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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 636/2015 & C.M. No.29316/2015

TARLOK SINGH

..... Petitioner

Through Mr. Ramji Srinivasan, Sr. Adv. with
Mr. S. Ravi Shankar and Mrs.
Yamunah Nachiar, Advs.

versus

T J JOHNY

..... Respondent

Through Mr. Jos Chiramel and Mr. Ramesh
Kumar, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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03.05.2016

The petitioner before this Court is the landlord. He is aggrieved by the impugned order dated 16.10.2015 whereupon on an application filed under Section 19 (2) of the Delhi Rent Control Act (DRCA) by the non-applicant/tenant, order of re-entry of the property had been effected in favour of the tenant. The landlord is aggrieved by this finding.

Record shows that an eviction petition had been filed by the landlord against his tenant under Section 14 (1)(e) of the DRCA. This eviction petition had been decreed in favour of the landlord on 21.09.2013. In terms of Section 19 (2) of the DRCA, the landlord was required to occupy the premises either by himself or through his beneficiary; the premises were to be occupied within two months of obtaining possession of the same. Contention of the tenant before the Trial Court was that this mandate had not been complied with.

The Trial Court had noted the submissions and counter

submissions of the parties and had thereafter passed an order for re-entry of possession qua the tenant.

There are certain dates which are undisputed. Admittedly the eviction order had been passed in favour of the landlord under Section 14 (1)(e) of the DRCA on 21.09.2013. Physical possession of the suit premises was taken over by the landlord on 03.06.2014. The petitioner is admittedly a 84 year old citizen. His wife is also in her earlier 80's. They are permanent residents of United Kingdom. The eviction petition had disclosed that because of harsh winter months in United Kingdom, the petitioner wished to set up his residence in India and accordingly the aforementioned suit premises (i.e. a shop, a store, kitchen and a bathroom on the ground floor of property bearing No.7A/4, WEA, Karol Bagh, New Delhi let out at a monthly rent of Rs.123/- per month w.e.f. 1940) was required by the landlord. The other facts which are undisputed are that the landlord had to undergo an operation of his prostate gland in London and he was discharged from the hospital on 09.05.2014. He was advised for a follow up after three months from the date of his operation. He however urgently had to go back to his physician on 05.08.2014. This was prior to the expiry of the three month period. The discharge summary of the petitioner showing his medical condition i.e. w.e.f. 07.05.2014 as also the letters of his surgeon dated 05.08.2014 and 08.08.2014 recording his medical conditions and the fact that he had to undergo prostate surgery and then go back to his general physician on 05.08.2014 are also a part of the record. Further admitted fact being

that on 02.08.2014, the two month period (as mandated under Section 19 (2) of the DRCA stood expired); this was the period within which the possession of the premises had to be taken over by the landlord and he had to occupy the same. Further admitted position is that up to 10.07.2014, the mother and the son of the landlord had stayed back in Delhi and they were getting the property repaired. It is also an admitted position that the tenancy was more than 45 years old having been created in the year 1940. Further admitted position is that the marriage of the granddaughter of the landlord had been fixed in November, 2014 and wedding cards both of the pre-wedding celebrations as also the post-wedding reception had been placed on record. This wedding took place in November, 2014. The landlord had come to India in January, 2015. His appearance before the ARC was noted on that date.

All these facts were noted by the Trial Court. The Trial Court had however proceeded on the basis that nothing prevented the landlord from coming to India after his surgery had been performed on 09.05.2014. His physical appearance in India for the first time after the date of eviction order (on 21.09.2013) was in January, 2015, as per the tenant, speaks volume of his dishonesty; had he been an honest and a bonafide landlord, he would have forthwith occupied the premises. Learned senior counsel for the petitioner on this score has drawn attention to certain photographs which were purportedly clicked by him in December, 2014; submission being that the condition of the suit property was fairly good even at that point of

time and the submission of the landlord that he was in fact carrying on repairs in the building and which had been prevented from taking actual physical possession is thus belied.

