

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

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RC.REV 396/2012

JULY 10, 2014

MANGAL SINGH

.....Petitioner

Through: Mr.M.Mohsin Israili, Advocate.

VERSUS

SMT KRISHNA

..... Respondent

Through: Mr.Umesh K.Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M.No.10872/2014

1. This application is wholly misconceived in claiming that the eviction order is infructuous and eviction should not be ordered because the landlord has received the rent.

2. All I need to observe is that, when admitted rent is tendered and received during the pendency of the case, and which case is contested to the hilt, it is implicit that amounts are received towards rent without prejudice, because the fact is that the petition is simultaneously being contested.

3. Learned counsel for the petitioner argues that it is not written in the receipts that the amounts received are without prejudice. In my opinion, such writing is not so necessary because action of contesting the eviction petition and wanting to seek the eviction of the tenant is an indication that the amounts are received without prejudice, because otherwise the eviction petition would not have been pursued for eviction against the petitioner/tenant.

4. The application is, therefore dismissed with costs of Rs.20,000/-, which shall be paid within four weeks from today.

RC.REV 396/2012 & C.M.Nos. 13701-13702/2012, 10872/2014

1. This petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 impugning the judgment of the Additional Rent Controller dated 02.12.2011 by which the leave to defend application filed by the applicant/tenant has been dismissed and the eviction petition filed by the widow/landlady has been decreed under Section 14-D of the Delhi Rent Control Act with respect to one room on the first floor situated in the property bearing no.A-155, first floor, New Seelampur, Delhi-53.

2. With respect to a case of *bonafide* necessity under Section 14(e), three ingredients are required to be shown:-

(i) The petitioner/widow is a landlady with respect to the suit premises which has been let out by her or by her husband;

(ii) The petitioner/landlady requires the premises for the need of herself and/or her family members;

(iii) The petitioner/landlady has no other alternative suitable accommodation.

3. The Additional Rent Controller, in my opinion, has thoroughly and exhaustively dealt with all the contentions which have been raised by the petitioner before me.

4. So far as the issue of relationship of landlord and tenant is concerned, in para 9 of the impugned judgment, it is noted that there is no dispute that there is a relationship of landlord and tenant. Para 10 of the impugned judgment notes that the landlady in her eviction petition stated that her husband Kallu Ram had inducted the present petitioner as a tenant and which aspect is not disputed in the application for leave to defend. The only defence of the present petitioner was that the landlady was not the sole owner of the suit property but that defence was not valid because all other

legal heirs had relinquished their rights in the suit property in favour of the landlady. I would in this regard refer to para 10 of the impugned judgment and which reads as under:-

“ 10. The petitioner has stated in her eviction petition that her husband Late Sh.Kallu Ram inducted the respondent as a tenant. The respondent in his application for leave to defend has not disputed this fact. He has only taken the defence that the petitioner is not the sole landlady/owner of the double storey house. It has been stated that the petitioner has only right to receive rent on behalf of other legal heirs of Late Sh.Kallu Ram. The petitioner has filed the copy of Relinquishment Deed executed by the other LRs of Late Sh.Kallu Ram whereby the petitioner has become the sole owner of property no. A-155, New Seelampur, Delhi-53. Hence, this ingredient also stands satisfied.” (underlining added)

5. I therefore cannot agree with the argument urged before this Court on behalf of the present petitioner that the petition under Section 14-D is not maintainable.

6. As per Section 14-D, the eviction petition can be maintained if the premises are let out either by the landlady or her husband. Once the premises are admitted to have been let out by the husband of the landlady Sh.Kallu Ram, and which is not in dispute, the petition under Section 14-D of Delhi Rent Control Act would be maintainable.

7. Counsel for the petitioner before this Court argued that the husband of the landlady had purchased the property from another owner, and therefore, in such a case Section 14-D cannot apply. However, this argument is wholly misconceived once the admission is there of the tenant in the proceedings pertaining to seeking leave to defend before the Additional Rent Controller that he was inducted as a tenant by the husband of the landlady Sh.Kalu Ram. The argument therefore urged on behalf of the petitioner that the petition under Section 14-D is not maintainable is rejected.

8. So far as the issue as to whether the landlady actually required the premises for herself for the need of her family members is concerned, this aspect has been dealt by the Court below in paras 11, 18 and 19 of the impugned judgment wherein the Additional Rent Controller has given the details of the accommodation available, compared the accommodation available with the number of family members of the landlady as also for herself, and held that the accommodation with the landlady and her family members is not sufficient, and therefore, the one room on the first floor in occupation of the present petitioner/tenant is required. The landlady has in her occupation only seven room whereas, her family members besides herself consists of two sons along with their wives and each of the sons have

three children each. The landlady requires at least six rooms for her comfortable living along with her family members, including her grand children. Besides six rooms, the landlady also has the requirement of guest room for her married daughters, a drawing room , a dining room. The landlady however has just a total six rooms in her possession in the ground floor and the first floor of the property. Therefore, in my opinion, there is no illegality in the conclusion arrived at by the Additional Rent Controller of the requirement of the additional room which is with the petitioner/tenant.

