

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 29.04.2014

+ **RC. REV. 62/2014 & CM APPLs. 2137-38/2014**

SMT. ASHA LATA PANDEY Petitioner
Through: Mr. Dinesh Kumar, Adv.

Versus

BRAHAM PAL SINGH YADAV Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. The present petition impugns an order of 31st May, 2013 whereby the petitioner's eviction petition before the Rent Controller was dismissed.

Facts:

2. The petitioner along with her late husband had filed a petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (for short 'the Act') seeking eviction of the respondent from the suit premises bearing No. R-157, Gali No. 8, Ramesh Park, Laxmi Nagar, Delhi-92. The grounds for revision petition are that there has been a miscarriage of justice; that suit property was required *bona fide* for her family and there is no other suitable accommodation available; the eviction

petition does not abate on the death of one of the petitioners and the cause of action regarding *bona fide* requirement survives; that the Rent Controller failed to exercise jurisdiction vested in him and acted with material irregularity and finally, that the expression of “requirement of premises” by the landlord ought to be assigned a wider liberal meaning in view of the judgment of the Supreme Court in ***Joginder Pal v. Naval Kishore*, AIR (2002) SC 2256**. In the same vein, counsel for the petitioner also relied upon the judgment of this Court in ***Harish Kumar v. Krishna*, 2013 (4) CLJ 107 Delhi** to contend that family cannot be confined to only one person. The suit premises were said to be required bonafidely on the ground that petitioner No. 1, one of the owners, needed it for starting his own business. In other words, the eviction was sought specifically for the petitioner No.1 i.e. Rajesh Kumar Pandey. He passed away on 12th December, 2012. The Trial Court dismissed the eviction petition on 13.05.2013 on the ground that the petitioners were unable to prove that they did not have any other reasonably suitable accommodation. The appeal preferred against his dismissal was also dismissed on 16.12.2013. This petition seeks the setting aside of only the order of 31.05.2013

3. The ground of challenge before the Rent Controller and before this Court primarily is whether the petition would abate with the passing away of one of the petitioners when eviction is sought on the basis of *bona fide* requirement under Section 14(1)(e) of the Act. The Rent Controller dismissed the eviction petition on the ground that since the person for whom specifically the premises were required had

expired, the need also extinguished with him; and that the petitioners had not proved that there was no other reasonable suitable alternate accommodation available with them.

4. The Tribunal also held that an appeal would not lie under Section 38 of the Act, instead a revision would lie under Section 25B of the Act. It relied upon the judgment of the Supreme Court in ***Vinod Kumar Chowdary Vs. Smt. Narain Devi Taneja***, AIR (1980) SC 2012. Relevant portion of which reads as under:

“9. As a result of the above discussion we hold that the remedy of the landlady against the order of the Controller in the present case was by way of revision (and revision only) of that order by the High Court as laid down in the proviso to sub-section (8) of Section 25B, even though it was an order not directing, but refusing, recovery of possession of the premises in dispute.”

It refers to the judgments of this Court in ***Some Nath Raina Vs. Kirpa Ram Bhateja***, 1979 (16) DLT 327 and ***Rajender Singh Vs. Union of India, (Delhi) 1984 (7) DRJ 77*** which held that even an order refusing recovery of possession is covered under Section 25B (8) of the Act.

5. Hence, all needs to be examined by this Court is whether the order of 31.05.2013 passed by the Additional Rent Controller (ARC) which dismissed the eviction petition suffered from material irregularity. The grounds of the dismissal were: -

“In the present petition it is pleaded that the premises are bonafidely required by petitioner no. 1

Rajesh Pandey for starting his own business. As stated above said Rajesh Pandey has expired so with his death his requirement also extinguished. It is not the case of the petitioners that the premises are required by petitioner no. 2 Asha Lata Pandey also. Moreover, as per requirement of section 14 (1) proviso (e) the petitioners are required to prove that they have no other reasonably suitable accommodation along with their bonafide requirement. Reliance may be placed upon the case law reported at 1980 RLR 249 titled Hari Mohan Nehru Vs. Rameshwar Dayal. In the present case the petitioners have neither deposed nor proved that they are not having another reasonably suitable accommodation as such the petitioners are not entitled any eviction order U/s 14(1) proviso (e) DRC Act.”

