

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

% *Judgment pronounced on: August 05, 2013*

+ **RC. REV. No.245/2013**

Sh. Ramesh Kalra Petitioner
Through Mr. G.C. Shukla, Adv.

versus

Sh. Varinder Kumar Nangia Respondents
Through Mr. Ashish Malhotra, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. Shri Ramesh Kalra, the petitioner/tenant filed the present revision petition under Section 25-B(8) of Delhi Rent Control Act, 1958 read with Section 151 of CPC against the impugned order dated 21st March, 2013.
2. The said order was passed by CCJ-cum-ARC, Tis Hazari Courts, Delhi in eviction petition No. 157/2012 filed under Section 14(1)(e) of DRC Act in which the learned ARC dismissed the application of the petitioner for leave to defend on the ground that the petitioner failed to raise any triable issue that may require evidence and passed the order of eviction in respect of suit premises bearing Flat No.D-1C/40-B, LIG Flats, Janakpuri, New Delhi on the ground of bonafide requirement.
3. The petitioner was inducted as tenant in the suit property bearing LIG Flat No. D-1C/40-B, Janakpuri, New Delhi in May 1995 at Rs.1500/- per month. The petitioner along with his wife and two daughters was residing in the said property. Rs. 25,000/- was given as security to the respondent.

4. The respondent is living as a licensee in the property owned by his sister-in-law Smt. Kunti Devi at 10, East Nizamuddin Market, New Delhi. Previously the respondent was staying with his family at B-3B/39-A (Ground floor), Janakpuri, New Delhi which was owned by his late father. After the death of his parents, dispute arose among legal heirs and the respondent was forced to leave the said house of which the major portion is occupied by his sister-in-law, i.e. wife of his elder brother Mr. Jatinder Nath Nangia and her family.

5. The respondent filed an eviction petition against the petitioner to which the petitioner filed a leave to defend application alongwith a detailed affidavit denying the bonafide requirement of the respondent and stated that the respondent wanted to sell the suit property after eviction. As per the petitioner, he paid rent up to 30th November, 2012.

6. The petitioner stated that he showed his intention to purchase the tenanted premises and also agreed to sell the premises against a total consideration of ₹28,00,000/-. The petitioner gave ₹100,000 as earnest money to the respondent and it was settled that he will give ₹200,000/- on 1st December, 2012 and the remaining amount would be given on 15th April, 2013 when the property documents get transferred in the name of the petitioner. In the last week of November, the respondent came to the house of the petitioner and asked to either accept ₹100,000/- back or re-price the total sale at ₹3200000/-. The petitioner refused to increase the total sale consideration.

Relying on the agreement to sell in respect of the suit property, the petitioner has denied the relation of landlord and tenant between the parties and also denied the jurisdiction of the learned ARC to entertain the eviction petition as according to him, the present rent of the suit property is ₹3,700/-

per month.

It was also the case of the respondent that he owns two more properties other than the suit property being MIG Flat No. B3B/39-A Janakpuri, New Delhi and Flat No. 10, Block B, Nizamuddin Market, East, New Delhi.

7. The respondent in his reply to leave to defend application specifically denied agreement to sell and stated that he never entered into any sale agreement with the petitioner. He further denied that the rent of the suit premises is ₹3,700/- and stated that the present rent is ₹2,500 excluding water and electricity charges. He explained that the Janakpuri property was owned by his late father and regarding which a suit for partition is pending in the court of Ms. Shilpi Jain, Civil Judge, Delhi. He said that he was forced to leave the said house. The house at Nizamuddin is where he is presently staying and his sister in law is pressing hard on him to vacate her house.

8. Learned trial court after hearing both parties has arrived to the conclusion that the defence taken by the petitioner of entering into sale agreement with the respondent is false, sham and vexatious as there was no such document placed on record to show any such agreement to sell between the parties. The petitioner also failed to show that the rent of the suit premises was ₹3,700/- per month and the petitioner does not raise any triable issue which may require evidence. The defence taken by him per se appears to be sham and vexatious. The ownership of the respondent is not disputed, but the petitioner, however, denies relationship of landlord and tenant. It is also opined by the trial court that if the respondent had entered into any such agreement to sell with the petitioner, he would not have filed an eviction petition against the same person just after a fortnight. In the absence of cogent evidence it did not find any truth in the assertion of the petitioner

regarding oral agreement to sell.

9. The law is well-settled that for a landlord to succeed on the ground of bonafide need, he has to prove not only his requirement of the suit premises but also the fact that he does not have any suitable alternative accommodation for such need. The petitioner did not dispute the details of his family and also did not dispute that the house in Janakpuri was the previous residence of the respondent. The parental home of the Respondent is only an MIG flat, it may not meet the requirement of the respondent for his residence even if he gets 3/7th share in partition of the said flat. Regarding his Nizamuddin property, the respondent has placed on record copy of the title documents of the said Nizamuddin property. Therefore, the plea of the Petitioner in his leave to defend application regarding alternative premises owned by the respondent hardly require any evidence and does not raise any triable issue.

10. It is settled law that while deciding the application for leave to contest, the controller has to confine himself to the affidavit filed by the tenant under sub section (4) and the reply if any. On perusing the affidavit filed by the tenant and the reply if any filed by the landlord, the controller has to pose to himself the only question, “Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in clause of the proviso to Section 14(1) ?”. The controller is not to record a finding on disputed questions of facts or his preference of one set of affidavits against the other set of affidavits.

11. The petitioner though raised a plea that the rate of rent is ₹3,700/-, it is rightly observed by the trial court that it is raised in order to delay the eviction order and petitioner has not given any details in the leave to defend

application as to how and when the rent was increased and how much. Therefore, I am of the view that all pleas of the Petitioner did not inspire confidence of the court and the same are apparently sham, vexatious and afterthought on the part of the petitioner.

12. For the reasons stated above, I find no merit in the present matter. The revision petition is accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

AUGUST 05, 2013