

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 425/2011 and CM No.19507/2011**

% Reserved on: 6th January, 2015
Decided on: 9th January, 2015

MAHAVIR PRASAD Petitioner
Through: Mr. Shiv Charan Garg and Mr. Imran
Khan, Advocates.

versus

VED BHARAT KAPOOR Respondent
Through: Mr. Arvind K. Goel, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J.

1. Vide the impugned judgment dated 1st April, 2011 the petition filed by the petitioner under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (in short DRC Act) has been dismissed.

2. Learned counsel for the petitioner contends that three erroneous findings have been arrived at by the learned Trial Court:

(i) Though in Para 15 (D2) learned Trial Court holds that the requirement of one room by the Petitioner for his another son i.e. Ravi who is residing in U.K. at present along with his family but visits the petitioner is not mala fide in view of the judgment reported as Brij Mohan Vs. Sri Pal Jain 1993 RLR 190 however, in Para 15 (D5) he

holds the same requirement not to be bonafide and that one regular room is not required for the said purpose.

(ii) Learned Trial Court erroneously held that the petitioner concealed the material fact regarding the vacation of portion by one of the tenants Mr. Yusuf Ali during the pendency of the proceedings. According to the petitioner in the counter affidavit filed to the leave to defend application, the petitioner had clearly mentioned that Yusuf Ali another tenant in the premises who had two rooms with him had vacated the premises on 5th February, 2004. An inadvertent error in the affidavit Ex.PW-1/A cannot lead to the conclusion that there was material concealment.

(iii) Thirdly, despite admission of the respondent that the son of the petitioner Vinod Kumar was having a computer learned Trial Court erroneously rejects the bona-fide requirement of one computer room on the ground that present is the age of laptop and thus there is no requirement for a separate computer room.

3. Learned counsel for the petitioner relying upon Sarla Ahuja Vs. United India Insurance Co. Ltd. AIR 1999 SC 100 contends that when a landlord asserts that he requires his building for his occupation, the Rent Controller shall not proceed on the assumption that the requirement is not bonafide. It is not for the tenant to dictate terms to the landlord as to how should the landlord adjust his family without getting the tenanted premises. Thus the landlord is the sole arbiter of his own requirements. (See Shiv Sarup Gupta Vs. Dr. Mahesh Chand 1999 RLR (SC) 417). Relying upon Shri Hari Shankar Vs. Madan Mohan Gupta 2004 RLR 404 it is contended

that bedrooms for the married daughters and for the guests or for that matter one study/ pooja room cannot be said to be an exaggerated requirement. Relying upon Brij Mohan Vs. Sri Pal Jain 1993 RLR 190 it is contended that the landlord can require accommodation for his married sons even if the latter are earning and can set up independent homes. Further the tenant cannot base claims on the size of the rooms.

4. Learned counsel for the respondent on the other hand contends that the eviction petition filed by the petitioner is clearly mala-fide. The petitioner has ample accommodation available in the house and the petition was filed only to get the premises vacated from the respondent by hook or crook. Besides the rooms, the petitioner is in possession of covered verandas. The petitioner has adequate space for his entire family including the guests and hence the revision petition be dismissed.

5. Heard learned counsel for the parties. A brief exposition of facts is that the petitioner is the landlord/owner and respondent the tenant in respect of one room, one kitchen, common latrine and bath room on the first floor and one Miyani on the mezzanine floor in property bearing No. 10-A/30 Shakti Nagar, Delhi-07 (in short the premises) let out for residential purposes. According to the petitioner the said property No. 10-A/30 Shakti Nagar was previously owned by his father late Shri Rishal Singh and after his death and during his life time he executed a registered Will dated 23rd July, 1990 in favour of the petitioner and his brother Shri Moti Lal where after the father expired on 16th September, 1990. A mutual settlement took place between the petitioner and his brother in the year 1991 as per the site plan. Accordingly the accommodation available with the petitioner at the

time of filing of the petition was three rooms, one kitchen, bath room, one toilet and one latrine-cum-bathroom on the ground floor, two rooms, one kitchen, common toilet and bath room on the first floor and two rooms, one kitchen, tin shed and a common latrine and bathroom on the second floor which were in possession of another tenant namely Yusuf Ali which were vacated during the pendency of the proceedings and a Mumty under the staircase which cannot be termed as a room, as the same is not habitable being of 3 ft. height. The petitioner's family comprises of himself, his wife, his two sons namely Vinod aged 25 years working in GE Capital, Gurgaon, Haryana and Ravi Kumar aged about 28 years. The petitioner has five sisters who are married but frequently visit the property in question and stay at night. The elder son of petitioner namely Ravi Kumar is doing service in U.K. but he visits the property in question 2-3 times in a year and stays there for months at a time and thus the petitioner requires accommodation for him. Thus according to the petitioner he requires at least 8 living rooms, one for himself, one for his marriageable son Vinod Kumar, one for his married son Ravi Kumar and his wife and one drawing room, one dining room, one pooja room, one guest room and a computer room for Vinod Kumar who does the work of computers.

6. Leave to defend was granted to the respondent. The main contention of the respondent is that besides the rooms as mentioned, the petitioner has covered verandas also and thus there is ample space available to him. The relationship of landlord tenant having not been disputed the only issue that arises is whether the requirement of the petitioner is bona-fide or not.

7. Admittedly during the course of the proceedings the son of the petitioner Vinod Kumar also got married and has a five year old daughter from the said wedlock and two rooms on the second floor which were in possession of Yusuf Ali, the other tenant were vacated in another eviction petition. Thus, admittedly the petitioner has seven rooms, three on the ground floor, two on the first floor and two on the second floor.

8. The learned Trial Court held that the petitioner has converted two bedrooms on the ground floor into one drawing room and besides that he has one room available for himself and his wife on the ground floor. Besides that the petitioner has 4 other bedrooms available which can be used for his married son Vinod Kumar along with his daughter, son Ravi as and when he comes, guest room and pooja room.

9. The only bone of contention is whether the 8th room which is required as computer room for the petitioner's son Vinod and is in possession of the respondent is a bona-fide requirement or not. Vinod Kumar has not entered into the witness box and admittedly as per the petitioner, Vinod Kumar is working in GE Capital, Gurgaon, Haryana. The respondent in his cross-examination has admitted that the petitioner's son Vinod Kumar has installed a computer in his room. Be that as it may, there is no evidence on record by the petitioner that the petitioner's son Vinod is working from home so that he requires a separate room for his functioning. In the absence of the said evidence on record despite contrary findings as noted above and as contended by the learned counsel for the petitioner and noted above, it cannot be said that the petitioner is not in possession of sufficient accommodation. Even if it is held that the findings of the learned Trial

Court that the petitioner is in possession of rooms more than his requirement is erroneous, however from the evidence on record there is no material to come to the conclusion that the accommodation available to the petitioner is inadequate and thus he has a bona-fide requirement of one more room at this stage.

10. It is well settled that the revisional power is required to be used sparingly by this Court and only if the finding of the Court below is perverse or illegal. The same cannot be used to correct mere errors which have no bearing on the decision or do not result in failure of justice.

11. Accordingly, I find no reason to interfere with the impugned judgment. Petition and application are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 09, 2015
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