

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

+ **RC.REV. No.28/2013 and C.M. Nos.912/2013 (stay),
14659/2013 & 15718/2014**

% **16th December, 2014**

SMT. HASEENA BEGUM AND ORS Petitioners
Through: Mr. R.L. Kohli, Advocate.

VERSUS

SMT. QURESHA BEGUM Respondent
Through: Ms. Deepika V. Marwaha, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This rent control revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller dated 28.8.2012 by which the Additional Rent Controller has dismissed the leave to defend application filed by the petitioners/tenants and has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act with respect to the tenanted premises being one dalan (hall) measuring 16'X9',

part of the ground floor of property no.2192, Gali Nai Wali, Pahari Bhojla, Bazar Chitli Qabar, Delhi-6 as shown in green colour in the site plan Ex.X1.

2. At the outset, it is required to be noted that by the impugned judgment two eviction petitions of the same respondent/landlady Smt. Quresha Begum were decided. One eviction petition for *bonafide* necessity was filed against one tenant Sh. Abdul Hameed being eviction petition no.111/2011. The second eviction petition and which is the subject matter of the present rent control revision petition was filed against the present petitioners/tenants. Both these petitions were decided by the common judgment inasmuch as the *bonafide* need which was projected was for the family of the respondent/landlady including her two married sons being Sh. Ajmal Khan and Sh. Ashraf Khan. In the other eviction petition, against the tenant Sh. Abdul Hameed, the tenanted premises comprised of one shop and one room. The need for the shop was projected for the younger son Sh. Ajmal Khan, whereas the residential need for one room was projected for satisfying part of the residential need of the elder son Sh. Ashraf Khan. In the present proceedings, the need is with respect to the balance residential requirement of the elder son Sh. Ashraf Khan who is married and his family comprises besides himself, his wife and four children. Sh. Ashraf Khan has only one room in his occupation on the third floor of the property.

3. The selfsame impugned judgment was also challenged before this Court in RC. REV. No.572/2012 by the tenant Sh. Abdul Hameed and this RC. REV. No.572/2012 was dismissed by this Court on 31.7.2014. An SLP against the judgment dated 31.7.2014 in RC. REV. No.572/2012 has been dismissed by the Supreme Court on 31.10.2014 in S.L.P.(C) Nos.27762-63/2014. Reference is being made to the judgment dated 31.7.2014 in RC. REV. No.572/2012 inasmuch as more or less all the aspects which are in issue in the present case also stand decided by the judgment of this Court dated 31.7.2014, and again keeping in mind the fact that there is a common judgment with respect to both the eviction petitions being the eviction petition no.111/2011 filed against the other tenant Sh. Abdul Hameed and the eviction petition no.112/2011 filed against the present petitioners.

4. At this stage, it is relevant to refer to and reproduce paras 10 to 13 of the judgment dated 31.7.2014 and the same read as under:-

“10. That takes us to the need of the elder son Ashraf Khan, and for whose residential need the residential room with the petitioner/tenant is claimed. In order to decide whether there exists any need for residential purpose of Ashraf Khan, the entire accommodation in the entire property bearing no. 2192, Gali Nai Wali, Pahari Bojla, Bazar Chitli Qabar, Delhi, will have to be examined and considered. It is first to be noted that the property no.2129 is situated on an area of only about 145 sq. yds. and thus the rooms thereof are not big in area. There is a ground floor, first floor, second floor and third floor of this property. The elder son Ashraf Khan is living on the third floor of this property. As per the site plans filed by both the parties, there is absolutely no difference in the constructed area on the third floor, and the same consists of just one room along with kitchen, latrine and bathroom. The family of the elder son Ashraf Khan, admittedly comprises of Ashraf Khan himself, his son Farhan Khan, who is 27

years of age and of marriageable age at the time of filing of the eviction petition (he is stated to be already married now), and three married daughters who are living in the same vicinity. Once on the third floor there is only one room, surely, that accommodation is grossly inadequate because the elder son Ashraf Khan is entitled to one room for himself, one room for his married son Farhan Khan, one room as living room. Ashraf Khan also needs one guest room for his married daughters who visit frequently, and therefore, Ashraf Khan has a need for at least three bed-rooms besides a living room i.e four rooms but he has only one room. **Therefore, the landlady requires three other rooms for being available either on the ground floor or on the first floor or on the second floor of the property no.2192.**

