

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

+ **RC.REV. 11/2015**

% Decided on: 12th January, 2015

S R GUPTA

Through

..... Petitioner
Mr. Pradeep K. Bakshi, Mr. Puneet
Khurana, Advs.

versus

O P MEHTA & ANR.

Through

..... Respondent
Mr. Sunil Malhotra, Mr. Amit
Sanduja, Advs.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CAVEAT 28/2015

Learned counsel appears on behalf of the caveator. Caveat is discharged.

CM 486/2015

Exemption allowed subject to just exceptions.

RC.REV. 11/2015

1. The petitioner is aggrieved by the impugned order declining to grant leave to defend to the petitioner. The respondent/ eviction petitioner filed a petition under Section 14(1)(e) of the DRC Act stating therein that the

husband and wife were the owners of property No. BE-93, Shalimar Bagh (West) Delhi a plot admeasuring 126 sq. mtr. purchased from the DDA vide registered perpetual Lease Deed dated 27th September, 1977. The demised premises consisting of one drawing room, two rooms, one lobby, one kitchen, one bathroom, one W.C., one balcony except one store and rear terrace on the first floor was let out to the respondent on 21st April, 1981 for a monthly rent of ₹750/-. The respondents are in possession of the ground floor and second floor of the said property which second floor they got constructed in the year 1986-87. The requirement of the respondents who are an elderly couple is that they have two sons who are both living in USA however the two sons along with their wives and children often visit Delhi in the summer and winter breaks and due to paucity of accommodation they are unable to stay for long period in Delhi with their parents. Thus, besides four bedrooms in possession of the respondents the two bedrooms on the first floor which are in possession of the petitioner are also required. The respondents have placed on record the photocopies of the passports of their sons, daughters-in-law and their grand-children which showed that they have been visiting India.

2. I find no merit in the contention of learned counsel for the petitioner that the two sons do not come together and the learned Trial Court ought to have looked into this aspect of the matter. No restrictions can be placed on the programme of the two sons of the respondent and as to when they could visit their parents. It is generally in vacations that children from abroad visit their parents and thus the possibility that the two sons with their families visit their parents at the same time cannot be ruled out. On the contention

that the respondent No.1 is suffering from lumber spondilitis learned counsel for the petitioner contends that the respondents who are suffering from age-old problems would not be able to use the Pooja room on the second floor thus the same is a frivolous requirement. The respondents being old, the availability of an accommodation at the first floor would relatively be more suitable to them.

3. From the evidence on record placed by the respondent it is clear that the respondents need rooms for their two sons, their daughters-in-law and grand-children who visit them in the vacations and the suitability of an accommodation has to be seen taking in account convenience of landlord, his family members their profession, vocation, living style, habits, backgrounds etc.

4. In S.P. Kapoor Vs. Kamal Mahavir Prasad Murarka 2002 (97) DLT 997 it was held:

“If a landlord of status is settled outside Delhi who has to frequently visit Delhi on account of his political and business requirements, he can evict the tenant under this clause even though his need for staying in his own premises may be temporary. It cannot be expected that he should stay only in a Hotel when he has his own residential premises in Delhi.”

5. A Full Bench of Delhi High Court in Mohan Lal Vs. Ram Chopra & Anr. 1982 (2) RCJ 161 exhaustively considered the provisions of Section 25B of the Act and held:

“In our opinion the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision under Section 25B(8) cannot be regarded as a first appeal and nor can it be restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him.

A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act”

6. The view taken by the learned ARC is a plausible view and cannot be held to be illegal or perverse. I find no merit in the present petition. Petition is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 12, 2015
‘ga’