

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

% *Order delivered on: September 17, 2013*

+ **RC. Rev. No.325/2013, C.M. No.13619/2013**

RAM NATH MADAN THROUGH LRS Petitioner
Through Mr.Tara Chand Sharma, Adv.

versus

PROMILA CHOPRA & ORS. Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The present revision petition is filed by the petitioner under Section 25B (8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) against the eviction order dated 3rd May, 2013 passed by the ARC (Central), Tis Hazari Courts, Delhi, in an eviction petition filed by the respondents against the petitioner in respect of a room in the property bearing No. 53/27, Ramjas Road, Karol Bagh, New Delhi -110005 (hereinafter referred to as “the tenanted premises”).

2. Brief facts for the purpose of adjudication of the present petitioner are that the respondents filed the eviction petition stating that they bonafidely require the same for their occupation as well as occupation of their family members’ dependent upon them, in the absence of other reasonably suitable residential accommodation. It was stated that the tenanted premises was let out by way of an oral agreement in 1973 for residential purposes to Ram

Nath Madan and Shyam Sunder Madan and after their death, the present petitioners became the tenants.

3. Petitioner in their written statement contested the landlord-tenant relationship between the parties. It was contended that the respondents were neither the owners nor the landlords of the tenanted premises. And in fact Smt. Ram Piari (mother-in-law of respondent no.1 and mother of the remaining respondents) was the owner/landlady of the entire premises including the tenanted premises and after her death all her LRs, namely Virender Chopra, Narinder Chopra, Mahinder Chopra and Surinder Chopra became the owners/landlords. It was also contended that the tenanted premises was let out for commercial purposes and since the inception of tenancy the same was being used as a godown. It was further contended that besides the tenanted premises, there were six other shops in the said property and the same were let out for commercial purposes. It was averred that the tenanted premises is not required by the respondents for bonafide use as residence as they already had sufficient accommodation with them for that purpose and that the sons of respondent no.1 are not dependent upon her for their residence as they have their own houses in Delhi. It was only with the ulterior motive to let out the tenanted premises at an enhanced rate that the vacation of the petitioners was sought. The petitioners also disputed the correctness of the site plan filed by the respondents.

4. After the examination of parties, the learned Trial Court passed the impugned eviction order in favour of the respondents and against the petitioners. On the issue of ownership, the learned trial court observed that it was an admitted fact that respondent no.1 is the wife of Virender Chopra who pre-deceased her and two of the other respondents were Narinder Chopra and Mahinder Chopra and that as per the settled law, even co-owners

of the property could institute and file eviction petition on the grounds of bona-fide requirement. Even otherwise, the petitioner's witness Ashtutosh Madan in his cross-examination had admitted to the copy of the counterfoil of the rent receipt issued by the respondents. The learned trial court opined that once it is admitted by the petitioner that Late Smt. Ram Pairi, predecessor in interest of the respondents was the owner as well as the landlady of the tenanted premises, it stands proved on record that there was in fact a relationship of landlords-tenants between the parties.

5. With respect to the issue of nature of property was concerned, it was observed by the learned trial court that since the tenancy was an oral one, the testimony of the witnesses was the determining factor in this aspect. In view of the learned trial court, it could be inferred that the tenanted premises were in fact let out for commercial purposes, also considering that the neither earlier tenancy with one Ram Nath Gokal Chand, who was doing the business of sweets therein, nor the electricity meter which was in his name were contravened by the respondents through their evidence. It was opined that irrespective of their respective affidavits in evidence, in view of the case of *Satyawati v. Union of India*, III (2008) SLT 553, the purpose of letting was no longer an issue.

6. With regard to the issue of availability of alternative accommodation, the learned trial court, for the reasons stated in the impugned order, opined that the petitioners had failed to controvert the assertions of the respondents that they do not have any other alternative accommodation in their possession and that they bonafidely require the tenanted premises for the purposes of their residence. The eviction order was passed by the learned trial court after recording the evidence of the parties.

