

* **HIGH COURT OF DELHI AT NEW DELHI**
+ **RC. Revision No.504/2015 & CM APPL.20171/2015**

Reserved on: 27th November, 2015
Pronounced on: 21st December, 2015

SAROJ BALA SAPRA & ORS. Petitioners
Through: Mr. R. S.Sharma, Advocate.

Versus

AMAR PREET SINGH CHADHA & ANR. Respondents
Through: Mr. Praveen Kumar Singh, Advocate
with Mr. Rajeev Gupta, Advocate

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

V.K. SHALI, J.

1. This is a revision petition filed by the petitioners against the order dated 19.05.2015 passed by the learned Additional Rent Controller, (Central), Tis Hazari Courts, Delhi in an Eviction Petition No.E-101/13 titled *Amar Preet Singh Chadha & Anr. v. Smt. Saroj Bala Sapra & Ors.* by virtue of which the leave to defend application of the petitioners-tenants has been rejected and an order of eviction was passed.
2. Briefly, stated the facts of the case are that the respondents-landlords are claiming themselves to be the owner of property

bearing No.18-B/3, Desh Bandhu Gupta Road, Karol Bagh, New Delhi. It is stated that the respondents are presently residing in Dubai on account of the hotel business being run by respondent No.1. Respondent No.2 is the mother of respondent No.1 and it is stated that despite respondent No.1 doing business in Dubai, he continues to hold Indian Passport and he has roots in India. The elder daughter of respondent No.1 is pursuing studies in Delhi and younger one is also interested in pursuing her higher education in Delhi. So far as the respondent No.2 is concerned, she is stated to be an old lady of 80 years and thus a senior citizen who intends to spend her evening of life in India. It is stated that the respondents-landlords have no alternative suitable accommodation available to them except the suit premises and as and when they come to India they face lots of difficulties in putting at the residence in Punjabi Bagh, a house which belongs to the sister of respondent No.1 and daughter of respondent No.2. Accordingly, it is stated that the respondents are requiring the suit premises for their bona fide requirement and since the premises are stated to be in a bad shape, the respondents have stated that after seeking eviction of the

present petitioners, they intend to demolish the old structure and construct a new according to the present standard.

3. There were five tenants in the petition. Petitioners Nos. 4 and 5 made a statement on 28.11.2013 that they have no concern with the suit property and accordingly they were deleted from the array of parties. While as leave to defend filed by petitioners No.1 to 3 only was considered. They have taken the plea that the respondents-landlords do not have real intention of shifting to India as a matter of fact, the entire purpose of seeking eviction of the present petitioners was to demolish the property and sell it or use it alternatively as a hotel after reconstruction. The purpose of doing this exercise of converting the premises into a hotel was stated to be actuated with an intention to make money because the property prices had increased. They had also challenged the intention of the respondents-landlords to live in the suit premises as it was stated to be very small property. The house bearing No.19-A, Punjabi Bagh, New Delhi which was a residential house where they were putting up as and when they were in India, was stated to be an

alternative accommodation apart from this 6/85, WEA, Karol Bagh, Delhi where hotel was being run.

4. The learned Additional Rent Controller (ARC) rejected the pleas of the present petitioners-tenants by observing that the bona fide need of the respondents was established. The reason given by him are contained in paragraph in item wise as under:-

“BONAFIDE NEED OF THE PETITIONER

b. The Respondent's contention that the Petitioner projected bona fide need of returning to India and hence to reside in the suit premises is not genuine, is not acceptable:-

- i. From the passport of the Petitioners, it is very much clear that they are still Indian citizens;*
- ii. The Petitioners have categorically stated that they are only running a hotel business in Dubai for earning a livelihood, but their family roots are still in India;*
- iii. The Petitioner further pleaded that they want to get their daughters married in Delhi itself also cannot be stated to be a cooked up desire as naturally parents will always like their daughter to be married within their known circle which undisputedly is in India and not at Dubai.*
- iv. The fact that the Petitioner No.2 is a senior citizen having 80 years of age, intend to spend the rest of her life in her own property at Delhi cannot be stated to be a bogus desire, but rather a genuine one.*

c. The Respondent's contention to the effect that the Petitioner intends to sell the Suit Property is very well

covered by virtue of the provisions of Section 19 of the DRC Act.

d. The Respondents further contention to the effect that the Petitioners being persons of high standard cannot be expected to live in India in the Suit Property is also not tenable in view of the fact that the Petitioner themselves have stated in the Petition itself that they want to reconstruct the building to make it habitable according to their own standard, if the same get evicted by the Respondent.

Hence, the Bonafide Need as projected by the Petitioner stand proved.”

