

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 25th August, 2017**

+ **RC.REV. 394/2017**

SANJAY RATHORE

..... Petitioner

Through: Mr. Ashok Kumar, Adv.

Versus

KRISHNA DEVI

..... Respondent

Through: Mr. S.K. Oberoi, Mr. Deepak Anand
and Mr. Aayushmaan Vatsyayana,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

Caveat No.759/2017

1. The counsel for the caveator/respondent has appeared.
2. The caveat stands discharged.

RC.REV. 394/2017 & CMs No.30557/2017 (for stay) & 30743/2017 (for condonation of 62 day delay in re-filing)

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 23rd February, 2017 in E No.242/16 (Old No.31/2015) of the Court of Additional Rent Controller (ARC), North District, Rohini Courts, Delhi] of dismissal of the application filed by the petitioner for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent and the consequent order of eviction of the petitioner from one room in property No.C-9, New Cottage, Adarsh Nagar, New Delhi.

4. The counsels for the parties have been heard.

5. The respondent instituted the petition for eviction from which this petition arises, pleading (i) that there were in all 12 rooms in property No.C-9, New Cottage, Adarsh Nagar, New Delhi-110033 and which were let out by the respondent to different tenants and of which one room was let out to the petitioner; (ii) that the respondent along with her son and one widow daughter with her two children was residing in property No.B-32, Mahatma Gandhi Road, Adarsh Nagar, New Delhi-110033; (iii) that with the passage of time, differences had arisen between daughter-in-law of the respondent and the widow daughter of the respondent and who no longer had cordial relations; (iv) that relatives and other family members of the respondent had advised the respondent to separate the share in the properties aforesaid of the respondent, between her son and widow daughter; (v) that it has also been agreed that the respondent will construct a house for her son, daughter-in-law and their children and the “residential house” has been given to the widow daughter (though there is ambiguity in the petition for eviction in this regard but the counsel for the respondent, on enquiry, states that property No.B-32, Mahatma Gandhi Road, Adarsh Nagar, Delhi had been agreed to be given to the widow daughter); (vi) that the respondent is under obligation to provide a separate accommodation for her son and his family and the respondent thus requires to re-construct property No.C-9, New Cottage, Adarsh Nagar, New Delhi; and, (vii) that all the other tenants are ready to vacate the premises in their tenancy except the petitioner herein.

6. I have enquired from the counsel for the respondent, whether the respondent has got the other eleven rooms in the subject property vacated from the other tenants therein.

7. The counsel for the respondent states that notices have been issued to the other tenants. It is also volunteered that a petition for eviction under Section 14(1)(f) of the Act was also earlier filed against the petitioner.

8. I have enquired from the counsel for the respondent as to how on the aforesaid pleas, a case of requirement within the meaning of Section 14(1)(e) of the Act is made out. It is not the case of the respondent that the premises in her occupation are insufficient for herself or her family members. The only reason given is the desire of the respondent to provide separate accommodations to her son and widow daughter.

9. It is not as if the properties have been transferred in the name of the son and daughter *in praesenti* and which would have been the case if the intention expressed were being implemented. The plea, that the tenants in 11 other rooms in the property are ready to vacate their portions also cannot be accepted at this stage inasmuch as none of them have vacated till now and notices have had to be issued to them. Ordinarily, the question of issuing notice would not arise, if the said tenants were readily agreeable to vacate. Moreover, the case aforesaid was set up nearly two years ago and in the said two years, none of the said tenants have vacated. The requirement pleaded can only be fulfilled, if the entire property is vacated and which is still a far cry.

10. I am thus of the view that this is certainly a case for grant of leave to defend.

11. A landlord cannot be permitted to create a case of paucity of accommodation. In the present case, though it is not the case of the respondent that the accommodation in her possession in property No.B-32, Mahatma Gandhi Road, Adarsh Nagar, New Delhi is insufficient, on the

plea, of a desire to give the said house exclusively to the son, the tenant in another house cannot be evicted. 'Requirement' within the meaning of Section 14(1)(e) is not a mere desire. The degree of intensity contemplated by "required" is much more higher than in mere desire. In the facts of the present case, it needs to be put to trial, whether the intent and desire of the respondent, is the result of whim and fancy and in which case the respondent would be disentitled from an order of eviction under Section 14(1)(e) of the Act or outcome of a sincere, honest belief and need and in which case it would be held to be "requirement" within the meaning of Section 14(1)(e) of the Act. Placing myself in the armchair of the respondent at this stage and applying the practical approach instructed with realities of life, I am unable to objectively determine whether the need of the respondent to occupy the premises in tenancy of petitioner can be said to be natural, real, sincere, honest. The respondent, at least at this stage, is found wanting in substantiating her pleaded need. It is only after the Court, applying objective standards, is satisfied with the *bona fides* of the need of the landlord for the premises that the subjective choice of the landlord is respected by the Court. It also needs explanation as to why the son and daughter of the respondent cannot be separated in property No.B-32, Mahatma Gandhi Road, Adarsh Nagar, Delhi itself.

12. I am afraid, the learned ARC has not dealt with the matter in correct perspective and applying the statutory requirements. Rather, what is found is that after setting out the facts and the case law under Section 14(1)(e) of the Act, in the concluding paragraph, without applying the said case law to the facts of the present case, it is stated that no triable issue is made out. Such an

exercise does not constitute giving reasons, which are essence of the adjudicatory process.

13. The petition is thus allowed. The order dated 23rd February, 2017 dismissing the application of the petitioner for leave to defend and passing an order of eviction of the petitioner is set aside. The petitioner is granted leave to defend for eviction.

14. The petitioner to file written statement to the petition for eviction within thirty days with advance copy to the counsel for the respondent.

15. The parties to appear before the Additional Rent Controller (East), Rohini Courts, Delhi on 27th September, 2017.

RAJIV SAHAI ENDLAW, J.

AUGUST 25, 2017

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