7. On the issue of ownership and purpose of letting, the learned trial court has discussed the said issue in para 7 of the impugned order. The relevant extract of the finding after considering the evidence of the parties is as under:

“It is an admitted fact that petitioner no.1 Smt.Promila Chopra is the wife of Virender Chopra who pre-deceased her and two of the other petitioner are Narinder Chopra who pre-deceased her and two of the other petitioner are Narinder Chopra and Mahinder Chopra. The law is well settled that even one of the co-owners of a property can institute and file an eviction petition on the grounds of bona fide requirement against the tenant. Even otherwise, it is to be seen that RW-1 Ashutosh Madan in his cross-examination admitted that copy of the counterfoil of the rent receipt Ex RW1/X was issued to his father (Late Shyam Sunder Madan) and his uncle (respondent no.1 Ram Nath Madan since deceased and through LRs). Perusal of the said counterfoil which has been admitted by the respondents reflects that the same was issued by the three petitioners Promila Chopra, Narinder Chopra and Mahinder Chopra (since deceased and represented through petitioner no.2). Reference can also be made to the judgments cited as:- (i) Rajender Kumar Sharma & Ors Vs. Leela Wati & Ors 155 (2008) DLT 383, wherein it was held that the landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is required to show only that he is more than a tenant. (ii) Shanti Sharma Vs. Ved Prabha, AIR 1987 SC 2028, wherein it was held that for the purpose of Section 14(1)(e) of the Act, ownership is not to be understood as absolute ownership but only as a title better than that of the tenant.

Once it is admitted by the respondents that Late Smt Ram Piari, predecessor in interest of the petitioners, was the owner as well as the landlady of the tenanted premises, it stands proved on record that there was in fact a relationship of landlord-tenants between the petitioners and the respondents with respect to the suit property and that the petitioners are the successor in interest/owners of the tenanted premises. Further, as already

noted, the respondents have also admitted the counterfoil of the rent receipt Ex RW1/X wherein the name of the three petitioners is shown in the column of landlord/owner. The issue of ownership of the tenanted premises accordingly stands proved in favor of the petitioners.”

8. With regard to purpose of letting is concerned, it has come out in evidence that it was let for residential purpose. The relevant extract is as under:

“Petitioner no.1/PW-1 in her cross-examination admitted as correct that in the site plan Ex PW-1/1, the property in question shown in red is shown as a shop. It was further submitted that in her further cross-examination, PW-1 also admitted that neither Ram Piari nor her son got the latrine and bathroom constructed for the use of the alleged tenanted room by the respondents. It was further submitted by the Ld. Counsel for the respondents that it cannot be believed even on the fact of it that the tenanted premises was a room and was let out for residential purposes as it cannot be believed that a room which has been let out for residential purposes to the tenants would not include the latrine and bathroom which are the essential sanitary facilities to be provided by the landlords to the tenants. Further, even the petitioner/PW-1 was unsure in her cross examination as to whether at present there exists any bathroom or latrine or bathroom or latrine even offered as a common usage has been shown by the petitioners. It was further submitted that notwithstanding the fact that after the judgment of Hon’ble Supreme Court in Satyawati Vs. Union of India III (2208) SLT 553, the purpose of letting is no longer an issue/requirement u/s 14 (1)(e) of DRC Act, still the eviction petition is not maintainable on the ground of concealment/misrepresentation of a material fact which is with respect to the nature of the suit premises, by the petitioners in their eviction petition. Ld. Counsel for the petitioners, on the other hand, submitted that even if it is presumed that the tenanted premises was in fact a shop and was let out for commercial purposes, it cannot be said that there is any misrepresentation of facts by the petitioners as the purpose of

letting post Satyawati Vs Union of India Case (supra) is no longer relevant for the purposes of adjudication of an eviction petition on the ground of bona fide need u/s 14(1)(e) of DRC Act.”

9. With regard to issue of alternative accommodation and bona fide requirement the learned trial court has discussed the statement of the witnesses as under:

