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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M)813/2014

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Reserved on: January 29, 2015

Decided on : February 09, 2015

SURESH CHAND JAIN

..... Petitioner

Through: Mr. S.S.Jain with Mr.Nikesh Jain,
Advts.

versus

RAJESH JAIN

..... Respondent

Through: Mr.Som Dutta Sharma, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J

1. Aggrieved by the order dated 03.05.2014 passed by the learned Additional Rent Controller in eviction petition filed by the petitioner under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (in short “the DRC Act”) granting leave to defend to the respondent, the petitioner has preferred the present petition.

2. In the eviction petition, the petitioner stated that he was the owner of the suit property No.3760,Gali Barna, Sadar Bazar, Delhi-110006 wherein one room, one kitchen, one garage and a toilet on the Ground Floor (in short ‘the tenanted premises’) were let out to the father of the respondent for residential purposes. Rest of the suit property 3760,Gali Barna, Sadar Bazar, Delhi-110006 is comprising of a garage up on the ground floor, which is used by the petitioner or his family for parking one car and one motor-cycle. First Floor of the suit premises consisting of one room, one kitchen and one

bathroom was in occupation of one tenant against whom the petitioner has filed an eviction petition. The second floor of the suit property consists of two rooms and a toilet cum bathroom, out of which one room is being used by the second son of the petitioner Nitesh Jain with his wife and daughter for residential purpose and the second room by the petitioner as he deals in sale and purchase of shares. The petitioner is also owner of adjacent property No.3761, Gali Barna, Sadar Bazar, Delhi-110006 which also consists of Ground Floor, First Floor, Second Floor and a mumty and toilet cum bathroom on the Third Floor. On the Ground Floor of the property, one room, one toilet cum bathroom and covered veranda are being used by the youngest son of the petitioner Nitin Jain for residential purposes. The First Floor of the said property consists of one room, covered veranda and toilet cum bathroom built on the chajja. The room is being used as dining room and covered veranda is being used as a kitchen by the family of the petitioner. Second Floor of the said property consisting of one room, covered veranda and toilet cum bathroom is being used by the eldest son of the petitioner, his wife and two daughters, who are school going for the residential purposes. The petitioner and his wife use covered veranda on the second floor of the property for the residential purposes. The Third Floor of the said property consists of a mumty and toilet cum bathroom which mumty is being used for old household goods by the family.

3. In the eviction petition, the petitioner has further disclosed that he owns another property bearing No.3908, 3910-13, Gali Barna, Sadar Bazar, which again consists of Ground Floor, First Floor and Second Floor. He has explained various portions of the said property and that they have been let out to various tenants since long and some of the tenants in one of the

premises sub let the same without the written consent of the petitioner. Further, the wife of the petitioner is the owner of property bearing No.7036-7041, Gali Tanki Wali, Mandi Ghass, Pahari Dhiraj, Delhi-110006, which comprises of Ground Floor, First Floor and Second Floor which is also in possession of the various tenants, as explained in the eviction petition. It is stated that since the family of the petitioner comprises of himself, his wife, elder son, his wife, two daughters, second son, his wife and their daughter and the youngest son, they need at least one room for each of the family members besides a drawing room, dining room and one room for the guests and relatives as the daughter of the petitioner often visits and one room for *Pooja*. Further the elder son of the petitioner is a Lawyer and thus, he needs room for his study. The petitioner filed site plan of the properties No. 3760 and 3761, Gali Barna, Sadar Bazar, Delhi-110006 where he is residing with his family and also the photographs. From the details of the rooms in property Nos.3760 and 3761 which are adjoining properties, it is clear that the petitioner has five rooms in his possession and thus, the property available to the petitioner is grossly inadequate according to his requirement.

4. In the leave to defend application filed by the respondent, the relationship of landlord tenant has not been denied. It is stated that after the death of the father of the respondent, petitioner continued receiving rent from the deponent and at no point of time expressed any requirement of the premises. It is further stated that the petitioner has got sufficient accommodation in his occupation and is comfortably living in property No.3760 and 3761, Gali Barna, Sadar Bazar, Delhi-110006. A living room on the Ground Floor of the property No. 3760, Gali Barna, Sadar Bazar, Delhi-110006 has been converted into garage one year back. The petitioner

has wrongly shown that there is a mumty in the Third Floor whereas there are two rooms on the third floor. These two rooms were in the tenancy of Shri Tara Chand Jain, who vacated twenty years back and since then, the petitioner has been in the occupation of these two rooms and toilet on the Third Floor. The rooms and verandah as described in property No. 3761, Gali Barna, Sadar Bazar, Delhi-110006 are disputed by the respondent. However, it is stated that the verandahs are being used by the petitioner as rooms and thus there was sufficient accommodation available. It is further stated that the petitioner is in occupation and is residing in Kothi No.1, Barakhamba Road, New Delhi which belongs to petitioner's brother who permanently resides abroad and that the third son of the petitioner, namely, Nitin Jain was residing at Jagat Puri and was carrying on business at Shop No.46, Jagat Puri. Thus, there was no bona fide requirement of the petitioner.

5. Learned ARC after noting the contention of both the sides in the eviction petition, leave to defend application and reply to the leave to defend application without discussing the rival contentions held that the respondent had raised triable issues regarding additional accommodation available with the petitioner and his son and also with respect to the additional space available with the petitioner in property No. 3760 & 3761, Gali Barna, Sadar Bazar, Delhi which can only be decided after evidence is led and thus granted leave to defend.

