

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

% *Order delivered on: October 11, 2013*

+ **RC. Rev. No.378/2013**

VIPIN OBEROI Petitioner
Through Mr.Rajul Shrivastava, Adv. with
petitioner in person.

versus

LT. COL. (RETD.) A.N.ANAND, DECEASED NOW
REPRESENTED BY HIS LEGAL HEIRS Respondents
Through Mr.Jugal Wadhwa, Adv. with
Mr.Rishabh Wadhwa, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

Caveat No.911/2013

Since the learned counsel for the caveators/respondents has put his appearance, the caveat stands discharged.

C.M. No.16165/2013

Exemption allowed, subject to just exceptions.

The application is disposed of.

RC. Rev. No.378/2013 & C.M. No.16164/2013 (for stay)

1. The present revision petition is filed by the petitioner under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the “DRC Act”) against the eviction order dated 10th July 2013 passed against the petitioner (respondent in the eviction petition) by the learned Addl. Rent Controller (West), Tis Hazari Courts, Delhi, in respect of the second floor in the house bearing No.F-145, Rajouri Garden, New Delhi (hereinafter referred to as the “tenanted premises”).

2. Brief facts for the purpose of adjudication of the present petition are that Lt. Col. (Retd.) A.N.Anand filed an eviction petition (now deceased represented by legal heirs) against the petitioner on the ground of bonafide requirement of the tenanted premises for his own residence as well as for residence of his family members, dependent upon him.

3. Initially, the eviction petition was filed against the petitioner under Section 14(1) (a), (e), (h) of the DRC Act in the year 1992, however, the grounds under Section 14(1), (a) & (h) of the DRC Act were given up in the years 1997 and 1993 respectively. Hence, it was an eviction petition filed only under Section 14(1)(e) of the DRC Act by the respondent (since deceased) stating that the tenanted premises was bonafidely required for his own residence and for the residence of the family members dependent upon him.

4. It was stated in the eviction petition that in the property in question comprised of three floors; ground, first and second. The respondent (since deceased) was residing on the first floor of the property in question and that the second floor was under the tenancy of the petitioner. It was stated therein that the respondent's (since deceased) family consisted of himself, his son, daughter-in-law and two school going children and that the accommodation available with the respondent (since deceased) was not sufficient to accommodate his family members. It was stated that the visiting relatives and friends could not be accommodated in the said property due to paucity of accommodation and in the absence of any other alternate accommodation, the eviction petition was filed.

5. The petitioner in the written statement admitted the relationship of landlord-tenant but took a preliminary objection regarding the maintainability of the eviction petition stating that the same had been filed

for partial eviction as the entire tenanted premises was not mentioned in the petition. Another objection that was taken was that the respondent (since deceased) had not disclosed the accommodation available to him. It was averred that the respondent (since deceased) was in the occupation of the entire ground and first floor and that the same was sufficient for him and his family members. It was stated that though initially in the year 1985-86, the entire ground floor was being used as for residential purposes, but the respondent (since deceased) after getting it vacated by some tenant had converted some portion thereof into two shops. Out of the said shops, one was let out by the respondent (since deceased) to some tenant in the year 1987 which was again vacated by the tenant in the year 1989 and he re-let the same. In the year 1992, the daughter-in-law of the respondent (since deceased) started her business in the other/second shop and remaining portion of the ground floor consisting of one big hall, one room, one latrine-bathroom and one store is still in the possession of the respondent (since deceased). It was stated that this remaining portion was residential and was sufficient to be used for residence by the respondent (since deceased) as well as by his family members. It was also stated by the petitioner that even on the first floor respondent (since deceased) has one covered balcony in the form of room, two toilet-bathrooms, one kitchen and open space.

6. In the replication, the respondent disclosed his accommodation of two bed-rooms, one small store, one store, drawing-cum-dining room, two bathrooms and kitchen on the first floor. The respondent also disclosed that entire ground floor had become commercial since 1985 and it was not denied that the ground floor of the suit property has been converted for commercial purposes since the year 1985.

