a part of the record. Details of other properties being under

the tenancy of various other persons i.e. property No. 2664 is under the tenancy of Mohd. Shafi; properties No. 2665/1, 2665/2, 2666, 2667, 2671A, 2671B1, 2672, 2674, 2675A, 2675B as also 2677 are all in possession of other tenants and this has been substantiated by the rent receipts issued by the said tenants.

9 It is thus clear that there is no alternate accommodation available either with petitioner No. 1 or petitioner No. 2 and their bonafide need is thus established. The family of petitioner No. 2 (who is a resident of Bikaner, Rajasthan) comprises of her daughter who is pursuing an MBA course; her younger son was doing a diploma in D-Pharmacy; her husband had retired; both the children of petitioner No. 2 wish to carry out their work in Delhi. It is clear and apparent that the need of the sister to live in Delhi to meet the requirement of her children has been established. Petitioner No. 1 who is brother of petitioner No. 2 also needs these premises; both the petitioners have inherited this property from their father. In these circumstances, the eviction petition having decreed as no triable issue had arisen suffers from no infirmity.

10 At this stage, learned counsel for the petitioner has submitted a last ditch argument; this appears to be effortless effort on his part to

substantiate and advance a plea which did not even form a part of the pleadings; his contention being that present premises are in fact not covered under the provisions of DRCA and the petition itself was not maintainable before the Rent Controller; this averment admittedly does not find mention in the pleadings in the trial Court; no such defence had been taken by the tenant in his application for leave to defend; as such it cannot at this stage be gone into not being a part of the pleadings from where alone the Court has to decipher as to whether a triable issue has arisen in favour of the tenant or not entitling him to defend the eviction petition filed under Section 14 (1)(e) of the DRCA.

11 The landlord is also the best Judge of his requirement and it is not open for any person i.e. neither the tenant and nor even the Court to dictate terms as to how and in what manner he has to meet his needs for an accommodation. The landlord in order to obtain an eviction decree must however show that his need is genuine and bonafide; it should not be malafide. The tenant on the other hand unless and until sets up a prima facie defence cannot in a routine or a mechanical manner be granted leave to defend otherwise the very purport of Section 25-B of the DRCA which is a summary procedure engrafted for a special class

of landlords would be defeated and this was not the intent of the legislature. If the defence raised by the tenant is merely bald, whimsical or fanciful having no basis or foundation, leave to defend may not be granted.

12 In 111 (2004) DLT 534 Shri Hari Shanker Vs. Shri Madan Mohan Gupta and 155 (2008) DLT 383 Rajender Kumar Sharma & Others Vs. Smt. Leela Wati and Others the Courts have time and again reiterated:-

“The Courts cannot and should not in a mechanical or in a routine manner grant leave to defend.”

13 In this scenario, the eviction petition which has been decreed suffers from no infirmity; no triable issue having arisen, application seeking leave to defend was rightly dismissed. Petition is without any merit. Dismissed.

14 Trial Court record be sent back.

INDERMEET KAUR, J

FEBRUARY 14, 2012

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