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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 30th January, 2018

Decided on : 16th February , 2018

+ RC REV. 173-74/2005

RAMESH WATI & ANR.

..... Appellant

Through: Mr. Suryakant Singla and Mr.
Virender Kumar Singh,
Advocates

versus

HAR NARAIN

..... Respondent

Through: Mr. Manoj Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. This revision petition was preferred to bring a challenge to the judgment dated 12.07.2015 of the Additional Rent Controller (ARC) whereby the eviction petition (E-82/2003) instituted on 04.03.2003 by the petitioners seeking an order of eviction on the ground of bonafide need in terms of Section 14 (1)(e) of Delhi Rent Control Act, 1958 in respect of the premises described as one room measuring 15.6 x 13' alongwith veranda store measuring 6' x 7', open courtyard measuring 7.8 x 9.8, bathroom measuring 6' x 3' and a common latrine, as shown in colour red in site plan (Ex. PW1/1) forming part of house no.4537-38, Arya Pura, Subzi Mandi, Delhi-110 007 (hereinafter referred to as

“the tenanted premises”) was dismissed.

2. The eviction case, as originally brought before the ARC by Smt. Ramesh Wati and Leelawati both concededly co-landlords vis-a-vis the respondent in respect of the tenanted premises, they being residents of house no.4550, Arya Pura, Subzi Mandi, Delhi-110 007, a property distinct from the property of which the tenanted premises forms a part. Smt. Leelawati, second petitioner died during the pendency of the case before the Rent Controller and stood substituted by her husband, Bijender Kumar, who alongwith the first petitioner prosecuted the case till the impugned judgment dated 12.07.2005 was passed. It may be added here that the first petitioner Smt. Rameshwati also died (on 30.07.2015) during the pendency of the revision petition before this court and on application (CM 24562/2015) being moved, she has been substituted by her legal heirs, they including her husband Bal Kishan Verma, two sons Ajay Kumar Verma and Vijay Kumar Verma and two daughters Neelam and Madhu Tanwar.

3. As per the averments before the Rent Controller, at the time of filing of the eviction petition, the family of the first petitioner comprised of nine members including herself, her husband, elder son Ajay Kumar, his wife Indu Verma, their children Apurva Verma and Anushka Verma, younger son Vijay Kumar (who was unmarried at that point of time), then a student of post-graduation and two daughters both studying one pursuing graduation, the other still in school. It was pleaded that the first petitioner was suffering from heart ailment and hyper-tension and had been advised medically against climbing stairs for which reason she was in need of

accommodation at the ground floor level. It was explained that the property no.4537-38, of which the tenanted portion forms a part, consists of 6 rooms on the ground floor, 5 on the first floor and 2 barsatis on the second floor, each portion in occupation of different tenants. The petitioners also own property no.4550, Arya Pura, Subzi Mandi, Delhi-11 007, the first floor portion thereof comprising of two rooms, kothri, kitchen, latrine and bath were in use and at the disposal of the first petitioner, ground floor and a kothri measuring 8' x 8' at the second floor being in use and occupation of the second petitioner. It was explained that the second petitioner was also suffering from high blood pressure and liver disease and, therefore, required the continued use of the ground floor portion which consequently could not be made available for purposes of the first petitioner. The prayer was for eviction of the respondent on the ground of bonafide need of the first petitioner since the ground floor portion of house no.4550 which comprised primarily of two rooms and kothri was insufficient for the needs of the large family, it requiring one room for the first petitioner and her husband, one room for the elder married son and one room each for the three other children besides accommodation required in the nature of drawing room and guest room.

4. The case was contested by the respondent raising the issue of non-joinder of Smt. Savitri Devi, terming the claim malafide contending that Bal Kishan Verma, husband of the first petitioner was serving as a teacher in Baghpat area of District Meerut, U.P. where he alongwith the first petitioner and a daughter were residing permanently. The respondent also pleaded that the second son was

working as a professor in Meerut, U.P. and would hardly visit Delhi, the other son working in the area of Lodhi Road, New Delhi. By the time the pleadings were completed, the elder daughter of the first petitioner had got married and had moved to her matrimonial home in Village Naraina, Delhi. Pointing out this fact, additionally the respondent submitted in the written statement that the petitioners had nine rooms available to them in house no.4550, Arya Pura, Subzi Mandi, Delhi, which according to him was sufficient for their needs.