7. Lt. Col. (Retd.) A.N.Anand (since deceased) examined himself as AW-1 and his son Sunil Kumar Anand as AW-2. The petitioner also produced two witnesses, one Sh. Rajwant Singh Sindhu as RW-1 and petitioner himself as RW-2.

8. After hearing the final arguments, vide order dated 15th February, 2003 then learned Addl. Rent Controller dismissed the eviction petition preliminary on two grounds; first, that the eviction petition was for partial eviction, and second that the respondent (since deceased) had not filed the complete site plan disclosing the area in his occupation and there is no bona fide requirement prayed by the respondent.

9. Against the said order dated 15th February, 2003, respondent (since deceased) challenged the said judgment, after hearing the matter by this Court vide order dated 13th December, 2012 directed the respondent (since deceased) to file the site plan showing the accommodation available with him and also directed the learned trial Court to re-hear the parties.

10. During the pendency of the appeal before this Court, Lt. Col. (Retd.) A.N. Anand expired and his legal representatives were impleaded in his place.

11. In view of order passed by this Court for re-hearing of the matter, the respondent filed the site plan and after considering the entire material and evidence of the parties, the impugned order of eviction was passed against the petitioner who has now challenged the same in the present petition.

12. Learned Trial Court in para-12 of the impugned order has dealt with the submissions of the parties as well as considered the evidence adduced by both parties and decided the issue No.1 as to whether the petition for partial eviction was maintainable in law. The relevant extracts from such findings arrived at by the learned trial Court are read as under:-

“12. The respondent has raised the preliminary objection regarding the maintainability of the present petition stating that same is for partial eviction which is not permissible in law. Respondent has stated that apart from the portion shown by the petitioner in the petition, respondent is also having one covered Verandah in the form of room, one store above the staircase and exclusive possession of stairs, which the petitioner has not mentioned in the petition. The petitioner has disputed the same. At the time of filing of petition, petitioner filed site plan of the tenanted portion which in evidence was duly proved by him as Ex. AW1/12. The said site plan is nowhere disputed by the respondent either in pleadings or in the evidence. The perusal of site plan Exh. AW1/12 shows that petitioner has specifically shown one room of 8 X 8 in the site plan, to which respondent has stated as store above the staircase. The petitioner has also shown one open area mark 'A' in the site plan Ex. AW1/12 to which respondent has alleged as covered area in the form of room. In the site plan Ex. AW1/12, the petitioner has specifically depicted the entire area of the tenanted portion though he gave the different descriptions to the portions pointed out by the respondent. The petitioner has said room which according to respondent is store. Petitioner also showed the area of alleged covered room by mentioning it as open space. There is no dispute to the fact that petitioner has depicted the entire periphery of the tenanted premises in the site plan Ex. AW1/12 though by giving different description then that of respondent. The respondent has also stated that he is also in the exclusive possession of staircase leading from first floor to second floor, which petitioner has not mentioned in the petition. In my opinion, petitioner is not even required to show stair-case as tenanted portion either in the pleadings or in site plan. I do not agree with this contention as I could not persuade myself to agree with his said contention. This plea on the face of it has no force because normally, in eviction matters, the stairs are never shown in site plan as part of the tenanted premises and stairs are more often then not is a common facility in the buildings for ingress and egress to the tenanted premises, which in the present case is the second floor of the suit property. In the present case, the suit property is two story building and respondent is tenant on the entire second floor. There is no floor

above the second floor in the suit building. It is not disputed by the respondent that there are common stairs in the suit building from ground floor to second floor and respondent is using stairs from first floor to second floor for use and occupation of tenanted premises at second floor. The respondent is trying to make a mountain out of the molehill merely by relying upon the fact that AW1 has admitted that respondent put his locks on the doors of the stairs leading from first floor to second floor. Merely because stairs are not shown in the site plan as part of the tenanted premises, this does not render the case one for partial eviction as sought to be contested on behalf of respondent.”