In the reply filed by the landlord to these proceedings (in the Trial Court), the submission of the landlord was that on 03.06.2014, the physical possession of the suit premises had been taken over by the son of the landlord on his behalf who had remained in the suit property till 10.07.2014. His son had admittedly parked his car in a portion of the suit property. This fact is admitted. The other facts as detailed in the reply filed by the landlord were in relation to the premises which were being let out to the tenant; his discharge summary and his next follow up before the general physician on 05.08.2014. The fact that his granddaughter was married in November, 2014 is also not disputed.

Before advertng to the facts of the instant case, it would be necessary to note the ingredients of legislative enactment as contained in Section 19 (2) of the DRCA. It reads herein as under:-

“19. Recovery of possession for occupation and re-entry.-

(1) xxxxxxxxxxxxxxxxxxxxxxx.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied

are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made on him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.”

This Section provides for recovery of possession for occupation and re-entry. The landlord who has to recover possession of the tenanted premises from the tenant on the ground of bonafide necessity under Section 14 (1)(e) of the DRCA will have to occupy the premises either himself or through his beneficiary within a period of two months from the date of obtaining such a possession. Section 19 (2) is wholly connected with Section 14 (1)(e). The legislative policy is that the landlord who has obtained the possession of the property must reflect this bonafide need by taking over the occupation of the premises; the ‘occupation’ therefore has to be for the same purpose for which the premises have been obtained; the word ‘occupation’ however has to be interpreted in a wider manner than the word ‘possession’.

The Apex Court in AIR 1964 SC 1676 Ramnikal Patambardas Mehta Vs. Indradaman Amratlal Sheth in this context has made the following observation:-

“What is however clear beyond any doubt is that when the possession is obtained in execution it must be followed by an act of occupation which must inevitably consist of some overt act in that behalf”

This judgment had been delivered under Section 13 (1)(g) and Section 13 (1) (hh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 where the bonafide need of a landlord was projected in terms of Section 13 (1)(g) of the said Act. The second provision i.e. Section 13 (1)(hh) was a ground available to the landlord to seek eviction from the tenant for the purpose of demolition and for the purpose of erecting a new building. Section 13 (1)(g) of the said Act contained the first ingredient of Section 14 (1)(e) of the DRCA which is the bonafide need of the landlord to seek eviction of his tenant either for himself or for his beneficiary. In this context, the Apex Court had gone on to state that a narrow construction cannot be given to the word ‘occupies’ and the findings of the Apex Court in an earlier judgment in (1964) 1 SCR 553 Krishanlal Ishwarlal Desai v. Bai Vijko had been considered. That judgment was in the context of provisions of Section 17 which stipulated that if the premises are not occupied within the one month from the date the landlord recovers possession of the same, the Court may order the landlord on the application of the original tenant to place him in occupation of the premises. This provision i.e. Section 17 is almost para materia Section 19 (2) of the DRCA. The Apex Court in Krishanlal Ishwarlal Desai (supra) had made the observation

that when possession is obtained in execution, it must be followed by an act which must inevitably consist of some overt act in that behalf. The overt act in the instant case was the act of the landlord through himself and his wife to stay in the property up to 10.07.2014 for the purpose of carrying out necessary renovation and repairs as he himself was in London necessarily for the reason that he had been urgently operated upon for his prostate gland. The son of the petitioner and his wife had also parked their vehicle in the property.

The Bench of the Bombay High Court in Manchharam Ghelabhai Pittalwal Vs. The Surat Electricity Co.Ltd. in Civil Revision Application No.205/56 decided on 01.02.1957 by the Bombay High Court had interpreted the word ‘occupation’ in clause (g) of Section 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act to mean possession followed by an actual possession meaning thereby that one cannot occupy unless one is able to possess; the landlord must possess in order to enable him to carry out demolition or to erect a new building. These observations are relevant in the context of the instant case.