5. The case was put to trial in the course of which Bijender Kumar, husband of the second petitioner, he also being attorney of the first petitioner, was examined on their behalf (as PW-1) besides one Gokul Chand (PW-2), an acquaintance. On the other hand, the respondent examined himself (as RW-1), also tendering the evidence of two other witnesses Vishwanath (RW-2) and Satya Prakash (RW-3), his acquaintances.

6. The ARC, by his judgment dated 12.07.2005, noted the admission of the respondent (RW-1) during his cross-examination about he having initially been inducted and having paid rent to Ram Singh, the predecessor-in-interest of the petitioners and, after his demise, to the petitioners. Though the respondent would also claim that he had paid rent to the petitioners and Smt. Savitri Devi, another legal heir of erstwhile owner Ram Singh, he would concede that Savitri Devi never issued any rent receipt. While not excluding the possibility that Savitri Devi was a co-owner of the property, there being no dispute about the claim of the petitioners being the co-owner of the property, the ARC recorded satisfaction that the requirements of

the provision contained in Section 14(1)(e) of Delhi Rent Control Act, 1958 in this regard had been duly met. The objection of non-joinder of Savitri Devi was rejected with reference to the ruling of the Supreme Court in *Dhanna Mal Vs. Kalawati Bai*, 2002 (6) SCC 16 in as much as a co-owner can also bring an eviction petition without joining other co-owners or co-landlords. In the proceedings arising out of the revision petition at hand, the respondent would not raise any argument in above regard and, thus, the finding of the ARC must be treated as having attained finality.

7. The respondent had contested the eviction case on the ground that the purpose of letting of the tenanted premises was residential-cum-commercial. The ARC noted in the impugned judgment that no evidence had been led to prove or establish the use of the premises for any commercial activity. This plea, even otherwise, has been rendered insignificant in view of the ruling of the Supreme Court in *Satyawati Sharma Vs. Union of India*, 2008 (5) SCC 287. In terms of the law declared in the said case, the eviction petition on the ground of *bonafide* need under Section 14(1)(e) of Delhi Rent Control Act, 1958 can be brought even in respect of the tenancy, the purpose of which is commercial. Thus, the finding of the ARC in the impugned judgment on this score does not call for any interference. It rather must be affirmed.

8. It was admitted by the respondent (RW-1) during the course of his statement that all portions of property no.4537-38 are occupied by the tenants. Reference had also come in the pleadings to other property, they bearing no.4456, 4546-47, also in Arya Pura, Subzi

Mandi, Delhi, it being an admitted fact that all portions of the said other properties were also similarly in the use and possession of different tenants. Thus, the ARC noted that the only property which was in use of the petitioners is the house no.4550, Arya Pura, Subzi Mandi, Delhi. The accommodation comprised in this property is also not disputed. It consists of two rooms and kothri on the ground floor, two rooms and kothri at the first floor and one kothri (8' x 8') at the second floor. Though at one stage, the respondent had pleaded that the ground floor and first floor comprise of three rooms rather than two rooms and kothri, he did not file any site plan to show the dimensions of the portion described as kothri by the petitioners to be such as would render the same full-fledged room. The ARC was thus satisfied with the correctness of the site plan (Ex. PW1/1) proved by the petitioners during the trial. There is no argument raised at the hearing on the revision petition about the correctness of the said finding returned by the ARC in the impugned judgment.

9. The ARC dismissed the eviction petition observing that the husband of the first petitioner was employed in Baghpat, U.P. and therefore, the contention of the respondent that the petitioner and her husband were not residing in Delhi deserved to be accepted. He was of the view that this would render the need for accommodation in Delhi reduced to only for seven members of the family of the first petitioner. He rejected the plea for accommodation at ground floor for medical reasons as misconceived observing that the second petitioner had already died while the medical prescriptions (Ex. PW1/R1-28) concerning the first petitioner carried no such advice against climbing

of stair case.