11. Let us now take the residential portions which are available on the second floor, first floor and the ground floor respectively in order to determine whether any extra rooms are available for the residential need of Ashraf Khan. The second floor of the property as per the site plans filed by both the parties comprises of two rooms. One room on this second floor is with the younger son Ajmal Khan, and for whose need the shop on the ground floor is also claimed. On the second floor, Ajmal Khan is living with his family which comprises besides himself, his wife and three children aged 17, 15 and 13 years respectively. Therefore, the family of Ajmal Khan would require at least three bed-rooms i.e one for Ajmal Khan and his wife, one for his elder son who is 17 years of age, and the third room for his two children who are about 15 years and 13 years of age respectively. Besides three rooms, Ajmal Khan would also require a living room. **Therefore, there is a requirement of total four rooms for the younger son Ajmal Khan and his family, whereas, as per the respondent/landlady, there is only one room on the second floor with the Ajmal Khan,** but as per the petitioner/tenant he has two rooms on the second floor. Though the second room as per the case of the respondent/landlady is with a tenant, however even assuming that the tenant is not there as contended on behalf of the petitioner, yet the younger son Ajmal Khan will, therefore, have only two rooms instead of four rooms. Therefore, there is no portion even available on the second floor for the need of Ashraf Khan and his family and in fact there is a need for two more rooms for the residential need of Ajmal Khan and his family. Therefore, for Ashraf Khan and Ajmal Khan and their families four more rooms are required.

12. That takes us to the first floor of the property and this first floor comprises, as per the petitioner/tenant four bed-rooms, whereas, the respondent/landlady states that there are three bed-rooms. The case of the respondent/landlady is that one big room which exists on the first floor has been made by the petitioner/tenant into two rooms in the site plan, although actually there is only one big room and not two rooms. There is also besides the three rooms or four rooms (as per the tenant), a *dalan* i.e a living room and a room in the front portion with a tenant.

Actually as per the site plan filed by the petitioner/tenant, five rooms are shown and not four rooms, and this is because the fifth room on the front portion is obviously with a tenant, and thus one room being with a tenant in the front portion of the first floor is not disputed by the petitioner/tenant. The issue thus really boils down only as to whether there are three vacant rooms plus *dalan* on the first floor with the respondent/landlord or there are only two rooms with *dalan* i.e one more room because one room is bifurcated into two parts to make it into two rooms as per the case of the petitioner/tenant. The respondent/landlady has pleaded that besides her need of one bed-room and one living room, she requires two guest rooms for the use of her four married daughters who frequently visit there with their children.

13. In my opinion, considering the facts of the present case where not only the respondent/landlady has four married daughters but the respondent/landlady also will be required to accommodate the family members of her younger son Ajmal Khan and elder son Ashraf Khan as detailed above i.e Ajmal Khan has just one room on the second floor, although he has in his family besides himself and his wife, three children aged 17 years, 15 years and 13 years respectively and Ashraf Khan needs three more rooms i.e between Ajmal Khan's family and Ashraf Khan's family **there is need for five more rooms and** hence not too much capital therefore can be made by the petitioner of one or two additional rooms on the first floor available with the respondent/landlady, and all of which is after accepting the case of the petitioner that the rooms with the tenants on the first and second floor are available to the landlady, inasmuch as five additional rooms are required by the landlady i.e two more than the three rooms which the petitioner/tenant claims to be with the landlady being with two tenants and one additional room on the first floor." (emphasis is mine)

5(i).A reading of the aforesaid paras shows that a total of five rooms are required for the married sons Sh. Ashraf Khan and Sh. Ajmal Khan and their families in addition to the two rooms they are occupying. Sh. Ajmal Khan required four rooms whereas Sh. Ashraf Khan for whose need the present proceedings are filed also required four rooms as his family comprises of himself and his son Sh. Farhan Khan and three married daughters, who thus required three bedrooms plus one living room i.e one bedroom for Sh. Ashraf Khan himself, one for his son Sh. Farhan Khan, one bedroom as a guest room for his married daughters and one living room. The son Sh. Ashraf Khan however has only one room on the third floor of the property. So far as Sh. Ajmal Khan is concerned (for whom the connected eviction petition was filed and allowed and the challenge to which has been dismissed by this Court on 31.7.2014 and the SLP against the judgment dated 31.07.2014 has also been dismissed), his family comprises of himself, his wife and three children i.e one bedroom for himself and his wife, one room for his elder son aged 17 years, and one bedroom for his two children aged 15 years and 13 years is required. There is also a requirement of a living room for the family of Sh. Ajmal Khan and therefore a total of four rooms were required for Sh. Ajmal Khan and his family members. The son Sh. Ajmal Khan however has only one room on the second floor of the property.