Paras 11, 18 and 19 of the impugned judgment read as under:-

“11. The petitioner has filed the present petition claiming that respondent is a tenant in respect of one room on the first floor and he has also been using the common area such as Verandah, Bathroom, Latrine and Staircase on the first floor. It has further been stated that petitioner has three sons namely Balram, Anil and Rajesh and three daughters namely Beena, Kaushalya and Jago Devi. The petitioner has to live in the drawing room on the ground floor. The youngest son of the petitioner is living alongwith his wife, two sons and one daughter in the remaining three rooms on the ground floor. Another son namely Anil is living on the remaining portion of the first floor having three rooms alongwith his wife Pushpa, two daughters and one son. It has also been stated that there are total eleven members in the family, all dependent on the petitioner. There are two infants and two school going grand children who require independent rooms from study. The petitioner also faces paucity of accommodation when her daughters or any other guest comes to visit the petitioner and her family and they have no place to stay in the house. The petitioner is not having any place to worship as there is no pooja room in

her house. The petitioner is also not having any other suitable alternative residential accommodation in Delhi.

18. Even if the store room is taken into consideration to be a living room, the petitioner is having four rooms on the ground floor and three rooms on the first floor. The photographs filed by the petitioner clearly show that the room on the second floor is not having the roof and is in a dilapidated condition which cannot be considered as fit for living. Hence, not showing the said room in the Site Plan cannot be termed as malafide on the part of the petitioner. Petitioner has categorically stated that her youngest son is living in the ground floor alongwith his three children out of whom two are school going. Similarly, another son of the petitioner namely Anil is living on the first floor and is having three rooms in his possession. Even the Site Plan of the respondent only shows four rooms on the first floor out of which one room is in possession of the respondent himself. Hence, the contention of the respondent that one room on the first floor is with another tenant namely Naresh cannot be believed. The respondent has not filed any photograph or any other documentary evidence which could establish that the room adjacent to the tenanted room is in occupation of a person other than the family members of the petitioner. Thus, in all the petitioner is in occupation of only seven rooms. The two sons of the petitioner alongwith their wives and infact child require at least one bed room. Similarly, the four school going grand children of the petitioner who are also of growing age need space for their studies as well as for their living and at least two rooms are required for them. In **Smt. Rajwanti Dave Vs. Sardar Amar Singh 1987 (2) Rent Control Reporter 564**, It was held by Hon'ble Delhi High Court that the need for additional accommodation for the growing children is a bonafide requirement. The requirement of the petitioner for on room for herself also cannot be termed as malafide or fanciful requirement. Merely because the petitioner is living in the drawing room due to paucity of accommodation, it cannot be said that she does not require an independent

room for herself. Similarly, the requirement of one room for the guest and the married daughters by the petitioner Cannot be termed as fanciful. In **Smt. Prabhu Vs. K, Sharma, 1997 Rajdhani Law Reporter, 242 (SC)**, it was held by Hon'ble Supreme court that the requirement of the landlord for room for guests and also the requirement of drawing and dining rooms cannot be termed as fanciful and the same are bonafide requirements.

19. Thus, the petitioner requires at least six living rooms for a comfortable living alongwith her family members which include her growing grand children. This requirement is beside the requirement for guest room, drawing room and dining room but at present, the petitioner is in possession of only seven rooms and hence, the requirement of the tenanted premises by the petitioner for her bonafide need cannot be refused.

9. Learned counsel for the petitioner also argued before this Court that actually there is a tenant in one room of the first floor, namely one Sh. Naresh Kumar, and the landlady was guilty of concealment of existence of this room. This argument is however misconceived for two reasons. Firstly, even assuming the so called Naresh Kumar has one room in his tenancy, even that room was required as per the requirement of the landlady and her family members as discussed above. The second reason is that actually there is no Naresh Kumar as tenant of one room on the first floor because, in the site plan filed by the petitioner herein himself in the court below, only four rooms are shown to exist on the first floor. Out of four rooms, three rooms are in the possession of one son and the fourth room is with the present

petitioner himself. Therefore, it is not understood how another room exists for the so called Naresh Kumar to live in. Therefore, this argument urged on behalf of the petitioner/tenant is also misconceived and therefore, rejected.

10. Learned counsel for the petitioner then argued that the respondent had once tried to take illegal possession and therefore, the eviction petition has to be dismissed, however in my opinion, in law this cannot be a defence to a petition under Section 14-D of Delhi Rent Control Act once the requirements of Section 14-D are shown to exist.

11(i) Learned counsel for the petitioner further argued that the petitioner in addition to the room in his tenancy also has in his tenancy the latrine and bathroom on the first floor and since no evidence is sought with respect to them the eviction petition is liable to be dismissed.

(ii) Even this argument is misconceived because the latrine and bathroom are in common use of all the occupants of the first floor including the present petitioner/tenant, and therefore, the present petitioner/tenant had no tenancy rights in the said latrine and bathroom and only had a right to user thereof. Hence, there was no need to file the eviction petition for the so called portions of the latrine and bathroom.

12. Lastly, it was urged on behalf of the petitioner/tenant that there existed a room in the third floor of the property, existence of which was concealed by the landlady, and consequently the eviction petition should be dismissed. This aspect is duly noted and dealt by the Additional Rent Controller in para 18 of the impugned judgment, and by reference to the photographs filed by the landlady, it is found that the 'room' has only walls without any roof, and there is as such hence no room. Accordingly, this argument urged on behalf of the petitioner is also not tenable and is rejected.

13. In view of the above, I do not find any merit in the petition and the same is accordingly dismissed along with interim applications, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

JULY 10, 2014
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