6. It was not the case of the petitioners that premises were required by petitioner No. 2, Asha Lata Pandey also. The learned ARC then considered the affidavits filed in evidence by the petitioners and observed that the provision of filing affidavit was not taken sincerely in the right perspective; that the affidavits filed by the petitioners contained verbatim averments which were made in the pleadings, it reflected a casual approach towards the proceedings and that the petitioners did care even to correct the respective nomenclature in their affidavits. The affidavit of Asha Lata Pandey wrongly mentioned nomenclature of Rajesh Pandey as petitioner No.2 and Asha Lata Pandey as petitioner No.1 especially in para No. 7 of both the affidavits. The impugned order relied upon the judgment in ***Hari Mohan Nehru vs. Rameshwar Dayal, 1980 RLR 249*** and dismissed the eviction petition on the ground that no case for *bona fide*

requirement was made out specially when for the person for whose benefit the eviction was sought had passed away.

7. This Court notices that in his evidence, the petitioner deposed in para 7 as under:

“That the deponent has one son, who is unemployed he needs the suit property in question for his and for family bona fide requirement for doing some work in the support of his family and also deponent has one unmarried daughter and one is recently married, therefore, the petitioner No.2 Rajesh Pandey, who is the son of the deponent and daughter Geetanjali Pandey has inherent right for vacate the room from the respondent. The respondent has many houses, evidence as already been filed by the deponent. The respondent knowingly, deliberately not paying the rent as per my statement in the petition, in the rejoinder is the correct. It is submitted that the contents made by the deponent in the petition, rejoinder, W.S. may kindly be read as part and parcel of para under reply.”

8. It was stated by Rajesh Kumar Pandey in his cross examination that there were four members in his family, namely two sisters and his mother. That he was unemployed and monthly expenditure of his family was Rs.8,000/- to Rs.10,000/- per month. Therefore, he required the premises to start his own business. Petitioner No.2, in her affidavit, similarly stated that the suit premises were required for herself and for her family. There was no mention by petitioner No. 2 about petitioner No.1 requiring the tenanted premises to establish his own business, as mentioned in the cross-examination. She denied in her cross-examination that her son was engaged in business of real

estate. It was also deposed that the son was a heart patient was being treated at different hospitals and that he was unemployed. She admitted that two other tenants in different shops on the ground floor were evicted on account of non-payment of rent, but she did not recall the dates of their eviction. She admitted that the evicted shops were lying vacant in her possession. She further admits that the entire first floor, having four rooms, with toilet, bathroom, kitchen and lobby along with entire 2nd and 3rd floor, also having similar accommodation, are in her possession. From the aforesaid admission, the petitioner herself has clearly accepted that there is sufficient additional accommodation available to her which she could put to use. In the circumstances, even if the ratio of **Joginder Pal** (supra) is applied to the present case, and a wider meaning to the expression “for his own use” is given so as to cover other members of the family, still the requirement for additional accommodation in suit property would not be established. The “reasonable requirement”¹ criterion is not met in the eviction petition.

1. Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta (1999) 6 SCC 622

9. The issue of whether the petition for eviction would abate if the petitioner/landlord dies during its pendency? It was held in **Phool Rani vs. Naubat Rai Ahluwalia (1973) 1 SCC 688** that a plaintiff's heirs can claim the same relief as sought by the plaintiff. However, this was overruled by a subsequent case of the Supreme Court in **Shantilal Thakordas vs. Chimanlal Maganlal Telwala (1976) 4 SCC 417**. The understanding that can be drawn from the two judgments

cited, is that in situations where the landlord files an eviction petition for the bona fide requirement for himself and his family, the death of the landlord would not grant the legal heirs to make the same ground as claimed by the landlord. However, the position would be different when there are two plaintiffs who together file an eviction petition. In such circumstances, the suit would not abate. Applying this principle to the present case, the impugned order can be found to be in error in holding that the suit had abated as one of the petitioner died during the pendency of the proceeding. However, the petitioner by her own admission has failed to establish that the requirement was *bona fide*.

10. In these circumstances, this Court finds no reason to interfere with the impugned order which was passed after a complete trial based upon the evidence. The petition is dismissed as being without merit.

NAJMI WAZIRI
(JUDGE)

APRIL 29, 2014/acm