(ii) Therefore between the two sons a total of eight rooms were required but the sons only had two rooms for themselves and hence six additional rooms were required. Out of the six rooms so required, as per the judgment dated 31.7.2014 passed by this Court it was found that even assuming that one room on the first floor is available and which in reality is with the tenant as stated in para 12 of the judgment dated 31.7.2014, at least four more rooms would be required (if not five rooms) for the two brothers, Sh. Ashraf Khan and Sh. Ajmal Khan and their families. Therefore, even after the decreeing of the eviction petition no.111/2011 against Sh. Abdul Hameed and which eviction order has been sustained till the Supreme Court, the landlady will only have with her one additional room on the ground floor of the property, and meaning thereby that three other rooms are at least required and hence the *bonafide* need exists for one dalan (hall) on the ground floor of the property which is in the tenancy of the present petitioners/tenants. The issue in this case of the requirement of the residential accommodation of four rooms for the son Sh. Ashraf Khan therefore was squarely decided by the judgment dated 31.7.2014 of this Court, and there is therefore no merit in this petition that there is no *bonafide* requirement for Ashraf Khan and his family for the tenanted hall/dalan on the ground floor of the premises.

6. Learned counsel for the petitioners/tenants very vehemently argued three aspects for setting aside of the impugned judgment as under:-

(i) The respondent/landlady has in fact let out recently one room on the first floor to a tenant Mohd. Shafiq and which has been let out after getting the room evicted from a tenant one Sh. Abdul Majeed and thus this shows that the need of the respondent/landlady is not *bonafide*. This argument presumes that Mohd. Shafiq is a new tenant and not an existing/old tenant.

(ii) The respondent/landlady has also recently inducted a tenant Sh. Masood Ahmed at the rate of Rs.500/- per month in a room on the ground floor and therefore this again shows that the need of the respondent/landlady is not *bonafide*.

(iii) The third aspect which is argued is that the eviction petition is for partial eviction, inasmuch as, the petitioners besides having in their tenancy one dalan/hall on the ground floor, also have in their tenancy the use of the common courtyard and since no eviction decree has been sought with regard to the common court yard, the eviction petition is allegedly only for partial eviction, and is therefore liable to be dismissed.

7(i) So far as the first aspect of letting of one room on the first floor to Mohd. Shafiq after vacating the room from Sh. Abdul Majeed is

concerned, petitioners have placed reliance upon a legal notice dated 7.10.2013 issued by the respondent to Mohd. Shafiq.

(ii) This argument urged on behalf of the petitioners that the respondent has recently let out one room on the first floor to the tenant Mohd. Shafiq is demolished by the legal notice dated 7.10.2013 relied upon by the petitioners themselves inasmuch as, in para 1 of this legal notice dated 7.10.2013 it is mentioned that the tenant Mohd. Shafiq is a tenant from the year 1978. Therefore, once Mohd. Shafiq is a tenant since the year 1978, it is not understood as to how an alleged tenancy in the name of Sh. Abdul Majeed can be said to have existed and has allegedly been surrendered by Sh. Abdul Majeed for a new tenant Mohd. Shafiq inducted. This argument of the petitioners is therefore rejected inasmuch as the tenant Mohd. Shafiq is a tenant since the year 1978 and not a new tenant inducted after getting a room vacated from the alleged tenant Sh. Abdul Majeed. Another reason for rejecting this argument is that even assuming this one additional room is considered, since however a total of four additional rooms are required after taking one room which has been received from the tenant in eviction petition no. 111/2011, therefore the respondent/landlady will still assuming the room of Mohd. Shafiq is available, require three additional rooms and

consequently, the argument urged on behalf of the petitioners is an argument for the sake of argument and does not create any triable issue.