13. With regard to second plea as to whether the respondent/landlord had sufficient accommodation to accommodate all family members, visiting friends and relatives, admittedly, at the time of filing of the petition, respondent (since deceased) stated that his family comprises of himself, his son, daughter-in-law and two school going grand-children. He also stated that he has six married daughters who also oftenly visits him apart from other friends and relatives to whom due to paucity of accommodation he cannot accommodate.

13.1 The case of the petitioner before the learned trial Court was that the respondent (since deceased) is in the possession of entire first floor and ground floor except one shop on the ground floor of the suit property, hence, the accommodation available with the respondent (since deceased) is sufficient for his own residence as well as for his family members. Regarding the ground floor of the disputed property, the petitioner stated that in the year 1985, the ground floor of the suit property was vacated by some tenant and thereafter, the respondent (since deceased) converted the ground floor in two shops. One out of the said shops was let out by the respondent (since deceased) to some tenant in the year 1987 which was

again vacated by the tenant in the year 1989 and he re-let the same. The petitioner stated that even on the first floor, the respondent (since deceased) was having one covered balcony in the form of room, two toilet-bathrooms, one kitchen, and open space.

13.2 In the replication, the respondent (since deceased) mentioned that the accommodation at the first floor is consisting of two bed-rooms, one small store, one store, drawing-cum-dining room, two bathroom and kitchen on the first floor. The entire ground floor has become commercial since 1985. The respondent (since deceased) was having one big hall and latrine-bathroom on the ground floor in his possession which could be used by him.

13.3 The fact is not disputed by the petitioner that the ground floor of the suit property has been converted for commercial purposes since the year 1985.

14. On the date of passing the eviction order, the family of the respondent (LRs of the deceased respondent) consists of respondent himself (LR Sunil Anand S/o deceased respondent), his wife (W/o Sunil Anand), two married sons (both sons of Sunil Anand), two daughters-in-law and minor children (grand-children of Sunil Anand), as after the marriage of both the grand-sons of the respondent (since deceased), the accommodation available with the respondents (LRs of the deceased respondent) is hardly sufficient then what is required by the family of the respondents (LRs of the deceased respondent).

15. The petitioner did not dispute the constitution of the family members of the respondents (LRs of the deceased respondent).

16. The dispute is with regard to accommodation available with the respondent (since deceased) on the first floor. The respondent (since deceased) has stated that he was having two bed rooms, one small store, one

store, drawing-cum-dining room, two bath rooms & kitchen on first floor, whereas petitioner stated that the respondent (since deceased) was having five rooms, one covered balcony in the form of a room, two latrine-cum-bathrooms, one kitchen, one store and open space on first floor. The site plan shows that the respondent (since deceased) was in the occupation of two bedrooms, one puja room, one drawing room, one bathroom-toilet, one toilet, two store, one kitchen and one acrylic sheet shed.

The respondent (since deceased) also had nowhere disputed that he was not in occupation of 5 rooms, but now again the question is “whether all those 5 rooms are sufficient for the family of the respondents?”

17. The family of the respondent (since deceased) consists of 8 members with two bed rooms to accommodate all those family members. I agree with the finding of the learned trial Court that the respondent (since deceased) required minimum 5 bed rooms to accommodate his family members. One bed room is required by the son of the deceased respondent for himself and his wife, one bed room for his elder son (grand-son of deceased respondent) and daughter-in-law, one bed room for his younger son (grand-son of deceased respondent) and daughter-in-law, one bed room for children and one bed room as a guest room, apart from drawing-cum-dining room and puja room.