10. The revision petition at hand was brought before this court on 02.01.2006. For some reason or the other, the matter kept hanging fire with no meaningful progress. On 16.12.2009, the court called upon the parties to remain present to explore the possibility of arriving at a negotiable settlement. On 27.01.2010, the parties were referred to mediation centre for such purposes, the said exercise, however, not bearing any fruit. By order dated 20.04.2010, it was put in the category of 'regular matters', to be taken up on its own turn. By order dated 25.08.2010, the petition was dismissed in default from the category of regulars. It was, however, restored by order dated 30.04.2012 allowing the application to such effect.

11. On 24.09.2014, the court recorded the following order :-

"1. This petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns the judgment of the Additional Rent Controller dated 12.7.2005 by which the bonafide necessity eviction petition has been dismissed.

2. The eviction petition was filed in the year 2003 and today we are in the year 2014 and therefore there have been considerable change of circumstances including of whether sons of the petitioner No.1 are or are not residing in Delhi, if sons are residing in Delhi who are their family members and what are the ages of their children, and all of which aspects have to be supported by the requisite documents whether they be election identity card or the ration card or the passport including those of proof of the sons of the petitioner no.1 working at Delhi.

3. I exercise my powers under Order 7 Rule 7 of Code of Civil Procedure, 1908 (CPC), Order 41 Rule 27 CPC read with Section 165 of the Evidence Act, 1872 in a case of bonafide necessity such as the present because this Court has to see the position as of today in a bonafide necessity case such as the present in order to decide who are the family members of the petitioner No.1, and whether they are or are not residing at Delhi. Supreme Court has consistently held that in bonafide necessity eviction petitions, Courts can cautiously consider subsequent events and which subsequent events can be considered by filing of affidavits by both the landlord and the tenant. After filing of the affidavits, if any further orders with respect to evidence to be led are to be passed, then the same can be done.

4. Let the petitioner No.1 file the affidavit in this Court within a period of four weeks specifically stating therein as to who are as of today her family members, whether those family members are living in Delhi, and to be supported by necessary and clear proof of the existence and occupation of the family members in Delhi. Affidavit of the petitioners will show/give details of the actual accommodation presently available with them alongwith the site plan. Respondent will be entitled to file counter affidavit within a period of four weeks thereafter to the affidavit which is now being allowed to be filed by the petitioners.

4. List for further proceedings in the category of 'After Notice Miscellaneous Matters' on 12th December, 2014."

12. The first petitioner Rameshwati submitted her affidavit dated

31.10.2014 in compliance, the relevant part whereof reads as under :-

“1. That I am the petitioner No.1 in the above matter and am well conversant with the facts and circumstances of the case, hence competent to depose.

2. That this Hon'ble High Court vide order dated 24.09.2014 has been pleased to direct me to file affidavit specifically stating therein as to who are as of today are my family members, whether those family members are living in Delhi and the actual accommodation presently available with them alongwith the site plan. As such in compliance of the said order, I am submitted the present affidavit.

A. Details of family members:-

(i) Smt. Ramesh Wati – Petitioner No.1.

(ii) Sh. Bal Kishan – Husband

(iii) Sh. Ajay Kumar Verma – Married Son.

(iv) Sh. Vijay Kumar – Married Son.

(v) Smt. Neelam – Married Daughter.

(vi) Smt. Madhu Tanwar – Married Daughter.

3. That the property bearing No.4550, Arya Pura Subzi Mandi, Delhi-7, admeasuring approx. 60 sq. yds., is consisting of ground, first, second and a small room on third floor. The entire ground floor, shown in Red in the site plan annexed, is in use, possession and occupation of the petitioner No.2 who is residing there alongwith his full time servant namely Sh. Bhupender S/o Sh. Babu Singh. The petitioner No.2 is a widower and is not having any child as such he is taking assistance of his servant Sh. Bhupender in his milk dairy business as well as for domestic chores, as such both the petitioner No.2 and his above servant remains together all the times since 2003.