8. So far as the argument pertaining to the tenant Sh. Masood Ahmed is concerned, this argument has been rejected by the Additional Rent Controller in terms of the impugned judgment which holds that it is not understood that how there can exist a tenant Sh. Masood Ahmed inasmuch as all the portions of the ground floor of the property have been duly explained to be in possession of either the respondent/landlady or the tenants, and consequently, there does not arise any issue of letting out a room on the ground floor to Sh. Masood Ahmed as is alleged by the petitioners. Also, an important aspect to be noted is that the so called tenant Sh. Masood Ahmed is no one else but the elder brother of the present petitioner no.2 and the son of the deceased tenant late Sh. Saeed Ahmed. I therefore agree and adopt the findings given by the Additional Rent Controller in para 16 of the impugned judgment for rejecting this argument, and which para 16 reads as under:-

“16. In the application u/s. 151 CPC, the respondent has contended that during the pendency of this case, the respondent came to know that the petitioner has created the fresh tenancy or let out a room on the ground floor of property in question to one Sh. Masood Ahmed at the rate of Rs.500/- per month after receiving a handsome security from him.

In reply, the petitioner has denied the same and submitted that Sh. Masood Ahmed is none other than but the elder brother of

respondent no.2 and son of deceased tenant Sh. Saeed Ahmed in eviction petition bearing no.E-112/2011 and Sh. Masood is not in possession of any room on the ground floor.

I have perused the record and feel that respondent has made a bald statement just to protect his tenancy. It has come on record that respondent has filed the site plan in support of application for leave to defend. In said site plan, the respondent has shown one shop and a room (yellow in colour) in his possession; one dalan & store (blue in colour) in possession of Raessa Begum; one Dalan (green in colour) in possession of Saeed Ahmed; one store & some portion of open courtyard (brown in colour) in possession of Tanvir Ahmed; one shop (orange in colour) in possession of Abdul Majeed and one shop in red colour in possession of petitioner. While raising the objection that petitioner has created the fresh tenancy or let out a room on the ground floor of property in question to one Sh. Masood Ahmed, the respondent has failed to disclose as to in which room or shop or dalan on the ground floor the said tenant Sh. Masood Ahmed has been inducted by the petitioner and even, he has not stated which of the tenants as shown by him in his site plan have been got evicted by petitioner in order to induct Sh. Masood Ahmed and even in alleged rent receipt there is no description of portion except the property number. Even otherwise, it well established that *“It is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement.”*

The respondent has also filed the rent receipt alleged to be executed by petitioner in favour Sh. Masood Ahmed. As per petitioner, the said rent receipt has been forged and fabricated by the respondent and it even does not bear the signatures of petitioner nor has any serial number. I have seen the said rent receipt and found the submission made by the petitioner to be correct.

As per petitioner, Sh. Masood Ahmed is none other than but the elder brother of respondent no.2 and son of deceased tenant Sh. Saeed Ahmed in eviction petition bearing no.E-112/2011. The respondent has failed to give any satisfactory reply or explanation to this submission.

In view of the above, I feel that the application of respondent u/s. 151 CPC being devoid of merits is liable to be dismissed.”

(underlining added)

9(i). The final argument urged of partial eviction is again an argument of sheer desperation only inasmuch as if the case of the petitioners is that they are tenants besides in the dalan/hall on the ground floor also of common user of the courtyard on the ground floor, then surely the eviction will be with respect to both the dalan/hall and the common use of the common courtyard and no shallow argument can be raised to allege that only partial eviction is sought. The concept of partial eviction is that really some part of the tenanted premises will continue to remain with the tenant and therefore partial eviction cannot be ordered because the tenant cannot use only part of the tenanted premises. Also, it is relevant to note that no such argument of partial eviction is raised in the leave to defend application and once no issue of partial eviction is raised in the leave to defend application, no such argument of partial eviction can be addressed before this Court because all grounds for seeking leave to defend can and only be urged within the statutory period of 15 days prescribed for filing of the leave to defend application, and which period of 15 days is an inflexible period which cannot be extended by even one day as stated by the Supreme Court in the

case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC*

15.

(ii) Therefore, no ground urged beyond the statutory period of 15 days, and the ground of partial eviction not being found in the leave to defend application, in fact cannot even be urged on behalf of the petitioners/tenenats. I may note that it is for this reason that there is no discussion in the impugned judgment with respect to any argument of the alleged partial eviction.

10. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

DECEMBER 16, 2014
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VALMIKI J. MEHTA, J.