

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

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Reserved on: 9th January, 2015
Decided on: 19th February, 2015

+ **RC.REV. 106/2012 and CM Nos. 4245/2012, 7662/2013**

BRIJ RATTAN BAGRI Petitioner
Through: Mr. K.K. Sharma, Sr. Advocate with
Mr. D.K. Sharma and Mr. Ankur
Sharma, Advocates.
versus

UMA RANI JAIN Respondent
Through: Mr. Naveen Kumar, Advocate.

+ **RC.REV. 115/2012 and CM No. 4645/2012**

CHAND RATTAN BAGRI Petitioner
Through: Mr. Arujun Mitra, Advocate.
versus

UMA RANI JAIN & ANR Respondents
Through: Mr. Naveen Kumar, Advocate for
Respondent No.1.
Mr. K.K. Sharma, Sr. Advocate with
Mr. D.K. Sharma and Mr. Ankur
Sharma, Advocates for Respondent
No.2

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The revision petitions challenge the common impugned order dated 15th November, 2011 whereby the respondents eviction petition under

Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act (in short DRC Act) was allowed and the petitioners were directed to vacate the premises which comprises of five rooms, one kitchen, one store, one latrine/bathroom with covered verandah on the first floor as per site plan Ex.PW-1/A (in short the tenanted premises) of suit property bearing No.4727-31, No.21, Daya Nand Road, Daryaganj, Delhi.

2. Learned counsel for the petitioner in RC.REV. 106/2015 submits that the respondent has not proved the bonafide requirement. No document has been proved by the respondent that the sons were living in the premises with her or that they were dependent on her. No finding has been returned by the learned Judge with regard to availability of an alternative accommodation. The lease deed executed between the parties was in perpetuity and the premises could have been vacated only at the instance of the tenant and not the respondent/ landlady. Since it is stated that on the demise of her husband Uma Rani Jain now got possession of the premises on transfer an eviction petition would not have been maintainable under Section 1(6) of the DRC Act. The Court was required to frame issues before deciding the eviction petition however without framing the issues, the Court proceeded to decide the petition and passed the impugned order.

3. Learned counsel for the petitioner in RC.REV.115/2012 submits that the basic premise on which eviction petition was filed was that the petitioner was not living in the premises and thus the same be got vacated. In the written statement the petitioner clearly stated that the premises was not vacant but was being used for business. The defence of alternative accommodation taken by the respondents has not been adjudicated by the

learned ARC. The Model Town house of the respondents was admeasuring 500 sq.yds. wherein her son Nalin Jain was not residing and thus there was sufficient accommodation available with the respondent. The respondents failed to discharge the onus when prima facie it was demonstrated by the petitioners that the sons of the respondent were staying separately from her. In the entire eviction petition/ deposition it was nowhere stated how many rooms are in possession of the respondent. There is no specific denial of the evidence led by the petitioner showing electricity bills of the tenanted premises which indicate that the premises were in use. The finding of the learned ARC that 7 rooms were available in the Model Town house of the respondent is based on no evidence. Onus cannot be put on the petitioners to prove the premises in occupation of the respondent merely on the basis of site plan. The rent deed was not considered by the learned ARC and the findings are erroneous.

4. Learned counsel for the respondents on the other hand contends that the DRC Act provides for a special procedure for adjudication of the disputes and no issues are required to be framed before finally deciding the matter. Rules of procedure as laid down in CPC were not applicable. The respondent/eviction petitioner has pleaded her bona-fide requirement showing that there are 13 family members including married grandsons and thus the accommodation available was grossly inadequate. As per the evidence led by the petitioners/tenants, only guard was residing in the premises and the guard visited the premises regularly. In the written statement, the petitioners did not mention about Nalin Jain or his family staying with her. Even the grandchildren of the respondent are of

marriageable age and their requirements had increased. The petitioners did not even suggest to the respondent that the respondent had an alternative accommodation available and hence there is no merit in the contentions raised.

5. In the eviction petitions filed by the respondents and evidence by way of affidavit filed, the respondent Uma Rani Jain stated that she was the owner and landlady of property bearing No.4727-31, No.21, Daya Nand Road, Daryaganj, Delhi and the petitioner became tenant in the suit premises after the death of their father namely Shri Babu Lal Bagri as the tenanted premises had been let out to him vide written agreement dated 9th February, 1973. Initially when the eviction petition was filed, the respondent was not aware of the rent agreement as the same was executed 37 years ago but on the tenants/petitioners having filed the copy of the said agreement the same was stated to be correct. The premises comprises of five rooms, one kitchen, one store, one latrine/bathroom with covered verandah as per the site plan Ex.PW-1/A. The rate of rent of the premises was ₹3167/- per month excluding all charges. She filed the documents of ownership. The respondent pleaded/deposed that she had a large family consisting of herself, her husband, three sons along with their wives and their children. The elder son namely Nalin Jain aged about 49 years, his wife aged about 48 years and his son Abhinav Jain aged about 22 years; her other son namely Uman Jain aged about 46 years, his wife aged about 44 years and their daughters Sonali Jain aged 21 years, Harshita Jain aged 12 years and her third Son namely Deepak Jain aged about 41 years, his wife aged 39 years and their son Naman Jain aged 13 years and daughter Priyanshi Jain aged 9 years. Thus,

