

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC. REVISION 340/2014 & CM APPL.17306/2014**

Decided on: 5th November, 2015

MANJU BAHRGAVA Petitioner

Through: Mr. R.K Pathak, Advocate

Versus

KAMLESH GUPTA Respondent

Through: Mr. Praveen Jha, Advocate for
Mr. Manu Nayar, Advocate

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. By virtue of the present revision petition, the petitioner-tenant has challenged the rejection of her leave to defend application and passing of an eviction order dated 08.07.2014 by the learned Additional Rent Controller-1, Central, Tis Hazari Courts, Delhi (ARC).
2. Briefly stated the facts of the case are that the respondent-landlady Smt. Kamlesh Gupta filed an eviction petition against the present

petitioner-tenant Smt. Manju Bhargava in respect of a premises consisting of one room (*miyani*) above the garage and a common latrine, more particularly shown red in the site plan annexed with the petition, situated at 40/1, Shakti Nagar, Delhi-110007 filed under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (DRC Act).

3. It has been alleged in the eviction petition that one Smt. Savitri Devi, mother of the respondent-landlady was the absolute owner of the premises and in the year 1988 she had died whereupon the premises was inherited by the respondent-landlady on the basis of a Will dated 14.11.1983. The husband of the petitioner was inducted as a tenant in the premises, however, his tenancy was terminated on 01.05.2009 and since he did not vacate the premises after expiry of 30 days, consequently, the petition for eviction under Section 14 (1) (e) of the DRC Act was filed.
4. It has been stated by the respondent-landlady that she is suffering from brain cancer as well as breast cancer and has undergone massive brain surgery due to which she is physically unable to

attend to her work. It is also alleged that she is suffering from serious knee injury because of which she has not been able to climb the stairs and she is residing all alone in Greater Kailash where also the property is owned by her. It has been stated that since most of her relations are living in Shakti Nagar area at this age she needs help and comfort of her dear ones, therefore she has sought eviction from the premises in question and wants to shift to tenanted premises in Shakti Nagar area.

5. The petitioner-tenant contested the eviction petition and filed her leave to defend in which bona fides of the respondent-landlady were assailed. It was stated that the respondent-landlady had earlier let out a portion of the tenanted premises as she did not have any independent source of income and consequently this was only a ploy to get the present petitioner evicted.
6. The learned ARC has rejected the leave to defend application of the petitioner-tenant after referring to number of cases by observing that the respondent-landlady is a old lady suffering from brain and breast cancer and also suffering from knee injury,

therefore, medical condition is such as she has to be permitted to retrieve the possession of the suit premises so that she is able to shift to Shakti Nagar area under the tenanted premises where she can get some assistance in maintaining herself from her relatives. It is this rejection of the leave to defend application by the learned ARC, which has been assailed by the tenant in the present revision petition.

7. I have heard the learned counsel for the parties and have perused the record.
8. I do not agree with the finding which has been returned by the learned ARC wherein it had rejected the application seeking leave to contest the petition as not raising any triable issue. The finding returned by the learned ARC seems to be very highly unreasonable as no reasonable person could have returned the same. It has not in dispute that the parties have a relationship of landlord and tenant nor is in dispute that the respondent-landlady is having property in a posh area like Greater Kailash available with her where she is presently living. Even if it is assumed that she is living all alone

without any assistance it cannot be imagined that a person would leave a comfortable living and openness of accommodation and the environment so as to shift in a highly congested area of Shakti Nagar that too in a room which is only a *miyani*. The *Miyani* is a mezzanine floor which is not having a height more than 7 ft. and if a person lives in a room with a 7 ft. height, he is bound to feel suffocation because of low ceiling. These *miyanies* are essentially used for storage purpose though in the instant case because it was let out to the petitioner-tenant who was living therein on account of the necessity. But a person who is used to live in a regular ventilated room or a spacious house can hardly be expected to shift to a *miyani* because of the fact that her relations are living in that part of the city.

9. Even from medical point of view the area where the respondent-landlady is living is having number of government and non-government hospitals as she is living in South Delhi and yet she prefers to shift to Shakti Nagar area where there is hardly any medical assistance available which will be imperatively needed by

the landlady as she is suffering from dreaded diseases of cancer and has orthopedic problems also. Therefore, in such a factual situation, the very *bona fides* of the respondent-landlady becomes suspect whether the eviction of the petitioner is sought for the purpose of shifting or only is a ploy to get rid of her from the tenanted premises in question. This could be decided by the learned ARC after permitting the tenant as well as the landlady to produce evidence rather than believing the Affidavit of one party over the other.

10. Therefore, I feel that the order of the learned ARC on this score is erroneous which no reasonable person could have arrived at. The impugned order dated 08.07.2014 is set aside and the petitioner-tenant deserves leave to defend to be granted. Accordingly, the present petition is allowed and the petitioner is granted leave to defend.
11. Petitioner is directed to file written statement within a period of 30 days with advance copy to the other side who may file rejoinder/replication.

12. Parties to appear before the concerned learned ARC on 11.12.2015.
13. Pending applications also stand disposed of.
14. Copy of the order be sent to the learned ARC for information.

V.K. SHALI, J.

NOVEMBER 05, 2015

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