6. Learned counsel for the petitioner contends that the order of the learned ARC is totally a non-speaking order. After noting the contentions of the parties, without discussing the same the learned ARC just noted that triable issues had been raised and thus granted leave to defend. There is no

denial in the leave to defend application about the requirement of the petitioner and his family members. Even in the leave to defend application, the respondent has admitted that one room on the ground floor portion was converted into a garage and the necessity of a garage for parking the vehicles cannot be denied. The petitioner clearly disclosed the other properties available, however it is well settled that even if additional accommodation is available, premises in which the petitioner is residing with his family the same would be more advantageous to a joint family rather than some members of the family shifting to another accommodation. Thus the availability of other accommodations could not be termed as alternative suitable accommodation being available.

7. Learned counsel for the respondent on the other hand contends that the tenancy was earlier in the name of the father of the respondent and only an year back the petitioner accepted respondent Rajesh Jain as a tenant and started issuing rent receipts in his name. At that point of time he did not express any requirement of the premises. The petitioner has sufficient accommodation of 12 rooms available and hence the requirement of the petitioner is a mere desire and not bona-fide requirement.

8. I have heard learned counsels for the parties. Before adverting to the facts of the case it would be appropriate to note the scope of interference by this Court. The Supreme Court in Ram Narain Arora Vs. Asha Rani 1999 (1) SCC 141 held –

“12. It is no doubt true that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had

correctly or on a firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter. In this case, the Rent Controller proceeded to analyse the matter that non-disclosure of a particular information was fatal and, therefore, dismissed the claim made by the landlord. It is in these circumstances that it became necessary for the High Court to re-examine the matter and then decide the entire question. We do not think that any of the decisions referred to by the learned counsel decides the question of the same nature with which we are concerned. Therefore, detailed reference to them is not required.”

9. In Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh AIR 2014 SC 3708 the Constitution Bench held-

45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the

order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

10. The contention of the respondent that the third Floor of property No. 3760, Gali Barna, Sadar Bazar, Delhi-110006, is having two bedrooms is not fortified by the photographs placed on record by the petitioner which would show that the property is just built-up till the Second Floor. Merely because, the petitioner converted one room on the Ground Floor as a garage for the car parking cannot lead to the inference that the petitioner has sufficient space. Further to meet the exigencies and the needs of family if for the time being the verandahs have been covered and are being used as rooms, the same would not entail that the landlord should be permitted to continue with the unauthorized coverage and forced to live in the covered verandahs. It is well settled that the landlord is the best judge of his requirement and neither the tenant nor the Court can substitute the standard of living for him.

11. In Ragavendra Kumar vs. Firm Prem Machinery & Co. AIR 2000 SC 534, the Supreme Court considering an eviction petition under the M.P. Accommodation Act, 1961 on the ground of bonafide requirement of the landlord held that though the plaintiff landlord in evidence has stated that there were number of shops and houses belonging to him but he made categorical statement that his houses and shops were not vacant and the suit premises was suitable for his purposes. It is settled position of law that the

landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter.

12. In Pravita Devi vs. T.V.Krishan, (1996) 5 SCC 353, the Supreme Court held that the landlord is the best judge of his residential requirement and he has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how and in what manner he should live or to prescribe for him residential standard of their own.

13. The respondent took the plea that Kothi No.1 Barakhamba Road, New Delhi, belongs to the petitioner's brother, who is permanently residing abroad and the petitioner is in occupation and is residing in the said Kothi which fact is denied by the petitioner. This is a bald assertion by the Respondent and is not supported by any document. Though the tenant is not required to prove his defence, however, he has to substantiate his assertion to show that the defence taken is neither illusory nor sham nor moonshine and has substance in it. Even with regard to the younger son of the petitioner, Nitin Jain residing at Jagat Puri, no material has been placed on record. On the contrary, the petitioner has placed on record documents showing the address of the youngest son as 3760, Gali Barna, Sadar Bazar, Delhi-110006.

14. In para 7 of the eviction petition, petitioner has stated about his requirement which is not denied in the affidavit of the respondent. The respondent having admitted that the verandahs are being used as rooms, the learned Trial Court fell in serious error in considering that the same was sufficient accommodation available with the petitioner besides being additional space available in property No. 3760-3761, Gali Barna, Sadar Bazar, Delhi-110006. Further with regard to other buildings owned by the wife of the petitioner it is clearly stated that there are tenants living in

various portions. Further in a joint family the endeavour of the entire family is to live as one unit in one house if available and not at houses which are at a distance. Without adverting to facts and contentions noted by the parties the learned trial court simply noted that it was a fit case where evidence is required to be led.

15. In Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222, the Supreme Court held that if the landlord's needs were not unreasonable, then it has to be treated as a genuine and bonafide need. It was held:-

“13. Chambers 20th Century Dictionary defines bonafide to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whit ley define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its bonafides would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of

the landlord and then ask the question to himself- whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bonafide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bonafides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice Of the landlord by holding that not one. but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

14. The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all

respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of nonavailability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”

16. Considering the facts as noted above on the basis of law as enunciated by the Supreme Court, it be noticed that the order passed by the learned

ARC was a non-speaking order without considering the various contentions of the parties and thus the same is liable to be set aside.

17. Consequently, the impugned order is set aside. In view of the aforesaid discussion on the bonafide requirement and availability and kind of alternate accommodation, the impugned order granting leave to defend to the respondent is set aside. The eviction petition of the petitioner under Section 14(1)(e) of the DRC Act is allowed and the respondent is granted six months time to vacate the tenanted premises.

18. Petition is disposed off.

(MUKTA GUPTA)
JUDGE

FEBRUARY 09, 2015

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