5. So far as the question of alternative accommodation to the respondents-landlords is concerned, it has been stated that the property belonging to the sister of respondent No.1 could not be considered to be an alternative suitable accommodation. Certainly on that score, the view taken by the learned ARC cannot be found fault with.
6. I have heard the learned counsel for the petitioners as well as the learned counsel for the respondents.
7. The learned counsel for the petitioners has contended that the very bona fide need of the respondents-landlords is suspect on account of the fact that they are admittedly doing the hotel business in Dubai and have themselves admitted in the eviction petition itself

that after seeking eviction of the petitioners they intend to demolish the building. If they want to demolish the building, obviously it will take considerable amount of time and money to rebuild the property.

8. What is the kind of structure they are intending to build and for what purpose they are going to use it does not fit with the bona fide requirement envisaged under Section 14 (1) (e) of the Delhi Rent Control Act, 1958. This very fact raises in itself a triable issue and the learned ARC has simply been brushed aside this ground by observing that the respondents are Indian citizens and there is a sanction provided under Section 19 and their children are studying in intended to study in Delhi.
9. The High Court in case titled *M/s. Union Carbide India Ltd. v. Shri Dalip Singh*, All India RCJ 1981 (2), decided on 06.03.1981 has considered the scope of the summary procedure prescribed under Section 25-B (8) and observed that where the tenant raises serious pleas in his Affidavit that can be only proved by evidence and are prima facie likely to disentitle the landlord to get back the possession then tenant deserves leave to contest.

10. So far as the counsel for respondents-landlords is concerned, he has disputed the contention of the learned counsel for the petitioners and has contended that the landlord is well within his right to make the premises habitable after demolishing the old structure and raise a new structure and this cannot be found fault with on the ground of bona fide requirement. In support of his contention, the learned counsel for the respondents has placed reliance on *Kusum Devi v. Mohan Lal*, (2009) 11 SCC 594; *Sharifuddin v. Babuddin & Anr.*, 2009 (107) DRJ 253; *Ram Wati Devi & Ors. v. Mohan Babu Sharma & Ors.*, 215 (2014) DLT 548; *Bhem Sen v. Raj Devi*, 1973 RCR 734; and *Abdul Qadir & Anr. v. Hamid Hussain*, 1986 (29) DLT 107.
11. I have considered the respective submissions carefully and have gone through the impugned order.
12. I feel that there is considerable merit in the contention raised by the learned counsel for the petitioners that the bona fide requirement of the respondents in the instant case is suspect. The reason for this is that under Section 14 (1) (e) of the DRC Act this is not the purport of law that a person whose eviction is sought on the ground of

bona fide requirement that the landlord be permitted to demolish the entire structure and then raise altogether a new structure. If it would have been so, then it would have been specially incorporated in the provision itself. By reading such a requirement that a landlord is entitled to evict his tenant and raise a new structure which will be in tandem with the modern amenities, the ground under Section 14 (1) (g) of the DRC Act where the landlord seeks eviction on the ground of construction or reconstruction would become redundant.

13. It is nobody's case that the landlord can after evicting his tenant on the ground of bona fide requirement can suitably make additions or alterations or repairs so as to suit his requirement. To make addition/alterations or suitable repairs to meet his requirement cannot be equated with the razing of the entire structure to the ground as is sought to be done in the instant case. The noticeable fact in the instant case is that the respondents themselves have admitted in their eviction petition itself that they want to raze structure to the ground. Coupled with the fact that the respondents are already in hotel business not only in Dubai but are also running

hotel in Karol Bagh area where the suit property is situated therefore, it is well possible that after seeking the eviction of the petitioners from the suit property, the respondents-landlord may raise structure which will be more suited for running a hotel then a residence and if that be so then certainly the respondents-landlords are not entitled to seek eviction of the petitioners from the premises in question under Section 14 (1) (e) of the DRC Act. Therefore, in my considered opinion, this is a very vital triable issue raised by the petitioners in the instant case, which has been ignored so casually by the learned ARC by writing a cryptic judgment and giving item wise points and reaching to a conclusion on which no reasonable person could have arrived at.

14. I feel that the finding of the learned ARC is perverse and suffers from material irregularities and mis-appreciation of facts of the case. I therefore, set aside the eviction order dated 19.05.2015 by virtue of which the leave to defend has been rejected and an order of eviction was passed.
15. I may also mention that the judgments which have been cited by the learned counsel for the respondents are judgments which are

passed after the parties have adduced their evidence and, therefore, are distinguishable from the facts of the present case. These are not cases where the leave to defend was rejected under Section 14 (1) (e) of the DRC Act but these are the cases where eviction order passed after recording evidence whereas in *Behm Sen* and *Abdul Qadir (supra)*, the landlord has also filed eviction petition under Section 14 (1) (g) of the DRC Act which is not the case in the instant petition.

16. Accordingly, the revision petition is allowed. The petitioners are granted leave to contest the petition.
17. The petitioners/tenants shall file the written statement within four weeks from today with an advance copy to the respondents, who may file response thereto within two weeks thereafter.
18. The parties to appear before the learned Additional Rent Controller on 19.01.2016.
19. A copy of the order be sent to the learned Additional Rent Controller.

V.K. SHALI, J.

DECEMBER 21, 2015

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