4. That my elder son namely Ajay Kumar Verma, mentioned as Sl. No.(iii) above, is married, having wife namely Smt. Indu Verma and two minor children namely (i) Master Approv Kumar, aged 16 years, studying in St. Stephen School, Pitampura, Delhi and (ii) Ms. Anushka Verma, aged 12 years, studying in Ramjas School, Anand Parbat, Delhi. I alongwith my husband and elder son, his wife and their above said two kids have been residing on second floor, shown in Green Colour in the site plan annexed, which is consisting of Two Rooms, kitchen, bathroom and lobby. The third floor, consisting of one small room is also in my possession, which is being used by the kids for their study purposes as well as for storage. I am a house hold lady, my husband is retired person, whereas my elder son is serving in Ministry of Earth Sciences, India Meteorological Department, Lodhi Road, New Delhi.

5. That my younger son namely Vijay Kumar, mentioned at Sl.No.(iv) above, is married, having namely Mrs. Amita and a male child namely Master Animesh Verma, aged about 07, studying in 2nd class in St. Stephen School, Pitam Pura, New Delhi. Vijay Kumar alongwith his wife and child is residing on the first floor of the above said property, shown in Green in the site plan, consisting of one drawing room, one small room, lobby, kitchen and bathroom. My son Vijay Kumar is Master by profession, serving in NDMC school and his wife Smt. Amita is also a Teacher and is serving in NDMC School, both are presently posted at NDMC School, Ansari Nagar, Gole Market, New Delhi.

6. That both my daughter mentioned at Sl. No.(v) & (vi) are married. My elder daughter namely Neelam is residing at CB-61, CB Naryana, New Delhi alongwith her husband and minor son namely Master Aditya, aged about 10 years, whereas my another daughter namely Madhu Tanwar is residing at 184, Gali No.3, Lajwanti Garden, Delhi-110046, alongwith her

husband minor son namely Master Arnav, aged about 05 years. Both my above said daughters alongwith their respective families used to visit me frequently and also used to stay with us in holidays, weekends, festivals and family occasions.

7. That I and my husband, both are senior citizens, we both are suffering from heart problem and have already undergone Angioplasty etc. Apart from heart problem, we both are also suffering from diabetes. We are facing lot of problems in accommodating ourselves in the house, which is in our possession. Copies of all the relevant documents showing the addresses, place of employment, study etc. of all the family members alongwith site plan of the property in which I alongwith my family members is residing are enclosed with this affidavit.”

13. It was noted on 12.12.2014 that the respondent had not filed reply affidavit in terms of the directions given earlier. He was granted one last opportunity for the purpose subject to payment of costs of Rs.5,000/- and the matter was adjourned to 25.03.2015. Though there was some confusion at the hearing on the subsequent dates as to whether the respondent had availed of the opportunity to file a reply / counter affidavit or not, upon directions being issued by order dated 25.01.2018 for a report from the Registry, the counter affidavit dated 24.03.2015 of the respondent with an application for waiver of costs as had been tendered by diary no.146105/2015 on 24.03.2015 has come on record. It appears there were some office objections in terms of which the counter affidavit was to be taken back by the respondent, he not even having tendered the costs subject to which the opportunity for the purpose had been renewed by order dated 12.12.2014. Be that

as it may, having regard to the old pendency of the matter, and to obviate further delay that would otherwise consequently ensue on the counter affidavit being kept out of the proceedings, the office objections and non-payment of costs have been ignored and the counter affidavit taken into consideration.

14. The counter affidavit dated 24.03.2015 of the respondent begins with the submission that the affidavit of the petitioner had been filed “*to delay the disposal of the present revision petition*” and was based on false facts. The first submission obviously is unfair in that the first petitioner had submitted the affidavit dated 31.10.2014 in compliance with the directions of the court in the order dated 24.09.2014.

15. The counter affidavit of the respondent gives parawise replies to the affidavit of the first petitioner and, therefore, must be extracted in *extenso* as under :-

“1. Para No.1 of the affidavit is wrong and denied.

