

*

HIGH COURT OF DELHI AT NEW DELHI

+

RC. Revision No.317/2014

Decided on : 31st August, 2015

RAMESH CHAND Petitioner

Through: Mr. S.C. Singhal, Advocate.

Versus

NARESH KUMAR @ NARESH MADAN Respondent

Through: Mr. Atin Mehta, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner/landlord against the order dated 31.7.2014 by virtue of which the learned Additional Rent Controller, West District, Tis Hazari Courts, Delhi has granted leave to defend to the respondent to contest the eviction petition.

2. Before proceeding further it is pertinent here to reproduce the relevant paragraph 15 of the order dated 31.07.2014 granting leave to defend to the respondent and the same reads as under :-

“15. Although, it is well settled that landlord is best judge of his requirement. But in the present case, it is rightly contended by the respondent that it is a matter of trial whether married daughter along with her husband can be

considered as depended on the petitioner, even for the purpose of the accommodation. Further, in the facts and circumstances of present case, whether accommodation already available with the petitioner is sufficient or not is also a matter of trial. It becomes a matter of trial, that despite there being son of another daughter, namely, Deepak Tanwar, residing with the petitioner, the company of another daughter, namely Smt. Raj Chauhan is further required or not, that too not immediately in the same premises in which petitioner is presently residing but in the tenanted premises which is about fifty meters away from the residence of the petitioner. As such, I find force in the contention of the Ld. Counsel of the respondent and under these circumstances, the respondent has raised triable issue whether the requirement of petitioner is bonafide or not.”

3. As it flows from the aforesaid there are two main issues involved. Firstly whether a married daughter along with her husband can be considered to be a dependent on the respondent/landlord under the scheme of S.14 (1)(e) of the Delhi Rent Control Act. The second issue is whether the accommodation available to the respondent/landlord is sufficient for his requirement.

4. I have heard Mr. Singhal, the learned counsel for the petitioner/landlord. It has been contended by the learned counsel that the petitioner is aged around 70 years and his wife is almost 65 years of age and both of them because of their old age need assistance of their

daughter, namely, Raj Chauhan to live with them so that she is able to look after them. It has been stated that as the married daughter would be shifting to the residence of her parents necessarily it would require shifting of her entire family which consists of her husband and one son and since the existing accommodation which is available with the petitioner is not sufficient to meet this requirement, therefore, additional accommodation being the tenanted premises is required by the petitioner.

5. Mr. Singhal has placed reliance on the findings rendered by this court in the case titled SK Gupta & Anr. Vs RC Jain AIR 1984 Delhi 187, wherein the court categorically observed that the requirement of a married daughter, who may be visiting her parents, has to be considered while determining the bonafide requirement of the landlord. Further reliance has been placed on another judgment of this court titled J.D. Jain vs. Saraswati Devi 18 (1980) DLT 1 wherein the court observed that “himself” includes normal family members who are accustomed to live with the landlord. On the basis of the aforesaid it is contested that even a married daughter can be termed to be a dependent on her father for the purpose of accommodation and therefore, the eviction of the tenant under

Section 14 (1) read with Section 25-B of the Delhi Rent Control Act can be sought.

6. I have carefully considered the submissions made by the learned counsel and have also gone through the aforesaid judgment. There is no dispute about the fact that eviction of a tenant can be sought by the petitioner for his own requirement or for the requirement of any of his family members dependent on him. I am in agreement with the observations made by this court in J.D Jain (supra) and SK Gupta (supra) that our societal system is such that a married daughter continues to be so connected with her family that her visits to her parental home are of importance and a matter of consideration when weighing the bonafides of the requirement of a landlord in an eviction petition. But on the same note there cannot be a blanket application of the aforesaid judgments without any judicious application of mind as each case has to be seen in the light of its own peculiar facts and circumstances. In the present matter the son, of the other married daughter is already staying with the petitioner/landlord. Further it is pertinent to note that the married daughter namely Raj Chauhan, seeking accommodation with her parents stays only 50 meters away from the residence of the petitioner/landlord.

7. It is true that no law should act as an impediment where a married daughter desires to stay at her paternal home in order to give love and affection and necessary care to her aged parents. But in the instant case one cannot lose sight of the fact that not only one of the grandsons is already cohabiting with the petitioner/landlord to provide any assistance that may be required but Raj Chauhan, the married daughter is also residing in close proximity. A distance of mere 50 meters cannot in any probability be said to be a hindrance for a child desiring and willing of providing financial, physical or emotional support to his parents or present such great difficulty so much so that the child has no option but to move in the same premise, which although a convenient choice but given the present set of circumstances it cannot be said to be the singular most desirable option. In the light of the principles of natural justice and the aforementioned question as to whether a bonafide requirement is made out by the landlord, can only be decided after a due opportunity is given to the other party to adduce evidence in support of his contentions and to present his case. Similarly, the question on the aspect, as to whether the premise presently under the occupation and possession of the petitioner are sufficient or not for his needs as it has also come on record that the

petitioner already has three rooms, a guest room, drawing and dining room apart from kitchen and other necessary amenities in the suit property cannot be decided in a summary manner. In such a contingency, the question which would arise for consideration is as to whether the petitioner would require additional accommodation which consists of hall on the first floor which is under the tenancy of the respondent/tenant.

8. It is settled principle of law that in an application for leave to defend the applicant only needs to prima facie make out a triable issue. It is not required of him to prove every averment made in the said application at the stage of the filing of the application. As it flows from the aforesaid discussion the applicant/ tenant has been able to make out more than a prima facie case and raise triable issues so as to qualify for the grant of leave to defend. Once a triable issue is raised the same cannot be dealt with in a summary manner and requires an appreciation and analysis of the facts and evidence after giving due opportunity to each of the parties to present their case.

9. In the light of all these attendant circumstances, the learned Additional Rent Controller was absolutely right in granting leave to

defend to the respondent/tenant in order to raise and prove the question of *bona fide* requirement of the petitioner.

10. I do not find that there is any other conclusion which could have been arrived at, by any reasonable person. In the light of the analysis arrived at by the learned Additional Rent Controller I do not find any jurisdictional error, impropriety or illegality in the order granting leave to defend to the respondent. Accordingly, the present petition is totally misconceived and the same is dismissed.

V.K. SHALI, J.

AUGUST 31, 2015
‘AA’