for 13 members of her family only 7 rooms were available in the property E-4/22, Model Town and the respondent/ landlady required immediately at least 13 rooms in total for herself and for her family members. Besides she has three old servants for whom at least one servant room was required. Since the respondent is a religious lady she needs one room for worship. Her two sisters and brother regularly visit her. Besides, her husband has two sisters who also visit frequently. Thus two rooms were required for the purposes of guestroom. The respondent owns only two properties i.e. E-4/22, Model Town and the other being the tenanted premises i.e. 4724-31, No.21, Daya Nand Road, Daryaganj, Delhi. In cross-examination the respondent stated that her family was residing as a single unit and all the three sons had their own business, however her source of income was the rent received from the Daryaganj property. She stated that her son Nalin will reside at the suit property if she gets the possession of the same. She stated that in the Model Town house which was approximately 500-540 sq.yds. on the ground floor she was staying with her three sons and their families and on the second floor her jethani (sister-in-law) was staying. The second floor was also in possession of her sister-in-law.

6. In the written statement and evidence by way of affidavit filed by the petitioners it is stated that the petition fails on the touchstone of provisions of Section 14(1)(e) read with Section 25B of the DRC Act as the same does not fulfill the basic requirements and lacks the necessary ingredients. It is stated by the petitioners that vide the rent deed dated 9th February 1973 tenancy was amicably transferred to them. Property was let out for a period of five years to be extended for further period of five years at the option of the

tenant and the same could be used by the tenant either for the residence or for office. It is denied that the property was lying vacant. It is stated that the property was in active use and a security guard Avdesh Tyagi had also been employed. In addition the suit property contains the furniture of the petitioners which is used by them. Electricity bills from May 2006 till September 2009 were placed on record. It is contended that all the three floors of the Model Town property were with the respondent and there was no requirement of the suit property. It is stated that Nalin Jain does not reside at the house in Model Town as is evident from the ration cards filed as the name of the Nalin Jain is not mentioned in the ration card of the year 2007. In cross-examination the petitioner has admitted that he could not say how the site plan filed by the respondent was wrong. He sent one Kishore Kumar who prepared the map, Ex.RW-1/3. Kishore Kumar was never produced as a witness and the evidence that the respondent had huge property at Model Town which was sufficient was only hearsay. He also admitted that he had three offices one at Daryaganj, other at Asaf Ali Road and the third at Kaushambi, Ghaziabad, UP. He further stated that he might be having other offices which he does not know. His brother Brij Ratan was residing at 3/4318, Ansari Road, Daryaganj and he did not know the locations of the offices of his brother. He admitted that both the brothers were doing separate business and neither was he a Director in his brother's company nor was his brother a Director in his company. Avdesh Tyagi was an employee of his brother Brij Ratan Bagri. Petitioners examined other witnesses also with regard to their various offices and the electricity bills of the tenanted premises. Chand Rattan Bagri admitted that neither he nor his employees were residing in the tenanted premises.

7. Avdesh Tyagi appeared as RW2W2 and stated that he was an employee of Brij Ratan Bagri and had been residing with his family for many years. The tenanted premises have not been left unused or unoccupied and the same is being used incessantly by the petitioner for both residential as well as commercial purpose. He stated that he was residing on the fourth floor of the premises and on the third floor Brij Ratan Bagri was residing and did not know who was residing below the floor of Brij Ratan Bagri. R.P. Sharma appeared as attorney of Brij Rattan Bagri and filed his evidence by way of affidavit. He stated that a security guard Avdesh Tyagi was residing in the tenanted premises since long.

8. Section 14 of the DRC Act provide that notwithstanding anything to the contrary contained in any other law or contract, no order or decree for recovery of possession of any premises shall be made by any Court or Controller in favour of landlord or against a tenant provided that the Controller may on an application made to him make an order of recovery of possession of the premises on one or more grounds as mentioned therein. Thus being a non-obstante provision any contract between the parties that the tenancy could be extended on the desire of the tenant will not prevail.

9. The main stress of the petitioners is that respondent's son Nalin Jain was not staying with her as his name was not included in the Ration Card. No evidence has been brought on record to show that Nalin Jain with his family is staying at some other premises. The petitioner's witnesses have no personal knowledge of the respondent's family members or the number of rooms. Even excluding Nalin Jain's family the respondent has 10 members in the family and seven rooms. Thus it cannot be said that the requirement

of respondent is not bona-fide. It is well settled that the landlord is the best judge of his requirement and the same cannot be dictated by either the Court or the tenant.

10. Thus I find no merit in the petitions. The decision of the learned ARC is based on facts proved on record and does not suffer from any irregularity. Consequently, the petitions and applications are dismissed.

(MUKTA GUPTA)
JUDGE

FEBRUARY 19, 2015
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