2. Para No.2 of the affidavit is a matter of record.

3. Para No.3 of the affidavit is wrong and denied. It is denied that the property bearing No.4550, Aryapura, Subzimandi, Delhi-7 is measuring 60 sq.yds. consisting of ground floor, first floor, second floor and a small room on the third floor. It is denied that the ground floor is in occupation of the petitioner No.2 who is residing there along with his full time servant namely Bhupinder Singh son of Shir Babu Singh. It is denied that the petitioner is a widower and is not having any child, as such he is taking assistance of his servant Bhupinder in his milk dairy business as well as for domestic chaos, as

such both the petitioner No.2 and his above servant remains together all the time since 2003.

It is submitted that the property bearing No.455, Aryapura, Subzimandi Delhi-7 is measuring about 100 sq.yds. and the same is constructed on the ground floor, first floor, second floor and third floor. On the ground floor there are three rooms and one courtyard along with attached latrine, bath room and kitchen and on the first, second and third floors also, there are three rooms on each floor with courtyard and latrine, both room and kitchen. In all there are 12 rooms in possession of the petitioner in property No.4550, Aryapura, Subzimandi Delhi-7 and the petitioner and his family members are very peacefully residing in the above said house. It is submitted that the servant as alleged by the petitioner in the para under reply namely Bhupinder has no recognition in the eyes of law for the purposes of bonafide requirement, hence the reference of the said servant is of no use in the present proceedings.

4. Para No.4 of the affidavit is wrong and denied. It is denied that the elder son of the petitioner Ajay Kumar Verma is Master by profession and his wife is also teacher. It is submitted that false and frivolous averments have been made in the para under reply. It is submitted that no documents of the alleged teaching have been placed on record, hence the vague averments cannot be believed.

6. That the contents of para 6 of the affidavit are wrong and denied. It is submitted that the said alleged daughters do not visit the house of the petitioner for years or some times when they come, they do not stay in the house of the petitioner for more than one hour. It is

submitted that the false and frivolous averments have been made in this para under reply in order to mislead this honourable court.

7. Para No.7 of the affidavit is wrong and denied. It is denied that the petitioners are suffering from heart problem and have already undergone Angioplasty etc. It is denied that apart from heart problem, the petitioners are suffering from diabetes. It is denied that the petitioners are facing lot of problem in accommodating themselves in the house which is in their possession.

It is submitted that the false and frivolous averments have been made in the para under reply. It is submitted that no proof of the alleged diseases as mentioned in the para under reply have been placed on record. It is submitted that the petitioners are hail and healthy.

That my statement is correct.”

16. Pertinent to mention here that the counter affidavit running into 6 leaves, duly paginated, does not contain any reply to para 5 of the affidavit of the first petitioner. At the hearing, there was no explanation offered for such conspicuous omission.

17. A careful reading of the affidavit of both sides submitted in compliance with the directions of the court in the order dated 24.09.2014 bring out certain facts which are beyond dispute that may be noted hereinafter.

18. Both the daughters of the first petitioner have since got married and are living with their respective matrimonial families, the elder one in Naraina, New Delhi and the junior one in Lajwanti Garden, Delhi. Both the daughters have children of their own. The elder son Ajay

Kumar Verma and his wife Indu Verma have two children who, going by the declaration made on 31.10.2014 would now be 20 years and 16 years old respectively.

19. The family has since redeveloped the accommodation at the second floor of property no.4550, Arya Pura, Subzi Mandi, Delhi also adding a room at the third floor. The first petitioner submitted a site plan with her affidavit dated 31.10.2014 to depict the present state of accommodation in the property. At the stage of trial before the ARC, the respondent by his counter affidavit had not come with either any reply or observations or objections to the correctness of the said site plan. He has not filed any site plan on his own and therefore, the site plan which is part of the affidavit dated 31.10.2014 must be accepted as the correct site plan.

20. There is no reply in the counter affidavit and, therefore, the declaration in the affidavit of the first petitioner must be accepted to the effect that the two rooms and other facilities at the second floor of the property no.4550 are now in use and occupation of the elder son Ajay Kumar Verma and his immediate family i.e. the wife and two sons.