The facts of the instant case thus demonstrate that the physical possession of the premises had been taken over by the landlord through his son. This was on 03.06.2014. This was necessitated for the reason that the 84 years old landlord had just undergone his prostate surgery and had been discharged on 09.05.2014 but a follow up action was required by the doctors of United Kingdom for three months after 09.05.2014. Even before the expiry of the aforementioned

three months period, the landlord had to visit his doctor on 05.08.2014. The bonafides of the landlord in implementing the order of eviction and complying with the directions of Section 19 (2) of the DRCA was reflected by his conduct when he left his wife and son in Delhi up to 10.07.2014 to carry out the necessary repairs in the 45 years old building which has been received by him on 03.06.2014 and without which it was not possible for him to live in the building as it required renovation and repair. This was clearly reflected in the reply filed by the landlord to the application under Section 19 (2) of the DRCA before the Trial Court. In fact the record further reflects that after 03.06.2014, occupation of the suit property was carried out by the wife and the son of the petitioner; they had stayed in India up to 10.07.2014. Renovation and repairs of the building were carried out and this Court takes the judicial notice of the fact that a property which had been let out since 1940 would definitely need some kind of repair before it could be occupied by the new incumbent. The judgment reported as Ramnikal Patambardas Mehta (supra), clearly holds that a renovation would fall within the encompass and purview of Section 19 (2) of the DRCA. The fact that the vehicle of the petitioner/his son had been parked in this property was also noted by the Trial Court but it negated on the ground that this would not be reflective of the bonafide requirement of the petitioner. That finding by itself may be correct but this finding had to be arrived at by the Trial Court in the context of the factual narration of the instant case

which, at the cost of repetition, was to the effect that the landlord was precluded from a special emergent condition in not being physically present in India although he was represented through his wife and son. The medical condition of the petitioner had prevented him from doing so and the record of the concerned doctor showing his operative procedure and discharge summary and his next follow up on 09.08.2014 substantiates this submission. The fact that the wife and son of the petitioner were in Delhi with a follow up action to carry out the necessary repairs and renovation in the building is an admitted fact. The fact that the building did require repairs being a 45 years old tenancy is a judicial notice which the Court takes qua this property. The marriage of the granddaughter of the petitioner having been fixed in November, 2014 is also an admitted fact. The fact that an 84 years old man would find it difficult to travel to and fro from the United Kingdom to India keeping in view the fact that his presence in November, 2014 necessitated for the reason of the marriage of his granddaughter is also noted. In this background, the petitioner had sufficiently explained as to why he could not come to India up to January, 2015.

Be that as it may, the presence of the landlord was not necessary for the reason that the incumbent through his son had occupied the property after 03.06.2014 (date of decree) up to 10.07.2014; his wife and his son being his beneficiaries were both in India. The eviction petition clearly discloses his need which is the need of the landlord and his wife to stay in India as the winter months

in the United Kingdom are harsh and they required to shift to India. The wife of the petitioner was admittedly his beneficiary and falls within the encompass of Section 19 (2) of the DRCA.

The Trial Court had clearly returned an illegal finding. The order of re-entry passed by the Trial Court being perverse, is liable to be set aside.

The judgment relied upon by the learned counsel for the respondent reported as (1976) ILR 2 Delhi 644 P.C. Badhwar Vs. Lajwanti Malik has no application to the factual matrix of the instant case. That was a case where the landlord after recovery of possession of the suit property had re-let the premises for a commercial purpose; i.e. for the purpose of earning a higher rent and this is admitted by the landlord. It was in this background that the Court had held that the provisions of Section 19 (2) of the DRCA had not been adhered to. Factual matrix in the instant case is different.

Impugned order is set aside. Petition allowed and disposed of in the above terms.

INDERMEET KAUR, J

MAY 03, 2016

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