“9.....PW-1 Promila Chopra in her evidence by way of affidavit Ex PX not only reiterated in para no. 14 thereof that she owns a property in Rohini which is under the occupation of a tenant @ Rs. 3600/- per month, she went ahead in deposing regarding the present state of affairs of the said property by stating that the said flat at Rohini has been disposed of in April, 2006 i.e during the pendency of the eviction petition. She also reiterated that the petitioners or their family members do not own any other property except the property bearing no. 53/27, Ramjas Road, Karol Bagh, New Delhi. Even in her cross examination, PW-1 stood her ground by deposing that she is not in ownership or possession of any other property except the property in dispute and that she had already disposed of her flat at Rohini in the year 2006. Merely because, she did not file on record any document concerning the sale of the said flat, it cannot be said that her testimony regarding the sale of the said flat is to be disbelieved, more so, when even the respondents have failed to bring on record any cogent evidence so as to substantiate their plea that the petitioners are the owners of properties in Rohini and Noida. The other aspect of the matter is with respect to the issue as to whether the accommodation available and in possession of the petitioners is sufficient for their existing need and requirement of residence. As already noted, the respondents took a plea that not only the two sons of petitioner no.1 are not residing with the petitioner no.1 and have their own residence in Delhi, even the petitioners have in their possession sufficient accommodation in property no. 53/27, Ramjas Road, Karol Bagh, New Delhi. PW-1 not only denied the suggestion in her cross-examination that her son Dharmender Chopra is not living with her, she in fact reasserted that even her second son is also living with her. PW-2 Naveen Chopra also reiterated in his evidence by way of affidavit Ex P-2 that the family of petitioner no.1 consists of the

petitioner no.1 her two married sons and their family members. This aspect of the evidence of PW-2 was neither controverted nor rebutted by the respondents in his cross-examination. Going further, one of the respondents who is respondent no.3 Ashutosh Madan stepped into the witness box as RW-1 and deposed as per his affidavit Ex R-1. In his cross-examination, the witness stated that he can understand English and that he is also a part time coaching language teacher at American School, Gurgaon and that he is also running business of ball bearing and machinery parts from 10314, Motia Khan, Pahar Ganj, Delhi as a partner with his brother/another respondent Lalit Madan. From this testimony of the witness/respondent no.3, it can be safely inferred that he is a man of reasonable intelligence and prudence. Further cross-examination of the witness is to be dealt accordingly in the light of the said fact of his education. In his further cross examination, not only the respondent no.3 feigned ignorance about the other shops in the premises bearing no. 53/27, Ramjas Road in possession of the petitioners but also stated that he is not aware whether the petitioners are the owners of the shops in between the confectionery shop and the Sindhi Tikki shop. He further stated that he is also not aware as to who is owner of shop marked Z in site plan Ex PW-1/1. He further admitted that adjacent to the shop marked Z, there is a residential portion. He further admitted that Smt. Ram Piari had let out the tenanted portion shown in red in the site plan Ex PW-1/1 to his father and his Tauji. In his further cross-examination he also admitted that family of petitioner no.1 Smt. Promila Chopra resides in property no. 53/27, Ramjas Road, Karol Bagh, Delhi and that her two sons namely Raju @ Dharmender and Naveen and are also residing alongwith her in the said property. He further admitted that even the wife and children of Dharmender also reside in the said property. He also admitted that Naveen Chopra after his divorce married one Ms. Deepti on 15.04.2011. About the residence of petitioner no.2 and 3, the respondent also showed his ignorance as to whether they reside on the first floor of the said property. He also admitted as correct that Smt. Promila and her family members are residing on the ground floor of the property no. 53/27 which is shown bounded as A,B,C,D.E and F in site plan Ex PW-1/1. He also admitted that the other petitioners are residing on the first floor as shown bounded by G,H,I,J,K and L in site plan Ex PW-1/1. Thus, from the testimony of the sole witness examined by the respondents, it stands established that they have failed to controvert the assertions of the petitioners in their eviction

petition that they do not have any other alternative accommodation in their possession and that they bona fide require the tenanted premises for the purposes of their residence.”

10. RW-1 in cross-examination admitted that Smt.Promila Chopra resided in the suit property. Her two sons are also residing alongwith their mother in the suit premises. Wife of one of the sons Dharmender and their children also resides in the said property. RW-1 has also admitted in cross-examination that there is no electricity connection in the tenanted premises and the same is disconnected and he is not aware when the said electricity connection was disconnected, i.e. whether the same was disconnected prior to filing of his affidavit as defence or prior to filing of eviction petition.

11. RW-1 admitted that he has not visited the property and is not even aware how many rooms are available for the petitioners. He also cannot tell as to what construction is carried out in the said property.

12. In view of the abovementioned reasons, this court is not inclined to interfere with the impugned order. The learned trial court while passing the eviction order has considered each and every aspect of the matter and has also considered all the points raised by the petitioner. The impugned order has been passed after discussing the evidence of the witnesses.

13. Thus, the present petition has no force. The same is accordingly dismissed. Pending applications also stand disposed of.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 17, 2013