21. The second son Vijay Kumar has also since been married. As noted earlier, there is no reply in the counter affidavit to the facts concerning him. Thus, this court must accept the declaration on oath of the petitioner and hold that the immediate family of the second son Vijay Kumar comprise of his wife Amita and a child Animesh Verma who now would be about 11 years old. As per the site plan, the accommodation at the first floor consists of one drawing room, one

small room, lobby, kitchen and bathroom, entire of which portion is in the use and occupation of the said second son Vijay Kumar and his immediate family.

22. The site plan clearly depicts that the accommodation at the ground floor consists of one drawing room (9' x 3"x 15'), a store (9'.6" x 9') besides kitchen and bathroom. As per the declaration on oath of the first petitioner, this ground floor portion is in use and occupation of the second petitioner i.e. the husband of original second petitioner (since deceased). The first petitioner explained in her affidavit that the second petitioner is a widower and is engaged in a milk dairy business and has the assistance of a servant Bhupinder Singh who has been living with him since 2003.

23. The aforesaid facts were sought to be disputed and contested in the counter affidavit but, in the considered view of this court, there is no reason why the accommodation at the ground floor should be treated as an accommodation available as an alternative to the first petitioner for fulfilling the needs for which the eviction petition was filed. There can be no denial of the fact that both the original petitioners were co-owners. Each of them thus would be entitled to similar comfort in the property they owned jointly. As the husband of the deceased co-owner, the second petitioner is entitled to sufficient space within his own rights in the property and his occupation of the small accommodation at the ground floor cannot be grudged, not the least by a tenant.

24. In the above facts and circumstances, the only portion respecting which further scrutiny is required concerns the one room

(11'.3" x 9') and a bath at the third floor of the property. By any standards, the room at the third floor cannot be called to be sufficient to accommodate a family, that too elderly persons, in comfort. The husband of the first petitioner has since retired from service as a teacher in Baghpat (U.P.) and he alongwith his wife (the first petitioner) had shifted, after his retirement, permanently to live in Delhi, their residence being the available accommodation in property no.4550, Arya Pura, Subzi Mandi, Delhi. These facts culled out from the affidavit dated 31.10.2014 of the first petitioner have not been contested in the counter affidavit dated 24.03.2015 of the respondent.

25. After she had filed her affidavit dated 31.10.2014, the first petitioner also died on 30.07.2015. Undoubtedly, the needs explained in her respect have come to an end. But then, the needs of the family which has survived and has inherited the property continue and cannot be denied. After all, her husband, now a retired teacher, has shifted base from Baghpat, U.P. to live permanently in Delhi and be with his family in the evening of his life. Given the advanced age at which he is, one does not depend on medical prescription to conclude that his desire to live at the ground floor portion is genuine.

26. Even otherwise, given the fact that the family has grown, even the junior son having got married, both sons having their respective wives and children to look after, the needs for accommodation have only grown. The sons have been accommodated at the first and second floor of the property and justifiably so. Given the fact that two children of the elder son are also coming of age, the limited space at the first floor would not suffice.

27. It is not fair on the part of the respondent to contend that the married daughters do not need a space in the house of their father or that they would not visit to stay or further that if they were to visit they would be within parental home only for a few hours. The married daughters, as per the existing societal norms, visit the parental family which must provide comfortable space for them as well in the shape of guest rooms.

28. For the foregoing reasons, this court disapproves the approach adopted by the Additional Rent Controller in the impugned judgment. The petitioners, in the opinion of this court, had made out a good case for eviction on the ground of *bonafide* need and, therefore, the eviction petition should have been allowed. The subsequent developments, including the death of the first petitioner, would not bring about any change. On the contrary, the needs of the family have grown and, therefore, the petitioners deserve relief.

29. In the result, the revision petition is allowed. The impugned judgment of the Additional Rent Controller is set aside. An order of eviction in respect of the tenanted premises described earlier is hereby granted in favour of the petitioners and against the respondents. Having regard to the provision contained in Section 14(7) of Delhi Rent Control Act, 1958, this eviction order will become enforceable on elapse of a period of six months hereof.

R.K.GAUBA, J.

FEBRUARY 16, 2018

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