18. Law on this aspect is quite settled. See (i) ***Jagdish Chander Gulati vs. Kanta Devi***, 1996 (36) DRJ and ***Suraj Prakash vs. Sri Gopal***, 75 (1998) DLT 579, in which it has been held by this Court that subsequent requirements of the landlord can be looked into by the Court. The relevant portion of the judgment is reproduced as under:

“This brings me to the main question involved in the case; i.e. bona fide requirement of the premises by the landlady...

Therefore, the need of the landlady should be taken to be satisfied. In this context it has to be noted that in cases under section 14(1) (e) of the Act the facts regarding family members keeps on changing. They are never static. There are births and deaths in the family. Some of the family members get married. If it is a son, the daughter-in-law comes in. If it is a daughter, she goes out of the house. After marriage the son's family starts growing. The Court has to take into consideration the facts as they exist at the time of passing the judgment.... kept in mind”.

- ii) It is settled law that need for separate accommodation for children is permissible. It is observed in the case of ***Kharati Ram Khanna & Sons vs. Krishna Luthra***, 2010 (172) DLT 551, that the requirement of the landlord to settle down her two sons separately and independently was found to be genuine and bonafide.
- iii) In the case of ***Brij Mohan v. Shri Pal Jain***, 49 (1993) DLT 543, it was observed that it is settled law that grown up children require separate rooms to live in a manner he or she likes.
- iv) It was also observed in many cases that the landlord cannot be dictated the way he shall reside nor can the mode of division of rooms can be prescribed for each family member. Sometimes the children in the family cannot be accommodated in the rooms used by the adults and it is illogical to hold that minor children can be accommodated with the elders of the family. The landlord is the best judge of his requirement for residential or business purpose and in judging his special needs and convenience, the landlord would have a choice. (See ***Devi Ram & Ors. vs. Ram Kapoor***, 76 (1998) DLT 637).

19. The learned Additional Rent Controller, while considering the pleadings, documents as well as the material placed on record by both the parties, has come to following findings:

“Admittedly, the family of the petitioner consists of 8 members with two bed rooms to accommodate all those family members. In my view the petitioner requires minimum 5 bed rooms to accommodate his family members. One bed room is required by the petitioner (S/o deceased petitioner) for himself and his wife, one bed room for his elder son (grand-son of deceased petitioner) and daughter-in-law, one bed room for his younger son (grand-son of deceased petitioner) and daughter in-law, one bed room for children and one bed room as a guest room, apart from drawing-cum-dining room and puja room. Ld. Counsel for respondent also argued that petitioner is also having one covered balcony in the form of room which is used by the petitioner as bed room. Ld. Counsel for petitioner disputed the same and he stated that the balcony is covered with acrylic sheet and same is not used as bed room. I again do not agree with the arguments of Ld. Counsel for respondent that petitioner is using the covered balcony as bed room since the landlord who is owner of the entire property, even if, using the covered balcony as room the same must be in the compelling circumstances of-course for the reason that he is not having sufficient accommodation to accommodate his family. Considering the Social status of the petitioner (since deceased) as he was the Col. in Army and his Legal Heirs have also acquired social status from his as they are the children and grand-children of retired Col. in army, therefore they cannot be expected to accommodate his family in the room having the acrylic sheet roof. As far as, puja room and guest room are concerned, it has been held by Hon’ble High Court in Plethora of judgments that need of a landlord for Puja room and guest room for visiting married daughters is considered as bonafide requirement of the landlord.”

20. After having considered the submissions of the learned counsel for the petitioner and findings arrived at by the learned trial Court and on the basis

of the material placed on record, I am not inclined to interfere with the order passed by the learned ARC. The said order is reasonable and legally correct and it does not suffer from any infirmity.

21. The present petition is accordingly dismissed. However, in the interest of justice, equity and fair play, the petitioner is granted time up to 30th June, 2014 to hand over the vacant and peaceful possession of the suit property to the respondents. During this period, the petitioner shall not sublet or create any third party interest in the suit property.

22. No costs.

(MANMOHAN SINGH)
JUDGE

OCTOBER 11, 2013